



**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI**

**CP (IB) No. 1101/MB/2021**

*[Under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016]*

IN THE MATTER OF:

**KADKOMP SYSTEMS PRIVATE LIMITED**

[CIN: U72200PN1989PTC052499]

'Sai Niketan' 101/102 Sainiketan Erandawana

Pune-411004

Maharashtra.

**...Corporate Applicant**

**Pronounced:13.02.2025**

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances : Hybrid**

Corporate Applicant : Adv. Yahya Batatawala.



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**ORDER**

***[PER: SANJIV DUTT, MEMBER (TECHNICAL)]***

1. **BACKGROUND**

- 1.1 This Application bearing Company Petition IB No.1101/2021 was filed on 31.10.2021 by Kadkomp Systems Private Limited (hereinafter referred to as “the Corporate Applicant”/ “Company”) under Section 10 of the Insolvency and Bankruptcy Code ,2016 (hereinafter referred to as “the Code”) read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (hereinafter referred to as “the AAA Rules”) for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) of the Corporate Applicant.
- 1.2 The Corporate Applicant, incorporated on 07.07.1989, operates as an engineering services company providing Weld-line Fixture designing to the Auto industry, as well as high-tech CAD/CAM software solutions to corporate clients.
- 1.3 The Corporate Applicant submits that due to slowdown in the global automotive industry, coupled with the effects of demonetisation, its business related to the Auto sector faced substantial pressure. Further, the COVID-19 Pandemic severely impacted the business operations. The Corporate Applicant currently has seventeen Operational Creditors and two Financial Creditors. The Corporate Applicant seeks an opportunity to revive its business, as post-pandemic, businesses in the information technology sector are flourishing.



- 1.4 Due to financial difficulties, the Corporate Debtor has defaulted in discharging its debts. The Corporate Applicant has disclosed that its total debt obligation, including the amount of default, stands at Rs. 5,33,74,171/- (Five Crore Thirty-Three Lakh Seventy-Four Thousand One Hundred and Seventy-One Rupees). Of this, Rs. 4,08,28,150/- (Four Crore Eight Lakh Twenty-Eight Thousand One Hundred and Fifty Rupees) represents the outstanding debt to Financial Creditors. The outstanding amount to Operational Creditors is Rs. 44,02,022.87/- (Forty-Four Lakh Two Thousand and Twenty-Two and Eighty-Seven Paise), along with statutory liabilities totalling Rs.81,43,997.96/- (Eighty-One Lakh Forty-Three Thousand Nine Hundred and Ninety-Seven and Ninety-Six Paise). A detailed list of liabilities, including names and addresses of creditors is annexed to Application.
- 1.5 The debt obligations were incurred on various dates which are detailed in the ledger extracts annexed to the Application. The financial debt is secured by assets, with supporting documentation including audited financial statements for the financial years 2018-19 and 2019-20 and a provisional financial statement for the year ended 25.10.2021. The Corporate Applicant has annexed to the Application a special resolution passed by the shareholders of the Company in its Extraordinary General Meeting held on 16.10.2021, according consent/approval for filing Application under Section 10 of the Code before this Tribunal for initiating CIRP in respect of the Company and authorising the Board of Director of the Company or any person(s) authorised by them to execute and sign any affidavits, forms to sign and file all the e-forms and other documents and do all such acts, deeds, things and matters



as may be deemed necessary to give effect to this resolution. At a meeting held on 18.10.2021, the Board of Directors of the Corporate Applicant resolved and authorised Mr. Ravindra G. Kulkarni, Director of the Company, to initiate CIRP under Section 10 of the Code.

- 1.6 The Corporate Applicant has proposed name of Mrs. Manisha Sanjay Agrawal, bearing Registration No. IBBI/IPA-003/IPA-ICAI-N-00241/2019-2020/12836, as the Interim Resolution Professional (IRP). The proposed IRP has submitted her consent in Form 2, confirming her eligibility and attesting that no disciplinary proceedings are pending against her. In the above circumstances, the Corporate Applicant has prayed that this Tribunal may be pleased to initiate proceedings under Section 10 of the Code for commencing CIRP.

## 2. **ANALYSIS AND FINDINGS**

- 2.1 We have heard the Ld. Counsel appearing for the Corporate Applicant and perused the documents placed on record and the extant provisions of the Code.
- 2.2 As per Section 10 of the Code, where a corporate debtor has committed a default, a corporate applicant thereof may file an application before the Adjudicating Authority for initiating CIRP. The Application is to be filed in the prescribed Form-6. Along with the application, the corporate applicant is required to furnish the following particulars/documents:-
- 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.

As per Section 10(4), the Adjudicating Authority shall by an order admit the application if the same is complete and no disciplinary proceeding is pending against the proposed resolution professional.

- 2.3 Further, the settled legal position with regard to the mandate of Section 10 and the role of the Adjudicating Authority in this regard has been brought out by the Hon'ble NCLAT in the matter of **Unigreen Global Private Limited Vs. Punjab National Bank & Ors.** [CA (AT) (Ins.) No.81 of 2017] 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".*

*.....*

*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*



*information as 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."*

2.4 In light of the above legal principles, it is now proposed to deal with the present Application. It is observed from the record that this Bench, by order dated 09.11.2021, directed the Registry and the Corporate Applicant to serve notices to all its Financial Creditors as well as Operational Creditors. The Corporate Applicant duly complied with this directive, serving notice on both Financial Creditors and filing an Affidavit of Service on 02.05.2022, with proof of service attached thereto. Further, on 13.06.2022, the Corporate Applicant filed an affidavit with this Bench including proof of service for notices sent to



various tax authorities, namely, VAT, Professional Tax, IT & TDS and GST Departments. Another Affidavit of Service dated 09.05.2022 was also filed, placing on record proof of service of notices on its Operational Creditors. It is noticed that despite service of notices on creditors, no objections or submissions have been filed before this Tribunal opposing the present Application.

- 2.5 A perusal of the list of creditors and the ledger statements of both Financial and Operational Creditors reveals that the Corporate Applicant availed rupee term loans from Indian Overseas Bank and IDFC First Bank Limited, with outstanding dues payable amounting to Rs.4,08,28,151/- plus applicable interest and charges. Further, it is noted that there are seventeen Operational Creditors including five statutory authorities, with dues amounting to Rs.1,25,46,021/-. The total debt owed by the Corporate Applicant to its Financial and Operational Creditors thus stands at Rs. 5,33,74,172/-.
- 2.6 It is also noticed from the record that the Indian Overseas Bank issued a demand notice under Section 13(2) of the SARFAESI Act, 2002 on 07.04.2021 calling upon the Corporate Applicant to pay dues of Rs.1,09,25,180/- within 60 days from receipt of the notice. The Applicant responded to the above notice on 07.06.2021, requesting the Bank to consider a One-Time Settlement (OTS). However, there is no evidence on record to show that any OTS was executed or payments were made. Similarly, the Company has placed on record Demand Notice under Section 13(2) of the SARFAESI Act dated 03.12.2020 received from IDFC First Bank Limited stating that the loan account of the Corporate Applicant had been



classified as NPA on 02.11.2019 and calling upon it to pay in full the outstanding dues of the Bank within 60 days from the date of the notice. Further, a legal notice dated 25.08.2021 from an Operational Creditor, namely, ARK Infosolutions Private Limited, was served on the Corporate Applicant for recovery of Rs.3,53,692/-. Though the Corporate Applicant acknowledged the debt owed to the said Operational Creditor, it could only make partial payment thereof due to financial stress.

2.7 Further, the Corporate Applicant has annexed to the Application a notice dated 03.12.2020 under Section 138 of the Negotiable Instruments Act, 1881 issued by an Operational Creditor, namely, Tech Data Advanced Solutions (India) Private Limited, for dues amounting to Rs.10,40,825/-. Although this claim was disputed by the Corporate Applicant, it is evident that the Company was liable to discharge outstanding dues of its financial and operation creditors and had committed defaults in payment thereof exceeding the monetary threshold prescribed under Section 4 of the Code.

2.8 The Corporate Applicant has annexed to the Application the Special Resolution passed by its members at the Extra-Ordinary General Meeting held on 16.10.2021 granting approval for filing Application under Section 10 for initiating CIRP in respect of the Company. The Corporate Applicant has also placed on record its audited financial statements for financial years 2019-20 and 2021-21 and tentative financial statements as on 25.10.2021, perusal of which shows that the Corporate Applicant had been incurring substantial losses since financial year 2019-20 and its revenue from operations had fallen from Rs.3.61 crore during financial year 2018-19 to



Rs.4.62 lakh during financial year 2020-21. The Company had nil revenue from operations and accumulated losses of Rs.3.61 Crore during the period ended 25.10.2021.

- 2.9 In view of above discussions, we find that the Corporate Applicant is in default of a debt due and payable and the default exceeds the minimum threshold stipulated under Section 4 of the Code. We find that the present Application is filed as per Rule 7 of the AAA Rules in Form 6 and is complete in all respects. The Corporate Applicant has furnished an undertaking that it is not ineligible or barred under Section 11 of the Code to make an application to initiate CIRP. Thus, we are satisfied that the default stands established and the Corporate Applicant has been able to make out a case for initiation of CIRP under Section 10 of the Code. The Corporate Applicant has proposed the name of Mrs. Manisha Sanjay Agrawal, having Registration No. IBBI/IPA-003/IPA-ICAI-N-00241/2019-2020/12836 to act as the IRP. The Corporate Applicant has placed on record the written consent of the IRP in Form 2.
- 2.10 In view of aforesaid facts and circumstances, this Bench is of the considered view that the present Application is fit for admission under Section 10 of the Code for directing initiation of CIRP against Kadkomp Systems Private Limited, the Corporate Applicant.

### **ORDER**

- I. In view of the aforesaid findings, the present Application bearing CP(IB)No.1101/(MB)/2021 is hereby **admitted** and initiation of CIRP is ordered against Kadkomp Systems Private Limited, the Corporate Applicant.



- II. This Bench hereby appoints **Mrs. Manisha Sanjay Agrawal, having Registration No. IBBI/IPA-003/IPA-ICAI-N-00241/2019-2020/12836** having valid Authorisation for Assignment up to 31.12.2025 as the interim resolution professional to carry out the functions as mentioned under the Code. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- III. We declare Moratorium in terms of sub-section (1) of Section 14 of the Code with consequential directions as mentioned below. We prohibit:
- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 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. Notwithstanding the above, during the period of moratorium: -
- (a) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;



(b) That the provisions of sub-section (1) of section 14 of the Code shall not apply to -

- i. such transactions as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
  - ii. A surety in a contract of guarantee to a corporate debtor.
- V. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the Code or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.
- VI. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Sections 17 or 25, as the case may be, of the Code. The suspended directors, officers, managers and employee of the Corporate Applicant shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VIII. The Corporate Applicant shall deposit a sum of Rs. 3,00,000/- (Three Lakh Rupees) by way of demand draft drawn in favour of the IRP towards the initial



CIRP cost arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency and Bankruptcy Board of India (IBBI) as may be applicable.

- IX. The Registry is directed to communicate this Order to the Corporate Applicant and the IRP by Speed Post and email immediately.
- X. A copy of this Order be sent to the Registrar of Companies, Mumbai, Maharashtra, 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.

**Sd/-**  
**SANJIV DUTT**  
**MEMBER (TECHNICAL)**  
*//Deepal//*

**Sd/-**  
**K. R. SAJI KUMAR**  
**MEMBER(JUDICIAL)**