

In the National Company Law Tribunal Mumbai
Bench, Mumbai.

Under Section 10 of the Insolvency &

Bankruptcy Code 2016

In the matter of

M/S. BM Jain Metallik Pvt. Ltd.

...Petitioner/Corporate Debtor.

For the Petitioner:-

1. Prachi Wazalwar, Advocate for Applicant.
2. Abhay Wadhwa, Advocate for Applicant.

Coram: M. K. Shrawat, Member, (Judicial)
Bhaskara Pantula Mohan, Member (Judicial)

Per: M. K. Shrawat, Member, (Judicial)

Order dated : 18.10.2017

1. The Petitioner M/S. BM Jain Metallik Pvt. Ltd. is the Corporate Debtor who had filed the Petition on 04.09.2017 under Section 10 of the Insolvency & Bankruptcy Code 2016 to declare itself as insolvent.
2. Background of the case :-
 - a) The Company was incorporated in the year 2012 with the objective to carrying on the business of ferrous and nonferrous foundries, extrusion, castings, machining, smelting, fabrication, forging of all types of ferrous and nonferrous metals, mechanical and electrical engineers, steel markers and steel converters of establishing electrical furnace for manufacture of ferro alloys and special steels and all other kinds of trading and manufacturing of auto, ancillary, machinery, engineering goods and all other metals.
 - b) The credit facilities were earlier obtained from the State Bank of India in the year 2010 by the erstwhile firm namely M/s Bhavarlal Mangilal Jain, which was converted into Private Limited M/s BM Jain Metallik Pvt. Ltd. w.e.f. 4th September, 2012. Problems in repayment began from the year 2013.
3. The Corporate Debtor has filed this Application based on a default in payment to its Financial Creditor viz. M/S. State Bank of India, Stressed Assets., Management Branch, "The Arcade", 2nd Floor, W.T.C., Cuffe Parede, Colaba, Mumbai - 400005. The Bank (Financial Creditor) had sanctioned a loan to the erstwhile firm and taken over by Corporate Debtor on 19.01.2010, as follows:-

(Amount in Lacs.)

Name	Total Debts Raised (Principal Amount)	Amount in Default as per book of account
<u>Secured :-</u>		
<u>State Bank of India</u>	2,951.40	2,951.40

<u>Unsecured :-</u>		
Detailed List of unsecured loan enclosed.	48.93	48.93

3.1 That as per the above chart the present position of the total outstanding debt is ₹ 3,000.33/- (in lacs) (Secured 2951.40/- + unsecured 48.93/-).

4. **Primary Security** – Company's entire present and future stocks of trading goods, stored at Company's godown / rented godown / in transit / anywhere else and Book debts, receivables, actionable claims and all present and future current assets are held by the Bank as Primary Security.

4.1 **Collateral Securities** :- List of collateral securities held under mortgage by the Bank and estimated the total value at ₹ 450 lacs are as under.

(a) Residential Flat No. B/301, 3rd Floor, EC-54, Mangal Geet Co-op. Hsg. Soc. Ltd. Evershine City, Vasai (E), Dist. Thane – 401205, admeasuring 575 Sq.ft. carpet area owned by Mrs. Pushpadevi B Jain.

(b) Residential Flat No. 619, 6th Floor, G Building, Piccadilly, Royal Palms Estate, Aarey Milk Colony, Village Morol-Moroshi, Goregaon (E), Mumbai, admeasuring 227 Sq.ft. carpet area owned by Mr. Bhaverlal Jain.

(c) Residential Flat No. 620, 6th Floor, G Building, Piccadilly, Royal Palms Estate, Aarey Milk Colony, Village Morol-Moroshi, Goregaon (E), Mumbai, admeasuring 227 Sq.ft. carpet area owned by Mrs. Pushpadevi B Jain.

(d) NA land at Gut. No. 177, Mauje – Saavli, Taluka Miraj, Dist. Sangli, Maharashtra, admeasuring 32100 sq. mts. area owned by Mr. Bhaverlal Jain and Mr. Dinesh S. Jain.

5. After the Legal notice was issued on 16.07.2016 to initiate proceedings under SARFAESI Act, 2002. The admitted position is that the Bank has initiated Recovery Proceedings by initiating Notice dated 20.09.2016 under SARFAESI Act, 2002.

6. As far as the nature of the Loan and Debt amount is concerned, the same has not been denied by the Applicant. List of Trade Creditors and other operational creditors alongwith Financial Creditor are annexed with this Petition.

7. The financial position of the Corporate Debtor has also been examined from the Profit & Loss Account and the Balance Sheet drawn as on 31st March 2015 and 31st March 2016 and noticed that the Recovery is possible from the Current Assets of Rs. 22,13,47,251.42/- and Rs. 16,68,85,535.78/- respectively.

8. The evidences on record have thus established that there was a "Debt" and admittedly there was a "Default" in payment of the outstanding Debt hence the requisite condition of Section 10 has been complied with.

ms

9. The Bench is of the conscientious opinion that by commencement of Insolvency Resolution Process the restructuring of the finances of the Debtor Company is possible. Moreover, once the Insolvency Professional shall take control of the finances then duty bound to ascertain that the interest of the Creditor should be safeguarded.

9.1 That the Petitioner has placed on record a resolution dated 26th April, 2017 of Board authorising one of the Director to file application under section 10 of Insolvency and Bankruptcy Code.

10. In Form No.6, the Applicant/Corporate Debtor has proposed the name of the Insolvency Resolution Professional (IRP) : CA Mr. Rakesh Chaturvedi, Reg. No. IBBI/IPA-001/IP-P00242/2017-18/10471, Add: Paresh Rakesh & Associates, 103, Namrata CHS, Bldg No. 15, Shastri Nagar, Link Road, Goregaon West, Mumbai - 400104, email: ip@pareshrakesh.in

11. In Form No.2 dated 1st September, 2017, the Insolvency Resolution Professional has conveyed his willingness to accept his appointment in the above case. He has also given the necessary certificates/affirmation from his side to this Tribunal in this regard.

12. Accordingly, this Tribunal "Admits" the Petition and appoints CA Mr. Rakesh Chaturvedi, as Interim Resolution Professional to initiate the Insolvency Resolution Process on the above Applicant forthwith, with the following directions:-

a) Since this is a case of "Corporate Debtor" therefore the Insolvency Resolution Process shall commence as prescribed under section 10 of the I&BP Code, 2016. The occurrence of default is established. Even after service of Demand Notice the amount in question remained unpaid by the "Corporate Debtor" till date.

b) Having considered the totality of the circumstances and the Application for initiation of Insolvency Resolution Process under the I&BP Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed supra, it is hereby pronounced that "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation and as a consequence prohibits all of the following viz:-

(I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(SARFAESI Act);

me

- (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.
- (II) That supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (III) That the provisions of sub-section (1) Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of 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.
- (V) That the public announcement of the corporate insolvency resolution process shall be acted upon immediately as specified under section 13 of the Code.

13. Accordingly, this CP 1352/I & BP/NCLT/MAH/2017 stood admitted.

14. The Insolvency Resolution Process is commenced from the date of this order.

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)

Sd/-

M. K. Shrawat
Member (Judicial)

18th October, 2017