



DIVISION BENCH
COURT - II

P-116

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/76(KB)2023

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 30TH APRIL 2024

IN THE MATTER OF	ELLENBARRIE EXIM LTD.
UNDER SECTION	IBC UNDER SEC 10

Appearance (via video conferencing/physically)

Mr. Shaunak Mitra, Adv.] For the Petitioner
Mr. Saurav Jain, Adv.]

O R D E R

1. Ld. Counsel appearing on behalf of the Petitioner present.
2. Hon'ble NCLAT *vide* its Order dated 01.04.2024 has passed the followed Order(s) as under: -

“We thus are satisfied that Adjudicating Authority rejected Section 10 application on insufficient grounds, debt and default was amply proved which was reflected in the Financial Statements of the Corporate Debtor. No Creditor has come up either before the Adjudicating Authority or before this Tribunal in pursuance of the notices published in the newspaper to object the debt and default.

We are satisfied thus Section 10 application was not required to be rejected by the Adjudicating Authority in the facts of the case.

In result, we allow this Appeal, set aside the Order dated 09.11.2023, revive the Company Petition IB No. 76/KB/2023 before the Adjudicating Authority. Adjudicating Authority may pass a fresh order on the said Application after copy of the Order is produced before the Adjudicating Authority at an early date.”

3. In terms of the Order passed by the Hon'ble NCLAT on 01st April, 2024 since nothing is left for this Tribunal to consider or to adjudicate upon, we admit the application.

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4. In the light of the enumerations supra, the application bearing **C.P.(IB) No. 76/KB/2023**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 10 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**: -

- i. The Application filed by the **ELLENBARRIE EXIM LTD. (Corporate Applicant)**, under **Section 10** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Corporate Applicant herein**.
- ii. As a consequence of this Application being admitted in terms of Section 10 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Corporate Applicant as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as: -
 - (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.*



[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 license, permit, registration, quota, concession, clearances 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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- 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 moratorium period.
- v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Corporate Applicant has proposed the name of the newly Interim Insolvency Professional. In view of the above, **Mr. Vishal Shekhar, IBBI Registration No. IBBI/IPA-002/IPN00593/2018-19/11891, email ID: vs.vishalshekhar@gmail.com**; as the newly **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.



- vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii. During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix. The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x. The IRP or the RP, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi. The Corporate Applicant in absence of the Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) 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. The expenses



relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

- xii.** The **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
 - xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
 - xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
 - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 5.** Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.
 - 6.** Accordingly, this **C.P.(IB)/76(KB)2023** is thus **allowed**.
 - 7.** Post the matter on **01/07/2024** for filing the Periodical Progress Report by the IRP/RP.



D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)