NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-251(ND)/2021

IN THE MATTER OF:

M/s Bezel Stockbrokers Private Limited
Registered office at:
D-6/16, Vasant Vihar,
New Delhi - 110057 **... Corporate Applicant/Corporate Debtor**

Versus

1. Security Exchange Board of India
SEBI Bhavan BKC
Plot No. C-4A-G Block,
Andra Kurla Complex,
Bandra (East), Mumbai,
Maharastra – 400051 **... Respondent No. 1**

2. Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Shankar
Market, Connaught Circus,
New Delhi - 110001 **... Respondent No. 2**

Section: 10 of IBC, 2016

Order Delivered on: 02.08.2023

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Shikhar Tandon

For the Respondent : Adv. Abhishek Baid and Adv. Praneet Das for SEBI

ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

M/s Bezel Stockbrokers Private Limited (for brevity, the **'Corporate Applicant/Corporate Debtor'**) has filed the present application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **'IBC 2016'**) with a prayer to initiate the Corporate Insolvency Resolution Process against it.

2. The Corporate Applicant namely, M/s Bezel Stockbrokers Private Limited is a Company incorporated on 01.02.2013 under the provisions of the Companies Act, 1956 with CIN U65990DL2013PTC247789 having its registered office at D-6/16, Vasant Vihar, New Delhi - 110057, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.1,00,00,000/- and Paid-up Share Capital is Rs.1,00,00,000/- as per the master data annexed with the application.

3. It is stated by the Corporate Applicant that it is a stock broker company incorporated under the Companies Act, 1956 registered with ROC Delhi. The Corporate Applicant has also been registered with the Securities and Exchange Board of India (SEBI) under (Stock Brokers and Sub-Brokers) Regulations, 1992 vide Registration number INZ000266237 since 14.06.2019. It has been carrying on the business as a stock broker/proprietary trading member/clearing member for carrying on the activities of buying, selling, or dealing in securities/ clearing and settlement of trades and for carrying on such other activities as are permitted by stock

exchange(s)/clearing corporation, subject to the conditions specified therefor, from time to time, by the Board since June 2019. The Corporate Applicant has further submitted the following:

3.1 Due to the financial crisis, it was not able to deposit the 20% margin of the total price of the stocks purchased by the Corporate Applicant on behalf of its clients as per the SEBI rules, due to which the amount of the shares was forfeited by the SEBI, creating a huge liability of Rs.3,35,84,815/- towards its Shareholders/ Clients.

3.2 The advance funds (Cash & Collateral), which were given to the Corporate Applicant by its Clients, which were unused and kept for future orders as reflected in the ledger account of the respective prospective shareholder are also not paid back, creating a further liability of Rs.91,78,621/-.

3.3 Thus, the total liability of the Corporate Applicant towards its clients comes to Rs.4,27,63,436/-. The Corporate Applicant has been incurring mounting losses year after year and due to this, it has become impossible for it to carry on its operations. Consequently, the corporate Applicant has been declared a defaulter and expelled from the NSE membership. Hence, it has been decided by the Corporate Debtor to file this Application under section 10 of IBC 2016.

4. The particulars of the unpaid financial debt, the list of 110 financial Creditors, and the date of default are mentioned in Part III of the application, which is reproduced overleaf:

<table>
<tr>
<td>3.</td>
<td>TOTAL DEBT RAISED AND AMOUNT IN DEFAULT</td>
<td>
<table>
<tr><th>Type of Facilities</th><th>Amount Sanctioned</th><th>Amount disbursed by the Bank</th><th>Amount in default</th></tr>
<tr><td></td><td></td><td></td><td>4,27,63,436/-</td></tr>
</table>
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<tr>
<td>4.</td>
<td>DATE WHEN THE FINANCIAL / OPERATIONAL DEBT WAS INCURRED</td>
<td><u>DATE WHEN THE FINANCIAL DEBT WAS INCURRED</u>
<u>FOR SECURED FINANCIAL CREDITOR</u>
DETAILS OF THE FIRST SANCTION ARE AS UNDER:-
There are different default dates for different creditors and for the sake for brevity the default date can be considered as the date of filing of complaint with the NSE by the creditors i.e. 06.02.2020 after the Corporate Applicant had failed to return the creditor their dues and hence default had occurred.</td>
</tr>
</table>

5. From the perusal of the above, it is observed that the Corporate Applicant has stated that it has committed default to the tune of Rs.4,27,63,436/- only.

6. The Corporate Applicant has also annexed the copy of the Special Resolution passed by Members authorizing it to file Section 10 application before this Adjudicating Authority, the copy of which as placed on page no. 60 of the application reads thus:

BEZEL

BEZEL STOCK BROKERS PVT LTD.
CORP.OFFICE. 248A,Rathi Complex,2nd Floor,
MUNIRKA, NEW DELHI-110067.Ph.-01143180300-315

CERTIFIED TRUE COPY OF THE SPECIAL RESOLUTION PASSED BY THE MEMBERS OF BEZEL STOCK BROKERS PRIVATE LIMITED IN ITS MEETING HELD AT ITS REGISTERED OFFICE AT D-6/16, VASANT VIHAR, NEW DELHI-110057 ON 05.03.2020 AT 11 A.M.

"RESOLVED THAT subsequent to the occurrence of default towards the financial creditors and the operational creditors, the consent of the members of the Company be and is hereby given to initiate Corporate Insolvency Resolution Process of the Company 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 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other relevant provisions thereof.

RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorized to file an application on behalf of the Company seeking initiation of the Corporate Insolvency Resolution Process of the Company before the Hon'ble National Company Law Tribunal, New Delhi Bench at New Delhi and to make/ file any other application(s), reply, rejoinder, appeals, writ petitions, written statements etc. before the Hon'ble National Company Law Tribunal, Hon'ble National Company Law Appellate Tribunal, Hon'ble Supreme Court or any other authority or court having jurisdiction over the Company in this regard."

RESOLVED FURTHER THAT the Board of Directors of the Company be and is authorized to propose or engage an Interim Resolution Professional on behalf of the Company for conducting the corporate insolvency resolution process of the Company in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations framed there under and to engage or appoint advisors, consultants, lawyers, advocates and solicitors etc. on behalf of the Company in relation to or in connection thereof and to do all such acts deeds and things as may be required necessary, incidental and ancillary thereto give effect to the abovementioned process.

Certified True copy.

For Bezel Stock Brokers Pvt Ltd
BEZEL STOCK BROKERS PVT. LTD. BEZEL STOCK BROKERS PVT. LTD.

Angad Singh Bhatia — Director / Auth. Signatory — (Director)
Gurbachan Singh Bhatia — Director / Auth. Signatory — (Director)

BEZEL STOCK BROKERS PVT. LTD. New Delhi-57 INDIA D-6/16, Vasant Vihar

Regd.Office.-D-6/16,VASANT VIHAR, NEW DELHI-110057
GSTIN-07AAFCB4437J1ZM, PAN-AAFCB4437J,TAN-DELB13704F
CIN:U65990DL2013PTC247789

7. The Corporate Applicant has also placed on record, its financial statements for the financial year 2018-2019 and 2019-2020 and a copy of the provisional balance sheet for the year 2020-2021 from page no. 90 to 110 of the application. It has annexed the Defaulter Notice issued by SEBI.

8. The Respondent No.2 (SEBI) and on the issuance of notice to the Creditor, the National Stock Exchange of India Limited (NSE) have filed their reply and objected to the application on the following counts:

8.1 The Applicant is a Financial Service Provider (as defined under the Code) and therefore, in terms of Section 3(7) of the Code, the Applicant does not come within the definition of the 'Corporate Person'.

8.2 The Applicant M/s. Bezel Stockbrokers Private Ltd. is a stock broker company incorporated under the Companies Act, 1956 registered with ROC Delhi. The applicant was also registered with SEBI under the provisions of the SEBI Act read with SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 vide registration number INZ000266237. It has been carrying on the business as a stock broker/ proprietary trading member/clearing member for carrying on the activities of buying, selling or dealing in securities/ clearing and settlement of trades for carrying on such other activities as are permitted by the stock exchanges/clearing corporations since June 2019.

8.3 Sections 7, 9 and 10 of IBC stipulate the mechanism for initiation of CIRP against a Corporate Debtor ("CD"). A 'Corporate Debtor' is defined under Section 3(8) of the Code as "*a corporate person who owes a debt to any person",* but importantly, the definition of a 'Corporate Person' under

Section 3(7) of the Code excludes *"any financial service provider".* Further, Section 3(17) of the Code defines *'financial service provider'* as *"a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator".* In terms of Section 3(18), *"financial sector regulator"* means *"an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India ("SEBI"), the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government".*

9. During the course of the hearing on 26.07.2023, the Respondent/SEBI relied upon the Order dated 03.07.2023 of this Bench passed in the matter of "Globe Capital Market Limited Vs. Narayan Securities Limited" in Company Petition No. (IB)-856(ND)/2022, wherein the following was held:

> *"26. In view of the abovementioned averment, it won't be wrong to say that the Respondent was dealing with "Financial Product" as defined under Section 3(15) of IBC 2016.* ***Hence, we conclude that the Respondent was providing "Financial Services" in terms of Section 13(d) of IBC 2016.***
>
> *27. Further, from the record it is seen that the Respondent was registered with SEBI, which is evident from the "Clearing Member – Trading Member Agreement dated 09.03.2017". The relevant contents of the Agreement are reproduced overleaf:*
>
> *.....*

28. Since, the Respondent was registered with SEBI, the Services of the Respondent could be regulated by SEBI, which is covered under the definition of "Financial Sector Regulator" under Section 3(18) of IBC 2016.

29. In view of the aforesaid discussion, ***we conclude that Respondent is a "Financial Service Provider" in terms of Section 3(17) of IBC 2016 and as a consequence of that, it cannot be considered a "Corporate Person" as defined under Section 3(7) of IBC 2016. Accordingly, no application under Sections 7 (and for that matter under Section 9 or 10) of IBC 2016 can be filed against a "financial service provider" to initiate its CIRP."***

10. Per contra, the Applicant during the course of the hearing relied upon the Judgement of NCLT, Ahmedabad Bench passed in the matter of "**Mr. Vipul Harshad Raja vs. M/s Simandhar Broking Limited**" in CP (IB) No. 510/7/NCLT/AHM/2019 dated 06.04.2021. However, it was rebutted by the Respondent stating that the said Judgement has been stayed by the Hon'ble NCLAT in the matter of "**Nitin Pannalal Shah (Suspended Director of Simandar Broking Ltd.) Vs. Vipul H Raja & Ors**." in Comp. Appeal (AT) (Ins.) No. 379 of 2021.

11. We heard the submissions of both parties and perused the documents including written submissions placed on record. On perusal of the record, it is observed that Applicant is a stock Broker Company duly registered with SEBI vide registration no. INZ000266237 since 14.062019. The Certificate of Registration, as annexed by the applicant on Page 63 of the Application, is reproduced overleaf:

प्ररूप घ
FORM D

भारतीय प्रतिभूति और विनिमय बोर्ड
SECURITIES AND EXCHANGE BOARD OF INDIA

(स्टाक दलाल और उप-दलाल) विनियम, 1992
(STOCK BROKERS AND SUB-BROKERS) REGULATIONS, 1992

000 2031

(विनियम 6 तथा 10ख / Regulations 6 and 10B)

रजिस्ट्रीकरण प्रमाणपत्र
CERTIFICATE OF REGISTRATION

बोर्ड, भारतीय प्रतिभूति और विनिमय बोर्ड अधिनियम, 1992 के अधीन बनाये गये नियमों और विनियमों के साथ पठित उस अधिनियम की धारा 12 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए

In exercise of the powers conferred by sub-section (1) of section 12 of the Securities and Exchange Board of India Act, 1992, read with the rules and regulations made thereunder, the Board hereby grants a certificate of registration to

BEZEL STOCK BROKERS PRIVATE LIMITED
Trade Name: BEZEL STOCK BROKERS PRIVATE LIMITED
D-6/16, VASANT VIHAR
NEW DELHI
NATIONAL CAPITAL TERRITORY OF DELHI
110057

को प्रतिभूतियों में क्रय, विक्रय या व्यौहार / व्यापारों के समाशोधन तथा निपटान के क्रियाकलाप करने के लिए और ऐसे अन्य क्रियाकलाप जो स्टॉक एक्सचेंज (एक्सचेंजों) / समाशोधन निगम (निगमों) द्वारा अनुज्ञात हों करने के लिए, बोर्ड द्वारा, समय-समय पर, उसके लिए विनिर्दिष्ट शर्तों के अध्यधीन, स्टॉक दलाल / सांपत्तिक व्यापारिक सदस्य / समाशोधन सदस्य के रूप में रजिस्ट्रीकरण प्रमाणपत्र एतद्द्वारा प्रदान करता है ।

as a

Stock Broker

stock broker / proprietary trading member / clearing member for carrying on the activities of buying, selling or dealing in securities / clearing and settlement of trades and for carrying on such other activities as are permitted by stock exchange(s)/ clearing corporation(s), subject to the conditions specified therefor, from time to time, by the Board.

आबंटित रजिस्ट्रीकरण संख्या निम्नानुसार है / Registration number allotted is as under: **INZ000266237**

यह प्रमाणपत्र तब तक विधिमान्य रहेगा जब तक यह विनियमों के अनुसार निलंबित या रद्द नहीं हो जाता ।
This certificate shall be valid till it is suspended or cancelled in accordance with the Regulations.

आदेश द्वारा / By order
भारतीय प्रतिभूति और विनिमय बोर्ड के लिए और की ओर से
For and on behalf of **Securities and Exchange Board of India**

ANUPMA CHADHA
प्राधिकृत हस्ताक्षरकर्ता Authorised Signatory

तारीख / Date : **June 14, 2019**

jai kaushal - Mumbai

12. Thus, the issue that emerges from the submissions of the parties is "**Whether a Stock Broker Company is a Financial Service Provider?**

13. Accordingly, we refer to the term "Financial Service" as defined under Section 3(16), which reads thus:

> (16) "financial service" includes any of the following services, namely: –
>
> (a) accepting of deposits;
>
> (b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
>
> (c) effecting contracts of insurance;
>
> (d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
>
> (e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—
>
> (i) buying, selling, or subscribing to, a financial product;
>
> (ii) availing a financial service; or
>
> (iii) exercising any right associated with a financial product or financial service;
>
> (f) establishing or operating an investment scheme;
>
> (g) maintaining or transferring records of ownership of a financial product;
>
> (h) underwriting the issuance or subscription of a financial product; or
>
> (i) selling, providing, or issuing stored value or payment instruments or providing payment services;
>
> (17) "financial service provider" means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;
>
> (18) "financial sector regulator" means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;

14. Since Section 3(16) includes services with respect to "Financial Products", we refer to the term "Financial Product" as defined under Section 3(15) of IBC 2016, which reads thus:

> (15) "financial product" means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed;

15. The abovementioned definition of "Financial Product" includes inter alia, the term "Securities", and different types of "Contracts", which are not defined under IBC, 2016. Therefore, in terms of Section 3(37) of IBC 2016, we refer to Section 2 of the Securities Contracts (Regulation) Act, 1956, as per which the term "Securities", and "Contracts" are defined thus:

> ***"Definitions***.
>
> *2. In this Act, unless the context otherwise requires, —*
>
> *(a) "**contract**" means a contract for or relating to the purchase or sale of securities;*
>
> *….*
>
> *…..*
>
> *(h) "**securities**" include— (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*
>
> *(ia) derivative*
>
> *(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;]*
>
> *(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
>
> *(id) units or any other such instrument issued to the investors under any mutual fund scheme;]*
>
> *(ii) Government securities;*
>
> *(iia) such other instruments as may be declared by the Central Government to be securities; and*
>
> *(iii) rights or interest in securities"*

16. On perusal of the abovementioned definitions, it is observed that Shares, Scrips, Stocks, Bonds, Debentures, Debenture Stocks etc., are included under the term "Securities". Hence, the same can also be treated as a "Financial Product" as defined under Section 3(15) of IBC, 2016.

17. The Corporate Applicant, as per its own admission, as reproduced and already noted in para 3 above, was -

> *".....carrying on the business **as a stock broker/proprietary trading member/clearing member** for carrying on the activities of buying, selling, or **dealing in securities**/clearing and settlement of trades and for carrying on such other activities as are permitted by stock exchange(s)/clearing corporation, subject to the conditions specified therefor, from time to time, by the Board since June 2019."*

Since Corporate Applicant, being a stock broker, was dealing in *the activities of buying, selling, or **dealing in securities*** etc., which in terms of Section 3(15) of IBC 2016 are a "Financial Product" belonging to another person. **Hence, in terms of Section 3(16) of IBC 2016, the Corporate Applicant was providing "Financial Service" or in other words, it was a "Financial Service Provider".**

18. Additionally, the Corporate Applicant was also registered with SEBI under the provisions of the SEBI Act read with SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 vide registration number INZ000266237. Since, in terms of Section 3(18) of IBC 2016, SEBI is a "Financial Sector Regulator", **hence it can be concluded that the Corporate Applicant Company, being a "Financial Service Provider" was registered with and was subject to control and supervision of SEBI - the "Financial Sector Regulator".**

19. **Hence, in terms of conclusions arrived at para 17 and 18 above, we conclude that the Applicant/Stock Broker Company is a "Financial Service Provider".**

20. **Since the Corporate Applicant Company being a "Financial Service Provider" is outside the purview of the definition of a "Corporate Person" as defined under Section 3(7) of IBC 2016 and therefore, is not a "Corporate Debtor" in terms of Section 3(8) of IBC, 2016, the instant application is not maintainable by or against it for the purpose of initiating the Corporate Insolvency Resolution (CIR) process.**

21. The application is accordingly Dismissed.

Sd/-	**Sd/-**
(L. N. GUPTA)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**