

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2023

*An application under Section 10 of the Insolvency and
Bankruptcy Code, 2016, for brevity "I&B Code" read with
Rule 7 of the Insolvency and Bankruptcy Rules, 2016.*

IN THE MATTER OF:

**Bihar E-Governance Services & Technologies Limited
... Applicant/ Corporate Applicant/ Corporate Debtor.**

Date of Pronouncement: April 24, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant: Mr. Gaurav Khaitan, Adv.

O R D E R

Per: D. Arvind, Member (Technical)

1. The Court congregated through a hybrid mode.
2. We have heard the Ld. Counsel for the applicant.
3. This is a petition preferred by **Bihar E-Governance Services & Technologies Limited**, hereinafter referred to as "**Applicant**"/ "**Corporate Applicant**"/ "**Corporate Debtor**"/ "**BeST**" seeking to commence the Corporate Insolvency Resolution Process for brevity "CIRP" under Section 10 of I&B code in respect of the Corporate Debtor.

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4. Facts in a nutshell:

4.1. The Corporate Debtor is an SPV with 50-50 per cent shareholding between IL&FS and Bihar State Electronics Development Corporation Limited (hereinafter referred to as “Beltron”).

4.2. The Corporate Debtor and Beltron entered into a consultancy Services agreement dated May 24, 2007. Pursuant to the agreement, Beltron was issuing Project engagement work orders to the Corporate Debtor. The Corporate Debtor and IL&FS Technologies Limited (hereinafter referred to as “ITL”) entered into memorandum and agreement dated April 18, 2013, wherein ITL was appointed as a project co-ordinator and implementation agency that would co-ordinate and provide all services required implementation project in accordance with the consultancy service agreement made with Beltron.

4.3. However, Beltron vide its letter dated October 11, 2018, had conveyed its intention to exit and terminate the consultancy service agreement due to poor performance of the Corporate Debtor, and also on the account of financial health of the Corporate Debtor. In view of this the Corporate Debtors financial performance deteriorated in last few years resulting a Corporate Debtor not having sufficient funds to sustain itself.

4.4. The Corporate Debtor vide letter dated June 03, 2019, informed Beltron that it is unable to accept/execute any orders due to outstanding dues worth Rs. 2.63 Crore, payable by the Beltron has not been paid. The Corporate Debtor also informed

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Beltron that the revenue of the company has dropped due to various reasons including not getting new business from Beltron, reduction in fee and substantial delay in payment by the Beltron. In response to the communication by the Corporate Debtor to Beltron, no further communication was received from Beltron.

4.5. As on date of applying this application, the Corporate Debtor is substantially negative in net worth as per audited financials for 2021-22. Beltron, being a 50% Shareholders, vide letter dated June 11, 2021, granted its consent to initiate closure proceeding of the Corporate Debtor under Section 10 of the I&B code. Presently, the Corporate Debtor is not operational as no business activity is being carried out and no business is envisaged going forward. Therefore, this application under Section 10 of the I&B Code has been made to initiate the Corporate Insolvency Resolution Process of the Corporate Debtor.

5. Applicant's submissions:

5.1. Learned Counsel for the Applicant submits that the liability of the Corporate Debtor is 2.43 crores and its defaulted payment to the Creditors is excess of prescribed threshold limit provided under Section 4 of the I&B Code, as they are not in a position whatsoever to make this payment. Moreover, the Corporate Debtor is not in operation for the past few years and consequently, no revenue generation is possible for them to meet the liabilities. The joint venture partner Beltron has consented for initiating the CIRP under Section 10 of the Code in respect of the Corporate Debtor.

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5.2. The Board of Directors of the Corporate Debtor through a resolution dated 26th August, 2021 approved the proposal for initiating CIRP under Section 10 of the code. On 26th September, 2022 even the IL&FS which is another Joint Venture partner of the company also consented through their board resolution for initiating CIRP under Section 10 of the Code in respect of the Corporate Debtor.

6. Analysis and Findings:

6.1. We find that the Corporate Debtor has defaulted in paying the creditors and the details of which are in Para 3 of Form VI filed by the petitioner, as follows:

PARTICULARS OF FINANCIAL/OPERATIONAL DEBT					
NAME(S) OF FINANCIAL / OPERATIO NAL CREDITOR(S)	A. The details of financial creditors are as below:				
	S. No.	Name of the Creditor	Description of the debt	Amount Outstanding	Amount Due as on 31 July 2023 (INR)
	A.	Operational Creditors			
	1.	IL & FS Ecosmart Ltd.	Consultancy Service	478100.00	478100.00
	2.	IL & FS Technologies Ltd. (Terracis Technologies Ltd.)	Consultancy Service & Project Management unit setup for various service	21630022.40	21630022.40
	3.	Benchmark Infotech	Manpower service	135498.88	135498.88
	4.	Cybertech Software & Multimedia Pvt. Ltd	Manpower service	102632.00	102632.00
5.	Graphic Trades	Manpower service	625856.42	625856.42	
Copies of Invoices issued by the operational creditors and the ledgers maintained by the Applicant is annexed herewith and marked as Annexure – BB.					

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6.2. The date of default claimed in the application is on 26.03.2020 whereas the debt is reflected in the balance sheet as on 2021-22, and the debt has been acknowledged in the balance sheets from time to time from the year when the default was committed and hence, it is a continuing default.

6.3. We find that the Corporate Debtor has defaulted in excess of threshold limit specified in Section 4 of the I&B Code. The Corporate Debtor has complied with requirements under Section 10 (3) of the I&B code read with relevant rules and regulations made thereunder.

6.4. In view of the above we find this is a fit case for admission under Section 10 of the I&B Code, as debt and default has been acknowledged by the Corporate Debtor himself and the amount in default is excess of the threshold limit in terms of Section 4 of the I&B Code, 2016.

6.5. The application is complete in all respects and is filed within the time prescribed.

7. In the light of the enumerations supra, the application bearing **C.P.(IB) No. 236/KB/2023**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 10 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

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- i.** The Application filed by the **Bihar E-Governance Services & Technologies Limited (Corporate Applicant)**, under **Section 10** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Corporate Applicant herein**.

- ii.** As a consequence of this Application being admitted in terms of Section 10 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - 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 asset 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

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- d)** *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** 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.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has proposed the name of **“Mr. Kanchan Dutta”**, Address: Chatterjee International Center, 17th Floor, Room No. 13, 33A J.L. Nehru Road, Kolkata – 700071, Email ID: kanchan@kgrs.in, having registration no. IBBI/IPA-001/IP-P00202/2017-18/10391, as the **Interim Resolution Professional (IRP)**. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, as per the requirement of Rule

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9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, annexed as Annexure AA-1 at Pages 224A-224B to this application. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or IIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Kanchan Dutta”** as per the requirement of the IBBI Regulations. Hence, we appoint **“Mr. Kanchan Dutta”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made

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immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

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- xi.** The Financial Creditors/ Operational Creditors in absence of the Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** The **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency

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Resolution Process for Corporate Persons) Regulation, 2016.

- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 8.** Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.
- 9.** Post the matter on **19/ 06/ 2024** for filing the Periodical Progress Report by the IRP/RP.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 24th Day of April, 2024.

Bose, R. K. [LRA]
SG [Steno]