

NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD BENCH,
ALLAHABAD**

(In Company Petition No. 24/Ald/2017)

Dated Friday, the 17th Day of March, 2017

Quorum: Mr. H. P. Chaturvedi, Member-Judicial

IN THE MATTER UNDER SECTION 10 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH RULE 7 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016

AND

JEKPL PRIVATE LIMITED
PLOT No. 15, KNOWLEDGE PARK II
GREATOR NOIDA- 201306
GAUTAM BUDDH NAGAR
UTTAR PRADESH

.....*Corporate Applicant/Debtor*

Claim: (a) To admit the Company Petition No. 24/Ald/2017; and pass an order for initiating Corporate Insolvency Resolution Process u/s 10 of "The Insolvency And Bankruptcy Code, 2016".

(b) To cause a public announcement of the initiation of Corporate Insolvency Resolution Process.

(c) To declare moratorium in the terms of Section 14 of the Code.

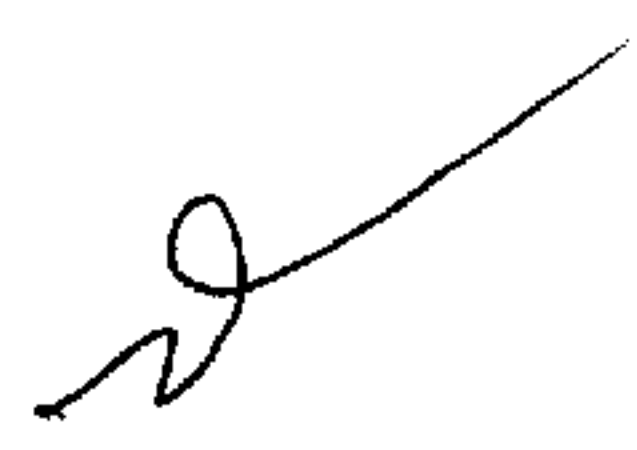
(d) Pass any such further order(s)/ which the Tribunal deems fit and proper in the facts and circumstances of the case.

Applicant's Counsel: Shri Navin Sinha, Senior Advocate along with Ms. Anindita Roy Chowdhury and Shri Rahul Agarwal

ORDER

(Per Mr. H. P. Chaturvedi, Member-Judicial)


1. The present Application is filed on behalf of the Corporate Applicant/ Corporate Debtor under Section 10 of Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The definition of Corporate Applicant includes Corporate Debtor as per Section 5(5) of the Code. Therefore the Company Petitioner seeks relief to initiate Corporate Insolvency Resolution Process in respect of JEKPL Private Limited.



2. It is stated that the Government of India, Oil India Limited with participating interest 40% , Geopetrol International Inc. with participating interest 25% , Enpro India Limited with participating interest 25% and Geo Enpro Petroleum Limited with participating interest 10% in the Contract Area executed a Production Sharing Contract on 16.06.1995 to explore and produce petroleum and related products from the Contract Area i.e Kharsang Field.
3. Subsequently , the Enpro's name was changed from Enpro India Limited to Jubilant Enpro Limited w.e.f 15.10.2001 .Thereafter, Enpro assigned its entire 25% participating interest to its affiliate company "Enpro Commercial Private Limited",w.e.f 16.10.2006 vide amendment in PSC .Name of "Enpro Commercial Private Limited", subsequently was changed to "Jubilant Energy (Kharsang) Private Limited" and thereafter, the name of this Company was again changed to "JEKPL Private Limited" vide a fresh certificate of Incorporation dt 02.03.2017 i.e. Corporate Debtor.
4. The corporate debtor obtained financial assistance from various financial institutions, the details as disclosed in the application are described as below:

Sr. No.	Name of Bank	Rupees In Crores
01.	State Bank of India	200.00/-
02.	Central Bank of India	200.00/-
03.	Central Bank of India	325.00/-

5. The Debtor Company also created charge over the assets of the Company in favor of the above mentioned financial institutions and said charges were duly registered with the Registrar of Companies, Kanpur .The Company has enclosed a copy of the Facility Agreement dated 09.06.2009 containing the terms and conditions imposed by the State Bank of India and the Central Bank of India while sanctioning/extending the credit facilities amounting to Rs. 400 crores. Further, the Company has also enclosed the Loan Agreement dated 13.10.2010 containing the terms and conditions imposed by the Central Bank of India while sanctioning/extending the credit facilities amounting to Rs. 325 crores.

6. The Central Bank of India later on addressed a letter dt. 24.01.2017 to the Corporate debtor stating that the account of the Corporate debtor has been classified as Non-Performing Asset on 01 May 2016 and accordingly advised it to regularize their accounts. Further, the State Bank of India addressed a letter dt. 27.01.2017 calling upon the Corporate Debtor to pay an amount of Rs. 104,46,00,351.59/- being the amount outstanding in respect of facilities sanctioned by the State Bank of India.
 7. It is also pleaded that the Corporate Debtor raised funds amounting to approx. Rs. 400 Crores by the way of various instruments from its sponsor to its group of companies to repay their borrowing to Corporate Debtor. The above fund were also utilized by the Corporate Debtor to pay various cash calls raised by Geo Enpro , who is an operator in terms of Production Sharing Contract .
 8. It is further stated that the Corporate Debtor Company has provided various security documents to secure the loan facility of USD 50 million provided by EXIM Bank to Jubilant Energy BV (JEBV) formerly known as Jubilant Energy NV, vide Dollar Loan Agreement dated 01.08.2011 and loan facility of USD 45 million provided by the Exim Bank to Jubliant Energy (Holding) BV (JEHBV) vide Dollar Loan Agreement dated 09.01.2014.
 9. It is submitted that at the time of execution of Production Sharing Contract, production from Contract Area stood around 280 barrel of oil per day by drilling new wells and implementing production enhancement techniques in the Contract Area. However, after achieving the peak production in August 2012, the Contract Area has been on a natural decline to current level of ~ 1000 BOPD. However, the Corporate Debtor lost almost to 7 years (of 20 initial year Contract period) on account of delay in receipt of Statutory and Regulatory approvals such as mining lease and forest clearance which resulted in less barrels being produced for no fault of Corporate Debtor. Also, the deferred barrels as well as new barrels will now be taxed by Government at much higher rates of royalty and cess and higher Government share of profit Petroleum under new extension policy announced by Government.
 10. Therefore, Corporate Applicant / Corporate Debtor has stated that it is now in serious financial distress to handle the operational difficulties as mentioned in preceding paragraphs of the Petition and which is beyond its control and Corporate Debtor is not able to pay its debts.
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Consequently, the account of Corporate Applicant has been classified as Non- Performing Assets by the Bank.

11. The Corporate Debtor has also submitted that it does not have necessary Financial Reserve to repay the debts owed by it. Although it made attempts for Restructuring of its Petroleum Operation in consultation with its Financial lenders but it yielded not much result regarding production feasibility of the project and further decline in oil and gas pricing hence the Corporate Debtor will continue to suffer severe financial stress.
12. The Corporate Debtor has annexed the Copies of audited financial statements for Financial Year ended 31.03.2015, 31.03.2016 & provisional financial statement as on 28.02.2017, list of assets and liabilities as on 28.02.2017 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 guaranties, name and address of the members of the corporate debtor with details of their shareholding were also disclosed.
13. Thus, in light of above, stated facts and circumstances the Corporate Applicant/ Debtor now has resolved to file present application for initiation of Corporate Insolvency Resolution Process as prescribed in the Insolvency Code, 2016 since amount of default is in excess of Rs. 1,00,000/- (Rupees One Lac only).
14. The corporate debtor submitted the written communication from the proposed interim resolution professional that he agrees to accept the appointment and also stated that there are no disciplinary proceedings pending against him.
15. The Applicant has also filed Balance Sheets which discloses liabilities are more than assets.
16. We have gone through the contents of the Petition and by perusing the documents enclosed therewith in Volume 1 to Volume 6 of the Petition. We have also heard the submission of Senior Advocate Shri Navin Sinha Learned Counsel for Applicant in respect of grant of relief to initiate Corporate Insolvency Resolution Process to the Corporate Applicant/ Debtor. We also examined the relevant section of Insolvency and Bankruptcy Code, 2016. A plain reading of Section 10 reads as under:

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.

17. In view of the above stated factual and legal position of the case we find that the corporate debtor has complied with provision of Section 10 of the Code and application declaring moratorium under section 14 of the Code, which is reproduced as below:

Section 14 Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —

(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) 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;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

18. Thus, we admit the petition for declaring Moratorium with Consequential Directions given as under :

- I. That the order of moratorium u/s 14 shall have effect from 17.03.2017 till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33 as, the case may be.
- II. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, 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 SARFESI 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.
- III. That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period.
- IV. That the provisions of Section 14 sub - section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- V. That this Bench hereby appoints Mr. Dinkar T. Venkatasubramanian , Email.Id dinkar.venkatasubbramanian , Registration No. IBBI/IPA-001/IP-P00003/2016-17/10011, Address : Ernst & Young LLP , 6th Floor, World Mark -1 , IGI Airport Hospitality District , Aerocity , New Delhi -110037 as Interim Resolution Professional to carry the functions as mentioned under Insolvency and Bankruptcy Code.
- VI. That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the code and calling for submissions of claim under Section 15 of the Code.
- VII. An authentic copy of this order be issued to parties including Interim Resolution Professional after the completion of necessary formalities.

In view of the above, the Application is admitted and accordingly stand disposed of.



H.P. CHATURVEDI, MEMBER-JUDICIAL

Dated 17 March, 2017