IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

C.P. (I.B) No.276/KB/2021

In the matter of :

Sections 10 of the Insolvency and Bankruptcy Code, read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules), 2016

And

In the matter of :

Maurya Manpower Services Private Limited, CIN: U74910BR1997PTC007952, having its office at Maurya Patna, South Gandhi Maidan, Patna- 800001,Bihar.

…. Corporate Debtor /Corporate Applicant

Coram: **Mr. Rohit Kapoor, Member (Judicial)**

Mr. Harish Chander Suri, Member (Technical)

COUNSELS APPEARED THROUGH VIDEO CONFERENCE :

1. Mr. Shaunak Mitra, Advocate -For the Corporate Debtor
2. Mr.Avik Chaudhuri,Advocate

Date of Hearing : 14/01/ 2022

Date of pronouncement of the Order : 11/02/2022

O R D E R

Per: **Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.

2. The Corporate Applicant, Maurya Manpower Services Private Limited, CIN: U74910BR1997PTC007952, has filed this Application, bearing **C.P. (I.B) No.276/KB/2021** under Section 10 of the Insolvency & Bankruptcy Code, 2016, praying for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant, through its Managing Director Umesh Chandra Srivastava (DIN 08684427) duly authorized vide Board Resolution dated 30.07.2021, stating that it has committed default in paying its debts (financial as well as operational).

3. The Corporate Debtor, Maurya Manpower Services Private Limited, was incorporated on 29th May,1997 and is engaged in the business of manpower supply including professional, clerical, manual, other staff, employees to any person, firm or company etc. The Nominal Share Capital of the Corporate Applicant is Rs. 10,00,000/- and paid-up share capital is Rs. 1,02,500/- Equity Shares of Rs. 10/- each fully paid up.

4. The **reasons for applying for initiation of the Corporate Insolvency Resolution Process, under section 10, by the Corporate Applicant, are briefly, stated below :**

5. It is submitted that the Company was operative since incorporation; however, it has not carried on any operation after the first quarter of Financial Year 2019-20, which has led to significant downfall in the revenue from operations ultimately leading to stall in operations.

6. It is submitted that presently, the Company has major share of liabilities in form of statutory dues to various regulatory authorities, employees, financial creditors/ operational creditors etc. Amidst non-operation, onerous assets, inadequate liquidity, the Company has no wherewithal to pay off its debts/liabilities. Moreover, it has become

commercially insolvent and it does not foresee that it would on its own be able to revive and run its business in near future.

7. It is submitted that the Financial position of the Company as on 31.02.2021 are as under:-

Shareholder's Fund:

Particulars	**Amount(in Rs.)**
Paid up Share Capital	**1,02,500.00**
Reserves and Surplus	**(1,21,80,746.00)**
Total	**(1,20,78,246.00)**

Liabilities :

Particulars	**Amount (in Rs.)**
Statutory Dues	**1,23,02,944.00**
Employees' Dues	**1,45,04,908.00**
Other Long-Term Liabilities	**1,14,888.00**
Other Current Liabilities	**4,000.00**
Total	**2,69,26,740.00**

Assets:

Particulars	**Amount (in Rs.)**
Tangible Assets	**0.00**
Non-current Investments	**55,32,000.00**
Long-term Loan and advances	**15,00,000.00**
Trade Receivables	

i. Dalmia Cements (Bharat) Limited	**18,39,721.00**
ii. Kampilya Builders Private Limited	**18,01,429.00**
iii. Kalyanpur Cements Limited	**9,91,779.000**
Cash and Cash Equivalents	**33,215.00**
Tax Deducted at source	**26,40,656.00**
Other Current Assets	**5,09,694.00**
Total	**1,48,48,494.00**

8. The Corporate Applicant herein submitted that the Paid-up capital comprises of 10,259 (Ten Thousand Two Hundred and Fifty Nine) Equity shares of Rs.10/- each and the same stands completely eroded and unrepresented by available assets as on date. It is submitted that there are no reserves in the Company as of now, rather it has a whopping accumulation of losses.

9. It is submitted that M/s Kalyanpur Cements Limited (KCL), one of the major debtors and client of the Company, has undergone Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016. As per the approved plan, the Operational Creditors are entitled to receive only 4.80% of their verified claims. Consequently, the Company, being an Operational Creditor to KCL had to write off its receivables to the tune of 95.20% amounting approximately Rs. 2.04 Crore (Rupee Two Crore and Forty Thousand only).Further, realization of the 4.80% receivables amounting approximately Rs. 9.91 Lakh is also uncertain as of now as the same is contingent upon approval of State Government of Bihar, which is taking its own time.

10. It is submitted that the writing of the receivables from KCL was a major factor for mounting of losses, and subsequently leading to negative net worth around Rs.01.21 Crore.

11. It is submitted that the liabilities are majorly statutory and non statutory dues to the concerned regulatory authorities and the employees to the extent of Rs.02.69 Crore,

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out of which around Rs. 01.19 crore is due towards Service Tax.The authority has raised demand notice of Rs. 01.32 Crore against the same.

12. It is stated that there are no fixed assets in the Company.

13. It is submitted that the Company has non-current investment of Rs.55.32 lakh in preference shares of M/s Vivid Colours Private Limited. Ever since the investment was made, investee company never declared any dividend to its preference shareholders thus making our investment futile and onerous. Further, the value of such investment has declined significantly as the investee is loss-making company and is inoperative since past several years.

14. It is submitted that the company had made long term loan to M/s Kampilya Builders Private Limited (KBPL) amounting to Rs. 15.00 lakh . It also has substantial receivable approximately of Rs. 1901 lakh from KBPL against the supply made by the Company. KBPL is undergoing liquidation under Insolvency and Bankruptcy Code, 2016. Considering the financials of KBPL, the company does not expect material realization of the said loan or receivable.

15. It is submitted that lastly, receivables from M/s Dalmia Cements(Bharat) Limited of around Rs. 18.39 can be considered as realizable and Company is making efforts for the same as well.

16. Thus, it is evident that the total liabilities stand approximately Rs. 02.69 Crore against the assets of Rs. 01.48 crores. However, considering the circumstances as explained in the preceding paragraphs, the Company does not foresee to realize its assets to an extent which would be sufficient to pay off its debts/liabilities.

17. It is stated that at present the Applicant is unable to complete even pending projects due to paucity of funds and is facing imminent termination of contracts and imposition of penalties by customers.

18. It is stated that if the prayer of the Applicant for admission into CIRP and appointment of IRP gets further delayed, the liabilities of the Applicant would increase vastly, forcing the Applicant into liquidation, rather than getting its resolution.

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19. It is submitted that Form MGT-14 bearing SRN T40246399 has already been filed with Registrar of Companies, Bihar in respect of Special Resolution dated 26th August, 2021 passed at 24th AGM for initiating CIRP under section 10 of the Code .

20. The extract of the Resolution passed at the Extra Ordinary General Meeting of the Shareholders of Maurya Manpower Services Private Limited held on 26th August, 2021, is reproduced below :

"Special Resolution passed unanimously:

To initiate Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code,2016 – Special Resolution.

"RESOLVED THAT pursuant to provisions of Section 10 read with Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, regulations made thereunder and other applicable provisions, if any, of the insolvency and Bankruptcy Code,2016 (Code), the Companies Act,2013(Act) (including any statutory modification/s or re-enactment/s thereof for the time being in force), and upon recommendation made by the Board of Directors at its '02nd of 2021-22' meeting held on 30.07.2021, consent of the members of the company be and is hereby given to make application with the Hon'ble National Company Law Tribunal(NCLT), Kolkata Bench, Kolkata, the Adjudicating Authority(AA), to initiate Corporate Insolvency Resolution Process(CIRP)".

RESOLVED FURTHER THAT the solution passed at 23rd Annual General Meeting of the Company held on 20.09.2020, to initiate winding up process for the company pursuant to Section 271(a), 272(1)(a) of the Companies Act, 2013 read with Companies (Winding up) Rules, 2020, be and is hereby nullified."

RESOLVED FURTHER THAT the corporate Applicant appointed by the Board, as aforesaid, be authorised for and on behalf of the company as the Corporate Debtor to:

(a) Apply for the commencement of the CIRP of the Company before the relevant bench of the NCLT;

(b) Appoint /nominate an Interim Resolution Professional (IRP) for conducting the CIRP before the NCLT;

(c) Approve of an to decide on the other terms and conditions for the appointment of the IRP;

(d) To negotiate, execute, file, deliver the documents, instruments, amendments to the documents, agreements, papers, applications, affidavits, undertakings, notices, information, and deal with regulatory authorities in connection with CIRP under the Code, Act and other applicable laws;

(e) To do all such acts, deeds and things as may be required for CIRP in accordance with the provisions of the Code including but not limited to various filings, pleadings, and initiation of proceedings before the NCLT, Kolkata Bench, and/or National Company Law Appellate Tribunal(NCLAT) and/or the Hon'ble Supreme Court, as the case may be including appointing consultant, advocates, attorneys etc. and for filing and/or defending litigation (s) for and/or against before fora;and

(f) To do all such acts, deeds and things as may be required give effect to the aforesaid resolution/s."

"FURTHER RESOLVED THAT Mr. Anang Kumar Shandilya, an Insolvency Professional having IBBI Registration No. IBBI/IPA-002/IP-N00882/2019-20/12826 is hereby appointed as an Interim Resolution Professional(IRP) registered with the Insolvency and Bankruptcy Board of India based on the in-principle consent received from him."

21. As stated above, the Corporate Debtor has one Financial Creditor, M/s Vivid Colors Private Limited. The amounts in default with respect to Operational Debt is Rs. 2,68,72,740/-

22. In support of the Petition, the Corporate Applicant has submitted the following documents along with the Company Petition:

i. Copy of Balance Sheet for financial year 2020-21, copy of Loan Agreement executed on 03.09.2019 between the Company and M/s

Vivid Colors Private Limited, the Financial Creditor, copy of Ledger and Bank Statement evidencing liabilities towards Financial Creditor, along with copy of demand notices served upon the company by the financial creditor and related correspondences, showing existence of financial debt and amount in default, are annexed as **Annexures-G,J,K and Annexure-L** respectively.

ii. Copy of Balance Sheet for financial year 2020-21, Copy of Demand Notice in Service Tax dues dated 07.06.2019, copy of letters from employees demanding their salary and wages, showing existence of operational debt and amount in default, are annexed as **Annexures-G,M and Annexure-N.**

iii. Written communication by the proposed interim resolution professional as set out in Form 2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is annexed as **Annexure-O**.

iv. Copy of the relevant books of accounts of the corporate debtor evidencing the default to creditors is annexed as **Annexure-G**.

v. Copies of audited financial statements of the corporate debtor for the last two financial year i.e. for 2019-20 and 2020-21 and the provisional financial statements as on 10.09.2021 are annexed as **Annexures-F,G,P** respectively.

vi. A statement of Affairs as on 10.09.2021 is annexed herewith as follows:

a) A list of asset and liabilities, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category, is annexed as Annexure-G.

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b) In the case of any property on which a claim against the corporate debtor is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created- There is no property on which any claim against the corporate debtor is wholly or partly secured;

c) The names and addresses of the financial creditors and operational creditors of the corporate debtor with the amounts due to each of them are annexed as Annexures H and I respectively.

d) Particulars of any debts owed by or to the corporate debtor to or by persons connected with it: No debt is owed by or to the corporate debtor to or by persons connected with it.

e) Whether any, and if so what, guarantees have been given in relation to the debts of the corporate debtor by other persons, specifying which, if any, of the guarantors is a related party to the corporate debtor and the corporate applicant – No guarantee has been given in relation to any debt of the corporate debtor; and

f) The names and addresses of the shareholders along with details of their respective shareholdings, is annexed as Annexure-R.

vii. Copy of notice calling 24th Annual General Meeting (AGM) of members of corporate debtor held on 26.08.2021 along with Explanatory Statement and a certified true copy of Special Resolution passed at the sad AGM confirming the authority of the Corporate Applicant to make this application are annexed as Annexures-D and E respectively.

viii Copy of e-Form MGT-14 for filing the aforesaid Special Resolution with the Registrar of Companies, Bihar and Challan bearing SRN T40246399 along with its approved status are annexed as Annexure-S.

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ix. Affidavit in support of the application in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority)Rules, 2016, is annexed as Annexure-A.

x. Proof that a copy of the application has been served to the Insolvency and Bankruptcy Board of India (Board) is annexed as Annexure-J.

xi. Proof that the specified application fee has been paid is annexed as Annexure-V..

23. In terms of Order dated 12th November, 2021 notice was issued to all the parties concerned.

24. In this case, there is absolutely no dispute about facts that the debts due and payable by the Corporate Applicant to the various Creditors and Corporate persons, could not be paid by the Corporate Applicant.

25. In these proceedings, Corporate Applicant submitted information relating to its books of accounts for the relevant period (Section 10(3)(a) of IBC). The Corporate Applicant has proposed the name of the IRP, as Mr. Anang Kumar Shandilya, who has submitted his consent in Form 2 and also his Authorisation for taking up the Assignment. The Corporate Applicant produced on record Special resolution passed by shareholders in Extra Ordinary General meeting dated 26th August, 2021.

26. The Application is defect-free and complete in all respects.

27. We have heard Ld. Counsel for the Corporate Applicant.

28. In the light of the facts stated in the application and the evidence placed on record, we find it to be a fit case for admitting the petition and ordering initiation of CIRP in respect of the corporate applicant by the following Orders :

ORDERS

(i) The Application filed by the Corporate Applicant under Section 10 of the Insolvency & Bankruptcy Code, 2016, is hereby, admitted for initiating the Corporate Insolvency Resolution Process in respect of Maurya Manpower Services Private Limited. Moratorium Order is passed for a public announcement as stated in Section 13 of the Insolvency & Bankruptcy Code, 2016.

(ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency resolution process and call for the submission of claims under Section 15. The public announcement referred to in Clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016, shall be made immediately.

(iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following :

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 asset 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 (54 of 2002) ;

d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.

vii) Provided that where at any time during the Corporate Insolvency Resolution Process period. if the Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an Order for Liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

viii) Necessary public announcement as per Section 15 of the Insolvency & Bankruptcy Code, 2016 may be made by the Resolution Professional upon receipt of the copy of this Order.

ix) As per proposal given by the Corporate applicant, **Mr. Anang Kumar Shandilya,** an Insolvency Professional having IBBI Registration No. **IBBI/IPA-002/IP-N00882/2019-20/12826**, for appointment as the IRP, is appointed as the Interim Resolution Professional for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan.

x) The Corporate applicant to pay to IRP a sum of **Rs. 2,00,000/-** as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xii) The Registry is hereby directed to communicate the Order to the Corporate Applicant, and to the Interim Resolution Professional by Speed Post and also by e-mail.

29. List the matter on **18/04/2022** for filing progress report.

30. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this, 11th day of February, 2022

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