

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO.1104/I&BP/NCLT/MAH/2017**

Coram: Ina Malhotra, Member (Judicial)

In the matter of Section 10 of **Insolvency and Bankruptcy Code, 2016.**

1. Antrix Diamond Exports Pvt. Ltd.
407, Panchratna, Opera House,
Mumbai – 400 004.

.... Corporate Debtor/Applicant

Counsel for the Corporate Debtor: ... Mr. Amit Vyas

ORDER

(Filed on 13th June 2017)

(Pronounced on 20th June 2017)

This Petition has been filed by the Corporate Debtor invoking the provision of Section 10 of the Insolvency and Bankruptcy Code (hereinafter referred to as the Code). Unable to liquidate its huge outstanding liabilities and being in clear default towards their Financial Creditors and Operational Creditors, they pray for initiation of Insolvency Resolution Process.

2. The said Petition has been filed in the required format giving details of the Corporate Debtor and its Creditors. As required, they have furnished details of the total amount of debt towards the each Financial and Operational Creditor. In addition, they have given the estimated value of the securities held by the Creditors. The Petition is duly annexed with the audited and provisional Balance Sheets and other financial statements of the Corporate Debtor. Ld. Counsel for the Petitioner/Corporate Debtor has drawn the attention of this Bench to the minutes recorded by the Joint Lenders Forum

comprising of about 10 Banks which seek to recover amounts in excess of Rs. 428.38 crores from the Corporate Debtor. After a number of meetings held by the Joint Forum, a decision has been taken to initiate proceedings for recovery of the loans given to the Corporate Debtor. The said decision has been taken after extensive rounds of deliberation and several opportunities granted to the Corporate Debtor to reduce / liquidate its liabilities.

3. The Petition is also annexed with various invoices of Operational Creditors who seek repayment of their outstanding dues. As per the statement, the liability towards the Operational Creditors is over Rs. 85 crores. This is in addition to the aforesaid liability of Rs. 428.38 crores towards the Financial Creditors.

4. Ld. Counsel for the Petitioner has pointed out that the Corporate Debtor does not suffer from any disability under section 11 of the Code for invoking the Resolution Process and has proposed the name of Mr. Ram Ratan Kanoongo, Registration No.: IBBI/IPA-001/IP-P00070/2016-2017/10156, as the Interim Resolution Professional. His consent and Certificate of Eligibility is on record.

5. Though the facts of the case fulfil the requirement for initiating a Resolution Process by a Corporate Debtor to salvage whatever can be secured and the liability of the creditors liquidated at the earliest, as also to ensure that its assets do not fall into disarray, what is noted is that to avail the loan/credit facilities from the Banks, the Corporate Debtor has offered not only its immovable properties as securities, but also the personal guarantees of its Directors and others, mortgaging

several immovable properties in favour of the Banks, apart from fixed deposits and hypothecation of the stock in trade.

6. The 10 Banks which form the Joint Forum of the Financial Creditors to whom the Corporate Debtor owes more than Rs. 428 crores are:

1. Allahabad Bank
2. Andhra Bank
3. Bank of Baroda
4. Bank of India (Lead Bank)
5. Canara Bank
6. Central Bank of India
7. IDBI Bank Ltd.
8. Indian Overseas Bank
9. Punjab National Bank
10. State Bank of Bikaner & Jaipur

The Guarantors named for availing the Credit facilities are:

1. Mrs. Jaywanti
2. M/s. Shree Fakirchand Enterprises Pvt. Ltd.
3. M/s. Jindat Exports (P) Ltd.
4. M/s. Labdhi Gems (P) Ltd.
5. M/s. Arihant Flats Pvt. Ltd.
6. M/s. Dhuleva Finance Pvt. Ltd.
7. M/s. SevantilalFakirchand & Co. Pvt. Ltd.
8. M/s. Anaya Gems Inc.
9. Shri Anshul Ajay Gandhi
10. Smt. Rajul Ajay Gandhi
11. Smt. DinikaAnshul Gandhi
12. Shri Ajay Fakirchand Gandhi – CEO

The Securities offered are:

A. Immovable Properties

1. Office premises 407A, 407B, 411, 412, 412A, 407 Panchratna Opera House, Mumbai. Created on 31st May 2012. Value as per creditors is 12.6 crores.
2. 501, KhatauCondimonium, 15A, Jamnadas Mehta Road, Malabar Hill, Mumba. Created on 3rd November, 2013. Value as per creditors is 38.78 crores.
3. Flat No. 403/404 ShantinathDarshan, Opp. BSS College, Malad West, Mumbai. Created on 18th March 2013. Value as per creditors 1.17 crores.
4. Office No. FC 4041 at Bharat Diamond Bourse, BandraKurla Complex. Created on 13th August 2014. Value as per creditors is 13.02 crores.
5. Office No. FW 6060 Bharat Diamond Bourse, BandraKurla Complex. Created on 13th August 2014. Value as per creditors is 0.75 crores.
6. Sub Plot No. F-2,3,4, H-10,11,14 & 15 Karmabhumi-II Pruthvi Co. Op. Hsg. Soc. Ltd., Vibhag-2 Old, Sy. No. 144 & 145 Block No. 129 Paiki, Village – Vansajada (Dhedia), Tal. Kalol, Dist. Gandhinagar. Created on 12th April 2014. Value as per creditors is 3.36 crores.
7. Unit No. 105 Jewel square CTS No. 15AQ/7/15, 8/15, 9/15 Sub plot No. B.Sy.No.479 + 480 A/I Koregaon Park, Pune. Created on 26th August 2014. Value as per creditors is 3.27 crores.
8. 1st Floor, 3rd Floor and 4th Floor, Antrix Arcade, Raspan party plot road, final plot No. 28, T.P. Scheme No. 102, Nikol, Ahmedabad. Created on 5th May 2014. Value as per creditors is 22.12 crores.

9. Flat No. 122, 12th Floor, Nobles Antrix, Near Ishwar Bhuvam & Memnagar Fire Station, Plot No. 234/p, Town Planning Scheme No. 19, Mouje: Shekhpur-Khanpur, Ahmedabad. Created on 20th March 2014. Value as per Creditors is 2.48 crores.

B. Fixed Deposits pledged with the banks (in the consortium as per paripassu basis) Security created on 20th April 2015

Bank of India	- 4.06 Crores.
Central Bank of India	- 1.75 Crores.
IDBI Bank Ltd.	- 1.74 Crores
SBBJ	- 1.43 Crores
Bank of Baroda	- 3.02 Crores
Indian Overseas Bank	- 5.37 Crores

C. Fixed Deposits with the banks on stand-alone basis.

Bank of India	- 2.58 Crores
Canara Bank	- 0.41 Crores
IDBI Bank Ltd.	- 0.91 Crores
Bank of Baroda	- 2.38 Crores
Indian Overseas Bank	- 6.15 Crores

7. Other than the Financial Creditors, the list of Operational Creditors is given as Annexure VI(c), to the Petition.

8. Given the aforesaid facts, it appears that the Corporate Debtor is eager to sound its own death knell, presumably to scuttle the proceedings before SARFAESI as the consequential moratorium imposed u/s 14 of the Code on admission of this

Petition would automatically stay/stall the proceedings vide which the personal properties offered as securities are not enforced or taken possession of. The admission of the Petition shall have a serious impact on the Financial Creditors who have already set the wheel in motion to secure their debts. The apprehension, or rather certainty, of taking away the physical possession of their valuable properties and being dispossessed appears to be the motivation for the Corporate Debtor to approach this Tribunal under the Code, rather than ensuring Resolution of their debts or seeking a turnaround of the Corporate business. There is no explanation as to why the FDRs have not been liquidated to reduce the liability towards the Banks. To stay the repossession of immovable properties by Banks by resorting to the provision of Sec. 10 of the Code would clearly be an abuse of the process of law to which this Bench certainly cannot be a party to. It is not sufficient just to meet the requirements under sec. 10 of the Code which would automatically entitle the Corporate Debtor to initiate such proceedings. The Adjudicating Authority has to consider the merits of each case and see beyond what meets the eye, and only after due application of mind, consider the case on its merits.

9. In the facts of the case, this Bench does not deem it just, fit and proper to admit the petition as initiation of the proceedings by the Corporate Debtor shall cause irreparable loss and injury to the Consortium of Banks, and an uncalled for protection to the borrowers and various guarantors.

Resultantly, Petition stands dismissed.

Sd/-
Ina Malhotra
Member (Judicial)