



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT-I
SPECIAL BENCH
KOLKATA**

C.P. (I.B) No. 63/KB/2023

A Petition under section 10 of the Insolvency and Bankruptcy Code, 2016 read with rule 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016.

In the matter of:

Dearborn Barter Private Limited
(CIN:_ U51900WB1994PTC066911)
Having its registered office at: -
4, Dr. Rajendra Prasad Sarani,
3rd Floor, Room No. 303,
Kolkata-700001.

... Corporate Applicant

Coram:

Smt. Bidisha Banerjee : Member (Judicial)
Shri Balraj Joshi : Member (Technical)

Date of hearing: 15 May 2023
Order pronounced on: 20 July 2023

Appearances (through hybrid mode)

For Corporate Applicant : 1. Ms. Aparijita Rao, Advocate
2. Ms. Ankana Basu, Advocate

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court convened through hybrid mode today.
2. The present Petition has been filed by Dearborn Barter Private Limited, CIN: U51900WB1994PTC066911, the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code, 2016 (“Code”) for initiation of Corporate Insolvency Resolution Process (“CIRP”) against itself. The Application has been filed through its Director, Mr. Pratush



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Droliia, duly authorised *vide* Board Resolution dated 28 August 2021. A copy of the Board Resolution dated 28 August 2021 is annexed to the Petition and marked as **Annexure- B** on **Page 37**.

3. The Corporate Applicant was incorporated on 28 December 1994.
4. The total debt is owed to the Operational Creditors is Rs. 2,90,79,028/- (Rupees Two Crore Ninety Lakh Seventy-Nine Thousand and Twenty Eight only).
5. The reasons for applying for initiation of the CIRP by the Corporate Applicant are as follows: -
 - 5.1. The Corporate Applicant defaulted in payment to Income Tax Department, who has raised Income Tax Demand on 24 December 2018 and 12 December 2019 for the Assessment Years 2011-2012, 2012-2013, 2013-2014.
 - 5.2. The debt to Amit Hemraj Jain & Associates incurred for the Financial Year ending 31 March 2022.
6. The members of the Corporate Applicant have given their consent by way of a resolution passed in the Annual General Meeting held 29 November 2021 to file the application under section 10 of the Code. A copy of the Resolution dated 29 November 2021 is annexed to the Petition at **Pages 38-39**.
7. That the Corporate Person has two Operational Creditors, *viz.* Income Tax Department and Amit Hemraj Jain & Associates.
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 Debtor for the Financial Year being 2019-2020, 2020-2021, 2021-2022.
 - (c) Copy of MGT 14 filed before the Ministry of Corporate Affairs.
9. The Corporate Applicant has proposed the name of Mr. Sanjeev Kumar Goyal (Regn. No. IBBI/IPA-001/IP-P02169/2020-2021/13399) to



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function as the Interim Resolution Professional (IRP). Mr. Sanjeev Kumar Goyal has submitted his written communication in Form 2. The written communication is annexed to the Petition and marked as **Annexure-D** on **Pages 46-47A**.

10. We have heard the learned Counsel appearing for the Corporate Applicant and have perused the documents on record.
11. On perusal of the documents provided by the Corporate Applicant, it has come to our notice that the Corporate Applicant is a Non-Banking Financial Company (“NBFC”) registered under section 45-1A of the Reserve Bank of India Act, 1934 which is clearly mention at page 43 of the Company Petition which also states the Corporate Applicant is primarily engaged in the business of providing Loans and Investing in securities.
12. The Auditor’s Report also states that the Corporate Applicant has registered as required under section 45-IA of the Reserve Bank of India Act, 1934.
13. The Hon’ble NCLAT in *Radhiraj Thakur, Director, Mayfair Capital (P) Ltd. v. Jindal Saxena Financial Services (P) Ltd.*¹ has held that Financial Service Providers have been kept outside the purview of the Code. From the records it is clear that the Corporate Applicant herein is a financial service provider.
14. Further, it is important to clarify that the the Government has notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (“FSP Rules”) on 15 November 2019, but it is important to note that Rule 6 of the FSP Rules states that CIRP can be initiated against a Financial Service Provider only when an application is filed by the Appropriate Regulator. In the present case the Financial Service Provider has filed the application to initiate CIRP against itself.

¹ [2018] ibclaw.in 79 NCLAT



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15. Under the above circumstances, we hereby dismiss C.P. (IB) No. 63/KB/2023. The Corporate Applicant is at liberty to seek other remedies that may be available to it under any other law.
16. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order pronounced on the 20th day of July 2023.

GGRB_LRA