



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court – II)  
KOLKATA**

**CP(IB)/1230(KB)2018**

***In the matter of:***

A petition 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*

***In the matter of:***

**Air Carrying Corporation (India) Private Limited (CIN: U63113WB1975PTC030141)**, having its registered office at 11, Crooked Lane, Maruti Market, Kolkata, West Bengal, Pin 700069.

...Corporate Applicant

***Coram:***

**Shri Rohit Kapoor** : **Member (Judicial)**  
**Shri Balraj Joshi** : **Member (Technical)**

**Date of Hearing: 11/10/2022**  
**Order Pronounced on: 17/11/2022**

**Appearance through videoconferencing/physically:**

For petitioner : Mr. Aniket Chaudhury, Adv.  
Ms. Pallavi Ray, Adv.

**ORDER**

***Per: Rohit Kapoor, Member (Judicial)***

1. This Court convened through hybrid mode.



2. The present petition has been filed by **Air Carrying Corporation (India) Private Limited, CIN: U63113WB1975PTC030141**, the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against itself. The application has been filed through its Director Mr. Manoj Arya, DIN: 00243185, duly authorised *vide* Board Resolution dated 13/04/2018, which is annexed with the Supplementary Affidavit affirmed on 27/07/2022 as **Annexure “B” at page 10**. The petition is supported by an affidavit, which is duly affirmed by the Corporate Applicant.
3. The Corporate Applicant was incorporated on 29/07/1975. It was mainly involved in the business of public carriers, transporters and carrier of goods, passengers, merchandise, commodities and other products, goods and luggage of all kind and description in any part of India and elsewhere on land, water and air or by any mode of transport and allied businesses.
4. The reasons for applying for initiation of the CIRP by the Corporate Applicant is that it has defaulted in payment of dues to the Financial Creditor and the Operational Creditors.
5. The total debt owed to the –
  - (i) Financial Creditor is Rs.16,63,57,228.45 (Rupees Sixteen Crores Sixty-three Lakhs Fifty-seven Thousand Two Hundred Twenty-eight and paise Forty-five only as on 25/09/2014;
  - (ii) Operational Creditors is Rs.13,62,073.00 (Rupees Thirteen Lakhs Sixty-two Thousand and Seventy-three only as on 07/04/2014.
6. The members of the Corporate Applicant have given their consent by way of a resolution passed in the Extra Ordinary General Meeting held on 07/06/2018 to file an application under section 10 of the Code. A copy of the resolution dated 07/06/2018 is annexed with the Supplementary Affidavit affirmed on 27/07/2022 as **Annexure “B” at page 8**.



7. The Corporate Person has one Financial Creditor, viz., Bank of India and two Operational Creditors, viz., (i) Maheshwari Coal Suppliers and Maheshwari Transport and other current liabilities, which are placed at pages 173 to 174 of the petition.
8. In support of its Application, the Corporate Applicant has submitted, *inter alia*, the following documents: -
  - (a) Memorandum and Articles of Association of the Corporate Applicant;
  - (b) Financial Statements of the Corporate Applicant for the last two Financial Years being 2016-2017 and 2017-18 and provisional Financial Statements as on 19/04/2018.
  - (c) Copies of demand notice and communications received for default from the Financial Creditor;
  - (d) Statement of Affairs of the Corporate Applicant as on 19/04/2018;
  - (e) List of secured, unsecured and sundry creditors and statutory liabilities, including detail of Fixed Assets;
  - (f) Independent Auditor's Report dated 04/09/2017 of Mr. Mulraj D. Gala, Chartered Accountant, which is placed at page 22 of the petition.
9. The Corporate Applicant has proposed the name of **Mr. Shailesh Bhalchandra Desai (Registration No. IBBI/IPA-001/IP-P00183/2017-18/10362)** to function as the Interim Resolution Professional and has also annexed his Consent dated 10/04/2018 in Form 2, which is placed at page 20 of the application.
10. We have heard the Learned Counsel appearing for the Corporate Applicant and have perused the documents on record.
11. There is no dispute from any quarter that the debt is due and payable by the Corporate Applicant to various creditors and the Corporate Applicant is unable to pay the same.



12. The Corporate Applicant has furnished the books of accounts for the relevant period under section 10(3)(a); the Corporate Applicant has proposed the name of the Interim Resolution Professional (IRP), who has submitted his written consent (section 10(3)(b)); the Corporate Applicant has also filed the Special Resolution passed by shareholders in Extra Ordinary General Meeting dated 07/06/2018 under section 10(3)(c).
13. The petition is free from defects and complete in all aspects as required under the law. The Petition shows that the Corporate Applicant is in default of debt that is due and payable, and the default is more than the threshold amount as stipulated under section 4(1) of the Code at the relevant time. The default stands established and there is no reason to deny the admission of the present Petition.
14. Therefore, in the light of the facts stated in the application and the evidence placed on records, this Adjudicating Authority admits this Petition and orders initiation of Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Applicant (Corporate Debtor) under the following terms: -
  - (a) The Petition bearing **CP(IB)/1230(KB)2018** filed by the Corporate Applicant under section 10 of the Insolvency and Bankruptcy Code, 2016, is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **Air Carrying Corporation (India) Private Limited, [CIN: U63113WB1975PTC030141]**.
  - (b) There shall be a moratorium under section 14 of the IBC, 2016
  - (c) 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 the Corporate Debtor under section 33 of the IBC, as the case may be.
  - (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency &



Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (e) As per the proposal given by the Corporate Applicant, **Mr. Shailesh Bhalchandra Desai (Registration No. IBBI/IPA-001/IP-P00183/2017-18/10362** is appointed as the Interim Resolution Professional (“**IRP**”), subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019, for ascertaining the particulars of Creditors and convening meetings of Committee of Creditors for evolving a Resolution Plan.
- (f) During the CIRP period, the management of the Corporate Applicant shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the Code. The Officers and managers of the Corporate Person shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.
- (g) The IRP/RP shall submit to this Adjudicating Authority progress report periodically with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (h) The Corporate Applicant shall pay to IRP a sum of Rs. 500,000/- (Rupees Five Lakh only) to meet the initial costs, as per regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which shall be subject adjusted against the final payment Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.



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- (i) The Resolution Professional shall conduct CIRP in a time-bound manner as per regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (j) The Court Officer of this Court is hereby directed to communicate this Order to the Corporate Person and the IRP by Speed Post, e-mail and WhatsApp immediately, and in any case, not later than two days from the date of this order. A copy of this order shall also be served on the IBBI for information.
- (k) Additionally, the Corporate Person shall serve a copy of this Order on the IRP, on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Applicant. The 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.
15. **CP(IB)/1230(KB)2018** to come up on 30.12.2022 for filing First Progress Report.
16. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Signed on this, the 17<sup>th</sup> day of November, 2022

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