

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

CP (IB) No.31/BB/2022
U/s. 10 of the IBC, 2016
R/w Rule 7 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s Olympic Sportsware & Equipments Private Limited,
Registered Office at:
Plot No. 9, 4th Phase,
Bommasandra Industrial Area (Sub-Layout),
Hosur Road
Bangalore – 560 099

... Petitioner/Corporate Applicant

Order delivered on: 2nd December, 2022

Coram: Hon'ble Shri. Kishore Vemulapalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri A.S Sathish Kumar

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition, CP (IB) 31/BB/2022, is filed by M/s Olympic Sportsware & Equipments Private Limited ('Petitioner/Corporate Applicant') under section 10 of IBC, 2016, R/w. Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of itself, M/s Olympic Sportsware & Equipments Private Limited. The financial and operational debt incurred by the Corporate Applicant is Rs 21,53,95,257/- and Rs 1,99,13,805/- respectively.
2. Brief facts of the case, as mentioned in the Company Petition/Synopsis filed by the Corporate Applicant, which are relevant to the issue in question, are as follows:

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- (i) M/s Olympic Sportsware & Equipments Private Limited (herein after referred to as Petitioner/Corporate Applicant) is a Private Limited Company and was incorporated on 02.01.2989, having CIN: U36931KA1989PTC009742. The registered office of the company is situated at Plot No.9, 4th Phase, Bommasandra Industrial Area (Sub-Layout), Hosur Road, Bangalore- 560 099. The Authorized Capital of the Corporate Applicant is Rs. 2,00,00,000/- divided into 2,00,000 equity shares of Rs.100/- each. The Paid-up Capital is Rs 1,72,59,800/- divided into 1,72,598 equity shares of Rs. 100/- each fully paid. The main business of the Corporate Applicant is manufacturer of sports equipment.
- (ii) It is submitted that the Corporate Applicant established itself to become a major player in sports equipments and has set up its manufacturing facilities in Bangalore from where it was catering to the entire value chain in different parts of India. It is further submitted that the trouble started for the Corporate Debtor on account of 3 factors- firstly, on-line business portals gave stiff competition by offering similar products at prices which can no way be matched by standalone manufactures & suppliers.
- (iii) Secondly, cancellation of orders by Real Estate Developers due to slowdown of the Real Estate Sector which led to non-completion/delayed completion of projects, as majority of the customers of the Corporate Applicant were real estate developers. And thirdly, the outbreak of the pandemic followed by the nation-wide lockdown which led to suspension of operations for more than 6 months forced the Corporate Applicant to temporarily suspend its operations.
- (iv) It is submitted that all these factors contributed to the Corporate Applicant's downfall and this further resulted in the National Co-operative Bank Limited (Secured financial creditor) classifying the Corporate Applicant's accounts as 'non-performing assets' on 28.02.2018. Again on 05.03.2018,

National Co-Operative Bank Limited issued Demand Notice u/s 13(2) of the SARFAESI Act, 2002. Further, efforts to settle the dues with the bank through OTS has not yielded any result.

- (v) It is submitted that the Corporate Applicant has no other option but to resolve the debt-ridden situation through the support of outside investors, albeit the facts that the Corporate Applicant has clear road map to revive its operations. Further, the Corporate Applicant has initiated talks with potential investors who have indicated their willingness to step in as strategic investors.
- (vi) It is contended that the company has a total financial debt of Rs 21,53,95,257/- out of which Secured Financial Debt amount to Rs 19,01,14,045 and Unsecured Financial Debt of Rs 2,52,81,212/-. The total amount of operational debt outstanding is Rs 1,99,13,805/- out of which Suppliers dues is Rs 1,87,28,103 and Statutory dues is Rs 3,99,267 and amount due to employees is Rs 7,86,435/-. The details of Financial debts are attached as Annexure VI ©(1) which is as follows:

Annexure VI ©(1): Financial Creditor

Secured Financial Creditor		
SL.No	Name of Financial Creditor	Amount (Rs.)
1	The National Cooperative Bank Ltd	19,01,14,045
Sub Total		19,01,14,045
Unsecured Financial Creditors		
1	Mr. C V Ashok Kumar	41,52,783
2	Mr Akilash Naga	1,20,46,279
3	Mrs. Anitha Ashok Kumar	66,00,431
4	Ms Sindhu Akilesh	24,81,719
Sub Total		2,52,81,212
Grand Total		21,53,95,257

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The details of Operational debts including dues to suppliers, dues to Statutory Authorities and dues to Employees amounting to Rs 1,99,13,805/- are attached as Annexure VI ©(2) to the Petition.

(vii) In the above circumstances, the Corporate Applicant has applied before this Tribunal to initiate proceedings under Section 10 of the IBC, 2016 for commencing Corporate Insolvency Resolution Process.

3. In response to the notice issued to Secured and unsecured Financial Creditors and operational creditors as directed vide order dated 25.03.2022; M/s The National Co-Operative Bank Limited., one of the Secured Creditor filed its objections, inter alia, stating as follows:

- (i) The Secured Creditor submits that that the Corporate Applicant had failed to mention the proper details of the loan facilities availed from the Secured Creditor- Bank.
- (ii) It is submitted that present Applicant is filed under Sec 10 of the IBC, Code is filed by the Corporate Applicant in order to defeat the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- (iii) Further there are discrepancies in the Financial Statement produced by the Corporate Applicant, and at Page 3 under the head "List of Financial Creditors as on 11.02.2022", the amount due is shown as " Rs. 19,01,14,045", whereas, the Corporate Applicant, as on 31.12.2021 is due to the Secured Creditor-Bank, a sum of Rs. 22,48,00,000/-, with future Interest from 01.01.2022.
- (iv) Further, as on 31.05.2022, the Corporate Applicant is due, a sum of Rs 23,44,30,707/- as per the following Loan Accounts:

Sl.No.	Loan Account No.	Balance outstanding as on 31.05.2022 (with Interest)
1.	OD 6	1,07,66,101.00
2	PML 20150002	17,99,85,171.00
3	PML 2015 0003	75,67,917.00
4	IPL 20150001	1,76,96,331.00
5	IPL 20160004	1,84,15,187.00

- (v) It is further submitted that if the Present CIRP is allowed, the Secured creditor herein the Bank will be put to irreparable loss and injury.
4. The learned Counsel for the Petitioner has filed rejoinder to the objection filed by the Secured Creditor, M/s The National Co-Operative Bank Limited, inter alia stating as follows:
- (i) Petitioner submits that the Corporate Applicant does not deny that it has borrowed from the Secured Financial Creditor; nor does it deny that it has defaulted in meeting its obligations to the Secured Financial Creditor.
- (ii) It is further submitted that the Petitioner has not suppressed any fact in its application filed u/s 10 of the Code. The fact that the Secured Financial Creditor initiated proceedings under the SARFAESI Act, 2002 has also been mentioned in the synopsis.
- (iii) Further, the Learned Counsel appearing for the Petitioner relied on the judgment passed by the Hon'ble NCLAT in the case of "Leo Duct Engineers & Consultants Limited Vs. Canara Bank & Standard Chartered Bank (Company Appeal (AT) Insolvency No. 100 of 2017) wherein the Appellate Tribunal laid down 3 pre-requisite for admission of application of the Corporate Applicant made u/s 10 of the Code viz.,
- a. Existence of debt;
 - b. Occurrence of default; and
 - c. The Corporate Applicant not suffering for any disqualifications laid down u/s 11 of the Code.
- And further went on to add that if the Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible u/s 11, the adjudicating Authority has no option but to admit the application, unless it is incomplete, in which case, the Corporate Applicant is to be granted time to rectify the defects.

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- (iv) It is submitted that the Corporate Applicant fulfils all the conditions for admission of its application made u/s 10 of the Code.
5. After a careful examination of the facts of the case it clearly shows that, there was a debt due and there was a default of the same. . It is also observed that the Petitioner Company was not earning sufficient profit to repay its debts. The Petition was supported with the special resolution passed by the shareholders of the corporate applicant.
 6. The petition was also support by an Affidavit that the Petitioner does not suffer from any disqualification u/s 11 of the Insolvency and Bankruptcy Code, 2016.
 7. Heard Shri A. S Sathish Kumar Learned Counsel for the Petitioner Company and we have carefully perused the pleadings of the party and the extant provisions of the Code and the law.
 8. As per Section 10 of Insolvency and Bankruptcy Code, 2016 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.
 9. It is also relevant to note down certain legal principles decided by the Hon'ble NCLAT, New Delhi with regard to the Petitions filed u/S.10 of the IBC, 2016 and the same are as under:

- (i) *M/s. Unigreen Global Private Limited Vs. Punjab National Bank & 3 Ors., in Company Appeal (AT) (Insolvency)No.81 of 2017 dated 01.12.2017, it was observed as under:*

“...20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Sub-section (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””.

21. In an application under Section 10, the ‘financial creditor’ or ‘operational creditor’, may dispute that there is no default or that debt is not due and is not payable in law or in fact. They may also oppose admission on the ground that the Corporate Applicant is not eligible to make application in view of ineligibility under Section 11 of the I&B Code. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11, the Adjudicating Authority has no option but to admit the application, unless it is incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.

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 informations are 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. Non-disclosure 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.

- (ii) *In Armada Singapore Pte. Ltd. Vs. Ashapura Minechem Ltd., in I.A.No.3052 of 2019 in Company Appeal (AT) (Insolvency)No.350 of 2019 and batch order dated 30.09.2019, the Hon'ble NCLAT held that a Petition filed under Section 10 of IBC, 2016 is not maintainable without the approval of the shareholders of the Corporate Debtor in its 'Annual General Meeting'/'Extra-Ordinary General Meeting'.*
- (iii) *The Hon'ble NCLAT in Vyomit Shares Stock & Investments Pvt. Ltd. vs. Securities and Exchange Board of India (SEBI) in Company Appeal (AT) (Insolvency) No.258 of 2019 dated 15.05.2019, held that an Application filed under Section 10 of the IBC, 2016, can be rejected on the ground that the 'Corporate Debtor' is earning sufficient profit.*
10. The is seen from the Audited Financial Statement for the year ended March 31, 2020 and March 31,2021 that the Corporate Applicant was having substantial Losses A copy of Provisional Financial Statement for the period ended February 10, 2022 is attached along with the Petition, which also shows substantial losses
11. The Corporate Debtor satisfies the conditions for initiating an Application U/s 10 of the Code viz., there is an existence of debt, there is a default and the Corporate Debtor is not disqualified U/s 11 of the Code. The shareholders of the Corporate Debtor unanimously passed a Special Resolution in the Extraordinary General meeting held on 10.02.2022 for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.
12. In view of the above facts and circumstances of the case, and the settled position of law on the issue; and by exercising powers conferred on this Adjudicating Authority, U/s 10 (4)(a) of the Code, we do hereby admit CP(IB) 31/BB/2022 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s Olympic Sportsware &



Equipments Private Limited. We declare Moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.
13. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.
14. Under Clause (b) of Section 10(3) of the Corporate Applicant is bound to propose the name of the Registered Resolution Professional to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2, Annexure III furnished by Shri B Ramana Kumar, a registered Insolvency Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that presently he is serving as Interim Resolution Professional/Resolution Professional/Liquidator in three other proceeding under the Code so far. He has also certified that no disciplinary proceedings are pending against him with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-001/IP-

P00657/2017-2018/11140. We find that written consent furnished by the proposed Interim Resolution Professional is in order.

15. In view of the above, we appoint Shri B. Ramana Kumar, Insolvency Professional, bearing Registration No. IBBI/IPA-001/IP-P00657/2017-2018/11140, email Id ramanakumar@ovopaxlegal.com , Mobile No. 9841113024, address: I Floor (Rear), 51A(14) Dr Ranga Road, Mylapore, Chennai- 600 004 as Interim Resolution Professional, with the following directions:-

- a. The term of appointment of Shri B Ramana Kumar shall be in accordance with the provisions of Section 16(5) of the Code;
- b. In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- c. The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral
- d. The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- e. It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- f. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a committee of creditors and shall file a report, certifying of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and
- g. The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight
16. A copy of this order be communicated to all the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

— sd —

(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)