

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI

Present: SHRI. R. VARADHIRAJAN, MEMBER (JUDICIAL)

Company Petition no. (IB)-303 (ND)/2017

Under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating) Rules, 2016

In the matter of:

Vardhman Industries Limited
Flat No.1309, 13th Floor, Vikram Tower
Rajendra Place, New Delhi-110008

.....Corporate Debtor

For Applicant: Mr. NPS Chawla, Advocate
Ms. Vaishanvi Rao, Advocate
Mr. Satwinder Singh, Advocate

For Respondent: -

For Intervener-Mr. Ankur Mittal, Advocate for SBI
Mr. Ajay Gandhi, AGM, SBI, Ludhiana

ORDER

16/11/2017

1. This is an application filed under section 10 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') for initiation of Corporate Insolvency process in respect of M/s Vardhman Industries Limited, the Corporate Debtor being the corporate applicant itself.
2. The application was fixed for hearing for the first time on 25.08.2017, when notice was directed to be served to the financial creditors i.e. State Bank of India, IDBI Bank and M.N Chemicals as stated in the application annexed as Annexure "A-5".
3. The applicant has filed affidavit of proof of service on 08.07.2017, *inter alia* affirming that notice of hearing has been duly served upon the financial creditors and also via speed post on 31.08.2017. The matter was finally heard on 27.10.2017.
4. The applicant Vardhman Industries Limited has averred that the company is involved in the business of manufacturing and marketing of coated flat products i.e. galvanised sheets (plain and corrugated) & colour coated sheets. The applicant company is a public company and due to several factors affecting generally the industry, the applicant it is stated that they started suffering huge losses due to which the corporate debtor has been unable to honour its obligations towards its financial creditors i.e. SBI and IDBI Bank.

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5. The corporate debtor has referred to the minutes of Board meeting dated 20.08.2017 wherein one Mr. Arun Thakur, General Manager (Marketing), has been authorised to take steps which are necessary to refer the company under the code. It was further resolved in the Board meeting that,

“Resolved that subject to the applicable provisions of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations made thereunder, the company is desirous of commencing Insolvency Proceedings on account of being Corporate Debtor within the meaning of section 10 of the Insolvency and Bankruptcy Code, 2016 before the Hon’ble National Company Law Tribunal.”

In addition the applicant company has also enclosed the minutes of the meeting of Board of Directors dated 20.08.2017 in support of the authorisation for pursuing the present application.

6. It is the case of the corporate debtor that it availed secured loan from State Bank of India and IDBI by creating charge of fixed assets and hypothecation of movables in their favour.
7. It is further submitted by the corporate debtor that it has procured a loan of Rs.94.19,00,000 from SBI and Rs. 34,00,00,000 from IDBI Bank out of which as on 19.08.2017 an amount of Rs. 86,29,97,013 and Rs. 32,13,20,753 respectively is outstanding. It has been further averred that the corporate debtor has been declared as a Non-Performing Asset (NPA) by the banks on 02.01.2017 and 07.02.2017 respectively which in itself is sufficient to establish that it is a defaulter. It has been further averred that on its persuasion, the financial

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creditors tried to implement a debt restructuring plan but however, no definitive proposal was arrived at between the financial creditors and the corporate debtor.

8. Learned counsel for the State Bank of India being the lead banker was given an opportunity to file its observations, if any, to the initiation of Corporate Insolvency Resolution process in relation to the corporate debtor. The learned counsel for State Bank of India represents that the observations of the bankers in relation to the management of the corporate debtor is much to be desired and further states that financial creditor is opposing the name of Mr. Rajesh Kumar Loomba suggested by the petitioner as Interim Resolution Professional and instead suggested the name of Sh. Manoj Maheswari as Interim Resolution Professional considering the size of the unit and appointment and competency of firm as well as taking into consideration the stake/ debt of financial creditor involved in the petitioner company. They have further averred that the borrower/ petitioner company is to obtain prior approval of the financial creditor in writing to permit any transfer of the controlling interest or make any drastic change in the management set up, as both the promoters' directors of the corporate debtor have stepped down from the Board of Directors of the petitioner company without the consent of lenders w.e.f. 30.09.2016. The financial creditor in its reply has tabulated its observation in nutshell to the averments of the Corporate Applicant/ Corporate Debtor which is reproduced hereunder:

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Sr. No	Petition	Branch's Response
1.	Admit the present petition under section 10 of the insolvency and Bankruptcy Resolution process.	The answering Financial creditor assent to admission of the petitioner company case under section 10 of insolvency and Bankruptcy resolution process.
2.	Appoint the proposed interim resolution professional as the interim resolution professional as per the provisions of section 16 of the Insolvency and Bankruptcy Code, 2016.	The answering Financial creditor do not agree to appointment of Sh. Rajesh Kumar Loomba as the Interim Resolution Professional and propose appointment of lender's IRP "Sh. Manoj Maheswari bearing registration No. IBBI/ IPA-003/IP/N00023/2017-18/10173 as Interim Resolution Professional. In view of the stake/ debt of Financial creditor involved in the petitioner company, it would be apposite that "Sh. Manoj Maheswari" is appointed as the IRP, subject to such directions as may be passed by this Hon'ble Tribunal.
3.	Declare a moratorium period as per provisions section 14 of the Insolvency and Bankruptcy Code, 2016.	The answering Financial creditor assent to it subject to the compliance that the petitioner company closes all its current A/cs with other banks other than SBI & IDBI Bank and route all its sales through the lead Bank (SBI) under the Trust & Retention Account (TRA) opened/ to be opened in this regard. The petitioner company may be called upon to furnish necessary undertaking in this regard.
4.	Direct issuance of a public announcement calling for submission of claims.	The answering Financial creditor assent to it.

5.	Pass any such other orders as this Hon'ble Tribunal may deem fit and proper on the facts and circumstances of the case.	As this Hon'ble Court may deem fit.
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9. The Learned Counsel for SBI further states that it requested the petitioner company to submit the requisite financial information which the petitioner has either not submitted or submitted with extensive delay and the petitioner is yet to comply with the observation of Special Investigative Audit (SIA) report since it was taken up with the petitioner in Joint Lenders Forum meeting dated 02.03.2017.

10. Learned counsel for the lead bank (i.e.) SBI also states that the petitioner company has sold the equity stake in JSW Vallabh Tinplate Pvt Ltd to promoter's family and the investment in JSW Vallabh Tinplate has been reduced from Rs. 14.13 crs to Rs. 2.38 crs. The same needs to be reckoned for security through pledge for the recovery of the Financial Creditors due since it is a valuable investment (as it is joint venture with JSW Steels Ltd in the ration 50:50) and is a part of security. The petitioner company has booked loss on sale of vehicles of Rs. 2.78 crs and Rs.0.82 crs in FY17 so they are required to submit the details of these transactions for attachment of assets, if sold to promoters, family or group companies.



11. In response to the reply filed by the State Bank of India, the petitioner company has filed a rejoinder.
12. In response to the allegations of change in controlling interest, it has been stated that the promoters are still the shareholders of the corporate debtor. They have further stated that corporate debtor decreased its investment in JSW Vallabh Tinplate Pvt Ltd from Rs. 14.13 crs to Rs. 2.38 crs since the said company has incurred loss in FY 2016-17 and is under debt and has repayment obligations and therefore, the Corporate Debtor foresees no return on their investment in relation to the said company. It has been further stated that loss on vehicle is Rs. Nil and as per the Balance sheet upto 19.08.2017, the said loss is also Nil.
13. An affidavit dated 08.07.2017 has been filed on behalf of the applicant company affirming that the applicant company is not undergoing any other corporate insolvency process other than the present proceeding filed by the company itself.
14. The applicant as already seen has proposed the name of Mr. Rajesh Loomba, Resolution Professional registration no. IBBI/IPA-002/IP-N00170/2017-18/10440, for appointment as Interim Resolution Professional. Mr. Rajesh Loomba in his letter dated 20.08.2017 has given consent for the proposed appointment as an Interim Resolution Professional in the present matter. He has also certified that there is no disciplinary proceeding pending against him.

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15. In connection with the filing of books of accounts the applicant has filed audited financial statement for FY 2014-15, 2015-16 and 2016-17 and also provisional financial statement from 01.04.2017 to 19.08.2017.
16. As evident from the records the present application was filed on 21.08.2017. Accordingly, as per the mandate of the aforesaid provisions of the Code copies of audited financial statements for the last three Financial Years 2014-15, 2015-16 and 2016-17 and provisional financial statement for the current Financial Year 2017-18 made upto a period 14 day prior to the date of application has been filed.
17. From the detailed examination of the Petition and the submission made by the learned Counsel, we are of the prima facie view that the petitioner has disclosed sufficient details as required under Section 10 of the Code read with Rule-7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The particulars of the corporate applicant and those of the financial debts and operational debts owed to respective category of creditors has also been given in Annexure A-5 which shows the aggregate amount of financial Debt in a sum of Rs. 118,63,17,766/- and operational Debt in a sum of Rs.11,62,04,920/-. The estimated value of assets as on 19.08.2017 has been given in Annexure A-8 showing a value of Rs. 1,778,233,250/-. The name of the Interim Resolution Professional has also been proposed in the application as filed by the corporate debtor along with certificate of eligibility of the Interim Resolution Professional. Further as per annexure A-7, copies of the audited financial statement for the Financial Years 2014-2015, 2015-2016, 2016-2017 have been placed on record. It



has been submitted that the applicant company is in dire need of a resolution plan in the interest of all the stakeholders. The present application has been filed in the requisite form-6 containing the required particulars in terms of sub-section 2 of section 10 of the Code. The petitioner satisfies all the statutory requirements. Therefore, we are inclined to admit the application and also, in view of the fact that the financial creditors, namely the lead bank of the consortium, SBI does not have any objection in the CIRP in relation to the corporate debtor being unfolded. In relation to the appointment of Interim Resolution Professional (IRP), the learned counsel for the petitioner upon instructions and to show the bonafides of the corporate debtor had consented to the appointment of the IRP as suggested by the Financial Creditor with a view to avoid any conflict and the same is taken on record. Further perusal of the reply filed by the financial creditor shows that the Interim Resolution Professional suggested by them has given the necessary consent in the manner prescribed under IBC, 2016 read with relevant rules governing the Resolution Professionals as prescribed by Insolvency and Bankruptcy Board of India.

18. In view of the above, we are satisfied that the present application is complete and that the applicant corporate debtor is in a default in relation to its creditors as admitted by it as well as vouched by its financial creditors. In view of the fact that the application is complete the present application is admitted under section 10 (4) (a) of the Code. The corporate insolvency resolution process shall



commence from the date of this order under sub-section 5 of section 10 of the Code.

19. A moratorium in terms of section 14 of the Code is being issued prohibiting the following:

- 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;
- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.


20. Mr. Manoj Maheswari is appointed as Interim Resolution Professional, who shall take necessary steps as envisaged under section 15, 17 and 18 of the Code. Since, the tenure of the IRP under section 16(5) shall not exceed 30 days from the date of his appointment, the IRP is directed to submit his report at the earliest but not



later than 19.12.2017. In terms of section 17 of the code, the Board of the Corporate Debtor shall stand suspended.

21. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process as per Sub-Section (4) of section 14 of the Code.

Let the copy of the order be supplied to the parties and the Interim Resolution Professional.


(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta