

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/988/2019

*(filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of M/s. JKS The Banyaan Private Limited

M/s. JKS THE BANYAAN PRIVATE LIMITED,
50, 4th Cross Street, Anna Nagar,
Pondicherry – 605 005

... Corporate Applicant

Order Pronounced on 23rd April 2021

CORAM:

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Petitioner : A. S. Sathish Kumar, PCS

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. The Applicant viz., **M/s. JKS THE BANYAAN PRIVATE LIMITED** (*hereinafter referred to as "Petitioner" or "Corporate Applicant"*) has filed the present Application under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code, 2016") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. This Tribunal vide its order dated 11.02.2020 had dismissed the present Application for the reasons stated therein. Aggrieved against the said dismissal order

passed by this Tribunal, the Applicant preferred an Appeal before the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 472 of 2020 and the Appellate Tribunal vide its order dated 20.01.2021 has remanded back the matter to admit the application filed under Section 10 of IBC, 2016. The operative portion of the order passed by NCLAT is extracted hereunder;

"16. With the aforesaid, we are of the view that the existence of debt and default is established and no winding up proceedings against the appellant and appellant is not covered by the ineligibilities provided under Section 11 of the I&B Code. However, the adjudicating authority has rejected the application on extraneous grounds. Therefore, the impugned order is set aside.

17. The case is remitted back to the adjudicating authority (NCLT, Chennai) to admit the application under Section 10 after notice to the parties if there is no defect. In case of any defect, appellant may be allowed time to remove the defects. The appeal is allowed with the aforesaid observations however there is no order as to costs."

2. A perusal of the aforesaid order passed by the Hon'ble NCLAT clearly manifest the fact that the 'debt' and 'default' on the part of the Corporate Debtor is proved and under these circumstances, this Application as filed by the Applicant under Section 10 of IBC, 2016 is required to be admitted under Section 10(4) of the IBC, 2016.

3. The Corporate Debtor has proposed the name of **Mr. J. Manivannan**, with Registration Number: *IBBI/IPA-002/IP-N00534/2017-18/11695* (email id:- equitablelegal@gmail.com) as

the Interim Resolution Professional (IRP) who has also filed his written consent in Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 which is placed at page 16 to 17 of the typed set filed along with the Application. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

4. As a consequence of the Application being admitted in terms of Section 10 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that 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 or a similar grant or right during moratorium period;

- 5. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

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

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

6. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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.

7. Based on the above terms, the Petition stands **admitted** in terms of Section 10 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned

-Sd-

ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-

R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond