



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI
CP (IB) No.890/MB/2023

[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:

ARYAN CASTINGS PRIVATE LIMITED

[CIN: U27310MH2011PTC217012]

G-39, Gat No. 232,

Lakhampur Taluka - Dindori

Nashik-422202

Maharashtra.

...Corporate Applicant

Pronounced: 17.01.2025

CORAM:

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

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances : Hybrid

Corporate Applicant : Adv. Rajaram Kuleriya a/w
Ritika Gupta.
Financial Creditor (UBI) : Adv. Mable Soans.
Operational Creditor (MSEDCL) : Adv. Vikas More a/w.Devangi
Jagtap i/b Lexcorp Partners.
Operational Creditor(Matarani Alloys) : Sunil Ramani

**ORDER****[PER: SANJIV DUTT, MEMBER (TECHNICAL)]****1. BACKGROUND**

- 1.1 This Application bearing CP (IB) No.890/MB/2023 was filed on 04.09.2023 by Aryan Castings Private Limited, (hereinafter referred to as “the Corporate Applicant”) 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 was incorporated on 03.05.2011 under the Companies Act, 1956 and carries on the business of manufacturing, trading, assembling, dealing, fabricating, casting of all kinds of metal pipes.
- 1.3 Two credit facilities were sanctioned by Union Bank of India (Financial Creditor) to the Corporate Applicant *vide* Sanction Letter dated 25.04.2019 viz. Cash Credit (against Hypothecation of Stock and Book Debts) of Rs.20,00,00,000/- (Twenty Crore Rupees) and Import/Inland Letter of Credit (DP/DA upto 120 days) of Rs.5,00,00,000/- (Five Crore Rupees), totalling Rs.25,00,00,000/- (Twenty Five Crore Rupees). Both charges were created in favour of the Union Bank of India on 28.05.2019. Later, a fresh Working Capital Term Loan facility of Rs.4,00,00,000/- was provided by the Union Bank of India *vide* Sanction Letter dated 04.03.2021 during COVID-19



Pandemic under Union Guaranteed Emergency Credit Line (UGECL) scheme and charge was also created for the same.

- 1.4 A Demand Notice dated 24.11.2021 was issued by the Union Bank of India under Section 13(2) of the SARFAESI Act, 2002, followed by a Possession Notice dated 04.02.2022, indicating that the bank had taken possession of the property described in the notice. Further, Union Bank of India conducted e-auctions on 25.03.2022 and 16.11.2022 for the sale of industrial land, plant and machinery, factory building and other ancillary structures owned by the Corporate Applicant.
- 1.5 The Board of Directors of the Corporate Applicant, in their meeting held on 09.07.2023, approved the initiation of CIRP under Section 10 of the Code, acknowledging that the company would be unable to pay its financial and operational dues.
- 1.6 Subsequently, on 27.07.2023, the bank organised an e-auction to sell the assets and collateral securities pledged by the Corporate Applicant for a loan amounting to Rs.31,74,69,959/-, but the auction was unsuccessful.
- 1.7 The Corporate Applicant has prepared the audited financial statement as on 31.03.2021 and a provisional Statement of Assets and Liabilities as on 31.07.2023, which revealed that the present business of Corporate Applicant could not be run in profit and currently, it has accumulated losses up to the year ended on 31.03.2021 amounting to Rs.57,40,97,758/-.
- 1.8 The Corporate Applicant has submitted audited financial statements for the financial year 2020-21. The total assets of the Corporate Applicant as on 31.03.2021 are valued at Rs.54,92,54,781/-. The names and addresses of



the directors and members, along with details of their shareholdings, have also been disclosed.

1.9 The Corporate Applicant has disclosed a default amount of Rs.31,74,69,959/- as on 30.06.2023, as recorded in the e-auction notice dated 06.07.2023. It is submitted that the Corporate Applicant has almost discontinued its business over the past few years and is unable to pay the dues owed to both Financial and Operational Creditors. The Statement of Assets and Liabilities as well as the names and addresses of the creditors, are annexed to the Application.

1.10 Consequently, the Members of the Corporate Applicant in their Extra-Ordinary General Meeting held on 09.08.2023, approved the proposal to file the Application under Section 10 of Code for initiating CIRP by passing Special Resolution in this respect and authorised Mr. Ashish Ashwani Agarwal to file all such applications and documents as may be required for the said purpose on behalf of the Company. In the above circumstances, the Corporate Applicant has applied before this Tribunal to initiate proceedings under Section 10 of the Code for commencing CIRP.

1.11 The Corporate Applicant initially proposed the name of Mr. Rajiv Bajaj, having Registration No. IBBI/IPA-002/IP-N00276/2017-18/10834, for appointment as the Interim Resolution Professional (IRP). However, on 10.11.2023, Counsel for the Corporate Applicant appeared and requested for a change of the IRP, citing inconvenience of the earlier IRP. The Tribunal, *vide* order dated 10.11.2023, allowed this request. The Corporate Applicant subsequently filed an Additional Affidavit dated 10.01.2024, enclosing the Consent Form-2 and valid AFA of Mr. Sonu Gupta, with



Registration No. IBBI/IPA-001/IPP-02261/2021-2022/13534. The proposed IRP has provided his consent in Form-2, confirmed his eligibility and affirmed that no disciplinary proceedings are pending against him.

2. **ANALYSIS AND FINDINGS**

2.1 We have heard the Ld. Counsel appearing for the Corporate Applicant and perused the documents placed on record.

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 emphatically brought out by the Hon'ble NCLAT in the matter of **M/s**




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 view of the above legal principles, it is now proposed to deal with the present Application. As stated above, the Corporate Applicant had availed credit facilities from Union Bank of India and committed default in repayment thereof. It is noticed from the record that the Corporate Applicant was served with a Demand Notice under Section 13(2) of the SARFAESI Act, 2002 by Union Bank of India on 24.11.2021. This was followed by a Possession Notice dated 04.02.2022 issued by Union Bank of India. It is noticed from perusal of the e-auction notice dated 06.07.2023 that an amount of Rs.31,74,69,959/- is in default by the Corporate Applicant as on 30.06.2023. It is an admitted fact that the Corporate Applicant has been facing financial crisis and is unable to pay off its debts. A perusal of financial statements of the Corporate Applicant for Financial Years 2021-22 and 2022-23 reveals



that the Corporate Applicant has no revenue from operations and has instead incurred substantial losses. The accumulated losses up to 31.03.2023 are shown in the balance sheet at Rs.58,38,61,372/-.

- 2.5 The Corporate Applicant has annexed to the Application the Special Resolution passed by its members at the Extra-Ordinary General Meeting held on 09.08.2023, wherein it was resolved that the Corporate Applicant was unable to repay its debts and, hence, CIRP under Section 10 of the Code needs to be initiated.
- 2.6 In compliance with our order dated 29.01.2024, the Corporate Applicant submitted a detailed list of creditors, categorising them into those with dues exceeding Rs.10 lakh and others with dues below Rs.10 lakhs and other creditors who had provided advances to the Corporate Applicant. Subsequently, this Bench on 08.02.2024 directed both the Registry and the Corporate Applicant to serve notices to the Bank/financial creditors as well as operational creditors whose dues exceed Rs.10 lakh. The Corporate Applicant has complied with this directive and has filed an Affidavit of Service, attaching proof of service.
- 2.7 It is noted that on 04.03.2024, Mr. Sunil Ramani, a representative of Matarani Alloys, Raipur, Chhattisgarh, one of the Operational Creditors of the Corporate Applicant, appeared and stated that an amount of Rs.22,75,826/- was due from the Corporate Applicant. Thereafter, on 30.04.2024, Ld. Counsels appearing for both Union Bank of India and MSEDCL submitted that their respective claims would be presented before the Interim Resolution Professional (IRP) in the event of admission. In other



words, pursuant to service of notices on creditors, none of the creditors has filed any submission to oppose the present Application.

2.8 All these clearly demonstrate that the Corporate Applicant is in default of a debt due and payable and that the default exceeds the minimum threshold stipulated under Section 4(1) 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. 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 Mr. Sonu Gupta Insolvency Professional, Registration No: IBBI/IPA-001/IPP-02261/2021-2022/13534 to act as the Interim Resolution Professional (IRP). The Corporate Applicant has placed on record the written consent of the IRP in Form 2 along with the registration certificate.

2.9 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 Aryan Castings Private Limited, the Corporate Applicant.

ORDER

- a. In view of the aforesaid findings, the present Application bearing **CP (IB) - No.890/(MB)/2023** is hereby **admitted** and initiation of CIRP is ordered against **Aryan Castings Private Limited**, the Corporate Applicant.
- b. This Bench hereby appoints **Mr. Sonu Gupta (rpsonugupta@gmail.com)**, Insolvency Professional, Registration No: **IBBI/IPA-001/IPP-02261/2021-2022/13534** **having** valid AFA up to 30.06.2025 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 IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

- c. We declare Moratorium in terms of sub-section (1) of Section 14 of the Code with consequential directions as mentioned below. We prohibit;
- i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor .
- d. During the period of moratorium, 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.



- e. 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.
- f. 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.
- g. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- h. 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 section 17 of the IBC. 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.
- i. The Corporate Applicant shall forthwith 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).

- j. The Registry is directed to communicate this Order to the Corporate Applicant and the IRP by Speed Post and email immediately.
- k. 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)

//Deepa//

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