

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI
C.P.NO. 1214/I&BP/NCLT/MB/MAH/2017

Application by Corporate Debtor to initiate Corporate Insolvency Resolution under
section 10 of the Insolvency And Bankruptcy Code, 2016

Wig Associates Private Limited,
102, Amar Residency, Punjab Wadi,
Sion Trombay Road, Deonar,
Mumbai – 400 088.

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Applicant.

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

SHRI BHASKARA PANTULA MOHAN
Member (Judicial)

PRESENT ON BEHALF OF THE PARTIES

Mr. Anant B. Shinde Advocate for Financial Creditor is present.

Mr. Amir Arsiwala Advocate for the Applicant is present.

Per : SHRI M.K. SHRAWAT, MEMBER (JUDICIAL)

ORDER

Pronounced on : 24.08.2017

1. This Petition is filed on 19th of July, 2017 invoking the provisions of **Section 10 of Insolvency and Bankruptcy Code, 2016** (hereinafter The Code) by a "Corporate Debtor". This Application is filed by the Debtor to initiate Corporate Insolvency Resolution Process against itself.
2. Facts in brief are that the Applicant Debtor had availed Credit Facility from Bank of Baroda vide Sanction dated 31.07.2009 for a period of 12 months. The nature of the facility and the sanctioned limit as on 31st July 2009 was as under :-

Nature of facilities	Existing Limits	Sanctioned Limits.
Line of Credit	250.00	450.00
Sublimit		(450.00)
Cash Credit	(250.00)	(110.00)
FBP/FBD	(80.00)	(80.00)
PCF	(60.00)	(53.00)
Import	(53.00)	
Term Loan	45.00	35.14
Total Exposure	295.00	485.14

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3. The Petitioner has submitted Form No. 6 as prescribed under the Code, according to which, the total debt raised from Bank of Baroda was ₹ 4,85,14,000/-. The purpose for the Loan was Renovation of Office Premises and Purchase of Machinery. On account of non-payment the impugned Loan Facility was declared N.P.A. on 09.02.2012. The Bank of Baroda has taken the security in the following manner.

Nature and type of facility	Limit	Rate of Interest	Outstanding As on 17.02.2012 (Amount in Rs.)	Security
Cash Credit	450.00 Lacs	4% above Base rate i.e. 14.75%	4,49,94,604.81	1) Hypothecation of Stocks, Book Debts and Machineries.
		As above	10,21,913.90	2) Equitable Mortgage of Properties i.e. i) Factory, Land & Building at C-219, TTC Industrial Area, MIDC, Turbhe, Navi Mumbai-400 705 Belonging to the Company. ii) Flat No. 801, 8 th Floor, Amar Residency S. No. 79/1, CTS No.433/3, Sion-Panvel Road, Deonar, Mumbai-400 088 belonging to the guarantors, Mr. Jaspal Amardas Wig & Mrs. Indira Jaspal Wig.
Total	469.71 Lacs		4,60,165,18.71	

4. On account of declaration of N.P.A., Bank of Baroda has issued a Notice for "Symbolic Possession" of the Factory Land and Flat N. 801 owned by Mr. Jaspal A. Wig and Ms. Indira J. Wig situated in Deonar, Mumbai.

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5. The admitted factual position is that the Bank has initiated Recovery Proceedings by initiating Notice dated 17.02.2012 under SARFAESI Act, 2002. It is worth to mention that during the course of hearing a Representative of Bank of Baroda has also regularly attended the proceedings and objected to the Admission of this Petition. Through an Affidavit the Bank has affirmed that the Petition has been filed with a malafide intention to obstruct the physical possession of the property at Vashi. The physical possession of the Factory, Land and Building was taken on 24.07.2017. The Bank Authority has also informed that against the said Order a Petition was moved before Hon'ble DRT, Mumbai for realisation of the debt amount of ₹ 4,88,97,293/- + interest thereon. At the time of taking over of the possession an Inventory of the Goods available at the Factory Premises have also been made. According to the Bank once a physical possession has been taken over then the Application has become redundant on the ground that 2 identical proceedings must not run side by side.
6. As far as the nature of the Loan and the debt amount is concerned, the same has not been objected by this Petitioner. The main argument of the Petitioner is that, if time be granted then the finances of the Company can be restructured and the Loan can be repaid. It is an admitted factual position that barring Bank of Baroda there is no other Financial Loan Liability.
7. As far as the financial position of the debtor is concerned the same can be analysed from the Profit and Loss Account and the Balance Sheets along with the Schedule annexed to the Petition so as to demonstrate that if time be granted then the finances can be restructured. We have examined all those Statement of Accounts and noticed as under :-
 - (a) The Revenue generation for the Financial Year as on 31st March 2015 was amounting to ₹ 3,63,57,681/- and for 31st March 2016 it was ₹ 2,83,53,942/-. As per the Provisional Balance Sheet drawn as on 31st March 2017 the receipt of Revenue generation was expected to be ₹ 3,38,81,969/-. As per the above information pertaining to the gross receipt of the Debtor Company one can see that the Gross Revenue Generation was not bad hence, the repayment is possible.

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- (b) Likewise we have also perused the Balance Sheet drawn as on 31st March, 2015 to 31st March 2017 (Provisional) and noticed that as against the long term borrowing of ₹ 5,44,21,092/- the Balance Sheet has reflected inventories of ₹ 1,97,83,839/-, Trade Receivables ₹ 4,06,01,930/-. As against that, there was no change in the figure of Long Term Borrowings. In the Balance Sheet drawn as on 31st March 2016. The Trade Receivables and the amount of Short Term Loan were also within the range, as claimed in the Compilation. A provisional balance sheet is drawn as on 31st March 2017 wherein on one hand the Long Term Borrowings were shown as ₹ 4,41,33,630/-. Under the "other heads" such as Work in Progress, Inventories, Trade Receivable etc. the amount is by and large tallied with the past two Balance Sheets.
- (c) The purpose of this comparative study is to ascertain the scope of restructuring and rehabilitation of this Debtor Company. As per the arguments the Company being an ongoing Concern trading in Food Products it has substantial potential in the Market. It has also been pleaded that the impugned debt amount can easily be paid from the recoveries of current asset, inventories of ₹ 2,06,04,165/-, trade receivables ₹ 1,15,40,313/- and Short Term Loans and Advances of ₹ 1,11,05,835/-. Apart from this, under the head "Current Assets" the Company has also Tangible Assets, one of them i.e. Factory land and building, which has been taken over by the Bank. Although the Book Value is not substantial but as per the comparative chart the Fair Market Value is attractive so as to cover up the Bank liability.
8. *Interalia*, in the light of the above discussion we are of the conscientious view that there are genuine reasons, due to which this Petition deserves "Admission". The reasons, in short, are that there is scope of higher margin of profit specially when turn over is reasonably high touching the figure of almost ₹ 3.39 Crores as per the Provisional PNL Account as on 31st March 2017. The other reason for "Admission" can be said to be sufficient debt receivables, plus short term advances, which can be liquidated if a Professional is directed to pursue the Recovery on behalf of this Debtor Company. There is one more appealing reason that the immovable asset of the Company i.e. Factory, land and building can also fetch high price in the Market if at all liquidated.

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9. **FINDINGS :-**

In the light of the foregoing discussion and the reasons assigned it is justifiable to invoke the provisions of section 10 of The Code. The position of accounts have demonstrated that the Corporate Debtor have committed default in repayment of Debt to the Banks and the private investors. A timely intervention is now required. The Management of the Corporate Debtor having the complete information of the financial affairs of the Corporate Debtor is directed and should cooperate in submitting the total data to IRP without fail because time is the essence in the proceedings to be initiated under IB Code. A Committee of Creditors to be constituted which shall comprise Financial Creditors. It is also hereby clarified wherein a Creditor has assigned any debt to a Financial Creditor, the assignee shall be considered as an "Operational Creditor" to the extent of such assignment. These are some areas which are discussed hereinabove, however, not restrictive in nature, hence the IRP shall take all necessary steps to collect the information relating to the assets and finances of the Corporate Debtor. Rather, needless to mention, the IRP shall make every endeavour to protect and preserve the value of the property of the Corporate Debtor. He shall also perform due diligence in managing the operations of this going concern.

10. Once the Petition is admitted the clauses of "Moratorium" as prescribed under section 14 shall commence immediately thereafter. The commencement of "Moratorium" shall protect the assets of the Debtor Company as it is hereby pronounced about the prohibition in transferring, encumbering or disposing of any of its assets. The "Moratorium" shall also rule out simultaneous multiple legal proceedings before different legal forum. This Order shall, *inter alia*, prohibit the institution or continuation of any legal proceedings against this Corporate Debtor. However, it is hereby provided that where at any time during the Corporate Insolvency Resolution Process period, if this Bench approves the Resolution Plan or passes an Order for liquidation of Corporate Debtor, the "Moratorium" shall cease to have effect thereafter.
11. This Bench is of the opinion, that in a situation when the Bank of Baroda had taken over physical possession of the Factory Premises of the Debtor Company the IRP shall not interfere with the possession but by including the Bank of Baroda in the

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Committee of Creditors can take all necessary steps to protect the interest of Bank of Baroda by liquidation of other assets, if at all required. It is worth while on the part of Bank of Baroda to co-operate with IRP towards realization of debt amount may be by auction of the assets of the Debtor Company, however, by fixing a minimum agreeable price.

12. The name of the IRP as proposed by the Applicant viz. Mr. S.K. Golla, Interim Resolution Professional, Address 1704, Tower-3, Raheja Tipco Heights Rani Sati Marg, Malad (East), Mumbai-400 097, Email: martingolla@hotmail.com. Registration No.IBBI/IPA-002/IP-N00095/2017-18/10238 is hereby approved. The IRP so appointed shall also take note of the formality prescribed under section 15 of The Code of public announcement of Corporate Insolvency Resolution. He shall act swiftly and strictly as prescribed under The Code. On commencement of the Insolvency Proceedings, he shall intimate the progress to this Bench within one month time and for that purpose matter is adjourned to September, 2017.
13. To conclude, the application under section 10 of The Code is hereby "Admitted". The "Moratorium" shall commence henceforth. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this Order.

Sd/-

Bhaskar Pantula Mohan
Member (Judicial)
24.08.2017

Sd/-

M.K. Shrawat
Member (Judicial)