IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III

(IB)-596(ND)/2023

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

IN THE MATTER OF:
M/s. Phonic Online Private Limited .... Corporate Applicant

Order Delivered On: 11.01.2024

CORAM:
SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:
For Applicant : Mr. P. Nagesh, Sr. Adv, Mr. Suhas Pauthige, Mr. Shourya Aditya, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This is an application filed by M/s. Phonic Online Private Limited, the Corporate Applicant under Section 10 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking to initiate Corporate Insolvency Resolution Process (CIRP).

2. The Corporate Applicant was incorporated on 30 September 2008, under the provisions of the Companies Act, 1956 with the Registrar of Companies, Delhi. The Corporate Applicant was primarily involved in the business of trading and distribution directly or indirectly of telecommunication devices such as smartphones.

3. The Corporate Applicant changed its name from M/s. Modicap Advisors Pvt. Ltd. to M/s. Spice Online Retail Private Limited on 02.11.2010. The Corporate Applicant entered into an inter-corporate loan agreement with

M/s. Hindustan Retail Private Limited on 19.06.2015 for availing loan for an amount of Rs. 50,00,000/- (Rupees Fifty Lakh Only).

4. On 26.02.2016, the Corporate Applicant entered into an inter-corporate loan agreement with M/s. Mobi Shock Technology Private Limited and borrowed an amount of Rs. 20,00,000/- (Rupees Twenty Lakh Only). On 29.04.2016, the Corporate Applicant entered into an addendum to the loan agreement dated 19.06.2015 whereby the principal loan amount was revised to Rs. 70,00,000/- (Rupees Seventy Lakh Only).

5. On 16.06.2016, the Corporate Applicant changed its name from M/s. Spice Online Retail Private Limited to M/s. Spice Online Private Limited. On 05.08.2016, the Corporate Applicant enter into an agreement for availing financial assistance in the form of external commercial borrowing for an amount of Rs. 16,80,00,000/- (Rupees Sixteen Crore Eighty Lakh Only) from a non-resident investor company namely M/s. New India Investments Private Limited vide bond subscription agreement dated 05.08.2016 to meet its working capital requirements. Pursuant to the bond subscription agreement dated 05.08.2016, the Corporate Applicant has drawn Rs. 16,03,59,400/- in multiple tranches to meet its working capital requirement.

6. During the period 20.20.2021, owing to the worldwide impact of Covid-19, the business of the Corporate Applicant was adversely impacted and the management of the Corporate Applicant was evaluating several mechanisms in order to find a solution to revamp its business operations.

7. The Corporate Applicant together with the supplier held several discussions to function and avail the facilities of a credit-based supply chain module which was eventually not agreed by the suppliers. The operating cash flow of the Corporate Applicant was adversely impacted and the External Commercial Borrowings (ECB) loan availed was due for repayment. Therefore, the Corporate Applicant requested the ECB Lender and the parties reached a consensus for an extension of the term of ECB upto 31.10.2022. The ECB loan again became due for repayment on 31.10.2022, however on account of business losses and cash flow issues, the Corporate

Applicant was unable to discharge its ECG liability and this resulted in defaults towards the Financial Creditor.

8. On 23.11.2022, the Corporate Applicant changed its name from M/s. Spice Online Retail Private Limited to M/s. Phonic Online Private Limited. During the period 2022-2023, the Corporate Applicant called upon its wholly-owned subsidiary company namely M/s. Reboot Retail Private Limited (RRPL) for repayment of interest bearing loan outstanding approximately 34.36 Crores. The wholly-owned subsidiary RRPL intimated to the Corporate Applicant about its inability to repay the loan amount. The Board of Directors of the Corporate Applicant on 28.03.2023 in Extra Ordinary General Meeting with the requisite majority approved the Special Resolution for initiating the Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code 2016 because of the inability of the Corporate Applicant to repay the debt due to the Financial and Operational Creditors. Hence this Application.

9. DETAILS AND PARTICULARS OF FINANCIAL CREDITORS AND OPERATIONAL CREDITORS

Sr. No.	**PARTICULARS OF THE FINANCIAL DEBT [CREDITORS WISE, AS APPLICABLE]**	
1.	NAME(S) OF FINANCIAL CREDITOR(S)	New Idea Investment Pte. Ltd.
2.	ADDRESS OF CORRESPONDENCE OF THE FINANCIAL CREDITOR(S)	1, North Bridge Road, #10-05/06, High Street Centre, Singapore-179094.
3.	TOTAL DEBT RAISED AND AMOUNT IN DEFAULT	In terms of the Bond Subscription Agreement, loan/debt amount available for drawdown was agreed as Rs. 16,80,00,000/-. Out of the total amount agreed, the Corporate Applicant had drawn only Rs. 16,03,59,400/-. Amount of Default (Principal amount + Interest due)
4.	DATE WHEN THE FINANCIAL DEBT WAS INCURRED	a. Tranche I: 21.09.2016 — Rs. 3,94,11,400/- b. Tranche II: 31.10.2016 — Rs. 9,99,30,000/- c. Tranche III: 17.01.2017— Rs. 2,10,18,000/-

Sr. No.	PARTICULARS OF THE FINANCIAL DEBT [CREDITORS WISE, AS APPLICABLE]	
1.	NAME(S) OF FINANCIAL CREDITOR(S)	Hindustan Retail Pvt. Ltd.
2.	ADDRESS OF CORRESPONDENCE OF THE FINANCIAL CREDITOR(S)	B—6/101, 1st Floor, Near Jain Mandir, Subhash Chowk, Laxmi Nagar, Delhi-110092.
3.	TOTAL DEBT RAISED AND AMOUNT IN DEFAULT	Total Debt raised: Rs. 70,00,000/- Amount of Default: Rs. 77,75,036/- (Principal: Rs. 70,00,000/- + Interest: Rs. 7,75,036/-) The loan was drawn in multiple branches from time to time depending upon the business requirements.
4.	DATE WHEN THE FINANCIAL DEBT WAS INCURRED	a. Tranche I: 19.06.2015 - Rs. 50,00,000/- b. Tranche II: 30.04.2016 - Rs. 10,00,000/- c. Tranche III: 03.05.2106 - Rs. 10,00,000/-

Sr. No.	PARTICULARS OF THE FINANCIAL DEBT [CREDITORS WISE, AS APPLICABLE]	
1.	NAME(S) OF FINANCIAL CREDITOR(S)	Mobisoc Technology Pvt. Ltd.
2.	ADDRESS OF CORRESPONDENCE OF THE FINANCIAL CREDITOR(S)	622, 6th floor, DLF Tower A, Jasola District Centre, Delhi- 110025
3.	TOTAL DEBT RAISED AND AMOUNT IN DEFAULT	Total principal Debt as per Loan Agreement: Rs. 20,00,000/- Amount of Default (Principal + Interest): Rs. 22,07,123/-.
4.	DATE WHEN THE FINANCIAL DEBT WAS INCURRED	26.02.2016

10. We have heard the submissions made by Mr. P Nagesh, Learned Senior Counsel appearing for the Corporate Applicant and perused the record carefully.

11. We have perused the loan agreement, the financial statements, the list of Financial Creditors and the list of Operational Creditors. We have also perused the resolution passed by the Board of Directors and the special resolution passed by the Board of Director wherein it was resolved that the Corporate Applicant is not in a position to repay the debts and therefore the Corporate Insolvency Resolution Process under Section 10 of the IBC needs to be initiated.

12. We are satisfied that the Corporate Applicant has made a case for initiation of the CIRP under Section 10 of the IBC. The Corporate Applicant has proposed the name of Mr. Ankush Munjal having IBBI Registration No. IBBI/IPA-001/IP-P01129/2018-19/11825. The Corporate Applicant has placed on record the written consent of the IRP in Form-2 along with the registration certificate.

13. Having regard to the facts and circumstances of the case, we direct that the Corporate Insolvency Resolution Process under Section 10 of the IBC be initiated with respect to the Corporate Applicant.

14. In light of the above facts and circumstances, it is ordered as follows:

i. The Application bearing **IB–596/ND/2023** filed by the Corporate Applicant 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 is **admitted.**

ii. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

"(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 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.

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

iii. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

iv. As per the proposal given by the Corporate Applicant, Mr. Ankush Munjal (Registration No. IBBI/IPA-001/IP-P01129/2018-19/11825) is appointed as the IRP for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan. The address of the IRP is B-5/128, Paschim Vihar, First Floor, Delhi-110063. and the e-mail-id of the IRP is ankushmunjal@yahoo.com. The Written Consent in Form-2 and the Registration Certificate of the proposed IRP are filed along with the Application.

v. We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to the admission of this application under Section 10 of the Insolvency & Bankruptcy Code, 2016.

vi. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing a appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

vii. The IRP/RP shall submit to this Adjudicating Authority periodical reports on a quarterly basis with regard to the progress of the CIRP in respect of the Corporate Applicant.

viii. The Corporate Applicant to pay to IRP a sum of Rs.2,00,000/- (Rupees Two Lakh Only) to meet the initial costs, 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.

ix. The IRP/RP shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

x. Additionally, the Corporate Applicant shall serve a copy of this Order on the IRP and on the Registrar of Companies, Delhi by all available means for updating the Master Data of the Corporate Applicant. 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.

xi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)