IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I

CP (IB) NO. 374 of 2023

Under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016

<u>In the matter of</u>

Kaushal Silk Mills Private Limited
CIN : U17120MH1994PTC081344
Having its Registered Office at -
Jai Hind Estate No. 2A, Dr. A. M. Road,
Bhuleshwar, Mumbai 400002

… Corporate Applicant

Order Delivered On :22.11.2023

Coram:

Hon'ble Member (Judicial) : SH. JUSTICE VIRENDRASINGH G BISHT (RETD.)
Hon'ble Member (Technical): SH. PRABHAT KUMAR

Appearances:

For the Corporate Applicant : Mr. Onkar Deshpande, Advocate

<u>ORDER</u>

Per: Prabhat Kumar (Technical)

1. This Company Petition is filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 **("Code")** read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 by the Corporate Applicant,

seeking to initiate its own Corporate Insolvency Resolution Process ("**CIRP**"). The said application is being preferred by the Corporate Applicant owing to financial stress faced by it, consequent to which it is not in a position to repay the debts due to its creditors.

Brief Facts

2. The Corporate Applicant was incorporated on 22.09.1994 under the Companies Act, 1956. Its Corporate Identity Number ("**CIN**") is U17120MH1994PTC081344. Its registered office is at Jai Hind Estate No. 2A, Dr. A. M. Road, Bhuleshwar Mumbai 400002. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

3. The Corporate Applicant is in the business of manufacturing, dyeing, bleaching, mercerizing, printing or otherwise processing of textile piece goods on handlooms or powelrooms or in textile mills or other factories of man made fibres, cotton fibres, fabrics of cotton, silk, rayon, wool, joddy, jute, hemp and other fibres whether on the company's own account or behalf of others.

4. The Corporate Applicant submits that the Company has been incurring losses for the last 5 years and is not in a position to pay off its creditors. There are no Secured Financial Creditors in the Corporate Applicant. However, there are Unsecured Financial Creditors, Operational Creditors and Statutory Creditors. The total debt amounting to default is Rs. 5,20, 59, 371/- (Rupees Five Crores, Twenty Lakhs, Fifty Nine Thousand, Three Hundred and Seventy One Only).

5. The debt fell due on various occasions and default occurred, however, for the purpose of this Code, the date of default is stated to be 10.01.2023.

6. The Corporate Person has produced Provisional Balance Sheet as on 11.11.2022. It is seen that revenue from operations of the Corporate Applicant is NIL as on 11.11.2022. It shows that the Corporate Applicant is unable to pay the debt.

7. This Tribunal had directed the Applicant, vide Order dated 12.05.2023 to issue Notice to all the Creditors of the Corporate Debtor intimating the next date of hearing by all available means (i.e. Speed Post, e-mail, etc.) and to place on record

Affidavit of Service enclosing therewith proof of service of Notice on the Creditors. The Corporate Applicant has complied with the said directions and the same was taken on record vide Order dated 17.07.2023. The Tribunal has not received any objections from the creditors of the Corporate Applicant against admission of this Application.

Statutory Compliances

8. The Corporate Applicant has enclosed a copy of Special Resolution passed by the shareholder of the Company in their Extra-Ordinary General Meeting held on 13.01.2023 for initiating Corporate Insolvency Resolution Process u/s 10 of the Code.

9. The Board of Directors of the Corporate Applicant in their meeting held on 10.01.2023 authorised Mr. Shikharchand Mohanlal Paharia, Director of the Company to file necessary application under the Code.

10. Further, the Corporate Applicant has also enclosed the Audited Financial Statements for the years 2019-20, 2020-21 and 2021-22. The Corporate Applicant has also enclosed the Provisional Balance Sheet as on 11.11.2022.

11. The Corporate Applicant has suggested the name of Mr. Bhavesh Mansukhbhai Rathod having Registration No. IBBI/IPA-001/IP-P01200/2018-2019/11910 for appointment as the Interim Resolution Professional ("**IRP**"). The proposed IRP has also submitted his Consent in Form 2 confirming eligibility and that there are no disciplinary proceedings pending against him.

12. This application is filed as per Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 in Form-6. Required information is also furnished therein.

13. This application was filed on 20.01.2023 and as submitted by the Corporate Applicant, the date of default is 10.01.2023. Hence, the application falls within the limitation period of three years.

14. After hearing the submissions and upon perusing the supporting documents annexed with the Petition, this Bench is of the view that the application made by the Corporate Applicant is complete in all respects as required by law. It clearly shows that the Corporate Applicant is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority **admits** this Petition and orders initiation of CIRP against the Corporate Applicant.

15. The above CP(IB) No. 374 of 2023 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Kaushal Silk Mills Private Limited.

16. There shall be a moratorium under Section 14 of the IBC, in regard to the following:

    i. 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;

    ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

    iii. 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 (SARFAESI) Act, 2002;

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

17. Notwithstanding the above, during the period of moratorium: -

    i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

18. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

19. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. Mr. Bhavesh Mansukhbhai Rathod having Registration No. IBBI/IPA-001/IP-P01200/2018-2019/11910, Email Id: bhavesh76@gmail.com, is hereby appointed as the IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

21. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

22. The Corporate Applicant shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

23. The Registry is directed to communicate this Order to the Corporate Applicant and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

24. A copy of this Order be sent to the Registrar of Companies, Mumbai, Maharashtra, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.

25. Ordered accordingly.

Sd/-	**Sd/-**
PRABHAT KUMAR	**VIRENDRASINGH G. BISHT**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

/SP/