



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

CP (IB) No.73/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 DENTORTH INDIA PRIVATE LIMITED

(formerly known as American Orthodontics
(India) Private Limited),

Registered Office at:

No.677, 1st Floor, Suite # 123

27th Main,13th Cross,HSR Layout,Sector 1,

Bangalore-560102... Petitioner/Corporate Applicant

And

Union of India,Ministry of Finance

Order delivered on: 31st January,2023

Coram: Hon'ble Justice (Retd) T.Krishnavalli,Member (Judicial)
Hon'ble Shri.Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri Aditya I.S

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition, CP(IB) 73/BB/2022, is filed by M/s DentOrth India 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 DentOrth India Private Limited.. The operational debt incurred by the Corporate Applicant is Rs 8,17,67,637.93/-



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:

- (i) M/s DentOrth India Private Limited (formerly known as American Orthodontics (India) Private Limited) (herein after referred to as Petitioner/Corporate Applicant) was incorporated on 21.09.1995, having CIN: U51397KA1995PTC072808. The registered office of the company is situated at No.677, 1st Floor,Suite # 123,27th Main,13th Cross,HSR Layout,Sector 1,Bangalore -560102.. The Authorized Capital of the Corporate Applicant is Rs. 2,70,00,000/-. The Paid-up Capital is Rs 2,67,94,720/-. The main business of the Corporate Applicant is selling orthodontic products in India.
- (ii) It is submitted that M/s.Solpro Impex (Operational Creditor) is engaged in the business of importing orthodontic products. The corporate applicant is engaged in the business of selling orthodontic products in India. It is stated that in order to conduct its business, the Corporate Debtor used to purchase the orthodontic products imported by Operational Creditor, for selling to its customers in India.
- (iii) It is stated that the corporate applicant had placed multiple purchase orders for supply of orthodontic products. The operational creditor had raised multiple invoices on the corporate debtor for supply of orthodontic products.
- (iv) It is stated that the Corporate Debtor was unable to sell the orthodontic products to its customers due to the prevailing market conditions and the economic slowdown. This resulted in the non-payment of dues to the Operational Creditor which is due to the tune of Rs.8,17,67,637.93/-by the Corporate applicant. The details of operational debts are attached as Annexure II of the petition.



- (v) 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. The court notice was issued on 15.07.2022. In response to the said notice, the secured and unsecured creditors, M/s Taittiriya Pact Solutions Pvt Ltd, Unsecured creditor no 3 and Unsecured creditor no 2 have filed affidavits vide diary no 5028 & 5026 dated 22.11.2022, stating that they have no objection to the subject application being admitted by this Adjudicating Authority. On 18.10.2022, this Adjudicating Authority directed the Petitioner Counsel to adopt the substitute mode for service of notice for the remaining unsecured creditor i.e., Solpro Impex by way of paper publication in two daily newspapers i.e., one in English and one in Kannada having wide circulation in the area. In pursuant to the aforesaid orders, the Petitioner Counsel filed a compliance affidavit vide diary no 4928 dated 17.11.2022 along with original copies of newspaper publication of notices in 'Indian Express'(English), and 'Kannada Prabha' (Kannada) dated 14.11.2022. However, no objection has been filed on behalf of M/s Solpro Impex, the unsecured creditors.
 4. 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.
 5. The petition was also supported by an Affidavit that the Petitioner does not suffer from any disqualification u/s 11 of the Insolvency and Bankruptcy Code, 2016.
 6. Heard Shri Aditya I.S 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.
 7. 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.

8. 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.

9. The is seen from the Audited Financial Statement for the year ended March 31 2018 and March 31 2019 and a copy of Provisional Financial Statement for the period from 01.04.2020 to 31.12.2020 are attached along with the Petition, which shows losses. On 6.12.2022, this Tribunal directed the Petitioner Counsel to file the latest audited financials as on 31.03.2021. Compliance to the order dated 6.12.2022 is filed vide diary no 5394 dated 12.12.2022, which also shows losses.
10. 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 13.11.2020 for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.
11. 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) 73/BB/2022 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s Dentorth India 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.
12. 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.
 13. 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, furnished by Shri G.Vasudevan, 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-002/IP-N00291/2017-18/10849. We find that written consent furnished by the proposed Interim Resolution Professional is in order.
 14. In view of the above, we appoint Shri G.Vasudevan, Insolvency Professional, bearing Registration No. IBBI/IPA-002/IP-N00291/2017-18/10849, email Id vasu@gvacs.in , Mobile No.9944937063, address: 11 A, First Floor, Collector Sivakumar Street, K.K.Pudur, Saibaba Colony, Coimbatore as Interim Resolution Professional, with the following directions:-
 - a. The term of appointment of Shri G Vasudevan 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
15. 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)**

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**(T.KRISHNAVALLI)
MEMBER (JUDICIAL)**