

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

IBA/785/2019

Under Section 10 r/w rule 7 of the IBC, 2016

In the matter of

M/s. CAPE ENGINEERS PRIVATE LIMITED

---Corporate Applicant

Order delivered on: 06.09.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Counsel for Corporate Applicant: *Shri. A. S Sathish Kumar, PCS*

Counsel for R2 (Syndicate Bank) : *Shri. T. Ravichandran, Advocate*

Shri. D. SairamKumar, Advocate

Ms. D. Elavarasi, Advocate

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order Pronounced on: 06.09.2019

Under Consideration is an Insolvency & Bankruptcy Application filed u/s 10 of the Insolvency & Bankruptcy Code, 2016 ("the Code") by M/s. Cape Engineers Private Limited (in short, "the Corporate Applicant/Corporate Debtor") for initiation of Corporate Insolvency Resolution Process (CIRP) under Insolvency & Bankruptcy

A

(Application to Adjudicating Authority) Rules, 2016 (for brevity, 'I&B Rules 2016'), following a default in meeting its financial obligations to its Financial Creditors viz. Axis Bank (as the Borrower) and Syndicate Bank (as a Guarantor) as shown in the Company Petition filed in Form-VI.

2. On perusal of this Application, the total default amount claimed has been mentioned as ₹2,73,87,460. **It appears that the applicant has miscalculated the total default amount claimed and filed the instant application. The IRP will ascertain the actual default amount claimed by the Corporate Applicant in Part-III of Form-6.** The breakup of the aforesaid default consolidated statement of dues as given by Corporate Applicant is as follows:

Category	Default Amount (₹)
Financial Creditors	2,73,87,460
Operational Creditors	14,73,368
Other Creditors(Statutory Dues)	2,28,89,921
Total	5,17,50,749

3. The Corporate Applicant has defaulted in repaying the debt payable to Financial Creditors namely, Axis Bank on 30.09.2018 (as

Principal Borrower) and Syndicate Bank 31.12.2016 (as Guarantor) and Operational Creditors and other Creditors.

4. In compliance of Annexure-III, this Corporate Applicant has filed written communication dated 14.07.2019 (Page-26 of the Application) given by the Insolvency Professional as contemplated in Form-2 of the IBC, 2016, the Applicant has filed audited financial statements for the year ended 31.03.2018 (Page-29) and auditors' provisional financial statement (Page-61) as on 25.07.2019, until before 14 days of filing this Application reflecting the default of payment to the Financial Creditors, assets and liabilities of the Applicant, and other documents evidencing creation of charge over the assets of the Corporate Applicant. The Board of Directors of the Corporate Applicant Company passed a special resolution on 12.07.2019 (Page-78) for initiating a Corporate Insolvency Resolution process u/s 10 of the Code. Apart from this, the Corporate Applicant has filed constitutional documents such as Memorandum of Association and Articles of Association.

R

5. Looking at the material placed before this Bench, it is apparent on record that this Corporate Applicant defaulted in making payments to the Financial Creditors as well as the Operational Creditors.

6. In this case, the Corporate Applicant namely, Cape Engineers Private Limited has made a submission stating that they would like to recommend an IRP who will be continued as RP by the CoC which will be constituting after IRP takes over the management of the affairs of the Corporate Applicant Company. In case the Corporate Applicant proposes to replace the IRP recommended for appointment, they may do so in the First Meeting of the CoC to be convened by the IRP. The IRP may include this item as one of the Agenda in the First Meeting of the CoC.

7. In view of the same, we are of the view that this Company application is a fit case for admission u/s 10 of the Code **(subject to confirmation by IRP in respect of correctness of the total default amount claimed)**, since the Interim Resolution Professional has already expressed his consent to be appointed as Interim Resolution

Professional (IRP), this Bench hereby appoints Mr. J. Manivannan as IRP by admitting this Company Petition with directions as follows:

I. That Moratorium is hereby declared prohibiting all of the following actions, namely,

- a) the institution of suits or continuation of pending suits or proceedings against the Corporate Applicant including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the Corporate Applicant any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the Corporate Applicant in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Applicant.

2

- II. That Supply of essential goods or services to the Corporate Applicant, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this Order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints **Mr. J. Manivannan, having Reg. No: [IBBI/IPA-002/IP-N00534/2017-2018/11695], Plot No: 53B, 8/330, Vishalakshi Nagar, 4th Cross Street,**

h

Santhosapuram, Chennai-600073, E-Mail:
equitablelegal@gmail.com, Mobile No: 9962378774

appointed as Interim Resolution Professional is directed to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

8. Accordingly, this Petition is **admitted**.
9. The Registry is hereby directed to immediately communicate this order to the Corporate Applicant and the Interim Resolution Professional by way of e-mail.

-Sd-
(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

KNP/TJS