

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH  
KOLKATA

CP (IB) No. 1635/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process by an operational creditor under section 10 of the Insolvency & Bankruptcy Code, 2016.

AND

In the matter of:

M/S. SURAJ FABRICS INDUSTRIES LIMITED, Elegant Towers, 224A, A.J.C.  
Bose Road, Kolkata 700017

... Corporate Debtor/Corporate Applicant

Order Delivered on: 01/07/2019

Coram: Shri Jinan K.R., Hon'ble Member (Judicial) & Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsels present:

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|---------------------------------|------------------------|
| 1. Mr. D.N. Sharma, Advocate    | ]                      |
| 2. Ms. Neha Somani, Pr. CS      | ] For Applicant        |
| 1. Mr. R.C. Prusti, Advocate    | ] IOB                  |
| 2. Mr. Binay Upadhyay, Advocate | ] Financial Creditor   |
| 3. Ms. Mauha Ghosh, Advocate    | ]                      |
| 1. Ms. Nazia Aslam              | ] Phoenix ARC (P) Ltd. |
|                                 | ] Financial Creditor   |

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**ORDER**

**Per Harish Chander Suri, Member (Technical)**

1. This C.P. (IB) No. 1635/KB/2018 is filed by M/s. Suraj Fabrics Industries Limited, hereinafter referred to as the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code, 2016, read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, proposing its own liquidation.
2. This Corporate Applicant was incorporated on 2<sup>nd</sup> February, 1995 vide CIN: U17119WB1995PLC180759 with Registrar of Companies, Kolkata, with an Authorized Capital of Rs. 11,50,00,000/- (Rupees Eleven Crore Fifty Lakh Only) of which paid up capital was Rs. 11,38,80,000/- (Rupees Eleven Crore Thirty Eight Lakh Eighty Thousand Only) and its registered address is in Kolkata within the jurisdiction of this Tribunal.
3. It is submitted that vide Resolution passed in the meeting of Board of Directors of the Company held on 14<sup>th</sup> November, 2018, the Company has authorized Mr. Arjun Kumar Santhalia, Director of the Company to file an application under section 10 of the Insolvency and Bankruptcy Code, 2016 with the NCLT and also to sign/execute all necessary documents including petitions, applications, pleadings, appeals and affidavits etc. in connection with the aforesaid proceedings.

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4. The Company has also authorized Mr. Manoj Kumar Banthia, Company Secretary to enter appearance on behalf of the Company (hereinafter called the Corporate Applicant).
5. Vide special resolution passed in its Extra Ordinary General Meeting of the members of the Company accorded their consent to file application under section 10 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Regulation Process of the Company.
6. It may be pertinent to mention that the Company was incorporated on 2<sup>nd</sup> February, 1995 with the main object of manufacturing and trading of pig iron and other allied products such as sponge iron, steels of all kinds and various ferrous and non-ferrous metals and was doing the business of manufacturing of MS Billets and TMT Bars.
7. It may be further stated that the Corporate Applicant had availed a credit facility from **State Bank of Bikaner and Jaipur** (presently State Bank of India) to the tune of **Rs. 32,50,00,000/-** (Rupees Thirty Two Crore Fifty Lakh Only) and **credit facilities from Indian Overseas Bank** amounting to **Rs. 31,00,00,000/-** (Rupees Thirty One Crore Only) in the year 2010. However, due to continuous losses year after year from the financial year 2012-2013, the Company was unable to repay the debts due to the secured creditors i.e. SBI and IOB and eventually the bank accounts were declared as Non

Performing Assets (NPA) by the respective bankers i.e. bank account with SBI on 29<sup>th</sup> September, 2013 and bank account with IOB on 8<sup>th</sup> July, 2015. Thus, the Company has committed "**default**" as per the I & B Code, 2016 in payment of its debts and is unable to pay the same.

8. It is stated that consent of the shareholders holding 95% of the paid up capital of the Company was held and consent was granted by the shareholders.
9. As required under section 11 of the Code the Corporate Applicant through its Managing Director and Authorised Representative Mr. Arjun Kumar Santhalia filed an affidavit duly sworn on 29<sup>th</sup> November, 2018 that the Corporate Applicant had not been undergoing a corporate insolvency resolution process and that it had not completed corporate insolvency process twelve months preceding the date of making of the application under section 10 of the Insolvency & Bankruptcy Code, 2016 and had not violated any terms of the resolution plan which had been approved twelve months before the date of an application and was not a corporate debtor in respect of whom a liquidation order had been made. This was filed to specify the requirements of section 11 of the code.
10. Notice was issued to the Financial Creditors by this Tribunal on 20<sup>th</sup> December, 2018. Counsel for the Indian Overseas Bank and Phoenix ARC Private Limited submitted their Vakalat Nama and

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Board Resolution and sought time to file reply. The Indian Overseas Bank, one of the Financial Creditors of the Corporate Applicant held 59.26% voting share and submitted that they support application under section 10 of the Code filed by the Corporate Applicant.

11. It is submitted on behalf of the Indian Overseas Bank that the corporate applicant had approached this Financial Creditor for grant of various credit facilities and they granted a cash credit amount of Rs. 30,00,00,000/- (Rupees Thirty Crore Only) and Letter of Guarantee amounting to Rs. 1,00,00,000/- (Rupees One Crore only), an aggregate limit of Rs. 31,00,00,000/- (Thirty One Crore Only) to the Corporate Applicant on 19<sup>th</sup> July, 2010.
12. It is further submitted that in order to secure the aforesaid credit facility the Corporate Applicant had created security interest on the assets of the Corporate Applicant i.e. the 2<sup>nd</sup> charge on the block of assets of the corporate applicant (steel division) on pari passu basis with State Bank of Bikaner and Jaipur (SBBJ) and Fixed deposit worth Rs. 1.68 crore on pari passu basis with SBBJ.
13. In addition to this, on 1st October, 2010, the Corporate Applicant executed a Promissory Note in favour of the Financial Creditor and promised that on demand the Corporate Applicant jointly and severally, it shall pay to the Financial Creditor or order, the sum of Rs. 30,00,00,000/- along with interest thereon at the base rate of the bank till the date of full payment. The Corporate Applicant

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further executed a Letter of Hypothecation dated 1<sup>st</sup> October, 2010 in favour of the Financial Creditor and hypothecated the goods stored in its premises.

14. Another Demand Promissory Note (DPN) was executed by the Corporate Applicant on 1<sup>st</sup> October, 2010 in favour of the Financial Creditor a sum of Rs. 1,00,00,000/- for value received together with interest thereon at the base rate of the Bank. The Corporate Applicant further executed a General Counter Guarantee Agreement in favour of the Financial Creditor on 1<sup>st</sup> October, 2010.

15. Other Directors of the Company also stood as Guarantors in favour of the Financial Creditor making them jointly and severally liable to the extent of Rs. 31 crore. In addition to this, the Corporate Applicant had been offered and accepted offer of the Financial Creditor's Chandigarh Branch for restructuring of the credit limit being enjoyed by the Corporate Applicant with the Financial Creditor and sanction of Working Capital Term Loan (WCTL) limit of Rs. 29.96 crore, and FITL limit of Rs. 8.46 crore vide sanction letter dated 28.12.2013, on the terms and conditions mentioned therein. All the requisite documents were executed by the Corporate Applicant in favour of the Financial Creditor.

16. It is thus submitted that a total claim of Rs. 63,88,27,806.63 (Rupees Sixty Three Crore Eighty Eight Lakh Twenty Seven Thousand Eight Hundred and Six and paise Sixty Three Only) is outstanding

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against the Corporate Applicant and the Corporate Applicant has been declared as an NPA. In the affidavit filed on behalf of Indian Overseas Bank, this Financial Creditor has supported the application made by the Corporate Applicant under section 10 being the secured creditor.

17. Similarly, another Financial Creditor M/s. Phoenix ARC Private Limited has also filed an affidavit in reply to the application under section 10 of the Corporate Applicant and submitted that the Corporate Applicant had initially approached the State Bank of Bikaner & Jaipur (hereinafter referred to as the **"Assignor Bank"**) in September, 2002 and on their request, the said bank vide sanction letter dated 27.09.2002 sanctioned cash credit limit and various other loans granted from time to time. Various documents were executed by the Corporate Applicant in favour of the aforesaid bank including agreement of hypothecation, mortgage of immovable properties by deposit of title deeds etc.

18. It is further submitted that on confirmation of balance in the cash credit dated 31.03.2003 for securing the amount of Rs. 1,49,92,507.63 advanced to the Corporate Applicant by the Assignor Bank, balance confirmation letter and renewal of documents, dated 13.05.2004 (for securing the amount of Rs. 5,44,62,000/- advanced to the Corporate Applicant by the Assignor Bank), confirmation of balance in the Cash Credit A/c, dated 31.03.2005 (for securing the amount of Rs. 2,00,63,25.66 advanced to the Corporate Applicant

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by the Assignor Bank), Revival letter dated 29.05.2012 (for securing an amount of Rs. 46,78,00,000/- advanced to the Corporate Applicant by the Assignor Bank, were issued.

19. After classification of the account of the Corporate Applicant as an NPA, the Assignor Bank SBBJ vide a deed of assignment dated 31<sup>st</sup> March, 2015 has unconditionally and irrevocably assigned, transferred and released in favour of Phoenix ARC Private Limited, the Financial Creditor, all the financial assistance granted by the Assignor Bank together with all its rights, title and interest in the financing documents and all collateral and underlying security interest and/or mortgages and/or pledges created, to secure and/or guarantees issued in respect of the repayment of the financial assistance.

20. After assignment of the said account, Corporate Applicant approached the Financial Creditor for settlement of the said account and pursuant to the negotiations, a settlement was arrived at for Rs. 12,73,00,000/- (Rupees Twelve Crore Seventy Three Lakh Only) wherein a letter of acceptance dated 9<sup>th</sup> July, 2015 was executed between the Corporate Applicant (Corporate Debtor) and the Financial Creditor. As per the terms of the letter of acceptance, the Corporate Applicant acknowledged an outstanding debt of Rs. 33,17,00,000/- (Rupees Thirty Three Crore Seventeen Lakh only) as on 19<sup>th</sup> March, 2015 along with further interest, default interest and other charges payable from 20.03.2015 to the Financial Creditor

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and also agreed to pay the settlement amount of Rs. 12,73,00,000/- within a period of 5 years. The Corporate Applicant initially made payments as per the repayment schedule but later failed to adhere to the terms and conditions of the settlement.

21. It is further submitted that the Corporate Debtor is indebted to the Financial Creditor for a total sum of Rs. 56,12,00,049/- (Rupees Fifty Six Crore Twelve Lakh Forty Nine Only) as on 2<sup>nd</sup> April, 2019, therefore the Corporate Debtor is liable to pay that amount.

22. It is submitted by the Financial Creditor that the Corporate Debtor/Corporate Applicant has willfully and deliberately violated the terms of the letter of acceptance.

23. In view of the facts that the two main Financial Creditors who had funded the Corporate Applicant throughout running of its business, had made all out efforts to support the Corporate Applicant but, since the Corporate Applicant has failed to keep its commitments and committed default in making payment as per the payment schedule, it was declared an NPA. So this application having been filed by the Corporate Applicant itself for having admittedly committed defaults in payments of its dues to the Financial Creditors who have enclosed all the documents and bank statements to prove their case, there is no impediment in admitting the application under section 10 particularly when the Financial Creditors have no objection and have also supported the application

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under section 10 filed by the Corporate Applicant, for securing recovery of their secured respective loans.

24. The Corporate Applicant has filed all the requisite documents i.e. application (Form 6), its master data as taken from the website of MCA, Board Resolutions, List of Financial Creditors, Financial Statements and List of Financial Creditors showing outstanding liabilities which are to the tune of Rs. 67,05,68,038/-. The Corporate Applicant has also proposed the name of the Insolvency Professional **Mr. Santosh Choraria**, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of Institute of Chartered Accountants of India having **registration number IBBI/IPA-001/IP-P00549/2017-18/10979**, who has also sent a written communication dated 28<sup>th</sup> November, 2018 giving his consent to accept the appointment as an IRP if an order of admission is passed. He has further submitted in his letter that he is currently qualified to practice as an IRP and is serving as an IRP only in One proceeding. He has further certified that no disciplinary proceedings are pending against him with the Board of Institute of Chartered Accountants of India.
25. Since the application has been found to be complete in all respects and the default is proved as per the documents enclosed with the application by the Corporate Applicant, particularly in view of the fact that the liability is not denied and rather specifically admitted by the Corporate Applicant, and no disciplinary proceeding is

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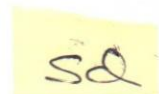
pending against the proposed resolution professional, this is a fit case where the Corporate insolvency Resolution Process (Liquidation) could be and should be initiated.

26. We have heard the Learned Counsels on both sides and perused the record. We, therefore pass the following orders:-

**ORDER**

- i) The application filed by the **Corporate Applicant/ M/S. SURAJ FABRICS INDUSTRIES LIMITED**, under Section 10 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process of the Company, is hereby admitted.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-





- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 (54 of 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.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Santosh Choraria**, carrying occupation at Room No. 222, P-41, Princep Street, Kolkata, West Bengal 700072, Registration No. IBBI/IPA-001/IP-P00549/2017-18/10979, Mobile No. 9831207932, E-mail ID [ca.schoraria@gmail.com](mailto:ca.schoraria@gmail.com) , an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of Institute of Chartered Accountants of India is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall

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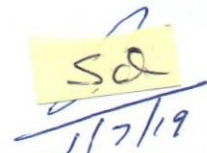
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identify the prospective Resolution Applicant within **105** days from the insolvency commencement date.

- xi) The Corporate Applicant is directed to deposit Rs. 3,00,000/- (Rupees Three Lacs Only) in the ESCROW Account to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP.
- xii) Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xiii) List the matter on **2<sup>nd</sup> August, 2019** for filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)  
Member (T)



(Jinan K.R.)  
Member (J)

Signed on this, the 1st day of July, 2019.

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