



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

Company Petition No. (IB)- 15/10/JPR/2022

IN THE MATTER OF:

M/S NIROZ INSULATIONS PRIVATE

R/o: Plot No.801, Shop No. 4 and 5,
Shastri Nagar, Dadabari Kota-
Rajasthan- 324009, India.

E-mail: nirozinsulations07@gmail.com

... Corporate Applicant/ Debtor

For the Applicant	:	Nitesh Shrivastava, Adv.
For Tata Motors	:	Avinash Kumbhaj, Adv.
For Kotak Mahindra Bank	:	Jitendra Choudhary, Adv.
For SBI	:	Alok Garg, Adv. Sonal Singh, Adv.
For ICICI Bank	:	Jatin Chawla, Adv. Hitesh Kumar, Adv.
For ARCIL	:	Pradeep Rajpurohit, Adv.

Order Pronounced On:02.03.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The instant Application is filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') for initiation of Corporate Insolvency Resolution Process in respect of M/s Niroz Insulations Pvt., the Corporate Debtor being the Applicant



Company itself. The instant Application is filed through its director, Mr. Subhash Chandra Mishra, who has been authorised vide Board Resolution dated 10.01.2022.

2. The Applicant, 'M/s Niroz Insulations Private Limited', is a company incorporated under the provisions of the Companies Act, 1956 on 18.05.1990 bearing CIN U31300RJ1990PTC005418. The registered office of the Applicant company is situated at Plot No.801, Shop No. 4 and 5, Shastri Nagar, Dadabari Kota, Rajasthan- 324009, India. The company has authorised share capital of Rs. 11 Lakh and paid-up share capital of Rs. 10,95,000/- (Rupees Ten Lakh Ninety-Five Thousand Only). The main object of the company is to engage in business of manufacturing of charcoal and insulation material for Hydro and Thermal.
3. During the year 2017, the company acquired multiple commercial and industrial vehicles on finance through multiple financial creditors and also availed term loan and extended credit limits amounting to Rs. 24 Crores (approx.) to boost and meet its working capital requirement. Thereafter, in the year 2018, the Company lost its major contracts which resulted in a financial crunch leading to default in payment of EMIs and as a result, many of the Corporate Debtor's bank accounts were declared NPA. Consequently, recovery proceedings were initiated by various financial creditor before Debt Recovery Tribunal, Jaipur and several Arbitral Tribunals. In many of the cases, awards have been passed and/or recovery certificates under



SARFAESI Act, 2002 have been issued pursuant to which the Financial Creditors took possession of many commercial vehicles and industrial equipments and sold them to recover the loan amount. However, in few cases, default is still persisting and the auction proceedings are either pending or failed.

4. The Applicant has further submitted that during the last 3 years, it has settled certain liabilities by entering in On Time Settlement (OTS) with Financial Creditors or offered the sale of Vehicle or assets of the Corporate Debtor. As on date the Corporate Debtor has a liability to the tune of Rs. 3 Crores to its Financial Creditors and is no more in a position to repay its dues. Further the Corporate Debtor has failed to continue as a going concern and the business operations of the Corporate Debtor have been stopped since 2020.
5. The Auditor of the Applicant in its audit report for the year ending 31.03.2021 has declared that the Company is not in a position to continue as a going concern. Hence, the Applicant has preferred the present Application.
6. The Applicant has annexed particulars of Financial Creditors and Operational Creditors as per Part III of Form-6 in Annexure-A7. The Applicant Company has a total of Five (7) Financial Creditors and Two (2) Operational Creditors. Moreover, the Applicant has submitted that as per the Audited Balance Sheet dated 31.03.2021, the consolidated financial liabilities are amounting to Rs. 2,50,76,237.3/- (Rupees Two Crore Fifty Lakh Seventy-Six Thousand Two Hundred and Thirty-Seven Only). Copy



of the Audited Financial Statements for the year ending 31.03.2020 and 31.03.2021 and Provisional Balance Sheet as on 31.01.2022 has been annexed as Annexure- A3 (Colly).

7. The Corporate Debtor had raised an amount of Rs. 1,80,00,000/- (Rupees One Crore Eighty Lacs Only) from the State Bank of India and has defaulted in its repayment. Accordingly, the Bank claimed an amount of Rs. 1,64,54,355/- (Rupees One Crore Sixty-Four Lakh Fifty-Four Thousand Three Hundred and Fifty-Five Only) by way of SARFAESI notice dated 24.05.2021 and subsequently took possession of the immovable property of the Applicant vide possession notice dated 04.08.2021. The notices issued by the State Bank of India have been annexed as Annexure A6 (Colly).
8. In order to prove the aforementioned default, the Corporate Debtor has placed on record the copy of notices issued by the State Bank of India under Section 13(2) and Section 13(4) of SARFAESI Act, 2002 along with its Financial Statements.
9. The Applicant has filed an Affidavit of Service vide Diary No. 1098/2022 dated 12.04.2022 in compliance of the Order dated 02.03.2022. Another Affidavit has been filed wherein the Applicant has undertaken that it does not fall under any of the categories stipulated in Section 11 of the Code and is not ineligible to file an Application under Section 10 of the Code.
10. Various Financial Creditors have filed their replies i.e. the ICICI Bank filed its objections vide Diary No. 1881/2022 dated 27.06.2022 wherein it has



been revealed that a Civil Suit has been initiated against the Corporate Applicant and Mr. Subhash Chandra Mishra before Hon'ble Court of District and Session Judge, Kota which came to be registered as Civil Suit Case No. 225/2020. Besides the aforementioned case, recovery proceedings were also initiated against the Applicant in Debt Recovery Tribunal, Jaipur wherein the vide Judgment dated 25.11.2020, recovery certificate was passed against the Corporate Applicant and the Respondent herein was permitted to sell the hypothecated assets to recover its dues.

11. The Financial Creditor i.e. Kotak Mahindra Bank Limited filed its reply vide Diary No. 1909/2022 dated 29.06.2022 wherein it is submitted that the Debt Recovery Tribunal, Jaipur has vide judgment dated 17.12.2019 issued a recovery certificate to the tune of Rs. 31,46,905.83/- along with 10% simple interest. Reply of another Financial Creditor i.e. HDB Financial Services has been filed vide Diary No. 1908/2022 dated 29.06.2022 wherein it has been stated that the Corporate Applicant owes a sum of Rs. 15,75,685/- (Rupees Fifteen Lakh Seventy-Five Thousand Six Hundred and Eighty-Five Only) and a complaint has been filed under Section 138 of the Negotiable Instrument Act, 1881 on account of dishonoured cheques of the Applicant.
12. The Financial Creditor i.e. Tata Motors Finance Limited has filed its reply vide Diary No. 2165/2022 dated 20.07.2022. In the said submissions, it has been contended that the Applicant owes a total amount of Rs. 77,73,071/2/- (Rupees Seventy-Seven lakh Seventy-Three Thousand Seventy-One and



Two Paise Only) and the Creditor has also provided the detailed list of proceedings initiated against the Applicant. Lastly, the State Bank of India (Financial Creditor) has filed its reply vide Diary No. 3016/2022 dated 12.10.2022 submitting that proceedings are pending against the Debt Recovery Tribunal, Jaipur. We have taken the aforementioned representations on record.

13. There is no dispute that the Company has admittedly defaulted in payment of its debt which was over the minimum applicable amount under Section 4 of the Code and therefore is entitled to file the present Application in terms of sub-section (1) of Section 10 of the Code.
14. In compliance of the requirements of Section 10(3)(a) of the Code read with Annex-V of Form 6 of the Rules, the Applicant Company has filed copies of audited financial statements of the Corporate Debtor for the financial years 2019-20 to 2020-21 and provisional statement of the Corporate Applicant for year ending on 31.01.2022.
15. Further in compliance with Section 10(3)(b) of the Code the Applicant had has proposed the name of Mr. Jai Prakash Rawat as the Interim Resolution Professional ('IRP'). The Applicant Company has obtained written communication in Form-2 from the Insolvency Professional for appointment as an IRP. In Form-2 filed along with the Application, it has been affirmed by the proposed IRP that he is a registered Insolvency Professional and qualified to practice as an Insolvency Professional. Further, it has been



affirmed/ confirmed that no disciplinary proceedings are pending against the proposed IRP.

16. In view of the above, it is clear that a default has occurred and the present Application under Section 10 is complete and that the Applicant is not ineligible under Section 11 of the Code. Further, it is evident that the requirements prescribed under sub-section 3(a) and (b) of Section 10 of the Code have also been complied with.
17. The Insolvency and Bankruptcy Code, 2016 is a complete Code in itself. The provisions of the Code are to be mandatorily followed. Adherence to the statutory requirements has to be in toto. Section 10(4)(a) of the Code mandates the Adjudicating Authority to admit the application if it is complete. When the language of the Code is clear and explicit the Adjudicating Authority must give effect to it, whatever may be the consequences.
18. In view of the foregoing, we are satisfied that the present Application is complete and that the Applicant Corporate Debtor has committed a default. Therefore, as the Application is complete the present petition is admitted under section 10(4)(a) of the Code. The Corporate Insolvency Resolution process shall commence from the date of this order under sub-section 5 of Section 10 of the Code.
19. A moratorium in terms of Section 14 of the Code is being issued prohibiting the following:



- *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;*
- *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
- *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 Act, 2002;*
- *Recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*

20. It is further directed that:

- *The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- *The provisions of sub-section (1) of section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

21. Mr. Jai Prakash Rawat holding IP Registration No. *IBBI/IPA-001/IP-P-01969/2020-2021/13039* is appointed as Interim Resolution Professional, who shall take statutorily prescribed steps inter-alia as envisaged under



Section 15, 17 and 18 of the Code. Since the tenure of the IRP under section 16(5) shall normally not exceed 30 days from the date of his appointment; the IRP is directed to submit his report at the earliest. The Applicant shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh Only) to the bank account of the abovementioned IRP within 10 days from the pronouncement of this order.

22. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process as per sub-section (4) of Section 14 of the Code.
23. Let a copy of this order be supplied to the Applicant as well as the Interim Resolution Professional to carry out the CIRP at the earliest. A copy of this order shall also be communicated to IBBI for its records.

**DEEP
CHANDR
A JOSHI** Digitally signed
by DEEP
CHANDRA JOSHI
Date: 2023.03.02
18:41:11 +05'30'
**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**PRASANTA
KUMAR
MOHANTY** Digitally signed by
PRASANTA
KUMAR MOHANTY
Date: 2023.03.02
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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**