

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**“CHANDIGARH BENCH, CHANDIGARH”**  
 (Exercising powers of Adjudicating Authority under  
 the Insolvency and Bankruptcy Code, 2016)

**CP (IB) No.108/Chd/Pb/2017**

**Under Section 10 of IBC, 2016**

**In the matter of:**

Kochar Overseas Pvt.Ltd.  
 Kot Mit Singh, Tarn Taran Road,  
 Amritsar, Punjab -143001

... Petitioner/Corporate Debtor

**Order delivered on : 16.11.2017**

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

For the Petitioner : 1. Ms.Jyoti Sareen, Advocate  
 2. Mr.Yoginder Pal Singhal, proposed IRP.

For the Financial : Mr.D.K.Gupta, Advocate  
 Creditor (PNB)

**ORDER (Oral)**

This petition has been filed by Kochar Overseas Pvt.Ltd, a corporate debtor itself in Form No.6 as prescribed under sub-rule (1) of Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the “Rules”) for initiating insolvency resolution process under Section 10 of the Insolvency and Bankruptcy Code, 2016 (to be referred hereinafter as the “Code”). The Corporate Debtor falls within the definition of term ‘Corporate Applicant’ as defined in sub-section (5) of Section 5 of the Code.

2. The petitioner-corporate debtor was incorporated on 21.07.2005 and allotted CIN U51909PB2005PTC028699. Copy of Certificate of Incorporation is at Annexure-4.

3. The Authorised Share Capital of the company is ₹6.50 crores and Paid-up Capital is ₹5.75 crores. The petitioner has attached the aforesaid information at Annexure-5 of the paper book. The petitioner has also filed Memorandum and Articles of Association of the company with the application.

4. This petition has been filed by the corporate debtor through Mr. Vikramjit Singh Kochar, Director of the company in whose favour the company has passed the resolution of Board of Directors dated 04.09.2007 Annexure-6. The corporate debtor had filed a reference before the Board of Industrial Finance and Reconstruction (BIFR) which registered reference No.16/2016 under the provisions of SICA Act, 1985 and as per the notification dated 25.11.2016 issued by the Ministry of Finance. SICA was repealed w.e.f. 01.12.2016 as per Section 252 of the Code read with its Eighty Schedule. The corporate debtor resolved to file petition before this Adjudicating Authority under Section 10 of the Code, authorising Mr. Ajit Singh Kochar and Mr. Vikramjit Singh Kochar jointly or severally, represent the company in the said petition and also nominating Mr. Yoginder Pal Singhal bearing IBBI Registration No. IBBI/IPA-001/IP-P00492/2017-18/10880 as the Resolution Professional to be appointed as the Interim Resolution Professional by virtue of sub-section (3)(b) of Section 10 of the Code. Mr. Yoginder Pal Singhal has furnished written communication in Form No.2 as at Page 10 of the paper book giving all the necessary particulars. There is no disciplinary proceedings pending against the proposed Resolution Professional and he is not serving as Interim Resolution Professional in any other case so far. Form No.2 is found to be in order.

5. Latest list of shareholders as represented by the learned counsel for petitioner is at Annexure-23 and list of Directors is at Annexure-2. Presently

there are 2 directors of the company namely, Mr.Ajit Singh Kochar and Mr.Vikramjit Singh Kochar and these directors are the promoters of the company according to the petitioner's version.

6. As per the information provided in Part III of Form 6, the corporate debtor has one Financial Creditor i.e. Punjab National Bank, Hall Bazaar, Amritsar. The corporate debtor has obtained CC limit, FITL, WCTL and two term loans. Apart from that, the corporate debtor also has two Financial Creditors who are the promoters or related parties. The amount of default in respect of Financial Creditor i.e. the Bank is more than ₹39 crores and in respect of promoters/related parties, the amount of default is ₹23,93,775/-. Details of these figures are at page 50-51 of the paper book. Annexure-12 is the list of operational creditors. The list contains the names of the operational creditors and their addresses. The amount in default for the operational creditors is ₹19,17,13,085.84.

7. When the matter was listed on 03.11.2017, it was observed that Column No.1 of Part-III of the application Form No.6 was incomplete, inasmuch as, the list does not contain the particulars of the dues of Government and employees who are also Operational Creditors. It was further observed that under Column No.6 and 7 of Part-III of the application, the information given is incomplete as it was mentioned as 'Not Applicable' instead of mentioning the specific reasons. In compliance with the order dated 03.11.2017, the petitioner-corporate debtor filed fresh Form No.6 giving all the particulars required including reference to the annexures with page numbers etc.

8. As per the information in Part-III of Form No.6, the petitioner has 205 Trade Creditors for which the list along with their addresses is at Annexure-

12. The amount of default in respect of trade creditors is ₹19,17,13,085.84 as per the information culled out from the provisional Balance Sheet, Anenxure-14 at page 273.

9. In respect of Government dues, there are Provident Fund payable for the financial years 2014-15 and 2015-16 and ESI payable for the financial year 2015-16, apart from the purchase tax payable to the Government in respect of financial year 2011-12. The total default of Government dues has been described as ₹1,99,000/-. There are no dues to the employees pending and the total amount of default in respect of Operational Creditors is ₹1919.12 lakhs.

10. The Financial Creditor was issued notice of the filing of this petition and Mr.D.K.Gupta, Advocate has filed Vakalatnama on behalf of the Bank along with Power of Attorney in favour of the authorised representative of the bank. Learned counsel for the Bank submitted that the Bank is not to file any objections to the instant petition.

11. I have heard the learned counsel for petitioner and learned counsel for the financial creditor and carefully perused the record.

12. The account of the corporate debtor was declared NPA by the financial creditor. The financial creditor (PNB) issued notice dated 13.11.2015 under Section 13(2) of SARFAESI Act, 2002 giving details of the default in respect of different facilities obtained by the corporate debtor. Notice dated 13.11.2015 was issued by the Bank to the corporate debtor, its then directors including the guarantors and others is at page 139 of the paper book. The total amount of default at that time was more than ₹40 crores. Thereafter, the Bank issued possession notice dated 31.3.2016 under Section 13(4) of SARFAESI

Act, 2002, Annexure-10 (page 147) giving details of the properties mortgaged etc., and symbolic possession was taken.

13. The corporate debtor has also created security interest in respect of certain properties, details of which have been given as mentioned in the notice issued under Section 13 of SARFAESI Act. Learned counsel further submitted that there are about 16 cases pending against the corporate debtor and its directors etc. list of which is at Annexure-13 and out of that list there are about 15 cases under Section 138 of Negotiable Instruments Act on account of cheques having bounced and one SA 151/2016 is pending before the DRT, Chandigarh at the instance of Punjab National Bank. Copies of documents have also been attached.

14. Section 10 of the Code is extracted as 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."*

15. 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.

16. 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.”

17. 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.

18. The corporate debtor has filed financial statements for the year ending 31.03.2016 and 31.03.2017 at Annexure-15 from pages 284 to 367 and the provisional financial statements for the period from 01.04.2017 to 16.09.2017 which are at Annexure-14 from pages 270 to 283. The audited financial statements are duly attested by the Chartered Accountant and Authorised Representative of the company. The contents of the application are supported by affidavit of Mr. Vikramjit Singh Kochar, authorised representative of the company and he has also filed affidavit with the fresh application form giving details of the information.

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

**Revenue from Operations:**

As on 16.09.2017	0
As on 31.03.2017	₹2,05,34,144.45
As on 31.03.2016	₹ 31,71,25,345.62
As on 31.03.2015	₹ 1,22,21,36,578.87

**Net Profit/Loss Of the Corporate Debtor:**

As on 16.09.2017	₹(-)1,03,048.27
As on 31.03.2017	₹ (-)94,59,395.93
As on 31.03.2016	₹ (-)10,53,81,478.72
As on 31.03.2015	₹ (-)20,09,54,901.72

**Accumulated profits /loss of the corporate Debtor:**

As on 16.09.2017	₹ (-)28,25,62,354.81
As on 31.03.2017	₹ (-)28,24,59,306.54
As on 31.03.2016	₹ (-)27,21,15,691.07
As on 31.03.2015	₹ (-)16,67,34,210.37

**Long Term Borrowings and other Liabilities:**

As on 16.09.2017	₹23,93,975
As on 31.03.2017	₹50,13,413.23
As on 31.03.2016	₹58,38,753.83
As on 31.03.2015	₹1,09,03,331.78

**Current Liabilities:**

As on 16.09.2017	₹58,90,66,208.70
As on 31.03.2017	₹59,14,96,575.86



As on 31.03.2016	₹64,06,66,919.15
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As on 31.03.2015	₹63,76,27,461.54
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20. The figures extracted above indicate the losses with continued fall in the revenue, therefore, 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'.

21. 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 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.

22. 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.

23. 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.

24. 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.

25. The matter be now listed on 27.11.2017 for passing formal order of appointment of Interim Resolution Professional. Copy of the order be communicated to the parties.

Sd/-

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

November 16, 2017

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