



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

(IB)-247(PB)/2023

IN THE MATTER OF:

Exotic Buildcon Private Limited

...

Applicant/Petitioner

Order under Section 10 of Insolvency & Bankruptcy Code, 2016.

Order pronounced on 21.11.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH KUMAR SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE AND VC)

PRESENT:

For the Petitioner : Ms. Swarnika Aggarwal, Mr. Akhil Sharma with Mr. Akhil Shankhwar, Mr. Ankit Srivastav, Advs.

ORDER

1. The present Petition has been filed by Exotic Buildcon Private Limited (**CIN: U45200DL2006PTC156631**), the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiation of Corporate Insolvency Resolution Process (CIRP) for the default of Rs. 10,78,61,804/- against itself, list of due amount from various Creditors has been marked as **Annexure-5 on Pages 70-71**. The Application has been filed through its **Director Mr. Dushant Singh, DIN:**



08685517, duly authorised *vide* Board Resolution dated 30th March 2023. A copy of the Board Resolution dated 30th March 2023 is annexed to the Application and marked as **Annexure-3 on Pages 57 & 65 of the application.**

2. The Corporate Applicant was incorporated on December 15, 2006 and it *inter alia* **was engaged in the business of construction services, residential building or part thereof; civil engineering, sale and/or leasing of property, managing and maintaining properties in order to maximize their value, enhancing the value of properties through development and/or renovation, providing efficient and effective property management services.**
3. We have heard the eloquent argument of Ld. Counsel Ms. Swarnika Aggarwal assisted by Mr. Akhil Sharma for the Petitioner. It is stated by them that notice to the secured and unsecured creditors has already been served by the applicant in terms of the order dated 01.05.2023.
4. It is also stated by them that the applicant has also complied with the earlier order dated 23.08.2023 of this Adjudicating Authority by which it had sought an affidavit to the effect that it has not received any SARFAESI notice and that this application is not to defeat the purposes of the law. The applicant has filed the latest audited financial results for the year ending 31.03.2023 containing the position of loans and advances, debtors, and inventory along with the auditor's report and furnished the pen drive *inter alia* providing the details of



the financial/Books of accounts. The Corporate Applicant has also submitted the Special Resolution passed by the shareholders of the Corporate Debtor approving filing of the application as per the provision of Section 10(3)(c) marked as **Annexure 3 on Pages 59-91**.

5. Although it has been submitted that Notice has been issued to all the Secured and unsecured Creditors & an Affidavit to that effect has been attached. Nevertheless, on perusal of the documents submitted by Applicant, it is found that only a list of secured and unsecured creditors along with the default amount has been attached. Proof of Service to such creditors has not been placed on record which raises a doubt as to effective service to such Creditors.
6. The applicant has also submitted a list of litigations (**Annexure – 7 on Pages 73-87**) and an affidavit dated **18.10.2023** stating that this application is not filed to defeat the purposes of Law. However, on perusal of those documents, it is found that a notice dated **01.12.2022** has been served by Excise & Taxation Officer cum Assessing authority, Gurugram for the Recovery of Arrears under HVAT Act, 2003 & CST Act, 1956. Notice dated **24.11.2022** u/s 221(1) of the Income Tax Act, 1966, another Notice dated **29.03.2023** u/s 148A(b) of the Income Tax Act, 1961 has also been put on record. An order dated **29.03.2023** by Mr. Ravi DC/ACIT Central CIR-I, Gurgaon against M/s Exotic Buildcon recording that Corporate Applicant has made a total Bogus purchase of Rs. 40,00,000/- in the form of



accommodation entries from various parties controlled by Sanjay Jain Group has been passed which is marked as **Annexure – 07 on Pages 84-85** of the Application.

7. Further, warrant of attachment against the movable property of M/s Excotic Buildcon has been issued vide order dated **06.10.2023** by Ld. ADJ Ms. Ruchika Singla, Rohini Courts and has been put up for report of Bailiff on **15.12.2023**. It has been recorded in the order that JD Company (M/s Excotic Buildcon) has Assets worth Rs. 101.35 lacs. It has also been recorded that Insolvency Proceedings are initiated against company but moratorium has not been issued till date. The execution order has been obtained by one **M/s Medors Biotech Pvt. Limited**, whose relation with the Applicant is not known. It is inferred that there must be a decree which is pending for execution against M/s Exotic Buildcon, the Applicant. We may like to mention here that the fact of the execution order has not been put forward by the applicant during oral arguments although they have filed it along with Affidavit in compliance of the Order dated 23.08.2023.
8. Although, this Adjudicating Authority had admitted the petition in the hearing on **08.11.2023** for initiating CIRP against Applicant but after perusing all the documents put on record by the Applicant, we are of the opinion that initiating CIRP against the Applicant would be interfering with the Jurisdiction of Court of Hon'ble ADJ and in the backdrop of the above-mentioned facts, we find it appropriate to issue notice to all the secured as



well as Unsecured Creditors along with Income Tax Authority & Excise & Taxation cum Assessing Authority, Ward 10 Gurugram.

9. The Registry is directed to issue notice to all the creditors along with Income Tax Authority & Excise & Taxation cum Assessing Authority, Gurugram by Email and by Speed Post at their addresses returnable **by 20.12.2023**. The list of all the creditors with their postal and email addresses has been attached with this order for facilitating the service of the notice by the Registry.
10. Parties are directed to file their response/reply on the next date of hearing.
11. Ld. Counsel for Applicant is also directed to place before us the latest development in execution proceedings before the Ld. ADJ, Rohini Courts Complex.

List the matter on **20.12.2023**

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-
AVINASH KUMAR SRIVASTAVA
MEMBER (TECHNICAL)