

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT-IV**

**Company Petition No. (IB)-92 (ND) 2021**

**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**

**IN THE MATTER OF :**

**M/s Sohanaa International Private Limited**

**CIN: U00000DL2003PTC351283**

**...Corporate Debtor/Corporate Applicant**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,  
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,  
HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on:09.04.2024**

**For the Applicant** : Mr. Ashutosh Gupta, Mr. Gaurav Rana and Mr. Ajitesh Kumar, Advs

**ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

The instant application is filed by M/s. Sohanaa International Private Limited ('Corporate Applicant') under Section 10 of the Insolvency and Bankruptcy Code, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process as the Corporate Debtor being the Corporate Applicant itself, has committed the default in paying the debt of Rs.18,40,64,124/- owed to the Financial Creditors.

2. The Corporate Applicant is a private limited company incorporated on 05.06.2003 under the provisions of the erstwhile Companies Act, 1956 having CIN: U00000DL2003PTC351283 and registered office situated at 407, New Delhi House, 27, Barakhamba Road, New Delhi-110001. The Corporate Applicant was engaged in the business of manufacturing, import, export, sell, deal in optical disc media like CS, DVD, Audio, Video Cassettes and all type of sound recording and other sensitised unexposed materials and chemicals preparations for photographic use.
3. The averments made by the Corporate Applicant in the application, which are necessary for adjudicating the matter are summarized as under:-
- i. The Corporate Debtor was engaged in the business of manufacture, deal, trade in optical disc media like CD, DVD, Audio, Video Cassettes. Since, the technology advanced, and the need for CD, Disc etc. reduced in the digital era, the Corporate Applicant could not cope with the technological advancements, and change in dynamics of business and consequently, the corporate applicant's business became more or less obsolete.
  - ii. The Corporate Debtor in the hope of expanding the business model had took loan from shareholders, directors and PC Media Systems Limited (relating concerns), since, the Financial Institutions were not inclined render loan to the Corporate Debtor.
  - iii. The Corporate Debtor submits that in April 2019, all the loans taken from PC Media Systems Limited were tallied and the Corporate Debtor undertook to pay all the loan on or before 30th November, 2019. However, the Corporate Applicant defaulted in the repayment of the outstanding from PC Media Systems Limited.
  - iv. The Corporate Debtor further submitted that in furtherance of the default to the creditors, and the non-operation of the business, the Board of directors had approved the resolution on 08.09.2020 for initiation of Corporate Insolvency Resolution Process under Section 10 of the Code, 2016. Furthermore, the shareholders had also approved the resolution for initiation of Corporate Insolvency Resolution Process under Section 10 of the Code, 2016 on 05.10.2020 vide a special resolution
  - v. Further, as of 08.12.2020, the Corporate Applicant had an outstanding of Rs. 18,40,34,124/- on account of borrowings from

three (3) Financial Creditors namely (i) M/s. P.C. Media Systems Limited, (ii) Mr. Sheal Oswal and (iii) Mr. Murari Lai Puri and also the Corporate Applicant has outstanding operational creditors of INR 3,00,000 (Rupees Three Lakhs only),

- vi. The Corporate Applicant submits the below mentioned documents to prove the existence of default of the debt:-
- a) Details of Financial Creditors as on 08.12.2020 along with the ledger accounts of Financial Creditors.
  - b) Copy of Loan Agreement basis which there is a default.
  - c) Details of Operational Creditors as on 08.12.2020 along with the ledger accounts of Operational Creditors.
  - d) Copy of the audited Financial Statements for the F.Y. 2018-19 & F.Y. 2019-20.

3. This Adjudicating Authority vide order dated 12.02.2021 directed the Ld. Counsel for the Corporate Applicant to serve the notice on all the the Creditors as well as RoC and Income Tax. The Corporate Applicant has complied with the aforesaid direction and submitted affidavit dated 11.03.2021 proving the service of notice of the application.
4. We have heard Ld. Counsel for the Corporate Applicant and perused the averments made in the application, affidavits filed by the Corporate Applicant. The relevant documents annexed with the respective submissions have been examined.
5. From the submission of the Corporate Applicant, it is observed that an amount of Rs.18,40,34,124/- is outstanding towards Financial Creditor and Rs.3,00,000/- is outstanding towards the Operational Creditors. The aforesaid outstanding liabilities are reflected in the Audited Financial Statements for the year ended 31st March 2019 and 31st March 2020, which shows that the Corporate Applicant continuously acknowledges the outstanding operational debt in its balance sheet. Further, the claim amount in default towards the Financial Creditor is well above the pecuniary threshold limit of Rs.1 Crores as envisaged in Section 4 of Code, 2016 to initiate the CIRP.

6. The Corporate Applicant, vide its Board resolution dated 08.09.2020 had resolved to file application under Section 10 of the Code, 2016. The members of the Corporate Applicant after due discussions and deliberation had resolved by way of Special Resolution to file an application under Section 10 of the Code, 2016 in their General Meeting dated 05.10.2020. The certified true copy of the Board Resolution dated 08.09.2020 and Special Resolution dated 05.10.2020 is annexed as Annexure 6 and Annexure 7 of the Company Application respectively.
7. At this juncture, it will be advantageous to consider what are the requirements for admitting an application under section 10 of the Code, 2016. For this purpose, it is useful to refer the judgment of the **Hon'ble NCLAT in Unigreen Global Pvt. Ltd. VS. Punjab National Bank & Ors. CA (AT) (Ins. 81/2017)** wherein it was held that:

*“20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Subsection (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 information 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. Nondisclosure 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.

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25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete.”

8. We are of the view that the existence of debt and default is established and no winding up proceedings are pending against the Corporate Applicant and

Corporate Applicant is not covered by the ineligibilities provided under Section 11 of the Code, 2016. We are satisfied that the Corporate Applicant is entitled to move an application under Section 10 of the Code in view of the admitted outstanding operational debt and default of the same by the Corporate Applicant. As a sequel of the above discussion and in terms of Section 10(4) of the Code, 2016, we hereby **admit the instant Petition (C.P.(IB)/92/(ND)/2021)** in terms of Section 10 of the Code and CIRP is initiated against M/s. Sohanaa International Private Limited.

9. The Corporate Person in Part-II of Form-6 of the Company Application has proposed the name of the Interim Resolution Professional in this application, the registration certificate and written consent of the Proposed IRP in Form-2 is annexed with the application. This Adjudicating Authority hereby appoints Mr. Anil Bhatia having registration number IBBI/IPA-001/IP-P00587/2017-18/11027, office at M-17, 4<sup>th</sup> Floor, Main Market, Greater Kailash -2, New Delhi- 110048 with email – id- [anilbhatia815@gmail.com](mailto:anilbhatia815@gmail.com) as the Interim Resolution Professional for Corporate Debtor. The appointed IRP is directed to place on record valid Authorisation for Assignment (AFA) within 3 days of the pronouncement of this order.
10. We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 10 of the Insolvency & Bankruptcy Code, 2016.
11. We direct the Corporate Applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Anil Bhatia to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the

Corporate Applicant. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.

12. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(a) The 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;*
- (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.”*
- (e) Notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.*

19. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

20. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing a appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

21. The office is directed to communicate a copy of the order to the Corporate Debtor/ Corporate Applicant, Financial Creditors, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from the pronouncement of this order.

**Sd/-**

**(DR. SANJEEV RANJAN)**

**MEMBER (T)**

**Sd/-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

**MEMBER (J)**