

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C. P. NO. 43/I & BP/NCLT/MAH/2017

Coram: B. S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of under Section 10 of Insolvency and Bankruptcy Code, 2016 and Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016)

And

GUPTA ENERGY PVT. LTD Corporate Debtor/ Corporate Applicant.

Applicants' Counsel: Mr. Nilesh Sharma & Mr. Ashish Pyasi, Advocates,
i/b. Dhir & Dhir for the Applicant.

ORDER

(Heard & Pronounced on 21.03.2017)

The Applicant filed this Petition u/s.10 of the Insolvency & Bankruptcy Code, stating that the Applicant is unable to discharge the liabilities resulting in default in making repayments to the various Banks and the Operational Creditors as mentioned in this Application, hence sought for declaration of Moratorium with consequential reliefs as mentioned u/s.13, 14 and 15 of Insolvency & Bankruptcy Code, 2016.

2. On perusal of the Application Form and the documents thereof, it is evident that this Petitioner has provided the names and addresses of the Directors and Promoters of the company along with the Board Resolution dated 14.2.2017 authorizing Mr. Piyush Marodia for filing this Application.

3. The Petitioner has given particulars of the Financial Creditors showing dues outstanding to ₹691.34crores, out of which, ₹223.44crore to Axis Bank situated at Nagpur; ₹169.73 crore to L&T Infrastructure Finance Co. Ltd.; ₹124.65 to Bank of India, ₹74.12 to Corporation Bank; ₹73.40 crore to State Bank of Mysore; and ₹26.01 crore State Bank of India.

4. To prove that the aforesaid debts still exist, the Petitioner has filed a document dated 21.3.2014 disclosing that the company had approached CDR for restructure of its debts and approving package through a letter dated 21.3.2014, in pursuance thereof, an Agreement was executed on 28.3.2014 for restructuring in between the Petitioner and the Banks mentioned above. Apart from the above evidence, the Petitioner Company has also placed a Certificate of Registration Form disclosing creation of charges in favor of the aforesaid Banks reflecting them as Annexure on pages 144 to 210 of the Application.

5. The Petitioner Company has also filed documents evidencing the default to the Financial Creditors, such as copy of the original Certificate dated 28.3.2016 filed by the Bank of India in DRT, copy of recall Notice dated 19.7.2016 issued by the State Bank of India and copy of the minutes of Joint Lender Forum meetings dated 19.10.2016 recording the accounts of the company with the lenders become NPAs.

6. The Applicant Company has filed a letter issued by Interim Resolution Professional Mr. Charudutt Marathe, stating that he has consented to take up this assignment disclosing that no disciplinary proceedings pending against him.

7. To prove that default is in existence as on the date of filing the Company Petition, the Applicant has placed books of accounts of the Corporate Debtor showing them on pages 268 to 293 in this Petition. The Company has also filed audited Financial Statements of the Corporate Debtor for Financial Years ended 31.3.2016 & 31.3.2015 as prescribed under the Rules of Insolvency & Bankruptcy Code. Since Rules mandate for filing provisional Financial Statements of the Company prepared before filing the Company Petition, the Applicant has filed the Financial Statements prepared on 28.2.2017 likewise list of Assets & Liabilities of the company as on date of 28.2.2017.

8. The Applicant Company has given the names and addresses of the Financial Creditors, Operational Creditors of the company and details of dues outstanding to them and also particulars of the security created on the Assets of the company. Despite the details given above, the Applicant company has disclosed the debts owed to the company as well as company owed to others reflecting receivables as ₹37.90crores and debts owed by the company in related party transactions as ₹156.48crores. The Guarantees given by the persons other than the company to the Financial Creditors, as on 28.2.2017 have also been disclosed on page 437 of the Application. This Application further discloses that the names and addresses of the members of the Corporate Debtor with details of respective shareholdings and an Affidavit signed by one of the Directors of the company authorized by the Board of Directors stating that all compliances required under law to file this Application has been made and by saying that the statements made in this Application are true and correct to the knowledge of him. As the Applicant has also filed proof of payment of fee as prescribed under law, this Bench being satisfied with the compliances that have been shown for passing the order u/s.10 of the I&B Code, 2016, this Bench admits this petition declaring Moratorium with consequential directions as follows.

(i) That this Bench hereby prohibits 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; 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; 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 the 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) 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 21-03-2017 till the 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 made immediately as specified under section 13 of the Code.

(vi) That this Bench hereby appoints, Mr. Charudutt Marathe, Gomed, Khare Town, Dharampeth, Nagpur 440010, Registration No. IBBI/IPA-001/IP-00605/2016-17/2014, Email Id: charuduttm@yahoo.co.in, as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

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9. Accordingly, this Petition is admitted.

Sd/-

V. NALLASENAPATHY
Member(Technical)

Sd/

B. S. V. PRAKASH KUMAR
Member (Judicial)