

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
“CHANDIGARH BENCH, CHANDIGARH”**

**CP (IB) No. 12/Chd/Pb/2018
alongwith CA No. 69/2018**

**Under Section 10 of the Insolvency
And Bankruptcy Code, 2016.**

IN THE MATTER OF:

KINGFISHER INDUSTRIES PRIVATE LIMITED,
having its registered office at 61, Daba Road, G.T.
Road East, Ludhiana, Punjab-141008.

..... Applicant-corporate debtor

Versus

Allahabad Bank, having its Branch
office at IFB Ludhiana, 165-Industrial
Area A, Cheema Chowk, Ludhiana.

....Respondent-financial creditor

Judgement delivered on: 20.03.2018

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the applicant : 1. Mr. Manish Jain, Advocate.
2. Ms. Divya Sharma, Advocate.

For Allahabad Bank and
ASREC (India) Ltd : Mr. K.P.S. Dhillon, Advocate.

Per: R.P. NAGRATH, MEMBER (JUDICIAL)

JUDGEMENT (Oral)

This petition has been filed by Kingfisher Industries Private Limited, a Corporate Debtor-Applicant itself in Form No.6 as prescribed under sub-rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules') for initiating Corporate Insolvency Resolution Process under Section 10 of the

Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code'). The corporate debtor also falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code.

2. The corporate debtor was incorporated as a company on 11.04.2012, having been allotted CIN U28113PB2012PTC036127, and its registered office is at Ludhiana, Punjab and, therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The Authorised Share Capital of the corporate debtor is 3 crores with 30,00,000 equity shares of 10/- each and Issued, Subscribed and Paid-Up Share Capital is 2,86,00,000/- with 28,60,000 equity shares of 10/- each. The Certificate of Incorporation of the corporate debtor is at Annexure VII(C) and Memorandum and Articles of Association is Annexure VII(B).

4. This petition has been filed by the corporate debtor through Mr. Sunil Kumar Singla, one of the Directors of the company who has been authorised to file this petition under Section 10 of the Code vide resolution dated 30.11.2017 Annexure VII(A). The contents of the application are supported by affidavit of Mr. Sunil Kumar Singla Annexure VIII(A) at page 774 of the paper book. There are 4 shareholders of the company, details of which are given in Sl.No.3 of Part I of the application and the Board of Directors of the company comprises of two Directors namely Mr. Karan Pratap Singla and Mr. Sunil Kumar Singla.

5. The corporate debtor has one secured Financial Creditor, namely, Allahabad Bank and the address of the financial creditor have been mentioned. The amount of debt in default in respect of corporate debtor towards Allahabad Bank is ₹14,40,06,724.22 as on 28.11.2017.

6. The unsecured financial debt towards Promoters & Associates as on 28.11.2017 is ₹2,49,97,541.79 and the amount in default in respect of other unsecured creditors is ₹2,28,37,851/- as on 28.11.2017.

7. The corporate debtor also has Operational Creditors viz. Trade Creditors, Government Departments and Service Providers (including the Punjab State Electricity Board). For the Operational Creditors, the corporate debtor is in default for an amount of ₹8,38,55,864.06/-. Total amount in default committed by the corporate debtor is ₹28,21,63,927.85. It is represented by the learned counsel for the petitioner that the addresses of all the creditors including operational creditors and the invoices in respect of the supply of the raw material by the operational creditors and the copies of ledgers accounts have been filed.

8. The account of the corporate debtor has been declared as 'NPA' by the secured Financial Creditors. Allahabad Bank issued the notice under Section 13(2) under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) giving the details of amount of default in respect of Cash Credit Account, EPC, WCTL, FITL, Bank Guarantee and Term Loan Account, total amounting to ₹15,04,72,671 upto 02.05.2016. The corporate debtor

has also created security interest in respect of certain properties, details of which have been given in the instant petition as also in the notice issued under Section 13(2) of the SARFAESI Act, 2002 (Annexure IA-(1). Thereafter, the Bank also issued the Possession Notice dated 02.08.2016 in respect of various immovable properties which is at Annexure IA-(2) and the advertisement of the auction for taking possession in the newspapers are at Annexure IA-(3).

9. The corporate debtor has stated that sale of the properties by the Bank for recovery of amount has not been made so far. The e-auction was conducted twice but it did not mature.

10. It is also stated that the corporate-debtor created first charge by way of hypothecation of all the current assets of the company including stock of raw material, work in progress, finished goods etc. and exclusive charge on fixed deposits of the company both present and future. It is further stated that the corporate debtor also furnished securities to secure amount of loan. Mr. Sunil Kumar Singla, one of the Directors of the company created equitable mortgage deed of the plot measuring 771 square yards comprised in Khasra No. 85/22, 90/1-2/1, 91/3-4-5-6-7-8-15/1-16/2 Khata No. 215/226-413/426 as per Jamabandi for the year 2006-07 by deposit of title deed dated 20.12.2012. The aforesaid Director also created equitable mortgage of the land measuring 2 Kanals 16.5 Marlas (1708 sq. yards) in Khasra No. 90/1, 91/5, 90/2/1, 91/3-4-5-6-7-8-15/1-16/2, 85/22 Khatta No. 413/426-215/226 as per the Jamabandi for

the year 2006-07 by deposit of title deed dated 06.02.2012 and also land measuring 2208 sq. yards by deposit of title deed dated 16.11.2011. These mortgage deeds were created on 23.02.2015 by deposit of title deeds.

11. Personal guarantees were also furnished by Mr. Sunil Kumar Singla, Mr. Karan Pratap Singla and Mr. Viresh Pratap Singla for the outstanding dues of the bank.

12. Notice of his petition was issued to Allahabad Bank and other unsecured and unrelated creditors, namely, Archana Ahlawat, Vijay Kumar Mittal, Ravinder Bhargya and Punjab Containers (P) Ltd. Only Allahabad Bank appeared and there was no representation from rest of the financial creditors despite service.

13. Allahabad Bank filed reply to the instant petition claiming that total outstanding amount against the corporate debtor-petitioner as on 26.02.2018 is ₹ 18,76,73,317/-. The borrowing of loan by the corporate debtor-petitioner from Allahabad Bank and it being in default is not a disputed question. The objection raised by Allahabad Bank is that the petitioner has shown amount of ₹ 2.77 crores approximately towards the loan from unsecured creditors out of which an amount of ₹ 2.49 crores approximately is the share/investment of the promoters/Director /guarantors of the related parties. The said amount is stated to have been taken artificially from the financial creditors simply to reduce the share of the financial creditors by enhancing their liabilities. Reference is

also made to the action being initiated against the petitioner under the SARFAESI Act. The petitioner is also said to have not come with clean hands to this Tribunal having concealed the figures of the outstanding amount. It is not disputed, however that account of the petitioner was declared Non Performing Assets (NPA). Reference is also made to a letter issued by IndusInd Bank by attaching copy of the statement of accounts and visit report of the bank officials showing the petitioner to be a defaulter. It is also prayed that the proceedings against the petitioner may not be stayed or moratorium ordered. At the end, it is stated that Allahabad Bank has assigned the debt in question to ASREC (India) Ltd on 27.02.2018 and assignment deed has also been executed which is yet to be registered. It is averred that the assignment deed placed on record after its registration. Learned counsel for Allahabad Bank has also filed CA No. 69/2018 to implead ASREC (India) Ltd as the respondent instead of Allahabad Bank on the basis of assignment agreement dated 28.02.2018. But it is submitted during arguments that actual date of agreement is 27.02.2018. ASREC (India) Ltd has also stated that agreement is yet to be registered.

14. We have heard the learned counsel for both the parties and perused the record carefully.

15. The question of ASREC (India) Ltd to be impleaded as necessary party in this case would not arise unless the agreement is registered. However, in case the agreement is registered, Allahabad Bank and

ASREC (India) Ltd can bring this fact to the notice of the Interim Resolution Professional or Resolution Professional, as the case may be, in case the petition is admitted. The Interim Resolution Professional/ Resolution Professional would then proceed according to the said information. In view of the above, CA No. 69/2018 stands disposed of.

16. Learned counsel for the financial creditor has also referred to a letter dated 31.03.2017 (Annexure R-1 of the reply) issued by IndusInd Bank to Allahabad Bank stating that the corporate debtor had given a declaration to IndusInd Bank that the petitioner was not enjoying any credit facility with any other bank on the basis of which the IndusInd Bank opened account of the corporate debtor-petitioner. The said account is said to have been frozen by IndusInd Bank. However, this assertion would be insignificant in this case because the statement of account of corporate debtor maintained by IndusInd Bank shows the outstanding balance in the accounts of the petitioner as on 31.03.2017 as nil. If IndusInd Bank has any other action to take, that is a separate issue.

17. Learned counsel for Allahabad Bank further refers to the assertion in the reply that opening current account with IndusInd Bank is contrary to the terms of sanction of loan by Allahabad Bank and RBI guidelines. The corporate debtor routed the transactions through IndusInd Bank causing loss to the Allahabad Bank thereby siphoning of the funds. This may be considered as material concealment of facts by the corporate debtor-petitioner. It is contended that this would disentitle the corporate debtor

from the order of admission. The petitioner was declared as wilful defaulter by Allahabad Bank as indicated in the letter dated 26.09.2017 (page 62 of the reply).

18. We have considered the aforesaid aspects of the case. The petitioner-Corporate Debtor being in default is not a disputed fact. We find that Corporate debtor is supposed to provide information as per particulars required in Form 6 of the Rules and nothing more than that. Reference can be made in this regard to the judgement of Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 02 of 2018 titled as **BCL Homes Ltd. Vs. Canara Bank & Ors.** that the factum of suppression of certain facts unrelated or beyond the requirement under I & B Code or Form 6 of the Rules cannot be a ground for rejection of application or to hold that the corporate applicant has not come with clean hands.

19. In "**M/s. Unigreen Global Private Ltd. Vs. Punjab National Bank & Ors.**", the Hon'ble Appellate Tribunal while taking into consideration provisions of Section 10 of the Code, by its judgement dated 01.12.2017 observed and held 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 within 7 days of receipt of a notice from the adjudicating authority.”

21. *In an application under Section 10, the ‘financial creditor’ or ‘operational creditor’, may dispute that there is no default or that debt is not due and is not payable in law or in fact. They may also oppose admission on the ground that the Corporate Applicant is not eligible to make application in view of ineligibility under Section 11 of the I&B Code. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11, the Adjudicating Authority has no option but to admit the application, unless it is incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.*

22. *Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the informations 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 informations are 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."

"25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of the SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete.

26. Any proceeding under Section 13(4) of the SARFAESI Act, 2002 or suit under Section 19 of the DRT Act, 1993 pending before Debt Recovery Tribunal or appeal pending before Debt Recovery Appellate Tribunal cannot proceed in view of the order of moratorium as may be passed.

27. *It is also desirable to refer to Section 238 of the I & B Code, as quoted below:*

*“238. Provisions of this Code to override other laws -
The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

In view of the aforesaid provision also, I & B Code shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force including DRT Act, 1993; SARFAESI Act, 2002; money suit etc.”

“34. Further, as we find that the Adjudicating Authority has noticed the extraneous factors unrelated to the Resolution process not required to be disclosed in terms of Section 10 or Form 6 and as the suits referred to relate to dispute between third parties, and not the Corporate Debtor, we hold that the Adjudicating Authority erred in rejecting the application on the ground of suppression of facts.”

20. We have perused the instant application filed in Form No.6 in terms of Section 10 of the Code and it is found complete in all respects. Section 10 of the Code reads as under : -

“10. (1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application furnish the information relating to—

(a) its books of account and such other documents relating to such period as may be specified; and

(b) the resolution professional proposed to be appointed as an interim resolution professional.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under subsection (4) of this section.”

21. The above provision of the 'Code' discloses that the following procedures are required to be completed by a 'Corporate Debtor' for initiating the process of insolvency:-

(i) Existence of a 'Corporate Debtor',

(ii) Such a Corporate Debtor must have committed a default.

(iii) On the satisfaction of (i) and (ii) above a Corporate Applicant may file an application for initiating Corporate Insolvency Resolution Process. Such an application as contemplated in (iii) above shall

be filed in such forms, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(iv) Along with the application information relating to books of accounts and other documents relating to such period as may be specified.

(v) The Applicant to name the Resolution Professional proposed to be appointed as an Interim Resolution Professional.

22. Section 10 of the 'Code' confers a discretion on this Tribunal to either admit or reject the application and in case of rejection to give an opportunity to the applicant before such rejection to rectify the defects within seven days from the date of receipt of such notice from the Adjudicating Authority. The term 'Corporate Debtor' has been defined under Section 3 (8) of Part-1 of the 'Code' to mean a Corporate Person, who owes a debt to any person and 'default' is defined under Section 3 (12) of Part-I of the Code to mean "non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be."

23. As provided in Rule 7(1) of the Rules, the Corporate Applicant has to make an application under Section 10 of the 'Code' in Form 6 accompanied with documents and records required therein and as specified in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Since we have already dealt in detail in the opening

paragraphs supra of this order relating to information furnished, we are not repeating the same for sake of brevity, as the essential particulars as contemplated, have been provided by the Applicant.

24. The corporate debtor has filed financial statements for the financial years ending 31.03.2016 and 31.03.2017 and provisional financial statements for the period from 01.04.2017 to 28.11.2017 [Annexure V(A), V(B) and V(C) respectively], All these financial statements are duly attested by Mr. Sunil Kumar Singla, Authorised Representative of the corporate debtor.

25. It is represented by the learned counsel for the corporate debtor that as per the financial statements, following is the status of the corporate debtor under different heads :-

Revenue from Operations:

As on 28.11.2017- ₹ 33,75,187.67

As on 31.03.2017- ₹ 6,82,60,118.85

As on 31.03.2016- ₹ 32,47,43,816.15

As on 31.03.2015- ₹ 38,65,23,033.34

Accumulated Profit/Loss of the Corporate Debtor:

As on 15.11.2017- ₹ (33,75,187.67)

As on 31.03.2017- ₹ (4,32,93,773.19)

As on 31.03.2016- ₹ (4,99,91,894.45)

As on 31.03.2015- ₹ 21,27,669.87

Long Term Borrowings & other Liabilities:

As on 15.11.2017- ₹ 19,39,153,28.08

As on 31.03.2017- ₹ 19,47,83,411.08

As on 31.03.2016- ₹ 17,73,77,086.26

As on 31.03.2015- ₹ 6,57,72,209.13

Current Liabilities:

As on 15.11.2017- ₹ 8,17,82,653.06

As on 31.03.2017- ₹ 8,53,02,938.06

As on 31.03.2016- ₹ 7,88,16,809.95

As on 31.03.2015- ₹ 8,82,56,158.00

26. The figures extracted above indicate the losses with continued fall in the revenue, therefore, it seems that the applicant has fallen into debt trap and is competent to set in motion the insolvency resolution process as contemplated under the 'Code'.

27. As per sub-section 3(b) of Section 10 of the Code, the corporate debtor is bound to propose the name of the Resolution Professional to be appointed as the Interim Resolution Professional. Mr. Alok Kaushik registered with IBBI under Registration No. IBBI/IPA-002/IP-N00253/2017-18/10767 (page 431) has been proposed to be appointed as the Resolution Professional. He has furnished written communication dated 02.12.2017 in Form 2 and certified that there are no disciplinary proceedings pending against him with the IBBI or ICSI Insolvency Professionals Agency. He has further disclosed all the information as per

the requirement of the Form. He has also stated that he is not presently serving as IRP/RP/Liquidator in any proceedings. The written communication has been found in order.

28. In view of the aforesaid discussion, the instant petition deserves to be admitted. It is further observed that the applicant-company save some sketchy particulars and has not given any road map as to how it is going to keep itself afloat as a going concern. However, keeping in perspective the objects for which the Code has been brought into force and to balance the interest of all stakeholders, we are satisfied that the instant application warrants to be admitted to prevent further erosion of capital and to safeguard the assets of the Applicant-Corporate Debtor.

29. The petition is admitted. While admitting the application the moratorium is declared for prohibiting all of the following as provided in section 14(1) of the Code:-

- (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.

30. It is further directed that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

31. The moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be. CA No. 69/2018 stands disposed of.

32. The matter be now listed on 27.03.2018 for passing formal order of appointment of Interim Resolution Professional.

Copy of the order be communicated to the parties.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

March 20, 2018
saini