IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IA No. 43/JPR/2022
And CP No. (IB)-33/10/JPR/2021

IN THE MATTER OF SECTION 10 of The Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:
Airen Copper Pvt. Ltd.
F-728, Road No.9F/ 2
Vishwakarma lndustrial Area
Jaipur – 302013 (Rajasthan)

…Petitioner / Applicant

AND IN THE MATTER OF:
IA No. 43/JPR/2022

Airen Copper Pvt. Ltd.
F-728, Road No.9F/ 2
Vishwakarma lndustrial Area
Jaipur – 302013 (Rajasthan)

… Applicant/Petitioner

VERSUS

Bank of Baroda
ROSARB, 2nd Floor, Baroda
Bhawan, 13, Airport Plaza,
Durgapur, Tonk Road, Jaipur.
302018

...Non-Applicant/Respondent

For the Applicant : Amol Vyas, Adv.

For the Respondent(s) : Pooja Singh, JTA for RoC
Ram Naresh Vijay, Adv. for Bank of Baroda
Dheeraj Palia, Adv for Income Tax Department
R.B. Mathur, Senior Standing Counsel

Order Pronounced On: 18.02.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The instant Application is filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') for initiation of Corporate Insolvency Resolution Process in respect of Airen Copper Private Limited, the Corporate Debtor being the Applicant Company itself. The instant Application is filed through the director Mr. Sudhir Kumar Agarwal, duly authorised vide board resolution dated 01.07.2021.

2. The Applicant, 'M/s. Airen Copper Private Limited', is a company incorporated on 15.02.2002 under the Companies Act, 1956 bearing CIN No. U27201 RJ2002PTC17445. The Applicant Company has its registered office at F-728, Road No.9F/ 2,

Vishwakarma lndustrial Area, Jaipur – 302013 within the territorial jurisdiction of this Adjudicating Authority.

3. As per averments, the Corporate Debtor has two financial creditors, namely, Bank of Baroda and Airen Metals Pvt. Ltd. and two operational creditors, namely, Harbhajan Singh and Airen Metals Pvt. Ltd. who have extended financial and credit facilities. It is stated that due to acute financial constraints, the Corporate Debtor could not maintain the accounts regularly and as a result as on 31st March, 2021 the total amount in default is Rs. 29,25,24,322/-.

4. In order to prove the said default, the Corporate Debtor has placed a demand letter dated 09.04.2021 issued by the financial creditor, Bank of Baroda asking for repayment of the financial facilities extended to it. Copy of demand letter is annexed as Annexure-9 to the Application. Further, the operational creditor, Harbhajan Singh has raised the Invoices for the non-payment of his dues and the same is annexed at Annexure – 11 to the Application.

5. There is no dispute that the Applicant Company has admittedly defaulted in payment of its debts which is over the minimum applicable amount under Section 4 of the Code and therefore is entitled to file the present Application in terms of sub-section (1) of Section 10 of the Code.

6. In compliance with the requirements of Section 10 (3) (a) of the Code read with Annex-V of Form 6 of the Rules, the Applicant Company has filed copies of audited financial statements of the Corporate Debtor for the financial years 2019-20 to 2020-21 and provisional statements up to 24.06.2021.

7. Further in compliance with Section 10 (3) (b) of the Code the Applicant has proposed the name of Mr. Vishnu Upadhyay, registration no. IBBI/IPA-003/IP-N00153/2018-2019/11843 as the Interim Resolution Professional ('IRP'). The Applicant Company has obtained written communication in Form-2 from the Insolvency Professional for appointment as an IRP. In Form-2 filed along with the Application, it has been affirmed by the proposed IRP that he is a registered Insolvency Professional and qualified to practice as an Insolvency Professional. Further, it has been affirmed/confirmed that no disciplinary proceedings are pending against the proposed IRP. The said Form-2 is annexed as Annexure-5 to the Application.

8. It was noted that the Applicant did not make submissions with respect to Section 11 of the Code. The Applicant was directed to remove the deficiency through an Affidavit. In compliance, thereof the Applicant had filed an affidavit vide dairy no. 462/2022 dated 17.02.2022 affirming that the Corporate Applicant is not

disqualified in terms of provisions of Section 11 of the Code to file and maintain the Application under Section 10 of the Code. The affidavit further confirms that no CIRP has ever been initiated nor any liquidation order or winding-up order has been made against the Applicant Company.

9. In view of the above, it is clear that a default has occurred and the present Application under Section 10 is complete and that the Applicant is not ineligible under Section 11 of the Code. Further, there is no dispute that the requirements prescribed under sub-section 3 (a) and (b) of Section 10 of the Code have also been complied with.

10. However, before admission of the matter, notices were issued to the Registrar of Companies and the Income Tax Department. The Income Tax Department has submitted its No Objection vide Dairy No. 216/2022 dated 25.01.2022 and the RoC has stated vide Diary No. 217/2022 dated 25.01.2022 that they have no specific objection against the Application.

11. The Ld. Counsel for the Bank of Baroda has stated in his reply that these proceedings have been initiated with a view to stalling the recovery process of the Financial Creditor and are made with the intention of defrauding its creditors. It is also stated that the Applicant ought to have submitted the last six years bank

statement, books of accounts; but have filed the Audited Financial Statements for the previous two years only.

12. The Applicant in its rejoinder filed vide Diary No. 221/2022 dated 27.01.2022, stated that the purpose of Section 10 is the maximization of the value of the assets and keeping the Corporate Debtor as a going concern.

13. The Corporate Debtor has also placed on record a special resolution passed by the shareholders, ratifying the decision to file the present petition in terms of the amended provisions of Section 10 of the Code. The particulars of the debts owed by the Corporate Debtor, with amounts due to each of them have also been furnished. Copy of special resolution is annexed as Annexure-4 with the Application. Further, under Section 10 of the Code, non-filing of the previous 6 years of audited financial statements is not fatal to the application as the audited accounts for the immediately preceding years have been filed and in any case, can be obtained from the records.

14. The Insolvency and Bankruptcy Code, 2016 is a complete Code in itself. The provisions of the Code are to be mandatorily followed. Adherence to the statutory requirements has to be in toto. Section 10 (4) (a) of the Code mandates the Adjudicating Authority to admit the application if it is complete. When the language of the

Code is clear and explicit the Adjudicating Authority must give effect to it, whatever may be the consequences.

15. In view of the foregoing, we are satisfied that the present Application is complete and that the Applicant Corporate Debtor has committed a default. Therefore, as the Application is complete the present petition is admitted under section 10 (4) (a) of the Code. The corporate insolvency resolution process shall commence from the date of this order under sub-section 5 of Section 10 of the Code.

16. A moratorium in terms of Section 14 of the Code is being issued prohibiting the following:

    - *Institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
    - *transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
    - *any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and*

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- *recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*

17. It is further directed that:

- *The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- *The provisions of sub-section (1) of section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

18. Mr. Vishnu Upadhyay, registration no. IBBI/IPA-003/IP-N00153/2018-2019/11843 is appointed as Interim Resolution Professional, who shall take statutorily prescribed steps inter-alia as envisaged under Section 15, 17 and 18 of the Code. Since the tenure of the IRP under section 16(5) shall normally not exceed 30 days from the date of his appointment; the IRP is directed to submit his report at the earliest.

19. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process as per sub-section (4) of Section 14 of the Code.

Let a copy of this order be supplied to the Applicant as well as the interim resolution professional to carry out the CIRP at the earliest. A copy of this order shall also be communicated to IBBI for its records.

IA No. 43/JPR/2022:

In the light of the above discussion, the present application IA No. 43/JPR/2022 is disposed off.

-Sd-

DEEP CHANDRA JOSHI
JUDICIAL MEMBER

-Sd-
RAGHU NAYYAR
TECHNICAL MEMBER