



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

ITEM No.503
IB 98/ND/2023

IN THE MATTER OF:

KRSNA Home Products Private Limited

...

Applicant

Order under Section 10 of IBC, 2016.

Order delivered on 27.09.2023

Coram:

Mr. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

IB 98/ND/2023 stands admitted.

Sd/-
DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)

Sd/-
P.S.N. PRASAD,
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
Company Petition No. (IB)-98 (ND) 2023**

Under 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:

M/s KRSNA Home Products Limited

CIN: U28998DL2013PTC255638

....Corporate Applicant/Corporate Debtor

Order Delivered on: 27.09.2023

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

1. The instant application is filed by M/s KRSNA Home Products Limited ('Corporate Applicant') under Section 10 of the Insolvency and Bankruptcy Code, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process as the Corporate Debtor being the Corporate Applicant itself, has committed the default in paying the debt of Rs.1,15,37,521/- (Rupees One Crore Fifteen Lakh Thirty-Seven Thousand Five Hundred and Twenty-One Only) as on 31.10.2022 owed to the Financial Creditors and the Operational Creditors.
2. The Corporate Applicant is a private limited company incorporated on 19.07.2013 under the provisions of the Companies Act, 1956 having CIN: U28998DL2013PTC255638 and registered office situated at G-11, 2nd Floor, Green Park Extension, South West Delhi, New Delhi-110016.



The Corporate Applicant was engaged in the business of manufacturers, traders, importers and exporters, wholesale and retail dealers in all kinds of home items including but not limited to ironing boards, shoe racks, drying racks, etc. and other related goods of every description to be used in residential as well as commercial establishments.

3. The averments made by the Corporate Applicant in the application, which are necessary for adjudicating the matter are summarized as under: -

- i. That the Corporate Debtor since its incorporation the company during the initial years of being set up, the company was growing well for a few years. But during the Covid-19 pandemic, Mr. Umang Srivastava, the General Manager of the Company tragically passed away, which adversely impacted the business operations of the Company. His unforeseen demise affected the zeal of the employees, leading to a situation wherein, most of the employees left the organization and did not return back. Due to this the company was unable to meet its matured commitments and also faced difficulties in performance of the contracts entered into before.
- ii. That the revenues and cash flows of the Company had been significantly impacted and consequently, the company has now been over burdened with debt and is not in a state to be able to fulfil its obligations. Due to such cash crunch situation and without the leadership of Late Sh. Umang Srivastava, the



Company was unable to run the manufacturing plant resulting in major drop in the sales of the Company since the past 2-3 years.

- iii. That the company is having the total outstanding debt of Rs. 1,15,37,521/- (Rupees One Crore Fifteen Lakh Thirty-Seven Thousand Five Hundred and Twenty-One Only). Further, the Corporate Debtor submits that the debt outstanding for payment by the Company is evident from the financial statements of the Company for the financial year 2018-2019 to 2020-2021.
 - iv. The Corporate Applicant submits the below mentioned documents to prove the existence of default of the debt: -
 - a) List of names of the Operational Creditors along with their respective addresses and amounts outstanding.
 - b) List of names of the Financial Creditors along with their respective addresses and amounts outstanding.
 - c) Copy of the audited Financial Statements for the financial years 2019-20, 2020-21 & 2021-22.
4. This Adjudicating Authority vide order dated 16.02.2023 directed the Ld. Counsel for the Corporate Applicant to serve the notice to the IDBI Bank. The Corporate Applicant has complied with the aforesaid direction and submitted affidavit dated 02.03.2023 with respect to service the notice.
5. In the present Section 10 application the Objector Bank (IDBI Bank Limited) i.e., the Financial Creditor has appeared before us and the brief submissions made by the Objector Bank are as stated below: -



- i. That the present petition is not maintainable as the same has been filed on with malafide intention before this Tribunal in order to avoid the legitimate dues of the Objector Bank/Financial Creditor despite having sufficient means. That the brief facts of the case are that the Corporate Applicant through its Director had availed the working capital facilities of Rs. 50 Lakhs under the IDBI Udyami Loan Scheme from the IDBI Bank Limited vide its sanction letter dated 17.10.2017. Thereafter in order to secure the said facility, the Financial Creditor executed Hypothecation-cum-Loan Agreement dated 10.11.2017.
- ii. That on the request of the Corporate Applicant, the Financial Creditor vide its sanction dated 07.10.2020 (renewal cum reduction of credit facility) has reduced the said facility from existing limits of Rs. 50 lakhs to Rs. 40 lakhs. Further at the request of the Corporate Applicant to meet temporary Covid mismatch arising out of covid-19 pandemic, the Financial Creditor has sanctioned a fresh additional loan under Guaranteed Emergency Credit Line of Rs. 9 Lakh to meet temporary COVID mismatch arising out of COVID-19 pandemic was disbursed vide Loan Account No. 0901673200000596. In order to secure the aforesaid limits of Rs. 40 Lakhs and Rs. 9 Lakhs respectively (hereinafter referred to as “the said Loan”), the Corporate Applicant has executed the Supplemental Deed of Hypothecation Cum Loan Agreement on 08.10.2020.



- iii. That the said Loan was duly secured by first and exclusive charge on entire current assets including stock and Book-Debts, of the Corporate Applicant both present and future, apart from personal guarantees of Mrs. Charu Srivastava.
- iv. That the despite various requests, reminders and letters by the Financial Creditor, the Corporate Applicant had failed to regularize the account, therefore, the accounts of the Corporate Applicant slipped to NPA Category on 30.07.2021. Therefore, the Financial Creditor issued notice Loan Demand Recall notice dated 02.08.2021 calling upon the Corporate Applicant to make the entire outstanding amount of Rs. 49,42,363/- due as on 01.07.2021.
- v. That since the Corporate Applicant and its guarantor/director Mrs. Charu Srivastava failed to pay the amount, the Financial Creditor had filed an Original Application No. 907/2021 for the recovery of Rs. 49,42,363/- which is pending before the Debt Recovery Tribunal-I ('DRT'), New Delhi. Despite the service through newspaper dated 22.10.2022 of 'Millennium Post' of English Edition and dated 23.10.2022 of 'Veer Arjun' of Hindi Edition, the Corporate Applicant has not appeared before the Ld. DRT.
- vi. That the Corporate Applicant and its Directors are having sufficient means to pay the entire outstanding of the Financial Creditor. It is further submitted that the Corporate Applicant and its Director owned properties viz. at Kalkaji, New Delhi apart from



the Saving Bank Accounts being maintained with the ICICI Bank, Green Park Branch, New Delhi and thus having sufficient net worth. In order to avoid the entire outstanding of the Financial Creditor, the present petition has been filed by the Corporate Debtor.

6. We have heard Ld. Counsel for the Corporate Applicant and the Objector Bank/Financial Creditor and perused the averments made in the application, affidavit filed by the Corporate Applicant and the Objector Bank. The relevant documents annexed with the respective submissions have been examined.
7. As per Section 10 of Insolvency and Bankruptcy Code, 2106 a Corporate Applicant can file an application before the Adjudicating Authority, seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor that has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudicating Authority, in a prescribed form by enclosing the following:
 - a. *The information relating to its books of account and such other documents for such period as may be specified;*
 - b. *The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and*
 - c. *The Special resolution passed by shareholders of the Corporate Debtor or the resolution passed by at least three-fourth of the total number of partners of the Corporate Debtor, as the case may be, approving filing of the application.*

As per 10(4) the Adjudicating Authority can admit an application if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.

8. It is observed that in the instant case there was a debt due and there was a default of the same. It is also observed that the Corporate



Applicant was not earning sufficient profits to repay its debts. The Corporate Applicant, vide its Board resolution dated 31.10.2022, had resolved to file application under Section 10 of the Code, 2016. The members of the Corporate Applicant after due discussions and deliberation had resolved by way of Special Resolution to file an application under Section 10 of the Code, 2016 in their General Meeting dated 22.11.2022. The certified true copy of the Board Resolution dated 31.10.2022 and Special Resolution dated 22.11.2022 is annexed in the Company Application.

9. This is seen from the audited financial statements for the financial years 2019-20, 2020-21 & 2021-2022 that the Corporate Applicant was having substantial Losses and the Balance Sheets show negative reserves to the tune of Rs. 99,220.52/- as at 31.03.2022.
10. The Corporate Applicant, vide its Board resolution dated 31.10.2022, had resolved to file application under Section 10 of the Code, 2016. The members of the Corporate Applicant after due discussions and deliberation had resolved by way of Special Resolution to file an application under Section 10 of the Code, 2016 in their General Meeting dated 22.11.2022. The certified true copy of the Board Resolution dated 31.10.2022 and Special Resolution dated 22.11.2022 is annexed in the Company Application.
11. On the other hand, the Objector Bank/Financial Creditor i.e. IDBI Bank Limited in its affidavit has submitted that the instant application has been filed by the Corporate Applicant to get the benefit of moratorium under section 14 of the IBC, 2016 to thwart the DRT



proceedings in OA No. 907/2021 as filed by the IDBI Bank and therefore, the same may be rejected.

12. At this juncture, it will be advantageous to consider what are the requirements for admitting an application under section 10 of the Code, 2016. For this purpose, it is useful to refer the judgment of the **Hon'ble NCLAT in Unigreen Global Pvt. Ltd. VS. Punjab National Bank & Ors. CA (AT) (INS. 81/2017)** wherein it was held that:

“20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Subsection (4) of Section 7 is similar to that of sub-section (4) of Section 10. Therefore, we hold that the law laid down by the Hon'ble Supreme Court in “Innoventive Industries Ltd. (Supra) is applicable for Section 10 also, wherein the Hon'ble Supreme Court observed as “The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority”.

22. Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the information as required to be submitted in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 subject to ineligibility prescribed under Section 11. If all information is provided by an applicant as required under Section 10 and Form 6 and if the Corporate Applicant is otherwise not ineligible under Section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground. 23. Any fact unrelated or beyond the requirement under I & B Code or Forms prescribed under Adjudicating Authority Rules (Form 6 in the present case) are not required to be stated or pleaded. Non-disclosure of any fact, unrelated to Section 10 and Form 6 cannot be termed to be suppression of facts or to hold that the Corporate Applicant has not come with clean hand except the application where the ‘Corporate Applicant’ has not disclosed disqualification, if any, under Section 11. Nondisclosure of facts, such as that the ‘Corporate Debtor’ is undergoing a corporate insolvency resolution process; or that the ‘Corporate Debtor’ has completed corporate insolvency resolution process twelve months preceding the date of making of the application; or that the corporate debtor has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under the said Chapter; or that the corporate debtor is one in respect of whom a liquidation order has already



been made can be a ground to reject the application under Section 10 on the ground of suppression of fact/not come with clean hand.

xxx xxx xxx

25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete."

Thus, as held by the Hon'ble NCLAT supra pendency of DRT proceedings shall not be a ground to reject an application under section 10 of the Code, if it is otherwise complete.

13. We are of the view that the existence of debt and default is established and no winding up proceedings are pending against the Corporate Applicant and Corporate Applicant is not covered by the ineligibilities provided under Section 11 of the Code, 2016. We are satisfied that the Corporate Applicant is entitled to move an application under Section 10 of the Code in view of the admitted outstanding financial debt as well as operational debt and default of the same by the Corporate Applicant. As a sequel of the above discussion and in terms of Section 10(4) of the Code, 2016, we hereby admit the instant Petition (C.P.(IB)/98/(ND)/2023) in terms of Section 10 of the Code and CIRP is initiated against M/s. KRSNA Home Products Private Limited.

14. The Corporate Person in Part-II of Form-6 of the Company Application has proposed the name of the Interim Resolution Professional in this application. The registration certificate and written consent of the Proposed IRP in Form-2 is annexed with the application. This Adjudicating Authority hereby appoints Mr. Chetan Gupta, having



registration number IBBI/IPA-002/IP-N01168/2021-22/13950 and office at 604-605, PP City Centre, Road No. 44, Pitampura, New Delhi-110034 with email – id-chetan.gupta@apacandassociates.com as the Interim Resolution Professional for Corporate Debtor. The consent of the proposed Interim Resolution Professional is on record. The corporate applicant has to pay the fee of IRP for a period of six months initially. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within five (5) days of pronouncement of this order.

15. We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 10 of the Insolvency & Bankruptcy Code, 2016.
16. We direct the Corporate Applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Chetan Gupta to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Corporate Applicant. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.



17. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a) The 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;
(b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 debtor 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 debtor.”
(e) Notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.



19. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
20. The office is directed to communicate a copy of the order to the Corporate Debtor/Corporate Applicant, Financial Creditors, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from the pronouncement of this order. It is presumed that no notice under SARFESI is received by the corporate applicant and the



present application under Section 10 is not made with an intention to defeat the purposes of law.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(P.S.N. PRASAD)
MEMBER (JUDICIAL)