

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI

Date of Decision: 15th May, 2017

Company Petition No. (IB)-78(ND)/2017

In the matter of

Under Section 10 of the IBC, 2016

M/s. Krishna Kraftex Private Limited

.....Petitioner

Versus

M/s. Krishna Kraftex Private Limited.

....Respondent

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)


MR. S.K.MOHAPATRA, MEMBER (TECHNICAL)

Present: Shri. Simran Jyot Singh, Advocate for Corporate Applicant

ORDERS


This petition under Section 10 of the Insolvency Bankruptcy Code, 2016 (herein after referred to as the 'Code') was filed on 26.04.2017 and has been taken up for final arguments and disposal today after granting time to the applicant to remove the objections before satisfying this Bench in respect of the prayer made.

2. The Corporate Debtor is a private limited company having been incorporated on 26.07.2013. Its authorized and paid up share capital is Rs. 1,00,000/- divided into 10,000/- shares of Rs. 10/- each.


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3. The Corporate Debtor has been engaged in the business of trading and dealing with all kinds of fabrics and textiles. During the course of his business, it availed loans from financial institutions to meet the exigencies of its business requirements, which have now culminated in a huge financial debt. It is averred that due to their ongoing financial crises, the Corporate Debtor is unable to repay its total Financial Debt of Rs. 97,47,267/- and a total Operational Debt of Rs. 68,88,034. In view of their inability to repay, a resolution has been passed by the Board of Directors for initiating the present proceedings for invoking the provisions of Section 10 of the Code. The shareholders have also given their consent. The present petition has been filed through its Director Nitin Jain, who is duly authorised by the Board Resolution dated 15.04.2017 to file the same.

4. The petitioner has filed its audited financial statements for the financial year 2014-15 and 2015-16 in addition to the provisional statements till 15th April, 2017. The detailed statements of the financial debts and operational debts which find corroboration in the annual returns reflect the total outstanding in excess of Rs. 1.52 Crores reflecting the accumulated losses. The total receivables have also been reflected in the balance sheets also find a mention in the Financial Statements and are in excess of Rs. 1.2 Crores.

5. Given the facts of the case that the Corporate Debtor is unable to meet its financial obligations, Ld. Counsel for the applicant Corporate Debtor submits that the facts of the case meet all the requirements under the Bankruptcy Code, and therefore the decision to initiate the Corporate Insolvency Resolution has to be permitted. The Corporate Debtor has named the Insolvency Resolution professional as Mr. Atul Kumar Kansal having Registration No. IBBI/IPA-001/IP-P00035/2016-17/10088, who has given his

consent along with the certificate that there are no disciplinary proceedings pending against him.

6. A perusal of the Financial Statements on record does not satisfy this Bench that the facts of this case call for the relief prayed. There are recoverables by the Corporate Debtor for which no steps have been taken to mobilize. Initiation of some recovery process could have made a substantial difference to the financial health of the company. Though the details of the Financial and Operational Creditors have been given, no claim has been made against it by any of its creditors, and therefore it cannot be said that the Corporate Debtor be declared to be in "Default".

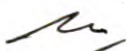
7. The object of the Code is to trigger a Resolution process so that the assets of the Corporate Debtor do not depreciate, dissipate or disintegrate into total disarray and disuse, reducing its net value to NIL. In the present case, the Corporate Debtor hardly has any assets to be resolved under the Resolution process. Loans are availed from financial institutions and from friends and family. A careful perusal of the liabilities reveals an outstanding Bank Auto Loan from a Bank for purchase of a vehicle which is its major asset. The same must be hypothecated to the Bank and for any lapse, the Bank would initiate its own recovery proceedings. Apart from the sole charge over the vehicle, it can easily be repossessed by a Receiver appointed vide a simple application under sec 9 of the Arbitration & Conciliation Act, as well as recovery made by invoking the personal guarantees offered. We do not need an insolvency professional to liquidate this asset for the Bank. We also do not have to appoint an insolvency Resolution professional to recover the moneys due to the Corporate Debtor from its own creditors. The expenses involved in the process would not justify the action which can easily be done by the Directors



of the Corporate Debtor. Further there is no justification shown to this bench as to why the Directors are keen to inflict the death knell of their Company. The reasonable surmise is to get themselves declared Insolvent, and to escape any recovery which may culminate in a sentence which may include one for civil imprisonment as well. The petition is devoid of the details of the personal guarantees offered by the Directors in incurring the Financial debts with no reasonable explanation why they have not been invoked till now.

8. The Petitioner has failed to produce any evidence to show that a claim has been lodged with the Petitioner Corporate Debtor and is lying unpaid. However Id. Counsel for the petitioner presses his argument that on the petitioner's showing that if a liability exists as per balance sheet of the Petitioner and the Corporate Debtor is unable to liquidate its liability, the Code provides for the insolvency resolution to be set in motion.

9. We are unable to agree with the Id. Counsel for the applicant. It could never have been the intention of the legislature to consider a matter as serious as placing the Company in the hands of a Resolution professional in a mechanical way without due application of mind of the Adjudicative Authority. Should this have been the case, then every corporate entity, who has no assets in hand and has incurred great liabilities be it acquisition of cars or assets acquired and to personal use of Directors, would resort to a simple way of filing such an application to escape any recovery proceeding or even civil imprisonment on being declared Insolvent. Taking a hyper technical view of the provisions would open the flood gates of people forming Companies, incurring expenses in the name of the company and then filing for Insolvency Resolution Process under the Code for enjoying a Moratorium. The object of the Code is not to provide for an escape route to a Company or its Directors



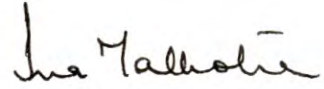
who have incurred great debts and are unable to liquidate the liabilities after availing services and goods (stock in trade) from various suppliers, loans from banks, friends and family.

10. Initiation of Resolution process is not justified in the facts of this case.

Application Rejected.



(S. K. Mohapatra)
Member Technical



(Ina Malhotra)
Member Judicial

(Sapna Bhatia)