

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

**CP (IB) NO. 09/Chd/CHD/2017
Date of Order: 07.04.2017**

**Coram: HON'BLE MR. JUSTICE R.P. NAGRATH, MEMBER(JUDICIAL)
HON'BLE DEEPA KRISHAN, MEMBER(TECHNICAL)**

In the matter of:

Sky Blue Papers Pvt. Ltd.
Plot No.85, Industrial Area, Phase-I,
Chandigarh.

...Corporate Applicant/Debtor

**Application for initiating Corporate Insolvency Resolution
Process u/s 10 of the Insolvency and Bankruptcy Code, 2016
read with Rule 7 of the Insolvency and Bankruptcy Code, 2016
and u/s 13 and 14 of the Code for grant of moratorium.**

Present: For applicant Mr. G.S. Sarin, Practising Company Secretary
and Mr. Jalesh Kumar Grover, Insolvency Professional for
Applicant/Debtor.

ORDER

Justice R.P.NAGRATH, Member (Judicial) :

This is an application filed by M/s Sky Blue Papers Private Limited a 'Corporate Debtor' itself in Form 6 as prescribed by sub rule (1) of Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016 (for brevity, 'the Rules') for initiating corporate insolvency resolution process. This form is filed with the application under Sections 10, 13 and 14 of the Insolvency and Bankruptcy Code, 2016 (for brevity, 'the Code') at the instance of the "Corporate Applicant". The 'Corporate Debtor' also falls within the term "Corporate Applicant" as defined in sub-section (5) of Section 5 of 'the Code'.

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2. It is represented by Mr. G.S.Sarin, Practising Company Secretary, Authorised Representative that the Applicant Company was incorporated on 06.03.2014 with the Registrar of Companies, Punjab and Chandigarh. The certificate of incorporation along with the Memorandum & Articles of Association of the Applicant Company is part of Annexure VI-B. The Applicant Company has been allotted Corporate Identity Number (CIN- U21029CH2014PTC035005). The authorised share capital of the Company is ₹2,50,00,000 consisting of 25,00,000 equity shares of ₹10/- each. Its subscribed and paid up share capital is ₹2,35,00,000/- divided into 23,50,000 equity shares of the said value each. There are presently two Directors of the Applicant Company viz. Ashwani Soni and Sahil Arora, both Promotor Directors having separate DIN numbers. The above Directors are the only shareholders of the company as per the list Annexure VI-F and Sahil Arora is having 80.85% of the shareholding.

3. Annexure VII-A is the extract of Board of Directors Resolution dated 20.03.2017, authorising Ashwani Soni, Director of the company to file application under Section 10 of 'the Code' and Rules framed thereunder to initiate insolvency resolution process of the Company before the Tribunal. Ashwani Soni has also been authorised to accept service of process under 'the Code' on behalf of the 'Corporate Debtor'.

4. It is represented that the Applicant Company has the following financial creditors:-

Sl. No.	Name of the Bank / Unsecured Creditors	Address	Total debt	Amount in default
SECURED CREDITORS				
1.	Punjab National Bank	Large Corporate Branch, Sector 17-B, Chandigarh 160017	Debt raised as per sanction letter dt.03.04.2014. CC Limits: ₹4.00 crs. TL : ₹4.40 crs. ILC/FLC : ₹08.00 crs. Total ₹16.40 crs. Amount o/s as per books: ₹16.71 crs.	₹16.71 crs.
2.	Kotak Mahindra Prime Ltd.	SCO 153-154, Top Floor, Sector-9, Madhya Marg, Chandigarh 160017	Debt raised as per sanction letter dt.01.09.2015. Car Loan: ₹00.14 crs. Total ₹00.14 crs. Amount o/s as per books : ₹00.08 crs.	Nil
3.	Tata Capital Financial Services Ltd.	SCO 147-148, Sector 9 C, Madhya Marg, Chandigarh 160017	Debt raised as per sanction letter dt.19.08.2015. Car Loan: ₹00.06 crs. Total ₹00.06 crs. Amount o/s as per books : ₹ 00.02 crs.	Nil
	TOTAL DEBT RAISED (FINANCIAL CREDITORS- SECURED)		₹16.60 crs.	₹16.71 Crs.
	Amount as per books (Financial Creditors)		₹16.81 crs.	
UNSECURED CREDITORS				
1	Ashwani Soni	H.No.318, Sector 15-A, Chandigarh-160 015.	Total: ₹00.27 crs.	Nil
2.	Sahil Arora	2/4, Gali Gandha Wali, Chowk, Namak Mandi, Amritsar(Pb.)	Total: ₹03.30 crs.	Nil
			Total: ₹03.57 crs.	Nil

OPERATIONAL CREDITORS				
1.	Govt. Departments	Details given in list attached as Annexure II A	Total debt (dues) raised : ₹1.58 crs. Amount as per books : ₹1.58 crs.	₹01.58 crs.
2	Raw material suppliers	Details given in list attached as Annexure II D	Total debt (dues) raised : ₹0.18 Crs.	Nil

			Amount as per books : ₹0.18 crs.	
3.	Workers / Employees	Details given in list attached as Annexure II E	Total debt (dues) raised : ₹0.01 crs. Amount as per books : ₹0.01 crs.	Nil
4.	Service providers	Details given in list attached as Annexure II F	Total debt (dues) raised : ₹0.12 Crs. Amount as per books : ₹0.12 crs.	Nil
	Total debt raised from operational creditors		Total debt (dues) raised: ₹1.89 Crs. Amount as per books: ₹1.89 crs.	₹1.58 crs.
	TOTAL DEBT RAISED (FINANCIAL AND OPERATIONAL CREDITORS)		TOTAL DEBT (DUES) RAISED: ₹18.48 crs. AMOUNT AS PER BOOKS : ₹19.96 crs.	₹18.29 crs.

It is stated that the total amount of default in respect of Financial and Operational Creditors is ₹18.29 crores.

5. The applicant has also proposed the name of Interim Resolution Professional (IRP) as Mr. Jalesh Kumar Grover resident of House No.202, GH-40, Sector 20, Panchkula-134113 (Haryana), Mobile No.09501081808, email:jk.grover27@gmail.com having Registration No.IBBI/IPA-001/IP-00136/2016-17/1259. Mr. Jalesh Kumar Grover has also filed written communication in Form 2 of the 'Rules' to act as Insolvency Resolution Professional, if an order admitting the application, is passed. He has also declared that he is eligible to be appointed as Resolution Professional in respect of 'Corporate Debtor' in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Mr. Jalesh Kumar Grover has also declared that no disciplinary proceedings are pending against him with the

Board or Indian Institute of Insolvency Professionals of ICAI. It is also declared that Mr. Jalesh Kumar Grover is not presently serving as Interim Resolution Professional/Resolution Professional/Liquidator in any proceedings. Mr. Jalesh Kumar Grover in his declaration has furnished complete information with regard to the paragraph (vi) of Form 2 to the effect that (a) he is eligible to be appointed as an Insolvency Resolution Professional of the applicant in terms of Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016; (b) he is not a related party of the Applicant Company; and (c) he is not an employee or promotor or a partner etc. of the Applicant Company. He further undertakes to abide by the Code of Conduct set out by Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016. The office has also verified the Registration number of Insolvency Professional from the website of Insolvency and Bankruptcy Board of India.

6. The applicant further represents that due to default in making the payment of dues to the Punjab National Bank, it has issued notice dated 17.06.2016 under Section 13 (2) of SARFAESI Act, 2002 Annexure I-B calling upon the 'Corporate Debtor' to pay an amount of ₹16,71,31,522.70. The reference was made in this notice to the primary collateral security which the debtor has furnished for the said loan. It was directed that the 'Corporate Debtor' shall not transfer by way of sale, lease or otherwise (except in the ordinary course of business) any of the secured assets without the prior consent in writing from the bank. It is further represented that the bank issued another notice dated 14.02.2017 under Section 13 (4) of the SARFAESI Act,

2002 which is a part of the Annexure I-B (colly) vide which the bank has called upon the 'Corporate Debtor' and its Directors to deliver possession of the secured assets of the 'Corporate Debtor', before 15.03.2017 failing which the authorised officer of the bank was supposed to take possession of the secured assets on or after the said date during the time specified therein.

7. It is also represented that by way of primary security the bank has charge over the entire current assets of the company comprising of the raw material, stock in process, finished goods etc. and the entire fixed assets/block of assets of the company. By way of collateral security equitable charge on immoveable property comprising of residential House on Plot measuring 2 biswas situated in Sub Tehsil Zirakpur, Tehsil Derabassi, District Mohali in the ownership of Parkash Saklani S/o Lal Singh was created by deposit of sale deed dated 29.11.2004 and its estimated value is ₹0.66 crores as per the valuation report dated 20.10.2014 obtained by the bank. The valuation report is at Annexure I-D.

8. Equitable mortgage of property consisting of residential plot measuring 7 marla situated in Village Karora, Sub Tehsil Majri, Tehsil Kharar, Distt. Mohali in the name of Kanchan Saklani was also created by deposit of sale deed dated 23.02.2007 and the estimated value of this asset is ₹0.50 crores as per the valuation report dated 20.10.2014 Annexure I-E. The estimated value of the fixed assets of the company are stated to be ₹11.37 crores. Copy of the sanction letter dated 03.04.2014 issued by Punjab National Bank is at Annexure I-A.

9. Apart from the above, personal guarantee was also furnished by Sunil Guglani in respect of loan. The net worth of personal guarantee is ₹20.53

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crores and immoveable property valued at ₹11.50 crores as on 10.12.2013. Personal guarantee has also been furnished by Sahil Arora and the bank mentioned the net worth of ₹4.10 crores vide sanction letter dated 31.03.2014. Ashwani Soni also furnished bank guarantee of the net worth of ₹0.47 crores as per sanction letter dated 03.04.2014.

10. Other mortgages have also been described in the petition including banks. The default in respect of the loan sanctioned by Kotak Mahindra Bank and Tata Capital Financial Services Ltd. is stated to be nil, so no details thereof are being given.

11. The 'Corporate Debtor' has also attached the Certificate of charge issued by Registrar of Companies as Annexure I-F. As per this document the charge was created on 03.04.2014 in favour of Punjab National Bank.

12. The instant application has been filed in Form 6 in terms of Section 10 of 'the Code' by the 'Corporate Debtor'. Section 10 of 'the Code' is extracted hereunder:-

(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

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(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.

The above provision of 'the Code' discloses that the following procedures are required to be completed by a 'Corporate Debtor' for initiating the process of insolvency:

- (i) Existence of a 'Corporate Debtor'
- (ii) Such a 'Corporate Debtor' must have committed a default.
- (iii) On the satisfaction of (i) and (ii) above, a "Corporate Applicant" may file an application for initiating Corporate Insolvency Resolution Process.
- (iv) Such an application as contemplated in (iii) above shall be filed in such forms, containing such particulars and in such manner and accompanied with such fee as may be prescribed.
- (v) Along with the application as in (iv) above, information relating to books of accounts and other documents relating to such period as may be specified.
- (vi) The Applicant to name the Resolution Professional proposed to be appointed as Interim Resolution Professional.

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Section 10 of 'the Code' confers a discretion on this Tribunal to either admit or reject the application and in case of rejection, to give an opportunity to the applicant before such rejection, to rectify the defects within seven days from the date of receipt of such notice from the Adjudicating Authority. The term 'Corporate Debtor' has been defined under Section 3 (8) of Part-I of 'the Code' to mean a Corporate Person, who owes a debt to any person and 'default' is defined under Section 3 (12) of Part-I of 'the Code' to mean "non-payment of debt when whole or any part or instalment of the amount of debt has become payable and is not repaid by the debtor or the 'Corporate Debtor', as the case may be".

13. As provided in Rule 7 (1) of the Rules, the "Corporate Applicant" has to make an application under Section 10 of 'the Code' in Form 6 accompanied with documents and records required therein and as specified in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Since we have already dealt in detail in the opening paragraphs supra of this order relating to information furnished, we are not repeating the same for sake of brevity, as the essential particulars as contemplated, have been provided by the Applicant.

14. In relation to the information relating to books of accounts, audited financial statements have been filed for preceding two years ending 31.03.2015 and 31.03.2016 and unaudited provisional balance sheet for the period from 01.04.2016 to 24.03.2017 relating to the Financial Year 2016-17 are also attached. These are Annexures V-A, V-B and V-C, respectively. All the statements are attested by authorised signatory of the "Corporate Applicant".



15. When the matter was first listed on 30.03.2017 it was noticed that the affidavit in support of Form 6 was not in the prescribed format which was required to be filed afresh. The applicant has complied with the aforesaid direction and filed fresh affidavit of Ashwani Soni, Director of the 'Corporate Debtor'.

16. It is represented by Mr. G.S. Sarin, Practising Company Secretary that as per financial statement, following is the status of the Applicant Company under different heads:-

Revenue	Amount in ₹.
As on 28.02.2017	72712879
As on 31.03.2016	155802220
As on 31.03.2015	90587389
Accumulated Profit & Loss of the Corporate Debtor	Amount in ₹.
As on 28.02.2017	-24557611
As on 31.03.2016	-9627851
As on 31.03.2015	-3993640
Long Term Borrowings and other liabilities	Amount in ₹.
As on 28.02.2017	122496804
As on 31.03.2016	115476888
As on 31.03.2015	11643371
Current Liabilities	Amount in ₹.

As on 28.02.2017	87631081
As on 31.03.2016	117814099
As on 31.03.2015	63408465

17. The figures extracted above indicate the losses and fall in revenue. It seems that the applicant has fallen into debt trap and is competent to set in motion the insolvency resolution process as contemplated under 'the Code'. On the basis of the aforesaid statements the total debt raised by the 'Corporate Applicant' with regard to the financial and operational creditors is ₹18.48 crores and it is further represented that the total amount of default is ₹18.29 crores.

18. In view of the aforesaid discussion, the instant petition deserves to be admitted. It is, however, observed that the Applicant Company save some sketchy particulars has not given any road map as to how it is going to keep itself afloat as a going concern. However, keeping in perspective the objects for which 'the Code' has been brought into force and to balance the interest of all stakeholders, we are satisfied that the instant application warrants to be admitted to prevent further erosion of capital and to safeguard the assets of the Applicant Company/Corporate Debtor. For the reasons aforementioned while admitting the application, we issue the following directions:-

- (i) Appoint Mr. Jalesh Kumar Grover resident of House No.202, GH No.40, Sector 20, Panchkula-134113 (Haryana), Mobile No.09501081808, email: jk.grover27@gmail.com Registration No. IBBI/IPA-001/IP-00136/2016-17/1259, a Registered Insolvency

Professional (IRP) as the Interim Resolution Professional as contemplated under Section 16 of 'the Code' and his term of appointment shall be for a period of thirty days from the date of this order or as may be determined by the Committee of Creditors whichever is earlier;

(ii) In terms of Section 17 of 'the Code', from the date of his appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of 'the Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of the 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of 'the Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor'.

(iii) The Interim Resolution Professional shall strictly act in accordance with 'the Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standard of ethics and moral.

(iv) The Interim Resolution Professional shall endeavour to constitute the Committee of Creditors at the earliest but not later than three weeks from the date of this Order.

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(v) It is hereby directed that the 'Corporate Debtor', its properties, personnel and persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor'.

19. We further declare a moratorium in relation to the following matters as contemplated under Section 14 of 'the Code' as under:-

- (a) The institution of suits or continuation of pending suits 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;
- (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 (54 of 2002);
- (d) The recovery of any property by any owner or lessor or where such property is occupied by or in the possession of the 'Corporate Debtor'.

20. The Interim Resolution Professional appointed by this Tribunal is also directed to cause a public announcement within 3 days from the date of this order as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate

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Persons) Regulations, 2016 of the initiation of Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of 'the Code' read with Section 15 calling for the submission of claims against the 'Corporate Debtor'.

21. It is further directed that the Interim Resolution Professional shall positively file a report of events before this Tribunal every week in relation to the 'Corporate Debtor'. Copy of this order be supplied to the Authorised Representative of applicant immediately who shall deliver a copy instantly to the Interim Resolution Professional.

—Sd—

(DeePa Krishan)
Member(Technical)

—Sd—

(Justice R.P. Nagrath)
Member (Judicial)

April 07, 2017
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