

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH**

IB-131(PB)/2017

IN THE MATTER OF:

M/s Amit Spinning Industries Ltd. Petitioner

SECTION: Under Section 10 of (IBC).

Judgment delivered on 01.08.2017

Coram:

CHIEF JUSTICE M.M. KUMAR
Hon'ble President

Deepa Krishan
Hon'ble Member (Technical)

For the Petitioner/Applicant : Shri Arvind Kumar, Advocate.
Ms. Henna George, Advocate.

For J.M. Financial ARC : Shri Manoj Kumar Gupta, Sr. VP Legal
Shri Rajive R. Raj, Advocate

For Axis Bank Ltd. : Shri Jogendra Singh, Legal Manager

JUDGMENT

Ms. Deepa Krishan, Member (Technical)

The instant petition has been preferred under Section 10 of the Insolvency and Bankruptcy Code, (for brevity the "Code") with a prayer for initiating Insolvency Resolution Process against the Applicant Company and for issuance of directions activating the moratorium under Section 14

of the Code.

2. Brief facts of the case necessary for disposal are that the Applicant M/s Amit Spinning Industries Ltd. is a registered company bearing CIN No. L17100DL1991PLC171468 and is in the business of manufacturing of textiles. The Applicant Company was incorporated on 07th December 2006 in Pune and subsequently transferred its registered office to Delhi and such alteration was confirmed by the ROC, National Capital Territory of Delhi and Haryana on 14th December 2007. As the registered office is now located in Delhi, this Tribunal has jurisdiction over the case.

3. The Applicant has filed a true copy of Board resolution dated 12.05.2017 authorising Mr. Vijay Bhan Singh, Director to file the instant insolvency application as Annexure D with the application.

4. It is stated in the application that the applicant has the following financial creditors:

- i. Axis Bank Ltd. This financial creditor granted a loan facility to the tune of Rs. 5365 lakhs to the Corporate Applicant in 2006 and the same amount was sanctioned and disbursed in that year. A security was created in the favour of Axis Bank. The certificate of registration of Charge issued by the ROC, along with form of registration of Charge with regard to Axis Bank has been attached along with the application as Annexure E.

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ii. UCO Bank Ltd.: - Loan facility of Rs. 1250 Lakhs was granted to the corporate applicant by UCO Bank in the year 2011 and the same amount was sanctioned and disbursed in the same year. It is stated that the security was created in favour of UCO Bank in the same year. It has further been stated in the application that UCO Bank Ltd. assigned the whole of the Charged properties and the benefits of each loan in favour of JM Financial Asset Reconstruction Company Pvt. Ltd. on 26.03.2014. A copy of the certificate of registration of modification of Charge issued by the ROC, along with form of registration of Charge with regard to JM Financial Asset Reconstruction Company Pvt. Ltd. has been attached along with the application as Annexure F.

5. The list of Operational Creditors of the Corporate Applicant along with the address and the due amount payable by the applicant company as on 20.05.2017 has also been attached as Annexure C. The list of debtors of the Applicant Company showing the total receivables as on 20.05.2017 has been attached as Annexure H with the application.

6. During the course of hearing, the Learned Counsel for the applicant company directed our attention to the copy of Form-A filed by the Corporate Applicant before BIFR on 10th October, 2011 that has been placed as Annexure J. Briefly, it is stated in this application that erratic demand,



uncertain raw material prices, foreign currency fluctuation and change in Government Policy had affected growth and profitability of the company negatively and had caused losses to the tune of Rs. 563.49 Lakhs as on 30th June, 2011. The said letter also has a reference to the Corporate Applicant's earlier letter dated 09th November, 2009 with respect to erosion of 50 per cent of peak net worth pursuant to the provisions of Section 23 (i) of the Sick Industrial Companies (Special Provisions) Act, 1985.

6.2 A copy of the Order dated 18.07.2012 passed by BIFR, whereby, the Corporate Applicant was declared sick has also been filed along with the application as Annexure K.

6.3 A copy of notice dated 18.12.2012 issued by UCO Bank under Section 13(2) of SARFAESI Act seeking payment of a sum of Rs. 6,68,14,403.33/-, is also appended and marked as Annexure L.

6.4 A copy of Loan Recall Notice dated 16.06.2016 issued by Axis Bank seeking payment of a sum of Rs. 2221.48 lacs plus interest, is also appended and marked as Annexure M.

6.5 A copy of Notice dated 15.12.2016 was issued by Axis Bank under Section 13(2) of SARFAESI Act seeking payment of a sum of Rs. 24,79,00,145.17/-, is also appended and marked as Annexure N.



6.6 Copies of audited financial statements of the Corporate Applicant Company for the last two financial years are also appended the application as Annexure P.

6.7 A copy of provisional financial statements of the Corporate Applicant Company for the current financial year made upto a date not earlier than fourteen days from the date of the application is also filed along with the application as Annexure Q.

6.8 Details of the Corporate Applicant Company's assets and liabilities are given in the Current Balance sheet (drawn up for the period 1.04.16 to 20.5.17), appended herewith and marked as Annexure Q.

7. In the instant application, it is stated that the Corporate Applicant is entitled to file the present insolvency petition seeking initiation of Corporate Insolvency Resolution Process as per section 4(b) of the SICA Repeal Act read with Sec. 252 of the Insolvency and Bankruptcy Code, 2016. Since the reference was pending with BIFR when SICA Repeal Act came into force and the matter of the Corporate Applicant Company pending before BIFR stood abated, accordingly no Fees is payable on the instant insolvency petition as the instant insolvency petition is filed within 180 days from the date of coming into force of SICA Repeal Act.



8. During the course of hearing, the Learned Counsel for the Corporate Applicant stated that while declaring the Corporate Applicant sick vide Order dated 18.07.2012, UCO Bank was appointed as the operating agency. However, no revival plan was filed before the BIFR.

9. In part II of the instant Application filed in Form-6 and under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, Mr. Manish Garg was named as the proposed Interim Resolution Professional. Learned Counsel stated that as the said proposed IRP is no longer available, an additional affidavit has been filed on 19.07.2017 proposing the name of Shri Praveen Bansal, Address- J-347, Sarita Vihar, New Delhi-110076, registration no. IBBI/IPA-001/IP-00175/2017-18/10344. The written communication by proposed IRP in Form-2 under Rule 9 of the above referred Rule has also been attached.

10. The Corporate Applicant has filed an affidavit on 11.07.2007 stating that a copy of the insolvency petition along with this Tribunal's Order dated 02.06.2017 has been served on the Financial Creditors, namely, M/s Axis Bank and M/s JM Financial Asset Reconstruction Company Pvt. Ltd.

11. An affidavit has been filed by the Corporate Applicant to place on record a copy of the original application being O.A. No. 385/2017 filed by M/s Axis Bank before Debt Recovery Tribunal (DRT), Delhi against the



Corporate Applicant Company. It is stated that the said O.A. is pending before the DRT on date.

12. The legal Manager of Axis Bank appeared before this Tribunal on 19.07.2017 and stated that they do not oppose the instant application.

13. A short reply has been filed on behalf of Financial Creditor M/s JM Financial Asset Reconstruction Company Pvt. Ltd. and this Financial Creditor was also represented by Learned Counsel before the Tribunal on 19.07.2017. In this reply, it is stated that UCO Bank has assigned all its rights, title, interests and benefit in respect of its claim against the Corporate Applicant namely M/s. Amit Spinning Industries Ltd. together with security interest thereon to the present Applicant herein in terms of section 5 of SARFAESI Act vide Assignment Agreement dated 26.03.2014. Therefore, Applicant ARC has stepped into the shoes of UCO Bank and shall have all the rights to pursue the present case as Creditor of M/s Amit Spinning Industries Ltd.

14. It was further stated that it is an admitted fact that the Corporate Applicant (Amit Spinning Industries Ltd.) filed its reference before BIFR in October 2011 and was declared sick 17.07.2012 in terms of section 2(1) (o) of SICA and the Corporate Applicant had enjoyed the protection under section 22(1) of SICA for more than five years. It was further stated that after



the Corporate Applicant was declared sick, despite availing several opportunities, the Corporate Applicant has not been able to give any viable scheme before BIFR for almost five years but was enjoying the moratorium as provided under section 22(1) of SICA.

15. The financial creditor has also drawn our attention to the fact that UCO Bank's account was NPA in 2012 as the Corporate Applicant was not making payment to UCO Bank. However, it is stated that at the same time, the corporate applicant was regularly making payment to Axis Bank and Axis Bank's account turned NPA only in 2016. On 10.07.2017, JMF ARC's dues was Rs. 16,76,93,841.18, and for the recovery of the same, it is stated that recovery application / OA has been filed before DRT, Delhi.

16. The Learned Counsel for JMF ARC submitted that the JMF ARC has no objection if the present petition of Corporate Applicant is admitted. However, the result of admission would be that as per provisions of section 14 of Insolvency and Bankruptcy Code, the moratorium would commence from the date of admission. It has been submitted that the Corporate Applicant has enjoyed moratorium for more than five years before BIFR and was not at all interested in its revival which is evident from the fact that in more than four years, Corporate Applicant was not able to give any viable scheme to the Operating Agency appointed by the BIFR. In the above conspectus, it is prayed that the Corporate Applicant is not entitled for

further moratorium as enumerated in section 14 of the Insolvency and Bankruptcy Code and hence, Interim Insolvency Resolution Professional may be directed to conclude the resolution within a period of 100 days.

17. We have heard learned counsel for the parties and have perused the paper books with their able assistance.

18. On. 1.12.2016, the provisions of Insolvency & Bankruptcy Code, 2016 have been notified by the Central Government for the objects as can be gleaned from the Statement of Objects and Reasons as given below:

“An act to consolidate and amend the laws relating to reorganisation and in-solvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith of incidental thereto”.

19. A perusal of the above object discloses that the provisions of IBC, 2016 have predominantly been brought into force for the re-organisation and insolvency resolution of corporate persons and that too in a time bound manner for the maximization of value of assets of such persons to promote



entrepreneurship and balance the interest of all stake holders involved in relation to the insolvent.

20. The scheme of the act provides for triggering the insolvency resolution process by three categories of persons, namely,

- a) Financial creditor
- b) Operational creditor, and
- c) by the corporate debtor itself

The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the Corporate Debtor is delineated under Section 10 of IBC, 2016 wherein the Corporate Debtor is required to furnish information in accordance with Form-6 of the Insolvency & Bankruptcy (Adjudicating Authority) Rules, 2016 (hereinafter referred as AA) Rules, 2016. Under Form-6, the Corporate Debtor is required to disclose as amongst others, the details of the Corporate Debtor including the date of incorporation as well as the details of financial creditor and operational creditors to whom the Corporate Debtor owes money including their address for correspondence. It is also pertinent to note that in relation to the debts owed by it the Corporate Debtor is required to furnish the total amount of debt and the amount in default and also in particular as to when the financial or operational debt was incurred including the details of the security held, if any, by the creditors and its estimated value. The Corporate Debtor, in addition, is also required to furnish the documents evidencing the



existence of financial/operational debt and the amount in default. All the above information are required to be furnished before the Adjudicating Authority i.e. NCLT in order to provide sufficient background material to the Adjudicating Authority to initiate Corporate Insolvency Resolution Process by the Corporate Debtor itself. Since the Corporate Debtor itself is initiating the process of insolvency, it is incumbent on the Corporate Debtor to disclose all the above facts in relation to the debts owed by it to its creditors; the securities offered to the creditors as well as the assets of the Corporate Debtor. Since the process is self-initiated in so far as the Corporate Debtor is concerned, all the disclosures must be true and correct and must not be made to scour for any concession it may get in the process, including moratorium, with a view to deny the recovery of bonafide and lawful debt owed to its creditors, including financial and operational.

21. The above paragraphs give the broad guidelines, as enunciated to the initiation of the Corporate Insolvency Resolution Process (CIRP) by the Corporate Debtor itself as in the instant case where the petition has been filed by the Corporate Debtor itself.

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22. The details of Financial Creditors along with the Charge created on company's assets and corporate and other guarantees given by the Corporate Applicant have been filed along with the instant application as follows: -

S. No.	Bank Name	Address	Type of Loan	O/S amount as on NPA Date (Rs In Lakhs)	Demand as per 13 (2) notice/statement/recall notice (Rs. In Lakhs)	Remarks	First Pari Passu Charge on the Company's Assets	Second Pari passu charge	Corporate Guarantee	Guarantors
1	Axis Bank	Axis Bank, 2 nd Floor, 148 Barakhamba Road New Delhi-110001	Term Loan	1,119.52	2,221.48	As per Loan recall Notice no AXISB/RCD/2016-17/3354 DATED 16.06.2016	Fixed Assets of the company both present and future	All Current assets (both present and future)	Spentex Industries Limited	Sh. Mukund Choudhary & Sh. Kapil Choudhary
			WCTL	49.02			All Current assets (both present and future)	Fixed Assets	Spentex Industries Limited	As above
			FITL	56.17			As above	As above	As above	As above
			STL	482.77			As above	As above	As above	As above
			CC o/s	514.00			As above	As above	As above	As above
2	UCO Bank*/JM FINANCIALS	UCO BANK, PARLIAMENT STREET BRANCH NEW DELHI-110001	WCTL	87.71	668.14	As per Notice U/S 13 (2) dated 08.12.2012	All Current assets (both present and future)	Fixed Assets	Spentex Industries Limited	Sh. Mukund Choudhary & Sh. Kapil Choudhary
			CC o/s	580.43			As above	As above	As above	As above

23. It is seen that as per the copy of provisional financial statement of the Corporate Applicant Company for the current financial year as on 20th May, 2017, a sum of Rs. 65,26,75,440/- is shown as trade payable as per "Annexure Q".

S. No.	Particulars	Note No.	As on May 20, 2017
	Equity and Liabilities		
3	Non-Current Liabilities		
(a)	Long-term borrowings	4	359,218,019
(b)	Deferred tax liabilities (Net)		
(c)	Other Long-term liabilities	5	131,936,646
(d)	Long-term provisions	6	12,566,259
			503,720,924
4	Current Liabilities		
(a)	Short-term borrowings	7	163,964,475
(b)	Trade payables		652,675,440
(c)	Other current liabilities	8	270,256,645
(d)	Short-term provisions	9	2,734,079
			1,089,630,639
		Total	641,765,171

As per the provisional balance sheet on 20th May, 2017, the asset position of the company is as follows: -

S. No.	Particulars	Note No.	As on May 20, 2017
	Non-current Assets		
1 (a)	Fixed assets		
	(i) Tangible assets	10	343,572,016
(b)	Non-current investments	11	23,231
(c)	Deferred tax assets (net)		-
(d)	Long-term loans and advances	12	69,459,445
(e)	Other non-current assets	13	1,657,692
			414,712,384
2	Current Assets		
(a)	Current investments		
(b)	Inventories	14	2,887,387
(c)	Trade receivables	15	252
(d)	Cash and Cash equivalents	16	2,026,393
(e)	Short-term loans and advances	17	222,138,755
(f)	Other current assets	18	-
			227,052,787
		Total	641,765,171
			0

24. Learned Counsel for the Applicant Corporate Debtor stated before us that the land assets of the company have been valued at historical values. As per the Annual Report of 2015-2016 as on 1st April, 2016, the total block of fixed assets comes to Rs 38,25,65,198/-.

25. As per the Learned Counsel, the Applicant Company is running and as per the provisional profit and loss statement filed for the period 1st April 2016 to 20th May, 2017, the revenue from operations came to Rs. 15,84,539/-

Terms Loan are secured by first pari passu charge by on fixed assets of the company, both present and future. The loans are further secured by Corporate Guarantee of its holding company, Spentex Industries Limited.

26. In view of the heavy amounts involved and also taking into consideration various factors, an opportunity was given to the financial creditors. Accordingly, the petitioner was directed to serve a notice of the application as filed before this Tribunal to the above-mentioned financial creditors so that it can be ascertained if they have any objection in relation to the initiation of Corporate Insolvency Resolution Process (CIRP), as prayed for by the petitioner. After due notice of the application and service of the same on the above-mentioned financial creditors, objections have been received from the Bank namely, from the Union Bank of India, which

is the lead Bank on behalf of itself, Corporation Bank, Central Bank of India, Vijaya Bank and Dena Bank.

27. From the detailed examination of the Petition and reply and also from the submission made by the learned Counsel, we are of the view that the petitioner has disclosed all the details required by Section 10 of the Code read with Rule-7 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The particulars of the corporate applicants and those of the financial debt have been disclosed in all material particulars. The name of the Interim Resolution Professional has also been proposed. The record of the financial debt as per the Books of the Corporate-Applicant; and record of the 'Operational Debtors'; certificate of eligibility of the Interim Resolution Professional, Books of Accounts showing default; copies of the audited financial statement for the Financial Year ending 31.03.2016 and 31.03.2015. (Annexure - P) all have been placed on record. A list of assets and liabilities as on 31.03.2016 has also been disclosed. The petitioner satisfies all the statutory requirements. The respondent has not been able to point out any defect warranting refusal to admit the petition. Therefore, we are inclined to admit the petition.

28. As a sequel to the above discussion, the petition is admitted. As a necessary consequence, we declare a moratorium for the purposes referred to in Section 14 of the Code and direct the Interim Resolution

Professional to make a public announcement of the initiation of corporate Insolvency Resolution Process and call for the submission of claims under Section 14 of the Code. The moratorium as contemplated in Section 14 shall come in operation with the exceptions as enumerated in Section 14(2) and (3). The Facts of the present case also reveal that the Corporate Applicant has already availed the moratorium as provided under Section 22(1) of SICA. Therefore, we feel it would be in fitness of things that the Insolvency Resolution Process in the present case should be speedy preferably within a period of 100 days.

29. The Petition shall be disposed of in the above terms.

Sd/-

**(CHIEF JUSTICE M. M. KUMAR)
PRESIDENT**

Sd/-

**(DEEPA KRISHAN)
MEMBER (TECHNICAL)**