

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court No. I)
KOLKATA**

C.P. (I.B) No. 105/KB/2022

*A Petition under section 10 of the Insolvency and Bankruptcy Code, 2016
read with rule 7 of the Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Persons), Regulations 2016.*

In the matter of:

Penguin Hospitality Private Limited

(CIN: U51900WB2010PTC151549)

Having its registered office at: -

8, Ho Chi Minh Sarani Ground Floor, Kolkata

WB 700071

...Corporate Applicant

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Date of hearing: 07.09.2022

Order pronounced on: 02.11.2022

Appearances (through video conference/physical hearing)

For Corporate Applicant;

1. Mr. Shaunak Mitra, Advocate
2. Mr. Saurav Jain, Advocate

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Court convened via hybrid mode.
2. The present Petition has been filed by Penguin Hospitality Private Limited (*‘the Corporate Applicant’*), under section 10 of the

Insolvency and Bankruptcy Code, 2016 (*'the Code'*) for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against itself. The Application has been filed through its Director Mr. Mohit Sancheti, DIN: 03505126, duly authorised *vide* Board Resolution dated 28 February, 2022.

3. The shareholders of the Corporate Applicant have given their consent by way of a resolution passed in the Extra Ordinary General Meeting held on 28 February, 2022 to file the application under section 10 of the Code, a copy of which is annexed to the Application and marked as **Annexure-B**.
4. The Corporate Applicant was incorporated on 23 July, 2010 under the provisions of the Companies Act, 2013. The nominal share-capital of the Corporate Applicant is ₹40,00,000/- and the paid-up share capital is ₹37,26,000/-.
5. The reasons for applying for initiation of the CIRP by the Corporate Applicant are as follows: -
 - 5.1 The Corporate Applicant, with the vision of starting its restaurant 'Veda', executed a brand licencing agreement with Gateway Hospitality Private Limited on 01.08.2011. Thereafter, a lease agreement was entered into on 07.08.2011 between the Artistry House Private Limited and the Corporate Applicant. On 09.10.2011, the Corporate Applicant entered into a Facilities/Amenities Agreement with Apeejay Private Limited.
 - 5.2 However, the said restaurant 'Veda' suffered huge losses and unable to bear the burden of such losses, the Corporate Applicant terminated the aforementioned brand licencing agreement, by letter dated 14.08.2015. Thereafter, the Corporate Applicant wanted to change its brand and approached the owners of the initial premises of the restaurant but the same was refused by the owners. Instead, the outstanding lease rent was demanded by the

said owners. The Corporate Applicant could not pay the rent of the said premises since March 2015 and was therefore forced to terminate the lease of the said premises with immediate effect.

- 5.3 By letter dated 18.11.2015, the Corporate Applicant had called upon the owners to forthwith refund the security deposit of ₹52,05,000/- and the Electricity Deposit of ₹4,50,000/- after retaining a sum of ₹20,90,000/- on a provisional basis pending further adjudication in arbitration. An arbitration award which included consideration of the above mentioned facts and pronounced on 02.05.2019.
- 5.4 However, application being A.P.No. 585 of 2019 under section 34 of the Arbitration and Conciliation Act, 1996 was filed on 30.08.2019 for setting aside the aforementioned arbitral award. The prolonged litigation expense had exhausted the funds of the Corporate Applicant and the bank accounts of the Corporate Applicant were frozen due to the ongoing litigation.
- 5.5 Therefore, since September, 2015, there has been no operation in the company. The management of the Corporate Applicant is unable to repay the debts due to its creditors.
6. The Corporate Applicant has proposed the name of **Mr. Kamal Nayan Jain** (*Regn. No. IBBI/IPA-001/IP-P-00029/2016-2017/10065*) having **email id: knjain@knjainco.com**, to function as the Interim Resolution Professional (IRP). **Mr. Kamal Nayan Jain** has submitted his written communication in Form 2. The written communication is annexed to the application and marked as **Annexure-P**.
7. We have heard the learned Counsel appearing for the Corporate Applicant and have perused the documents on record.
8. The Adjudicating Authority, vide order dated 21.07.2022, directed the Corporate Applicant to publish notice of filing the petition in Form no. NCLT-3A in two newspapers, once in English and once in a

regional language. The Corporate Applicant, vide affidavit dated 12.09.2022 has affirmed that the order had been complied with and that pursuant to such publication, no objection has been received.

9. Therefore, there is no dispute from any quarter that the debt is due and payable by the Corporate Applicant to various creditors and that the Corporate Applicant is unable to pay the same.
10. The Corporate Applicant has furnished the books of accounts for the relevant period under section 10(3)(a); the Corporate Applicant has proposed the name of the IRP who has submitted its written consent (section 10(3)(b)); the Corporate Applicant has also filed the Special Resolution passed by shareholders in Extra Ordinary General Meeting dated 28.02.2022 under section 10(3)(c).
11. The Petition is free from defects and complete in all aspects as required under the law. The Petition shows that the Corporate Applicant is in default of a debt that is due and payable, and the default is more than the threshold amount as stipulated under section 4(1) of the Code at the relevant time. The default stands established and there is no reason to deny the admission of the present Petition.
12. Therefore, in the light of the facts stated in the application and the evidence placed on record, this Adjudicating Authority admits this Application and orders initiation of CIRP against the Corporate Applicant under the following terms: -
 - (a) The Application bearing C.P.(IB)No. 105/KB/2022 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 **Penguin Hospitality Private Limited**.
 - (b) There shall be a moratorium under section 14 of the IBC.
 - (c) 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 IBC or passes an order for liquidation of Corporate Applicant under section 33 of the IBC, as the case may be.

- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) As per the proposal given by the Corporate Applicant, **Mr. Kamal Nayan Jain (Regn. No. IBBI/IPA-001/IP-P-00029/2016-2017/10065)** having **email id: knjain@knjainco.com**, is appointed as the IRP for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan.
- (f) During the CIRP period, the management of the Corporate Applicant shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the Code. The officers and managers of the Corporate Person 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.
- (g) The IRP/RP shall submit to this Adjudicating Authority periodical reports on quarterly basis with regard to the progress of the CIRP in respect of the Corporate Applicant.
- (h) The Corporate Applicant to pay to IRP a sum of **Rs.300000_ (Rupees Three 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. Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.

- (i) The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - (j) The Court Officer of this Court is hereby directed to communicate this Order to the Corporate Person and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
 - (k) Additionally, the Corporate Person shall serve a copy of this Order on the IRP and on the Registrar of Companies, Bihar, Patna, 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.
- 13. CP (IB) No. 105/KB/2022** to come up on **30.11.2022** for filing the first progress report.
- 14.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The Order is pronounced on 2nd day of November, 2022

SM[LRA]