IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

Company Petition No. (IB)-252/10/JPR/2019

CORAM: Mr. AJAY KUMAR VATSAVAYI, MEMBER(JUDICIAL)
Mr. RAGHU NAYYAR, MEMBER (TECHNICAL)

IN THE MATTER OF SECTION 10 of The Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:
Kanishkdeep Stock Consultants Pvt. Ltd.
6A-10, Mahaveer Nagar Extension,
Kota- 324005 (Rajasthan)

...Petitioner / Applicant

For the Applicant : Siddharth Bapna, Adv.

For the Respondent(s) : U. S. Patole, ROC-cum-OL
Prateek Kedawat, Adv. for IT
On Behalf of R.B. Mathur, Senior Standing Counsel for Income Tax Department

Order Pronounced On: 09.02.2021

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. The instant Application is filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

Sd/-

('Rules') for initiation of Corporate Insolvency Resolution Process in respect of M/s. Kanishkdeep Stock Consultants Private Limited, the Corporate Debtor being the Applicant Company itself. The instant Application is filed through director Mr. Manoj Gupta, duly authorised vide board resolution dated 02.08.2019.

2. The Applicant, 'M/s. Kanishkdeep Stock Consultants Private Limited', is a company incorporated on 09.02.2007 under the Companies Act, 1956 bearing CIN No. U67120RJ2007PTC023816. The Applicant Company has its registered office at 6A-10, Mahaveer Nagar Extension Kota-324005 within the territorial jurisdiction of this Adjudicating Authority.

3. As per averments, the Corporate Debtor had one financial creditor who had extended financial facilities. It is stated that due to acute financial constraints, the Corporate Debtor could not maintain the accounts regularly and as a result as on 31st March, 2019 the total amount in default is Rs. 1,90,42,556/-.

4. In order to prove the said default the Corporate Debtor has placed demand letter dated 13.03.2018 issued by the financial creditor asking for repayment of the financial facilities extended to it. Copy of demand letter is annexed as Annexure-M to the Application.

Sd-

5. There is no dispute that the Applicant Company has admittedly defaulted in liquidating its debts which is in excess of the minimum applicable amount under Section 4 of the Code and therefore is entitled to file the present Application in terms of sub-section (1) of Section 10 of the Code.

6. In compliance of the requirements of Section 10 (3) (a) of the Code read with Annex-V of Form 6 of the Rules, the Applicant Company has filed copies of audited financial statements of the Corporate Debtor for the financial years i.e. 2017-2018 to 2018-19 and provisional statements upto 30.09.2019.

7. Further in compliance of Section 10 (3) (b) of the Code the Applicant has proposed the name of Mr. Sanjay Badrilal Punglia, registration no. IBBI/IPA-001/IP-P00855/2017-2018/11437 as the Interim Resolution Professional ('IRP'). The Applicant Company has obtained a written communication in Form-2 from the Insolvency Professional for appointment as an IRP. In the Form-2 filed along with the Application it has been affirmed by the proposed IRP that he is a registered Insolvency Professional and qualified to practice as an Insolvency Professional. Further it has been affirmed / confirmed that there are no disciplinary proceedings pending against the proposed IRP. The said Form-2 is annexed as Annexure-D to the Application.

Sd—

8. In the case of *M/s. Unigreen Global Private Limited versus Punjab National Bank and Ors.* in Company Appeal (AT) (Insolvency) No. 81 of 2017 Hon'ble NCLAT vide order dated 1st December, 2017 has held that:

> *"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……."*

9. In view of the above, it was noted that the Applicant has failed to make submissions with respect to Section 11 of the Code. The Applicant was directed to remove the deficiency through an Affidavit. In compliance thereof the Applicant had filed an affidavit vide dairy no. 259/2021 dated 25.01.2021 affirming that the Corporate Applicant is not disqualified in terms of provisions of Section 11 of the Code to file and maintain the Application under Section 10 of the Code. The affidavit further confirms that no CIRP has ever been initiated nor any liquidation order or winding up order has been made against the Applicant Company.

Sd/-

10. In view of the above it is clear that a default has occurred and the present Application under Section 10 is complete and that the Applicant is not ineligible under Section 11 of the Code. Further there is no dispute that the requirements prescribed under sub-section 3 (a) and (b) of Section 10 of the Code have also been complied with.

11. However before admitting the matter, notices were issued to the Registrar of Companies and the Income Tax Department. The Income Tax Department has submitted its No Objection vide letter dated 27.11.2019 and Ld. JTA for RoC has submitted during the hearing on 09.01.2020 that they have no specific reply or objection against the Application.

12. The Corporate Debtor has also placed on record a special resolution passed by the shareholders, ratifying the decision to file the present petition in terms of the amended provisions of Section 10 of the Code. The particulars of the debts owed by the Corporate Debtor, with amounts due to each of them have also been furnished. Copy of special resolution is annexed as Annexure-N with the Application.

13. The Insolvency and Bankruptcy Code, 2016 is a complete Code in itself. The provisions of the Code are to be mandatorily followed. Adherence to the statutory requirements has to be in toto. Section 10 (4) (a) of the Code mandates the Adjudicating Authority to admit the application if it is complete. When the language of the Code is clear and explicit the

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Adjudicating Authority must give effect to it, whatever may be the consequences.

14. In view of the foregoing, we are satisfied that the present Application is complete and that the Applicant Corporate Debtor has committed a default. Therefore, as the Application is complete the present petition is admitted under section 10 (4) (a) of the Code. The corporate insolvency resolution process shall commence from the date of this order under sub-section 5 of Section 10 of the Code.

15. A moratorium in terms of Section 14 of the Code is being issued prohibiting the following:

- *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;*
- *transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
- *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*

Sd/-

of Financial Assets and Enforcement of Security Interest Act, 2002;

- *recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*

16. It is further directed that:

- *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.*
- *The provisions of sub-section (1) of section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

17. Mr. Sanjay Badrilal Punglia, registration no. IBBI/IPA-001/IP-P00855 /2017-2018/11437 is appointed as Interim Resolution Professional, who shall take statutorily prescribed steps inter-alia as envisaged under Section 15, 17 and 18 of the Code. Since, the tenure of the IRP under section 16(5) shall not exceed 30 days from the date of his appointment; the IRP is directed to submit his report at the earliest.

18. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process as per sub-section (4) of Section 14 of the Code.

Sd—

Let a copy of this order be supplied to the Applicant as well as the interim resolution professional to carry out the CIRP at the earliest. A copy of this order shall also be communicated to IBBI for its records.

Sd/-

SH. RAGHU NAYYAR,
TECHNICAL MEMBER

Sd/-

SH. AJAY KUMAR VATSAVAYI
JUDICIAL MEMBER