

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C. P. NO. 01/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

U.B. Engineering Limited Corporate Debtor/ Corporate Applicant.

Applicants' Counsel: Mr. Alok Dhir, Counsel, Mr. Nilesh Sharma, Mr. Ashish Pyasi, Pragya Khaitan, Ralhina Maravarman, Advocates for the Applicant.

ORDER

(Heard & Pronounced on 18.01.2017)

The corporate debtor applicant herein M/s U.B. Engineering Limited has initiated Corporate Insolvency Resolution process under Section 10 of the Insolvency and Bankruptcy code 2016. The applicant has filed an application in terms of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules 2016. The Corporate applicant debtor was incorporated on 12-1-1970 in the name of "Western India Erectors Private Limited", subsequently was changed to "Western India Erectors Limited" and later on the name of the Company was changed into "Western India Private Limited" and thereafter, the name of this Company was again changed to "UB Engineering Limited" vide certificate of change of name dt 21-10-1993 issued by Registrar of Companies, Maharashtra, Bombay. The said corporate applicant debtor obtained financial assistance from various financial institutions, the details as disclosed in the application are as below: -

Sr. No.	Name of the Bank	Rupees in crores
1.	Axis Bank	69.00
2	Corporation Bank	594.78

3	IDBI Bank	165.00
4.	Lakshmi Vilas Bank	70.00
5	Yes Bank	105.00

2. The Company has also created charge over the assets of the Company in favour of the above mentioned financial institutions and said charges were also registered with the Registrar of Companies, Maharashtra. The Company has enclosed the sanction letter containing the terms and conditions imposed by the above financial institutions while sanctioning/extending the credit facilities.

3. The Corporation Bank which is the lead Bank of the Corporation Bank consortium (comprising of Corporation Bank, IDBI Bank Ltd., Lakshmi Vilas Bank Ltd, Yes Bank Ltd and Axis Bank Ltd), addressed a letter dt. 09.10.2014 to the Corporate debtor calling upon to pay an amount of Rs.116,79,87,385/- being the amount outstanding in respect of various facilities sanctioned by the above said consortium of Banks. The said letter also states that since the corporate debtor is unable to pay the lawful debts the consortium is entitled to take necessary steps for dissolution of the corporate debtor under provisions of 271 and 272 of the Companies Act 2013. The Corporation bank on behalf of the consortium banks issued notice under Section 13(2) and 13(4) of SARFAESI Act 2002 on 11-8-2014.

4. The Applicant Corporate debtor submitted the written communication from the proposed interim resolution professional that he agrees to accept the appointment and also stated that there is no disciplinary proceedings pending against him. Copies of audited financial statements for Financial Year ended 31.03.2015, 31.03.2016 & provisional financial statement as on 26.12.2016., list of assets and liabilities as on 26.12.2016 divided in to such categories as are appropriate for easy identification with estimated values assigned to each category, names and address of the financial creditors and operational creditors with amount outstanding and particulars of securities were also given by the Corporate Debtor. Further, particulars of debt owed by or to the corporate debtor

to or by the persons connected with it, details of personal guaranties, name and address of the members of the corporate debtor holding 1% or more of the paid up capital of the Company with details of their shareholding were also disclosed.

5. Section 10 of the Insolvency and Bankruptcy code provides as below:

“Section 10: Initiation of corporate insolvency resolution process by corporate applicant

- (1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority,*
- (2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.*
- (3) The corporate applicant shall, along with the application furnish the information relating to
 - (a) Its books of account and such other documents relating to such period as may be specified; and*
 - (b) The resolution professional proposed to be appointed as an interim resolution professional.**
- (4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order:
 - (a) Admit the application, if it is complete; or*
 - (b) Reject the application, if it is incomplete;**

PROVIDED that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

- (5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.”*

An ordinary scanning of the petition filed and the documents enclosed establishes that the corporate debtor borrowed funds from the consortium banks

which clearly establishes that there is a debt and in view of the non-payment of the debt due to the consortium of banks the Corporation bank as a lead bank in the consortium issued notice under SARFAESI Act which is an ample proof that the corporate debtor has committed a default. Further the corporate debtor being unable to make the payment to consortium banks came to file this Company petition admitting that there is a default. The corporate debtor has also named the proposed interim insolvency resolution professional viz Mr. Adesh Kumar Mehta:10/63, Old Rajinder Nagar, New Delhi-110060, Registration No. IBBI/IPA-02/2016-17/122.

6. Considering the above facts this Bench is of the view the corporate debtor has complied with the provisions of Section 10 of Insolvency and Bankruptcy Code and the application is admitted declaring moratorium with consequential directions as mentioned below:

(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 18.1.2017 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. Adesh Kumar Mehta:10/63,Old Rajinder Nagar, New Delhi-110060, Email Id: mehta_adesh@yahoo.com, Registration No. IBBI/IPA-02/2016-17/122- as interim resolution professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

(vii) Accordingly, this Application is disposed of.

Sd/-

B. S.V. PRAKASHKUMAR
Member (Judicial)

Sd/-

V. NALLASENAPATHY
Member (Technical)