



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

CP (IB) No.133/BB/2023
Application U/s. 10 of the IBC, 2016
R/w Rule 7 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

KONVERGE HEALTHCARE PRIVATE LIMITED

153, Sector-5, HSR Layout,
Bangalore- 5601102

... Petitioner/Corporate Applicant

Order delivered on: 06/11/2024

Coram: Hon'ble Shri. K. Biswal, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For Petitioner Company : Shri Srinath R. Bhat
For Creditor Nos 5 & 8 : Shri Gopal Sathar

O R D E R

Per: K.Biswal, Member (Judicial)

1. The present Petition, CP (IB) No. 133/BB/2023, has been filed by Konverge Healthcare 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, Konverge Healthcare Private Limited. The total amount of default committed as per the Corporate Applicant is Rs 2,51,67,170/- (Rupees Two Crore, Fifty One Lakhs, Sixty Seven Thousand, One Hundred and Seventy Rupees Only).
2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:



- (i) The Petitioner Company has been incorporated on 5th December 2014 with the Registrar of Companies Bengaluru bearing CIN U24232KA2014PTC077624 in the name “Konverge Healthcare Private Limited.”
- (ii) The main objective of the Company is Marketing, distribution, import, export, wholesale and/or retail trade all kinds of pharmaceuticals, antibiotics, drugs, medicines, biologicals, nutraceuticals, healthcare, patent medicines, surgical instruments, vaccines, hospital requisites etc.
- (iii) The Company had taken Secured Loan of Rs 3,00,00,000/- (Sanction Amount Rs 4,00,00,000/-) from Caspian Impact Investments Private Limited and charge has been created for the same on 15/09/2018.
- (iv) The Company was regular in re payment of loan amount. However, From Financial Year 2020-21 Company’s operations got hit by COVID Pandemic. It could not manage to repay the instalments and become defaulter in repayment of Loan.
- (v) On 20/01/2020 the Secured Creditor Caspian Impact Investments Private Limited sent a notice for default in the repayment of Loan. Again notice for default of payment received on 21/08/2023 from advocate for Caspian Impact Investments Private Limited.
- (vi) Even after so many attempts to get the business to the Company and to revive, Company could not get the business and there are no operations in the Company as of now. Hence this application.

3. The Learned Counsel for the Respondents No.5, has filed objections vide diary No 1164, dated 21/02/2024, which contains as follows;

- i. The Respondent herein has already filed Section 9 against the same Petitioner/Corporate Debtor which is awaiting registration.
- ii. Further, the Respondent No.5 has also admitted that the essential ingredients involving the admittance of Section 10 Application under



IB Code, stand duly fulfilled regards to existence of the above enunciated debt and default committed.

- iii. It is the grievance of the Respondent herein that the Corporate Debtor owes a Loan of Rs 10,62,154/- arising out of goods supplied and effectively received by the Corporate Debtor. That in the Audit reports of the Corporate Debtor only 6,47,328/- has been disclosed owed to the Respondent herein. Hence, to modify the debt owed to Rs 10,62,154/-.

4. The Learned Counsel for the Respondent No.8, has filed objections vide diary No 1165, dated 21/02/2024 as under:

- i) It is the claim of the Respondent No.8, that the Respondent herein has already filed Section 9 against the same Petitioner/Corporate Debtor which is awaiting for registration.
- ii) Further, the Respondent No.5 has also admitted that the essential ingredients involving the admittance of Section 10 Application under IB Code, stand duly fulfilled regards to existence of the above enunciated debt and default committed. The Learned Counsel for the Respondents No.17, has filed objections vide diary No 3768, dated 17/07/2023.
- iii) It is the grievance of the Respondent herein that the Corporate Debtor owes a Loan of Rs 4,72,042/- arising out of goods supplied and effectively received by the Corporate Debtor. That in the Audit reports of the Corporate Debtor only 3,11,564/- has been disclosed owed to the Respondent herein. Hence, to modify the debt owed to Rs 4,72,042/-.

5. 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. Further, it is observed that the objections received are not objecting to initiation of CIRP of the Corporate Debtor, but correction of claims in the books of the Corporate Debtor.



6. The petition was also support by an Affidavit that the Petitioner does not suffer from any disqualification u/s 11 of the Insolvency and Bankruptcy Code, 2016.
7. On 08/12/2023, this Tribunal directed the Ld Counsel for the Petitioner to file a) Latest Audited Financials containing position of Loans and Advances, Debtors and Inventory along with Auditors report b)Financials/Books of accounts in a pen drive. c)Affidavit regarding pending legal proceedings. d) An affidavit to effect that it has not received any notice under SARFESI Act and that this application is not to defeat the provisions of law. The compliance of the said direction was done vide Diary No. 1077, dated 16/02/2024 and the same is taken on record.
8. Heard the 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.
9. 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.Further, as per sub-section 4 of Section 10 the Adjudicating Authority can admit an application if the same is complete and no

disciplinary proceedings are pending against the proposed Resolution Professional.



10. 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) *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, the Hon’ble NCLAT 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.*

11. Further, the audited financials for the year 2021-2022, 2022-2023 were attached along with the petition. It is seen that the Corporate Applicant was having substantial Losses.
12. The Corporate Applicant 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



01/09/2021 for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.

13. The Applicant has suggested a qualified Resolution Professional namely Kalpana Kamlesh Gandhi, with Registration No. *IBBI/IPA-001/IP-P-02635/2022-23/14164*, who has also filed his written Consent in Form-2 dated 11/09/2023, by inter alia declaring that he is eligible to be appointed as resolution professional in respect of the corporate applicant and there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
14. 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) 133/BB/2023** by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Konverge Healthcare 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.



15. 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.

16. 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 *Kalpna Kamlesh Gandhi*, a registered Insolvency Professional with IBBI. She has also certified that no disciplinary proceedings are pending against her with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which she is a member. Her Registration number is *IBBI/IPA-001/IP-P-02635/2022-23/14164*. We find that written consent furnished by the proposed Interim Resolution Professional is in order.

17. In view of the above, we appoint Kalpna Kamlesh Gandhi, Insolvency Professional, bearing Registration No. *IBBI/IPA-001/IP-P-02635/2022-23/14164*. email Id kalpanagandhica@gmail.com Mobile No. 8850405989, address: 302, Emperor, L T Road, Borivali(West), Mumbai - 400092, with the following directions:-
 - a. The term of appointment of Kalpna Kamlesh Gandhi 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.

18. 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.

Sd/-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-

(K. BISWAL)
MEMBER (JUDICIAL)