

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH.**

C.P. NO. 1042/ I & BP / NCLT/MB/MAH/2017

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI  
COMPANY PETITION NO. 1042/ I & BP / NCLT/MB/MAH/2017**

**APPLICATION BY THE CORPORATE APPLICANT TO INITIATE CORPORATE  
INSOLVENCY RESOLUTION PROCESS UNDER THE CODE  
(Section 7 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules 2016)**

**CORAM:**

**SHRI M.K. SHRAWAT  
MEMBER (JUDICIAL)**

**In the matter of P & S JEWELLERY LTD.**

**Address: Sakina Manzil No.2, 4<sup>th</sup> Floor,  
Raja Ram Mohan Roy Road, New Charni Road,  
Mumbai – 400 004.**

**PRESENT ON BEHALF OF CORPORATE DEBTOR:**

1. Ms.Ami Jain, Advocate
2. Ms. Sushila Shrimali, Advocate

**ORDER**

**Heard and Pronounced on: 29 .05.2017.**

- 1) Petition under consideration filed on 25-05-2017 invoking the provisions of **Section 10 of Insolvency & Bankruptcy Code 2016 ( hereinafter referred as The Code )**. Thereupon, listed for hearing on 29-05-2017 for adjudication on 'Admission' before this Vacation Bench due to urgency in the matter.
- 2) Background for filing this petition Under Section 10 of The Code was that the Petitioner Company was stated to be registered as a "Sick Industrial Company" with Board for Industrial and Financial Reconstruction. However from 1<sup>st</sup> December 2016 the Sick Industrial Companies Repeal Act 2003 stood abated/ repealed. The Petitioner has thus moved this Petition before NCLT. The Petitioner has affirmed that this Petition has been filed within the

W/s

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prescribed period of 180 days from the commencement of the I & B Code 2016.

3) Admittedly the Petitioner is a 'Corporate Debtor'. The Petition under consideration is submitted on requisite "Form 6" to initiate Corporate Insolvency Resolution Process under The Code. Total amount of Debt has two components, as stated in the impugned petition, i.e. '**Financial Debt**' as well as '**Operational Debt**'. Main financial creditors are several Banks as **Secured creditors** having principle outstanding amount of Rs.6,341,082,097/- as per the statement annexed.

4) Annexed documents have further revealed the position of the accounts of the "**Operational Creditors**". The Operational Creditors have supplied Goods and Services and the credit balance as on 15-05-2007 amounted to Rs.7,074,765,870/-, as per annexure attached to the Petition.

5) The area of operation of Section 10 of The Code is that where a Corporate Debtor has committed a default, a Corporate Applicant thereupon may file an application for initiating Corporate Insolvency Resolution Process with the Adjudicating Authority ( i.e. NCLT ). This section further prescribes that the Adjudicating Authority (NCLT) shall within a period of 14 days, by an order can either admit the application or reject the application. Thereafter, on admission , the Corporate Insolvency Resolution process shall commence from the date of admission of the application. After being satisfied and on admission of the application filed under Section 10 of The Code, the Adjudicating Authority shall by an order declare a "Moratorium".

6) The Corporate Applicant has narrated the background of the Default in the petition as under:-

*" Our company was registered as a sick industrial company with the erstwhile Board for Industrial & Financial Reconstruction as Case No. 42/2015. With The Sick Industrial Companies (Special Provisions) Repeal Act,2003, along with Section 4(b) of the said Act coming into force on and from 1<sup>st</sup> December,2016, the aforesaid reference of the corporate debtor stood abated from the said date. Prior to the coming into effect of the said Repeal Act, the government amended Section 4 (b) of SICA Repeal Act, 2003,*

MAY

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*under Section 252 of OBC, 2016 in the manner specified in the Eighth Schedule to IBC,2016, which is reproduced hereunder:-*

*“(b) on such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall stand abated:*

*Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Tribunal (NCLT) under the Insolvency and Bankruptcy Code 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and bankruptcy Code,2016.*

*Provided further that no fees shall be payable for making such reference under Insolvency and bankruptcy Code 2016, by a company whose appeal or reference or inquiry stands abated under this clause”*

6.1) The Petitioner has further narrated the facts in the petition reproduced below:-

*“ P & S Jewellery Ltd. the corporate applicant and debtor herein, was registered as Case No. 42/2015 with the erstwhile Board for Industrial & Financial Reconstruction (BIFR). Pursuant to Notification Nos. S.O. 3568(E) and 3569(E) dated 25.11.2016, the provisions of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, as also Section 4(b) there under came into effect on and from 01.12.2016. Accordingly, w.e.f. 01.12.2016, all proceedings/references pending before the erstwhile BIFR stood abated from the said date, barring the orders sanctioning a scheme, which were saved by Clause 5(1)(d) read with Clause 5(1)(e) of the said Repeal Act. It is further submitted that Section 4(b) of the said*

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*Repeal Act, as amended by Section 252 of the Insolvency and Bankruptcy Code, 2016, in the manner specified in the Eighth Schedule of IBC 2016, allowed a company in respect of whom such reference stood abated, to make a reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016, in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. The second proviso of said section 4(b) further provides that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry stands abated under this clause.*

6.2) The Petitioner has also annexed along with the petition an Order dated 17-06-2016 passed by Board for Industrial & Financial Reconstruction (BIFR) bearing Case No. 42/2015, nevertheless with a prayer to deal with the issue under the provisions of the new Code.

7) The Petitioner has proposed the name of the Interim Resolution Professional viz. Mr. Vipul K Choksi, 38, Bombay Mutual Building, Dr.D.N. Road, Fort, Mumbai – 400 001, and other details are available in the pleadings. The said Insolvency professional has given an undertaking on Form No.2 declaring that no disciplinary proceedings are pending against him, hence eligible to be appointed as a Resolution Professional.

8) Before I proceed further it is worth to clarify a legal question that whether two parallel proceedings i.e. one before the Respected BIFR and another before the NCLT can run side by side? Answer to this question ,inter-alia, is that Section14 of The Code itself has prescribed that if the “Moratorium” is invoked then the other proceedings, as defined in the said section, shall be abated. The consequence of Moratorium is that certain proceedings such as institution of suits, continuation of pending suits, proceedings of the Corporate Debtor and execution of any judgement passed



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by any court of law, Tribunal etc. shall be prohibited. Likewise transferring, encumbering, alienating of the assets of the corporate debtor shall also be prohibited. This section further prescribes that any action to foreclose, recover or enforce any interest created by the corporate debtor in respect of its property shall be abated. On due analysis of this section it is unambiguous that the Adjudicating Authority ( NCLT ) shall by an order declare Moratorium for prohibiting any action to recover or to enforce any security interest created by a "Corporate Debtor" in respect of his property, including any action under SARFAESI Act. Moreover, in my humble opinion, the life of the "Insolvency Resolution Process" under The Code is very limited, stated to be 180 days. This period is not eclipsing the provisions of SARFAESI Act for an unlimited period. The application of I & B Code is for a limited period, but in no way in contradiction to the provisions of the SARFAESI Act. Under the said act a creditor can demand for recovery of his debt but there was no provision in the said Act to involve other creditors. Therefore the import as also the significance is that all the other creditors should also be provided an equitable option to assume and/or undertake due legal recourse for redressal under some other Statute. In the wisdom of Hon'ble Legislatures a new Act / Code is therefore needed to safeguard the interest of all the creditors , thus resulted into enactment of Insolvency & Bankruptcy Code 2016. As a result it can be safely concluded that the provisions of I & B Code 2016 are not in conflict with the provisions of SARFAESI Act.

9) Certain conditions precedent for "Admission" of a Petition under I & B Code are required to be accomplished. On due consideration of the totality of the circumstances as well as the background of the case, this Bench is of the opinion that the Petition deserves "Admission" under the I & B Code. As a result the provisions of Section 7 and Section 8 of The Code shall come into operation, which prescribes that "Financial Creditor" and "Operational Creditor" are entitled to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

9.1) Once the Petition is admitted the process of 'Moratorium' as prescribed under Section 14 of The Code shall come into operation i.e. prohibition of institution of suit, transferring/ alienating any asset of the

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Corporate Debtor, prohibition of foreclosure of recovery including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of any Security Interest Act.

10) The appointment of proposed Interim Resolution Professional viz. viz. Mr. Vipul K Choksi is confirmed, who shall perform the duties as assigned under Section 18 of The Code. He is directed to inform the progress of the Resolution Plan and the compliance of the direction such as Public Announcement to this Bench on or before 28<sup>th</sup> of June,2017. The Petitioner shall also act upon under the provisions of Section 13 by making a public announcement to comply the provisions of Section 15 of The Code.

11) The commencement of the Corporate Insolvency Resolution Process is hereby declared.

**Date: 29<sup>th</sup> May, 2017.**

Sd/-  
**M.K. SHRAWAT**  
**MEMBER (JUDICIAL)**

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