

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

**CP (IB)NO. 09/Chd/Pb/2018**

**Under Section 10 of the Insolvency  
and Bankruptcy Code, 2016**

**In the matter of :**

Ambey Constructech Pvt. Ltd. having its  
registered office at 21605, First Floor,  
Street No. 6/1A, Power House Road,  
Bathinda, Punjab-151001.

...Applicant-Corporate Debtor

Vs.

Punjab National Bank, BO: Civil  
Lines, SCF 23-24, Model Town  
Phase 1, Bathinda-151001.

...Respondent-Financial Creditor

**Judgment delivered on : 13.02.2018**

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)**

For Applicant-Corporate Debtor : 1. Mr. Manish Jain, Advocate,  
2. Mayur Kanwar, Advocate and  
3. Mr. Gautam Mittal, C.A.  
For Respondent-Financial Creditor : Mr. R.S. Bhatia, Advocate.

**JUDGEMENT (ORAL)**

This petition has been filed by Ambey Constructech Pvt. Ltd., the corporate debtor itself in form No 6 as prescribed under sub-rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules') for initiating Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for short, to be referred hereinafter as the 'Code'). The corporate debtor also falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code.

2. The corporate debtor was incorporated on 20.12.2011, having been allotted CIN U45200PB2011PTC035768. Its registered office is at Bhatinda and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The authorised share capital of the corporate debtor is ₹ 50 lacs divided into 5,00,000 equity shares of ₹ 10/- each. The issued, subscribed and paid up share capital is ₹ 15,90,000/- comprising of 1,59,000/- equity shares of ₹ 10/- each. The certificate of incorporation of the corporate debtor is at Annexure VII (c) (Page 239) and the petitioner has also annexed the Memorandum and Articles of Association of the company. The instant petition has been filed by the corporate-debtor through Mr. Puneet Garg, one of the Director, who has been authorised to file this petition under section 10 of the 'Code' vide resolution of Board of Directors dated 17.11.2017 [ Annexure VII (A) ]. The contents of the application are supported by the affidavit of Mr. Puneet Garg which is at Annexure-VIII (B). There are nine shareholders of the company, the details of which are given at Sr. No. 2 of Col. 3 of Part-I of the application and the Board of Directors comprises two Directors; namely Mr. Harvinder Pal Singla and Mr. Puneet Garg.

4. Punjab National Bank is the only secured creditor of the corporate debtor. Other unsecured creditors allegedly forming part of the list of financial creditors are SECL Industries Private Limited; Rakesh Kumar Singla; Davinder Singh and Ceigall India Limited. The corporate-debtor has furnished addresses of all the financial creditors. The amount of debt in default in respect of Punjab National Bank as on 15.11.2017 is stated to be ₹10,67,54,119/- and the amount in default in respect of other unsecured

financial creditors as named above is ₹ 4,10,00,000/-, ₹14,56,630/-, ₹ 62,10,000/- and 20,00,000/- respectively. It may be observed here that Punjab National Bank disputed the correctness of the above claims in respect of unsecured creditors who are related parties or the promotor-directors but that is the question which will be considered by the Interim Resolution Professional or the Resolution Professional as the case may be whenever such a question arises and will have to be based on the accounts books maintained by the corporate-debtor.

5. The details of operational creditors have also been furnished by the petitioner-corporate debtor. They include the trade creditors, government dues, both Central and State Governments, service providers and operational creditors related parties and the amount of default in respect of each of the operational creditors has been given. The corporate-debtor has also furnished the addresses of all the operational creditors and also copies of invoices in respect of trade creditors.

6. Admittedly, Punjab National Bank declared the accounts of the corporate debtor as NPA on 18.04.2015. The Bank-financial creditor also issued notice to the corporate debtor under Section 13 (2) & (4) of the SARFAESI Act and admittedly the bank has sold one of the secured assets of the corporate debtor due credit to which has been given in the books of the corporate debtor.

7. Notice of this petition was directed to be issued to the Punjab National Bank, the only secured financial creditor and the bank has filed reply to the petition. The bank does not principally opposed the triggering of the insolvency resolution process but certain disputes have been raised with

regard to the loss to the related parties for which the observations have already been made. In para-3 of the reply, the bank stated that total outstanding amount as on 31.01.2018 under Cash Credit Limit is ₹ 15,00,59,500/- excluding interest to be accrued in future. The bank has also filed OA No. 689/2016 before the Debt Recovery Tribunal-I against the corporate-debtor and the guarantors which is still pending.

8. I have heard the learned counsel for the applicant-corporate debtor and the secured creditor – Punjab National Bank and perused the records.

9. The applicant-corporate debtor has proposed the name of Mr. Ajay Kumar Jain having Registration No. IBBI/IPA-002/IP-N00415/2017-2018/11188 to act as Interim Resolution Professional which the corporate debtor is mandatorily required to propose in accordance with clause (b) of Section 10 (3) of the Code. Mr. Jain has furnished the requisite particulars and the declaration to the effect that no proceedings are pending against him and he is not working as Interim Resolution Professional/Resolution Professional/Liquidator in any other case so far. On perusal of the written communication in Form 2 furnished by the proposed Interim Resolution Professional, the same is found to be in order.

10. I have perused the instant application filed in Form No.6 in terms of Section 10 of the Code and it is found complete in all respects. Section 10 of the Code is extracted below: -

*“10. (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.”*

11. 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. 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.

(iv) Along with the application information relating to books of accounts and other documents relating to such period as may be specified.

(v) The Applicant to name the Resolution Professional proposed to be appointed as an Interim Resolution Professional.

12. 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-1 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 due and 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 I have already dealt in detail in the opening paragraphs supra of this order relating to information furnished, I am not repeating the same for sake of brevity, as the essential particulars as contemplated, have been provided by the Applicant.

14. The corporate debtor has filed audited financial statements for the financial years ending 31.03.2016 and 31.03.2017 and provisional financial statements for the period from 01.04.2017 to 15.11.2017 and these are at Annexure V(A), V(B) and V(C) respectively. All these financial statements are duly attested by Mr. Puneet Garg, authorised representative of the corporate debtor.

15. It is represented by the learned counsel for the corporate debtor that as per the financial statements, following is the status of the corporate debtor under different heads:-

**Revenue from Operations:**

As on 15.11.2017	₹ 40, 00,000.00
As on 31.03.2017	₹ 3, 51,525.60
As on 31.03.2016	₹ 32,561.00
As on 31.03.2015	₹ 31, 00,162.00

**Accumulated Profit/Loss of the corporate debtor:**

As on 15.11.2017	₹ 37, 88,043.00
As on 31.03.2017	₹ (50, 15,565.75)
As on 31.03.2016	₹ (7, 70, 02,704.51)
As on 31.03.2015	₹ (8, 07, 89,236.26)

**Long Term borrowing & other Liabilities:**

As on 15.11.2017	₹ 4, 44, 56,630.00
As on 31.03.2017	₹ 4, 24, 56,630.00
As on 31.03.2016	₹ 4, 24, 56,630.00
As on 31.03.2015	₹ 4, 24, 56,630.00

**Current Liabilities:**

As on 15.11.2017	₹ 18, 88, 64,214.88
As on 31.03.2017	₹ 19, 46, 54,214.88
As on 31.03.2016	₹ 19, 46, 36,091.23
As on 31.03.2015	₹ 21, 96, 62,888.53

16. From the figures extracted above, it seems that the revenue from operation is increasing but the accumulated loss or the liability of the corporate debtor as compared to revenue receipts is much more for which there is need

for initiation of resolution process. So this is a fit case for setting in motion the insolvency resolution process as contemplated under the Code.

17. In view of the aforesaid discussion, the instant petition deserves to be admitted. It is further observed that the applicant-company save some sketchy particulars and 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, I am 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.

18. While admitting the application the moratorium is declared for prohibiting all of the following as provided in section 14(1) of the Code:-

(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.



19. It is further directed that the supply of essential goods or services to the Corporate Debtor, as specified in Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall not be terminated or suspended or interrupted during moratorium period. This, however, shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

20. The order of admission shall, however, be without prejudice to the right of the Financial Creditors to proceed against the guarantors other than the corporate guarantee furnished by the applicant-corporate debtor.

21. The matter be now listed on 15.02.2018 for passing formal order of appointment of Interim Resolution Professional. Copy of the order be communicated to the applicant-corporate debtor as well as to the Punjab National Bank, the respondent-financial creditor

Sd/-  
(Justice R.P. Nagrath)  
Member (Judicial)

February 13, 2018  
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