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BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B) No. 122/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 10.05.2019

Name of the Company: ACE Worldwide Tours Ltd.

Section of the Companies Act: Section 10 Insolvency & Bankruptcy Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1. TIRTH NAYAK ADV Petitioner Tirth


2.

ORDER

The petitioner is represented through their respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.


HARIHAR PRAKASH CHATURVEDI
MEMBER (JUDICIAL)

Dated this the 10th day of May, 2019.

**BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**

CP (IB) No.122/10/NCLT/AHM/2018

In the matter of:

M/s. Ace Worldwide Tours Ltd.
F 22/23/24, Jolly arcade
Opp. Rangila Park
Ghod Dod Road
Surat-395 007

...Corporate Applicant/
Debtor

Versus

1. IFFCO Tokio General
Insurance Company Ltd.
Shivranjani Cross Road
Near Pintoo Garments
Satellite
Ahmedabad

2. IDBI Bank Limited
Upper Ground Floor
21st Century Building
Ring Road
Surat-395 002

.... Respondents
[Financial Creditors]

Order delivered on 10th May, 2019.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

Appearance:

Mr. Tirth Nayak, Advocate for the Petitioner.

Mr. Akshat Khare, Advocate for IDBI.

Mr. Rushabh Shah, Advocate for IFCO Tokio General Insurance Co. Ltd.

ORDER

1. The present Application is preferred by the Corporate Applicant/
Corporate Debtor 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,
seeking for initiation of the Corporate Insolvency Resolution



Process (hereinafter referred to as "CIRP") itself, i.e., M/s. Ace Worldwide Tours Ltd. (hereinafter referred to as "Corporate Debtor company"). The definition of the Corporate Applicant includes a Corporate Debtor also for initiation of the C.I.R.P. This makes eligible to the present Corporate Debtor to move this IB Petition before this Bench, under Section 10 of the Code, seeking C.I.R.P for itself.

2. The Corporate Applicant/Debtor, i.e. M/s. Ace Worldwide Tours Ltd., is a Company, incorporated on 13th September, 2011 and registered under the Companies Act, 1956, bearing CIN: U63040GJ2007PLC051318. The registered office of the company is situated at F-22-23-24, Jolly Arcade, Ghod Dod Road, Surat-395 007, Gujarat. The Nominal Share Capital of the Company is Rs.16,00,00,000/- (Rupees Sixteen Crores only) and Paid-Up Share Capital of the Company is Rs.12,67,04,560/- (Rupees Twelve Crores Sixty Seven Lacs Four Thousand Five Hundred Sixty only).
3. The present application is filed and signed by Mr.Raju J. Choksi, being the Managing Director of the corporate of the applicant company. A perusal of the Company's Board Resolution, dated 10th February, 2018, shows that by such resolution Mr. Raju J Choksi, Managing Director, or Mr. Bharat Choksi, Director, are duly authorized to file the present IB Petition seeking initiation of the Corporate Insolvency Resolution Process for the Corporate Applicant/Debtor in terms of Section 10 of the Insolvency and Bankruptcy Code, 2016.

4. The Part-III of the application provides details about its financial creditors / operational creditors. The details of the Financial Creditors disclose about the financial debts to whom the company owes, but it has committed default in making repayment of the same. The details of Financial Creditors along with outstanding debts and the amount has been defaulted has been annexed as Annexure-6 with the present IB Petition and described as under;

Sr. No.	Name & Address of Bank	Type of account	Account No.	Amount due	Amount in default
1	Associates Co.Op. Bank Ltd. 1 st floor, Surat Vankar Snagh Building Ring Road Surat-395 003	Term Loan	449999900000662	1177110	1177110
2	ICICI Bank Ltd. Anjansalakha Athwalines Parle Point Surat-395 007	Over Draft Account	5205001095	280000	280000
3	IDBI Bank Ltd. Upper Ground Floor 21 st Century Building Ring Road Surat-395 002	Cash Credit	9651100001359	30232340	35732340.01
4	Goldline International Finvest Ltd. G-6, Gr. Floor House No.46 Gali No.4-C Ansari Road Darya Ganj New Delhi-110 002	Term Loan	N.A.	5328082	5328082
Grand Total				37017532	42517532.01

5. The present IB Petition described further a list of operational creditors as on 09 March 2018, as Annexure-6 & 7 to the present petition. As per the said list the corporate applicant/debtor owes a sum of **Rs.1,03,45,312.85** (Rupees One Crore Three Lakh Forty Five Thousand Three Hundred Twelve and paise Eighty Five only) to the operational creditors.

6. The Corporate Applicant has also provided details of liabilities (other than creditors) i.e. Employees Dues, statutory liability, which are attached to the present petition as Annexure-15B.
7. As per para-5 of Part-III of the petition, the applicant discloses the securities held by creditor(s), (i.e. date of its creation, its estimated value as per the secured financial creditor(s)). A copy of the same is enclosed as Annexure-12. Further a copy of Registration of Charge (as downloaded from the website of Ministry of Corporate Affairs) is also enclosed as Annexure-13. Further a copy of Deed of Mortgage/Hypothecation in favour of IDBI Bank Ltd. has been enclosed as Annexure-14(A), (B), (C) and (D) of the present IB Petition.
8. The Corporate Applicant submits that it has committed default in making payment of its financial debts to one of the Financial Creditors, i.e. IDBI Bank Ltd., hence, it has been issued Demand Notices on 03.11.2015 and on 03.12.2015 by insisting for making repayment of dues.
9. It is further reported that the above stated Financial Creditor-IDBI has also initiated a proceeding, under Sections 13(2) and 13(4) of the SARFAESI Act, against the Corporate Applicant and issued notices.
10. That apart, some of the operational creditors have also issued letter/notice to the corporate applicant/corporate debtor seeking repayment of their dues. It is stated that United Credit



Solutions Pvt. Ltd. as well as the Bombay Stock Exchange (BSE) have issued Demand Notices to the present Corporate Debtor company. A copy thereof is annexed with the present IB petition.

11. The corporate applicant/debtor has also enclosed a copy of its audited financial statements for the year 2015-16 and 2016-17 and the provisional financial statements for period from 01.04.2017 to 09.03.2018, as Annexure 11A, 11B and 11C, respectively.
12. In the present application, the Corporate Applicant has proposed the name of Mr.Narayan Gajanan Vidvans, as an Interim Resolution Professional (I.R.P), who also duly informed about his willingness to accept the assignment and to act as the IRP in respect of the present corporate applicant through his written communication in Form-2 to the present application.
13. As per record, this Adjudicating Authority by its order dated 29.11.2018 has impleaded M/s. IFCO TOKIO as one of the respondents to the present application. During the course of hearing on 07.12.2018 it expressed its no objection if the present IB Petition is allowed and admitted under Section 10 of the I & B Code, provided that its interest to be taken care of by this Adjudicating Authority while admitting the same.
14. In addition to the above, the Income-Tax Officer, Ward-1(1)(1), Surat, vide ref. No. ITO / WD.1(1)(1) / ATWPL /2018-19 dated

04.02.2019, wrote a letter to this Court informing about outstanding Income Tax Demand against the Corporate Applicant/Debtor company.

15. For the sake of convenience, the contents of the such letter are being reproduced hereinbelow;

"2. In this connection, it is informed that a request letter has already been send to your office vide letter no. ITO / Wd.1(1) (1)/ATWPL/2017-18 dated 12.04.2018 for considering the claim of the Revenue Department to the extent of Rs.4,43,71,945/-. Further, the re-assessment proceedings were completed for AY2009-10 to 2015-16 during the F.Y. i.e. 2018-19 and demand raised on 31.12.2018. Therefore, the following demands are due from the assessee company M/s. Ace Tours Worldwide Limited having PAN:AAGCA8835L as on date.

Assessment Year	Order	Amount in Rs.
2009-10	u/S 220(2) of the IT Act dated 02/10-2018	5,67,845/-
2011-12	u/S 220(2) of the IT Act dated 02/10-2018	1,54,950/-
2011-12	U/s.144 r.w.s. 153C of the I.T. Act dated 31.12.2018	4,56,34,560/-
2012-13	U/s.144 r.w.s. 153C of the I.T. Act dated 31.12.2018	59,87,890/-
2013-14	U/s.144 r.w.s. 153C of the I.T. Act dated 31.12.2018	3,67,05,920/-
2014-15	U/s.144 r.w.s. 153C of the I.T. Act dated 31.12.2018	1,08,95,630/-
2015-16	U/s.144 r.w.s. 153C of the I.T. Act dated 31.12.2018	9,46,990/-
	Total	10,08,93,785/-

The above stated demands could not be recovered from the assessee company. Therefore, it is requested to consider the revise claim of the Revenue Department to the extent of Rs.10,08,93,785/- as due against the assessee company.

16. Notwithstanding the above, one of the objectors-Financial Creditors, i.e. IDBI, has opposed the present IB Petition by filing its objections, contending such;

16.1 the present application filed by the applicant is not maintainable before this Adjudicating Authority. It is alleged that the applicant intends to thwart the recovery action initiated by it under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), then it has been contended that if the applicant feels aggrieved with the action initiated under the SARFAESI Act. It has an alternative efficacious remedy under the said Act to raise its grievance against the respondent. In support of its objection, the IDBI has placed reliance, on a decision of the Hon'ble Supreme Court in the matter of United Bank of India vs. Satyawati Tandon & Ors., wherein it has been pleased to observe as such;

"In our view while dealing with the applications involving challenge to the action for recovery of the public dues etc., the High Court must keep in mind that the legislations enacted by the Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved persons. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

Therefore, as per the IDBI, the applicant has filed this petition only to frustrate the legal recovery proceedings



initiated by it. Hence, this Tribunal is not having jurisdiction to pass any interim relief against the recovery actions being initiated by the secured creditor, i.e.IDBI.

16.2 It is further contended that as per Section 3 (30) of the IBC Code and as per Section 2(1) (zd) of the SARFAESI Act, a secured creditor is a creditor in favour of whom a security is created, from the list of financial creditors as disclosed by the applicant, IDBI is the only "secured creditor" in terms of its definition as all security documents have been executed only in favour of IDBI.

16.3 It is further alleged that the corporate debtor was in debt of various operational creditors and only two financial creditors. The corporate debtor was unable to pay its liabilities of taxes and statutory dues in the year 2008-2009. Hence, it is contended that if the management of the Corporate Debtor company was unable to manage the affairs of Corporate Debtor since 2008, then the management could have initiated liquidation process under the Companies Act, 1956 or could have approached this Tribunal for initiation of resolution process much earlier in 2016 itself, but the reason for the applicant coming before this Tribunal in 2018 is only to frustrate the recovery actions of IDBI. Because they have earlier failed to do so by filing a writ petition, vide SCA No. 7982/2017 before the Hon'ble Gujarat High Court. Hence, the present application is nothing but a fraudulent and malicious action on the part of the applicant and its promoters to stall the auction of IDBI which is going to be conducted as per statutory provision of law.



- 16.4 It is further submitted that the applicant had availed credit facilities of Rs.3.80 crore [Cash Credit facility of Rs.3,50 core and Bank Guarantee of Rs.30.00 lakh] against hypothecation of movable assets and mortgage of immovable properties. Shri Raju Jashwantlal Choksi, Shri Bharat Jashwantlal Choksi, Shri Anil Jashwantlal Choksi, Shri Jayesh Jashwantlal Choksi, Shri Mayank Anilbhai Choksi, Smt. Nileshaben Bharatbhai Choksi, Smt. Rekhaben Anilbhai Choksi, Smt. Suhangini Jayesh Choksi and Smt. Mala Raju Choski stood as personal guarantors of the credit facilities sanctioned by it.
- 16.5 It is contended that the borrowers as well as guarantors have executed various security documents for obtaining the credit facilities, i.e., Loan Facility Agreement, Deed of Hypothecation, Undertaking to Create Supplementary Deed of Hypothecation, Deed of Guarantee/Guarantee Agreement, Undertaking of Borrower and Undertaking of Guarantors, Undertaking to Create Mortgage, Demand Promissory Note, Registered Memorandum of Deposit of Title Deeds.
- 16.6 It is further alleged that the corporate applicant never paid actual amount of instalments and whatever was paid, was irregular and due to the non-payment of monthly instalments, the account of corporate applicant company has been classified as Non-Performing Assets (NPA) on 30.08.2015 as per the guidelines of Reserve Bank of India. The recall notice was also issued to the corporate applicant as well as to its guarantors for making repayment of the entire outstanding amount.
- 16.7 It is further contended that the borrowers i.e. the applicant company as well as its guarantors have

failed to make payment even after receiving the recall notice. The corporate applicant, being borrower, duly replied to the said recall notice vide letter dated 16.11.2015, wherein it had admitted its liability towards repayment, but made complaints of negative approach of the bank. The IDBI Bank thereafter dated 03.12.2015 by requesting the applicant to repay the entire outstanding amount as per the earlier demand, but the applicant/corporate debtor has failed to comply with. Therefore, the IDBI left with no option, but to invoke the personal guarantee of the personal guarantors by letter dated 31.12.2015.

16.8 For the aforesaid reasons, the IDBI, being objector IDBI has requested for dismissal of the present IB Petition filed under Section 10 of the I & B Code.

17. By considering the above mentioned facts of the present case, it is evident that the corporate applicant is having its outstanding debts due to its Financial and Operational Creditors, but is unable to pay the same, which amounts approximately to **Rs.4,25,17,532.01** to the Financial Creditors. That apart, there is some disputed dues of newly impleaded respondent/objector IFFCO-TOKIO General Insurance Company Ltd. to the extent of Rs.23,27,535/- only. Hence, the corporate applicant has moved for initiation of CIRP for itself.

18. We duly considered the merits of the objection raised by one of the Secured Creditors i.e. IDBI Bank, by opposing admission of the present IB Petition. We carefully examined the relevant provisions of Section 10 of the I & B Code, which authorizes a

corporate debtor company to voluntarily seek corporate interim resolution process for itself. The relevant provisions of Section 10 of the Code provides as under;

Section 10: Initiation of corporate insolvency resolution process by corporate applicant:

- (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 for such period as may be specified; and*
 - (b) *the resolution professional proposed to be appointed as an interim resolution professional; and*
of the corporate debtor, as the case may be, approving filing of the application.
- (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*
 - (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 sub-section (4) of this section.*

19. On the aforesaid provisions of Section 10, the Hon'ble NCLAT in its decision in the case of Unigreen Global (P) Ltd. vs. Punjab National Bank, has pleased to interpret the same, by observing as such;

“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 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. 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”.

20. Further, the Hon'ble Supreme Court in the matter of M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr. [Civil Appeal Nos.8337-8338 of 2017] has ruled by observing as such;

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). **The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.** A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point

out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. **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. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.**

21. In addition to the above, the Hon'ble NCLAT in its decision in the matter of Neeta Chemicals (I) Pvt. Ltd. v/s. State Bank of India, wherein the Hon'ble NCLAT has pleased to clarify this legal issue by observing as under;

5. *The Appellant has highlighted the facts relating to SARFAESI proceedings and action taken thereunder. It is also stated that the Appellant has already filed a suit under section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act) in S.A. No. 240 of 2017 challenging the securitization proceedings initiated by the Respondent ('Financial Creditor').*

6. *Learned counsel for the Respondent submitted that there are other instances which shows malafide on the part of the Appellant.*

7. *Similar issue fell for consideration before this Appellate Tribunal in "M/s. Unigreen Global Private Limited Vs. Punjab National Bank & Ors.- Company Appeal (AT) (Insolvency) No. 81 of 2017", wherein this Appellate Tribunal, by its judgment dated 1st December, 2017 taking into consideration the provisions of Section 10 of the 'I&B Code' and other relevant provisions, observed and held as follows:*

"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"

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. Nondisclosure 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. Nondisclosure 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.

24. 1st Respondent –financial creditor has referred to pendency of a Civil Suit between 'Mayank Maheshwari v. Anurag Garg' and another suit between 'Sh. Jagar Nath Mehto v. Vedika Overseas Tradex Ltd.'. Pendency of such suits cannot be a ground to deny admission of an application under Section 10, if all the information in terms of Section 10 of the I & B Code and Form 6 has been supplied by a Corporate Applicant/Corporate Debtor and the application is otherwise complete. Non-mentioning of suit(s) pending between the parties cannot be termed to be suppression of facts nor can be a ground to reject the application. In fact, once the application under Section 10 is admitted, all such related proceedings, including suits for recovery of moveable or immovable property of the Corporate Debtor and other proceeding cannot proceed further in any Court or Tribunal or Authority in view of order of 'moratorium' as may be declared under Section 13 and prohibition that may be imposed under Section 14 of I & B Code.

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 11 Company Appeal (AT) (Insolvency) No. 174 of 2017 or appeal pending before Debt Recovery Appellate Tribunal cannot proceed in view of the order of moratorium as may be passed.

32. In view of the provisions aforesaid, we hold that, if any winding up proceeding has been initiated against the Corporate Debtor by the Hon'ble High Court or Tribunal or liquidation order has been passed, in such case the application under Section 10 is not maintainable. However, mere pendency of a petition for winding up, where no order of winding up or order of liquidation has been passed, cannot be ground to reject the application under Section 10."

8. It is not the case of the 'Financial Creditor' (State Bank of India) that a winding up proceeding under the Companies Act or liquidation proceeding under the 'I&B Code' has been initiated against the 'Corporate Debtor'. Therefore, the 'Corporate Applicant' is eligible to file application under Section 10 of the 'I&B Code', if there is a debt and default".

22. By following the above stated Judicial precedents, it is now well settled legal position that this Adjudicating Authority is bound to admit an application, if it is found complete by providing requisite information under Section 10 of the I& B Code read with Form 6 of the relevant rules and it does not suffer from any ineligibility prescribed under Section 11 of the Code. Therefore, once the IB Petition is found complete, then this Adjudicating Authority cannot reject the application on other grounds as agitated by the IDBI and other objectors. Further, there can be no serious prejudice to their claim when the petition is admitted and CIRP is triggered, as they can still lodge their claim before the IRP/RP which shall be dealt with as per I & B Code.

23. In the light of the above decision, we are of the view that the present IB petition is found complete. Hence, it deserves for admission so as to trigger the C.I.R.P under Section 10 the

Code. Therefore, the present IB Petition is hereby admitted under Section 10 of the Insolvency & Bankruptcy Code and the Moratorium under Section 14 of the Code is hereby declared in respect of the Corporate Applicant / Debtor Company with following consequential orders/directions;

- i) That the order of declaration of Moratorium under Section 14 of the Code shall commence from 10.05.2019 and shall have legal effect till completion of Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under Sub-section (1) of Section 31 or to go an order for the Liquidation of Corporate Debtor under as per Section 33 of the I & B Code, as the case may be.
- ii) That this Adjudicating Authority hereby appoint **Mr. Narayan Gajanan Vidvans, having IP Registration No. IBBI/IPA-002/IP-N00378/2017-2018/11121** (and residing at 604B, Shiv Kartik Enclave, VIP Road, Vesu, Surat-395007), Mobile Nos.919428409398 / 7506093966, appointed as "Interim Insolvency Resolution Professional" to carry the functions as mentioned under Insolvency and Bankruptcy Code, 2016.
- iii) The IRP so appointed shall make public announcement of Corporate Insolvency Resolution Process be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.
- iv) That the Bench hereby prohibits the institution of suits or continuation of pending suit 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 SARFAESI Act, 2002; 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) That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period.
- vi) That the provisions of Section 14 sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The Corporate Applicant/Debtor is directed to communicate a copy of this order to the Interim Resolution Professional, the Respondents and the Registrar of Companies, Gujarat.

24. Registry is directed to communicate a copy of this order to the Corporate Applicant/Debtor at its registered address as well as to the Interim Resolution Professional and the Registrar of Companies, Gujarat, Ahmedabad, after the completion of necessary formalities.

25. No order as to costs.

26. Accordingly, the present CP (IB) No.122/10/NCLT/AHM/2018 is admitted.


Harihar Prakash Chaturvedi
Member (Judicial) &
Adjudicating Authority