

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP(IB) No. 07/KB/2019

In the matter of:

Exclusive Engineers Private Limited, 41/A, Syed Amir Ali Avenue,
Kolkata - 700019

..Corporate Applicant/ Corporate Debtor

Coram: Shri Jinan K.R., Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

For the Corporate Applicant/Corporate Debtor :

1. Mr. Snehashis Sen, Advocate

For the Chief Engineer(Navy)

1. Mr. Shiv Chandra Prasad, Advocate

Mr. Ashutosh Prabhakar, AEE, AGE B/R, AGE (C) Navy Chennai

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Date of Pronouncement of the Order : 21.11.2019

ORDER

Per Shri Jinan KR, Member(Judicial)

1. M/s. Exclusive Engineers Private Limited, a Company incorporated under the provisions of Companies Act, 1956, having its registered Office at Kolkata, has filed this Application under Section 10 of the Insolvency & Bankruptcy Code, 2016, read with Rule 7 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution process (in short CIRP) as against the Applicant/ Corporate Debtor for the reason of inability to pay the debt due to the Operational Creditor.

2. The Applicant contends that it was incorporated on 15-04-1981 and engaged in the management and engineering, consultancy and contract work of electrical, chemical, mechanical, electronics, telecom, agro engineering etc., entered into an agreement with the Operational Creditor, the Union of India, for executing a work as described in the agreement on 27-12-2002, (Agreement Reference No. CE(NAVY)/VIZ/CHN/08 of 2002-03) for an amount of Rs. 83,87,747/- (Rupees Eighty three Lakh eighty seven thousand seven hundred forty seven only) and further executed Bank Guarantees in favour of the President of India. However, the work could not be completed, as scheduled and agreed to, by the Operational Creditor.

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3. Disputes and differences arose between the Corporate Applicant and the Union of India/Operational Creditor, and thereby, the disputes and differences were referred to an Arbitrator. The Arbitrator passed an award on 31-08-2017, allowing the claim of the Operational Creditor, to the tune of Rs. 44,89,928=37(Rupees Forty four Lakh eighty nine thousand nine hundred twenty eight and paise thirty seven only) along with the simple interest @ 8% to be calculated from February, 2005 till August, 2017, and at simple interest @ 12% on the said amount to be calculated from November, 2017 till date of actual payment.

4. The Corporate Applicant, being failed to pay the debt due to its inability, a resolution was passed by the Shareholders of the Corporate Applicant Company, in the extra ordinary general meeting of the Corporate Applicant held on 27-11-2017 for moving this Application under Section 10 of the Code. This Application was filed by Ms. Aruna Khandelwal an authorised signatory of the Corporate Applicant, who was also authorised by way of a resolution dated 03-10-2017 by the Board of Directors of the Company (Annexure B).

5. The Form 6 is complete. According to the Ld.Counsel for the Applicant there is no Financial Creditors. He also submits that other than the Operational Creditor i.e. Union of India, no other Creditors as per its books of account and that this application is liable to be allowed under Section 10 of the Code.

6. The Union of India, upon receipt of notice, come forward and objected this Application, contending that the Applicant filed this

Application suppressing the material facts. However, the Respondent/Operational Creditor admitted that the Corporate Applicant committed default in undertaking the work granted to the Applicant and the work contract has been canceled with effect from 24-03-2004 and the work got executed through other agency at the risk and cost of the Applicant Contractor and the Contractor had failed in depositing additional expenditure and thereby, the dispute was referred to the Arbitrator and the Arbitrator came to a finding that the amount, as shown in the Application, is liable to be paid by the Corporate Applicant to the Operational Creditor/Union of India. It is submitted on the side of the Respondent/Operational Creditor that the Application is liable to be dismissed both in law and in effect due to factual inaccuracy and misconception of law. The Application has not been filed with clean hands. The Corporate Debtor has sufficient means to pay its debt. The Corporate Debtor Company owns movable and immovable property and one immovable property, a building situated at Syed Amir Ali Avenue, is free from hypothecation and belonged to Shri RG Khandelia, who is the registered owner of the said building, and in order to avoid recovery measures to be initiated by the Respondent/Operational Creditor against him this Application was filed by the Corporate Applicant.

7. Heard both sides and perused the records.

8. The Corporate Debtor/Applicant admittedly is a defaulter. This is an application filed alleging that it is unable to pay the amount found due to the Operational Creditor. The Application filed under Section 10 is otherwise complete. The Corporate Applicant also

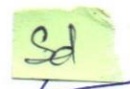
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proposes the name of the Resolution Professional and Form 2 along with written communication produced with the Application, shows that there is no disqualification on the proposed IP.

9. The Ld. Standing Counsel, appearing for and on behalf of the Union of India objected this Application contending that the Corporate Applicant has got means to pay and in order to avoid realisation of the amount by way of attaching the building owned by Shri AG Khandelia, the Corporate Debtor has filed this Application without any clean hands. Nothing forthcoming to substantiate the contention on the side of the Operational Creditor that the Corporate Applicant here, in this case, comes with uncleaned hands as alleged. Admittedly, there is a default in repayment of the amount, found due to the Operational Creditor. According to the Ld. Counsel for the Operational Creditor, if this Application is allowed, the right to file an execution Application under the provisions of the Arbitration and Conciliation Act would be defeated. It appears to us that it is no ground to reject this Application of this nature.

10. The Hon'ble Appellate Tribunal in **M/s. Unigreen Global Private Limited Vs. Punjab National Bank and others**, Company /Appeal(AT)(Insolvency) No. 81 of 2017 has held that " the moment the Adjudicating Authority 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 seven days of receipt of a notice from the Adjudicating Authority. Reading of Paragraph 21 in the above said judgment is worth for



understanding the proposition hel in the said judgment. It read as follows:-

Paragraph 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."

11. So, from a reading of the above said judgment of the Hon'ble Appellate Tribunal, what we understood is that this Adjudicating Authority cannot go beyond the scope of information furnished on the side of the Corporate Applicant. The Corporate Applicant, here in this case, furnished all the required information to be provided in Form No. 6, as per Rule 7 of the Corporate Insolvency Resolution Process(Adjudicating Authority) Rules, 2016. That being so, none of the objections raised on the side of the Operational Creditor are found sustainable under law.

12. For the reason aforesaid and as this case of the Corporate Applicant is covered by the decision of the Hon'ble Appellate Tribunal in M/s. Unigreen Global Private Limited Vs. Punjab National Bank and others, we are of the considered view that this Application is liable



to be admitted and accordingly, admitted upon the following among others :

ORDERS

- i) The application filed by the Corporate Applicant under Section 10 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Applicant M/s. Exclusive Engineers Private Limited, is hereby admitted.
- ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.
- iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
 - 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

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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 (54 of 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.

iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.



- vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- viii) **Mr. Manoj Kulshrestha, CMA, Insolvency Professional, an Insolvency Professional, registered with IBBI, having registration number IBBI/IPA-003/IP-N00005/2016-2017/10024, E-mail ID : costadviser@hotmail.com, Mobile No. 9811220152,** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to submission of fresh Form 2 with in one week of the date of this order.
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date and follow Regulation 40A strictly.

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- x) The Corporate Applicant is directed to deposit Rs.3,00,000/- (Rupees Three Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP within one week of the date of this order.
- xi) Registry is hereby directed under section 7 (4) of the I & B Code, 2016 to communicate the order to the Corporate Applicant, the Operational creditor, and to the I.R.P. by Speed Post as well as through E-mail.
- xii) List the matter on 08-01-2020 for filing of the progress report.

13. The free copy/certified copy of the Order may be issued to all the concerned Parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member(Technical)



(Jinan K.R.)
Member(Judicial)

Signed on this, the 21st November, 2019

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