

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA

C.P. (I.B) No.257/KB/2021

A Petition under Section 10 of the Insolvency and Bankruptcy Code, read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules), 2016

In the matter of :

Ways Development & Consultancy Private Limited through Mr. Abhay Raj (Director)

.... Corporate Debtor /Corporate Applicant

Coram:

Ms. Bidisha Banerjee : Member(Judicial)

Mr. Balraj Joshi : Member(Technical)

COUNSELS APPEARED THROUGH VIDEO CONFERENCE :

1. Mr. Rahul Parasrampuria, Advocate]For the Corporate Debtor

Date of pronouncement of the Order : 10/07/2024

ORDER

Per: **Balraj Joshi, Member (Technical)**

1. The Court is convened by video conference today.
2. The Corporate Applicant, Ways Development & Consultancy Private Limited , CIN: U45200BR2008PTC013907), has filed this Application, bearing **C.P. (I.B) No.257(IB)/KB/2021** under Section 10 of the Insolvency & Bankruptcy Code, 2016, praying for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant, through its Director Abhay Raj (DIN 02745665) duly authorized vide Board Resolution dated 29/07/2021, stating that it has committed default in paying its debts (financial as well as operational).
3. The Corporate Debtor, Ways Development & Consultancy Private Limited , was incorporated on 08/09/2008 and is engaged in the business of providing real estate and other related services. The Nominal Share Capital of the Corporate Applicant has paid up share capital of Rs.1000000/- and Rs. 700000/- respectively.
4. **The reasons for applying for initiation of the Corporate Insolvency Resolution Process, under section 10, by the Corporate Applicant, are briefly, stated below :**
5. The Corporate Applicant entered into various agreements with Ways Estates Limited on 17/01/2011, 11/03/2013, 28/11/2014, and 25/03/2011 for providing services such as training to its staffs, consultancy, advertisement, printing, market research and other services. It was mutually agreed between the parties that in consideration for providing such services to Ways Estates Limited, the Corporate Applicant shall receive a fixed compensation per month and such other amount for which the Corporate Applicant will raise invoices.
6. The Corporate Applicant had made a default in payment to the various Creditors for an amount of Rs.1,85,67,955/- (Rupees Once Crore Eighty Five Lacs Sixty Seven Thousands Nine Hundred Fifty Five only).

7. By an order dated 15/06/2023 passed by this Adjudicating Authority, the applicant filed the supplementary affidavit regarding the consent of the members to initiate CIRP against the corporate debtors under section 10 of IBC, 2016.

8. That an Extra General meeting of the Company was held on 23rd August, 2021 where the shareholders of the company had approved the CIRP commencement of the Corporate Debtor under Section 10 of the IBC, 2016.

9. That after filing of the instant company petition the corporate debtor has received a demand notice from the resolution professional of Ways Estate Limited asking for the repayment of the loan amount availed by the Corporate Debtor on 21st September, 2022 of Rs. 84,85,088.75/-

10. It is stated that at present the Applicant is unable to complete even pending projects due to paucity of funds and is facing imminent termination of contracts and imposition of penalties by customers.

11. It is stated that if the prayer of the Applicant for admission into CIRP and appointment of IRP gets further delayed, the liabilities of the Applicant would increase vastly, forcing the Applicant into liquidation, rather than getting its resolution.

12. The extract of the Resolution passed at the Extra Ordinary General Meeting of the Shareholders of Ways Development & Consultancy Private Limited held on 29th day of July 2021, is reproduced below :

“1. APPROVAL FOR INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP) AND APPOINTMENT OF INTERIM RESOLUTION PROFESSIONAL(IRP)

The Chairman put before the Board the matter to be discussed for the process of initiation of Corporate Insolvency Resolution Process (CIRP) referred under Section 10 of the Insolvency and Bankruptcy Code, 2016

“RESOLVED THAT, Pursuant to the provisions of Section 10 of Insolvency and Bankruptcy Code, 2016 and rules made there under (including any statutory

modifications or re-enactment thereof for the time being in force) and subject to the confirmation of the Shareholders by passing of Special Resolution in General Meeting approval of the Board be and is hereby accorded to take a step for initiation for the process of CIRP.

“ **FURTHER RESOLVED THAT**, pursuant to the provisions of Section 10 of Insolvency and Bankruptcy Code, 2016 and rules made there under (including any statutory modifications or re-enactment thereof for the time being in force) appointment of IP Anup Kr. Sanghal and/or Any other person as Interim Resolution Professional is hereby approved.

“**FURTHER RESOLVED THAT**, Mr. Abhay Raj and/or Mr. Nilabh Prasoon, Directors of the Company, be and are hereby authorized jointly and /or severally to file application for initiation of CIRP Process in Form 06, information related to Books of Accounts, to file petitions, necessary annexure and do all such acts, deeds, things as may be necessary in giving effect to the above resolution.”

2. TO APPOINT PROFESSIONAL FOR FILING APPLICATION IN NATIONAL COMPANY LAW TRIBUNAL, KOLKATA BENCH

The Chairman placed before the Board the matter to be discussed for the appointment of a Professional for filing an application in National Company Law Tribunal, Kolkata Bench for imitation of Corporate Insolvency Resolution Process (CIRP) referred under Section 10 of Insolvency and Bankruptcy Code, 2016 and rules made there under.

“**RESOLVED THAT, Mr. Rahul Parasrampuria, Practicing Company Secretary**, having office at 1, Abdul Hamid Street, (British India Street), 1st Floor, Room No. 113, Kolkata- 700069 be and is hereby authorised to prepare and file an application, replies, rejoinders, affidavits and other documents as may be required or necessary to do all such acts, things or deeds or take such steps before the NCLT, Kolkata Bench and NCLAT.”

3. APPROVAL OF NOTICE OF EXTRA ORDINARY GENERAL MEETING(EGM)

“ RESOLVED THAT, the Extraordinary General Meeting (EGM) of the members of the Company be held on 23rd day of August, 2021 at 1:00 P.M. at the registered office of the Company at Opp. Swadha Apartment, Near Vau’s Workshop, Ashiyana Road, Patna, Bihar – 800014”.

13. In support of the Petition, the Corporate Applicant has submitted the following documents along with the Company Petition:

- i. Copy of Mater Data of Corporate Applicant (**Annexure-A**).
- ii. Board Resolution authorizing the Director and Authorised Representative – **(Annexure-B)**
- iii. List of Creditors –**(Annexure-C)**
- iv. Copy of Memorandum and Articles of Association –**(Annexure D)**.
- v. Consent of IRP in Form 2-**(Annexure E)**.
- vi. Copy of Audited Financial Statements for the year ended 2018-19 and 2019-20- **(Annexure F)**
- vii. Copy of Statement of affairs dated 20.08.2021 **(Annexure G)**
- viii. Copy of Ledger extracts of Debtors dated 20.08.2021 **(Annexure H)**
- ix. Copy of Ledger extracts of Creditors dated 20.08.2021 **(Annexure I)**
- x. List of Shareholders and Directors- **(Annexure J)**
- xi. Copy of Service Agreement dated 17.01.2011**(Annexure K)**
- xii. Copy of Service Agreement dated 17/01/2013- **(Annexure-L)**
- xiii. Copy of Service Agreement dated 28.11.2014**(Annexure-M)**
- iv. Copy of Service Agreement dated 25.03.2016 (**Annexure N**)

14. In these proceedings, Corporate Applicant submitted information relating to its books of accounts for the relevant period (Section 10(3)(a) of IBC). The Corporate Applicant has

proposed the name of the IRP, as **Ajay Kumar**, who has submitted his consent in Form 2 and also his Authorisation for taking up the Assignment.

Analysis and Finding

This Petition has been filed under Section 10 of the IBC for initiation of CIRP by corporate applicant. Section 10 of the Insolvency and Bankruptcy Code 2016 provides for filing of such an application by such a Corporate applicant itself as per laid down criteria. Section 10 of the code provides as under:

Initiation of corporate resolution process by corporate applicant:

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.

¹ [(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.

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.]

(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; ²[and no disciplinary proceeding is pending against the proposed resolution professional]; or

(b) reject the application, if it is incomplete: ³[or any disciplinary proceeding is pending against the proposed resolution professional:]

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.

[Emphasis applied]

15. From section 10(1), it is seen that a corporate applicant who has committed default would be eligible to file an application under section 10 of the IBC.

16. The application format prescribed in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 clearly mentions the List of documents to be attached to the application in order to prove the existence of the financial/operational debt and the amount in **default**.

17. However, no information in regard to the default having occurred has been provided in the petition. As such, it is not possible to establish here default even though it has been mentioned at page 8 para 3 of the form that the corporate applicant has made default in the payment to the Ways Development & Consultancy Private Limited and other creditors for an amount of Rs.1,85,67,955/- (Rupees One Crore Eighty-Five Lacs Sixty Seven Thousands Nine Hundred Fifty Five only).

18. Further it is not clear as to why M/s Ways Estate to whom the Corporate applicant is a service provider is required to be paid by the corporate applicant.

19. Apart from the above, the application has been shoddily filed with numerous overlying and unattested correction slips stuck at various places, the fact remains that no default has been established in the petition and in the absence thereof this petition deserves to be rejected. There are numerous photocopied enclosures in the petition which have not been attested.

20. However, considering the stipulation of Section 10(4) (Supra), one **last opportunity** of SEVEN DAYS from the date of this order is given to the Corporate applicant to rectify the said defects.

21. **It is made absolutely clear that no further extension shall be granted and in absence of the clarifications above, the petition shall stand rejected.**
22. The Registry is hereby directed to communicate the Order to the Corporate Applicant, and to the Interim Resolution Professional by Speed Post and also by e-mail.
23. List the matter on **19.07.2024** for further consideration.
24. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on this, 10th day of July , 2024

PJ