IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court No. I)
KOLKATA

C.P. (I.B) No. 17/KB/2023

A Petition under section 10 of the Insolvency and Bankruptcy Code, 2016 read with rule 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016.

In the matter of:

Vrinda Ispat Private Limited (CIN: U65993WB1988PTC044026)**,** having its registered office at 56E, Hemanta Basu Sarani, Stephen House, 5th Floor, Room No. 95 Kolkata Kolkata WB 700001 IN

...Corporate Applicant

Coram:

Rohit Kapoor	:	Member (Judicial)
Balraj Joshi	:	Member (Technical)

Order pronounced on: 08.01.2024

Appearances (through video conference/physical hearing)

For Corporate Applicant;

1. Mr. Joy Saha, Sr. Advocate
2. Mr. Sumit Biswas, Advocate
3. Ms. Rajashree Bhowmick, Advocate

O R D E R

Per: Balraj Joshi, Member (Technical)

1. This Court convened *via* hybrid mode.

2. The present Petition has been filed by Vrinda Ispat Private Limited ***('the Corporate Applicant'***), under section 10 of the Insolvency and Bankruptcy Code, 2016 ***('the Code')*** for initiation of Corporate Insolvency Resolution Process ***('CIRP')*** against itself. The Application has been filed through its Directors Mr. Om Prakash Singh, DIN: 00218551 and Mr. Parmatma Prasad, DIN 08372469, Mr. ParmatmaPrasad beingduly authorised *vide* Board Resolution dated 29.04.2022 and thereafter *vide*Extra Ordinary General Meeting held on 29.04.2022.

3. Section 10(3)(c) of the Code mandates the Corporate Applicant to furnish along with the application, the special resolution passed by the shareholders of the Corporate Debtor or the resolution passed by at least three-fourth of the total number of partners of the Corporate Debtor. The shareholders of the Corporate Applicant have given their consent by way of a resolution (passed with 100% votes in favour) in the Extra Ordinary General Meeting held on 29.04.2022 to file the application under section 10(3)(c) of the Code. A copy of the Minutes of the Extra-Ordinary General Meeting dated 29.04.2022 is annexed to the Application and marked as **Annexure-A3**.

4. The Corporate Applicant was incorporated on 25.03.1988 under the provisions of the Companies Act, 1956. The nominal share-capital of the Corporate Applicant is ₹1,00,00,000/- and the paid up share capital is ₹87,09,200/-.

5. The Corporate Applicant has admitted to having one class of creditors i.e. Financial Creditors. The total amount of default admitted to by the Corporate Applicant is ₹84,91,92,904/-.

6. The Corporate Applicant has submitted that the reasons for applying for initiation of the CIRP are as follows: -

   6.1 The Corporate Debtor is the Guarantor to two separate and independent principal borrowers namely M/s Keshav Sponge and Energy Pvt ltd and Shri Bandrinarain Alloys and Steel Ltd, for credit facilities sanctioned to the principal borrowers by consortium of lenders from time to time. The said credit facilities were renewed, reviewed and enhanced from time to time.

   6.2 The Corporate Debtor has executed Deeds of guarantee in favor of the creditor for securing credit facilities sanctioned to both the principal borrowers as stated hereinabove. As per the agreement, the Principal Borrower and the Guarantors (which includes the Corporate Debtor herein) was mandated to repay the outstanding sums.

6.3 However, the Principal Borrower and the Guarantors (which includes the Corporate Debtor herein) have failed and/or neglected to make payment as per terms envisaged in the said agreements and have thereby committed breach of terms and conditions of the said agreements.

6.4 Thereafter, both the principal borrower accounts were classified as N.P.A. by the respective Financial Creditors. The creditors, thereafter, issued notices to the Principal Borrower and its guarantors (which includes the Corporate Debtor herein) under Section 13(2) of the SARFAESI Act, 2002 and had called upon the Principal Borrower and its guarantors (which includes the Corporate Debtor herein) to make payment of the total outstanding dues. The Corporate Debtor herein has no means to repay the said outstanding and is unable to make payments to the Creditors therefore, in order to seek remedy, the Corporate Debtor herein has been left with no other option but to file the instant application to initiate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016.

7. The Corporate Applicant has proposed the name of ***Mr. Santanu Brahma (Regn. No. IBBI/IPA-001/IP-P01482/2018-2019/12251)*** having ***email id: ip.santanubrahma@gmail.com***, to function as the Interim Resolution Professional (IRP). ***Mr. Santanu Brahma*** has submitted his written communication in Form 2. The written communication is annexed to the application and marked as **Annexure-A-15**.

8. We have heard the learned Counsel appearing for the Corporate Applicant and have perused the documents on record.

9. The Corporate Applicant, vide affidavits dated 23.03.2023 and 26.06.2023 has affirmed that the notice of filing the petition has been published in Form no. NCLT-3A in ***Telegraph***(English) on 04.03.2023 and ***Bartaman*** (Bengali), on 14.06.2023 respectively. The newspaper publications have been attached to the said affidavits.

10. Subsequent to such publication, no objector has come forward before this Adjudicating Authority. Therefore, there is no dispute from any quarter that the debt is due and payable by the Corporate Applicant to various creditors and that the Corporate Applicant is unable to pay the same.

11. However regarding the question of limitation, it is clear to us that both the deeds of guarantee executed by the Corporate Applicant stipulate that the Guarantors being the Corporate Applicant herein shall, on demand made by the lenders, pay to the lenders, all the amounts payable by the principle borrowers under the loan agreements. The said stipulations can be found on clause 2 of the guarantee deed[1] dated 31.03.2014 on page 79 of the petition and in clause 3 of the guarantee agreement[2] dated 07.04.2016 on page no. 126 of the petition.

12. Further, in this regard, we ought to place reliance on the decision taken by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of ***J.C. Flowers Asset Reconstruction Pvt. Vs. Deserve Exim Pvt. Ltd*** [3] wherein the following was held:

> *"The question as to when the default on part of the Guarantor is to considered has been decided by this Tribunal in a recent judgment pronounced on 28.04.2023 in "Company Appeal (AT) (Ins.) No.329 of 2023, Pooja Ramesh Singh vs. State Bank of India", where it has been held that default on the part of the Corporate Guarantor shall be held to have been committed only when guarantee was invoked, when Deed of Guarantee itself mentions issue of demand notice by the Bank. The issues which have been raised in the present appeal are fully covered by the judgment in "Pooja Ramesh Singh vs. State Bank of India""(para 8)*

The Appellate Tribunal in the said matter futher held that :

[1] Annexure A- 5
[2] Annexure A-10
[3] Company Appeal (AT) (Insolvency) No.486 of 2023, decided on 03.05.2023

"The Guarantee Deed contemplates demand by the bank, hence, unless demand is made by the bank to the Corporate Debtor, no default can be said to have been committed by the Corporate Guarantor and in the present case, demands for payment were invoked in the period covered under Section 10A." (para 10)

13. In light of the above facts and the precedent set by the Hon'ble NCLAT, it is clear to us that the 'date of default' in the instant case would only be counted from the first date of invocation of the guarantee by the lenders. The first such letter of invocation was issued by the Punjab National Bank under section 13(2) of the SARFAESI Act, 2002 on 26.04.2016. Further, all the demand notices issued by various creditors towards the Corporate Applicant herein were issued between 26.04.2016 and 09.10.2019. As such, the limitation period would conclude on 09.10.2022. In light of the same, the instant petition, filed by the Corporate Applicant on 16.01.2023, is barred by limitation.

14. Therefore, **CP (IB) No. 17/KB/2023** is hereby ***rejected***.

15. File be consigned to record. The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

16. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi	**Rohit Kapoor**
Member (Technical)	**Member (Judicial)**

The Order is pronounced on 8th of January, 2024

SM[LRA]