

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

Company Petition (IB) No. 730/KB/2019

***An Application under Section 10 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 7(1) of the Insolvency
and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016.***

IN THE MATTER OF:

RSI Private Limited.

(CIN: U51909WB1958PTC023703)

... Corporate Applicant.

Date of Pronouncement: April 24, 2024.

CORAM:

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

APPEARANCE:

For the Applicant:	Ms. Urmila Chakraborty, Adv. Mr. Rantu Kumar Das, PCS.
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ORDER

PER D. Arvind, Member (Technical)

- 1.** The Court congregated through hybrid mode.
- 2.** Heard the Learned Counsel, Ms. Urmila Chakraborty appearing on behalf of the Corporate Applicant.
- 3.** The instant application has been preferred under Section 10 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" by **RSI Private Limited** seeking the commencement of the Corporate Insolvency Resolution process, for brevity "CIR Process" in respect of itself.

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4. The details of default on part the Corporate Applicant is as follows:

Name of the Operational Creditor	Amount in default	Date of Default
Office of the Deputy Commissioner of Customs (Preventive), Porbandar.	Rs. 5,17,47,242/-	01.12.2016
Office of the Assistant Commissioner of Customs, Okha.	Rs. 9,12,81,472/-	15.03.2019

The Case of the Applicant:

5. The Corporate Applicant, being an MSME, having 150-200 workers, is in the business of manufacturing, importing and exporting polymer and cast-iron products etc. The Corporate Applicant was incorporated on 08.01.1958. It was converted into a public limited company from a private limited company on 27.03.1992 and later, again converted into a private limited company on 05.01.2010.

6. That, the Corporate Applicant was granted an Advance License bearing No. P/W/3496478/C and was also issued the DEEC Book No. 142580 by the Director General of Foreign Trade, Ministry of Commerce & Industry on 27.10.1994.

7. That, on 06.05.2005, the Commissioner, Customs (Preventive) Jamnagar passed an Order OIO No. 43/Commissioner/2005, against one Winsome Network Pvt. Ltd.

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(which later amalgamated with the Corporate Applicant by way of an order sanctioning the scheme of amalgamation) for recovery of Government dues to the tune of Rs. 5,49,97,242/- and issued a demand notice to Winsome Network Pvt. Ltd. on 23.08.2005.

8. Under the Foreign Trade Policy, advance licenses are granted to the corporate applicant for importing goods duty-free. The duty-free goods are used for manufacturing goods and ultimately the finished goods are exported. Thus, the export obligation is cast on such importers as per the Foreign Trade Policy.

9. Due to several reasons including market conditions, the products dealt by the corporate applicant lost its market, consequent to which, the corporate applicant was unable to meet export obligations as stipulated in the advance licenses issued to him. As per Foreign Trade Policy read with relevant customs notifications, if export obligations are not met, then corresponding customs duty forgone at the time of import required to be paid along with interest.

10. That, the Corporate Applicant approached the licensing authority on several occasions for extension of time for fulfilment of the export obligation. The last such extension of the Export Obligation Period (EOP) was granted vide a letter dated 04.05.2010, for a further period of 6 months from the date of endorsement.

11. That, on 23.02.2012, the corporate applicant filed a reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and on 23.07.2012, the corporate applicant

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was declared to be a sick unit and registered with the Board of Industrial Financial Reconstruction (BIFR). Further, the Corporate Applicant had filed a revised Draft Rehabilitation Scheme before the BIFR on 09.01.2014, where the officers of the Director General of Foreign Trade and Customs Authorities were parties.

12. That, on 01.12.2016, the BIFR reference stood abated upon promulgation of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 and the rehabilitation proposal of the Corporate Applicant before the BIFR was aborted.

13. That, on 23.03.2018, after the promulgation of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the EXIM policy introduced a provision i.e., Para 6.25 for revival of a Sick Unit in its policy. The Corporate Applicant applied to the Convenor, Board of Approval (BoA), New Delhi to consider its representation regarding the extension of EOP.

14. However, till date the representations made by the corporate applicant for extension of EOP (Export Obligations Period) not met any response and EOP has not been extended resulting in serious financial deterioration of the corporate applicant. Meanwhile, the corporate applicant has received notice on 15.03.2019, from the Assistant Commissioner of Customs Dwarka (which is annexed at Page 79 to the Application) demanding a sum of Rs. 9,12,81,472/- along with interest applicable thereon and a penalty of Rs. 9,42,81,472/-. It is contended that the corporate applicant is not in a position to pay this amount. Further, for the amalgamated company which is Winsome Network Private Limited which got

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amalgamated with the corporate applicant, received a demand notice dated 20.03.2005, for a sum of Rs. 5,49,97,242/- from Customs Authorities for similar default by the said company. The corporate applicant is not able to pay this amount as will and hence, this company petition has been filed under Section 10 of I&B Code seeking resolution under CIRP.

The Learned Counsel for the Applicant would submit:

15. That, the liabilities and default towards the said Operational Creditors are admitted and a copy of this company petition was also duly served upon the said Operational Creditors, as mentioned in para 4 of this Order and affidavit of service has been filed in such regard, annexed at Pages 144 to 149 of Supplementary Affidavit dated 13.03.2024.

16. Further, the Service of notice and petition of the present proceeding have been duly done on both the Operational Creditors by Speed Post, e-mail and also by way of substituted service made in the newspapers.

17. Further that, the Corporate Applicant has made paper publication four times pursuant to Orders passed by this Adjudicating Authority, which are as follows:

Date of Order	Date of Paper Publication
03.03.2020 (Page 167 of Supp. Affidavit dated 13.03.2024)	Affidavit of Compliance dated 17.03.2020 (Pages 162 to 167 of Supp. Affidavit dated 13.03.2024)

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22.03.2021 (Page 168 of Supp. Affidavit dated 13.03.2024)	Affidavit of paper publication on 06.04.2021 (Pages 169 to 175 of Supp. Affidavit dated 13.03.2024)
14.12.2022 (Page 181 of Supp. Affidavit dated 13.03.2024)	Affidavit of paper publication on 06.01.2023 (Pages 176 to 181 of Supp Affidavit dated 13.03.2024)
09.08.2023 (Page 182 of Supp. Affidavit dated 13.03.2024)	Affidavit of paper publication on 15.09.2023 (Pages 183 to 193 of Supp. Affidavit dated 13.03.2024)

18. Further to contend that pursuant to the Order dated 09.08.2023, the Registry has also issued notice upon the said Operational Creditors. On 20.09.2023, the Corporate Applicant received a forwarded e-mail from the erstwhile proposed IRP, which contained an e-mail dated 20.09.2023 from the Customs Office, Okha containing a Notice dated 17.08.2023 issued by the Registry of this Adjudicating Authority.

19. Further, it is asserted that the Operational Creditors are fully aware of the present proceeding and that they have no objection to the present petition. Thus, it is submitted that when the liability towards the said Operational Creditors is admitted and the same is to the knowledge of the said Operational Creditors, it is extraneous as to whether the said liabilities are reflected in the financial statements of the Corporate Applicant or not. Furthermore, the

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application for EOP Extension was being pursued at the level of DGFT offices.

20. The Learned Counsel for the applicant would contend that the Corporate Applicant challenged the various notices and/or Orders passed by the said Operational Creditors and filed an appeal before the Learned CESTAT, Mumbai and thereafter, before the Learned CESTAT, WZB, Ahmedabad. Thereafter, proceedings were instituted before the Hon'ble High Court of Gujarat. An SLP was also preferred before the Hon'ble Supreme Court of India in such regard. Only after all proceedings were dismissed and/or withdrawn after contesting the proceedings unsuccessfully, the Corporate Applicant admitted the claim of the said Operational Creditors. As such, the present proceeding is liable to be admitted.

Analysis and Findings:

21. We have perused the balance sheet of the corporate applicant as of March 2017. The company's net worth is negative. Value of tangible assets as on 31.03.2017, is only Rs. 66,12,099/-, whereas the liabilities excluding admitted liabilities towards customs duty mentioned above is Rs. 15,45,97,871/- which is reflected in the balance Sheet as at March 31, 2017 annexed at page 102 to the application. When that being the case, we find that in absence of any revenue, the company will not be able to pay the operational creditors, their dues.

22. Further, we have noted that the Assistant Commissioner of Customs, Okha vide letter dated 15.03.2019, has demanded Government dues as Custom Duty of Rs. 9,12,81,472/- with

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interest and penalty of Rs. 9,42,81,472/- from the Corporate Applicant, apart from demand for Rs. 5,49,97,242/- arising out of OIO No. 43/Commissioner/2005 dated 06.05.2005 passed by the Commissioner, Customs (Preventive) Jamnagar, on Winsome Network Pvt. Ltd., which got amalgamated with the Corporate Applicant company. We would note that to recover this outstanding Government dues arising out of OIO No. 43/Commissioner/2005 dated 06.05.2005, the Office of the Assistant Commissioner of Customs issued the demand notices to the Winsome Network Pvt. Ltd. on 23.08.2005, mentioning the confirmed total duty amount of Rs. 5,49,97,242/- along with the personal penalty of Rs. 28,00,000/- and Rs. 5,00,000/- upon the Managing Director and Administrative Director of the Corporate Applicant herein payable to the concerned Customs Authorities, which are annexed at page 90 to the application.

23. Thus, it would be evident that there is a total debt of Rs. 14,30,28,714/- as per the table mentioned in para 4 of this Order excluding the penalty as well as interest levied by the Customs Authorities. The defaulted amount is a continuing default admitted by them in several correspondences with the Customs Authorities. The defaulted amount is in excess of threshold limit mentioned in Section 4 of the I&B Code and the application has been filed within prescribed period of limitation and consequently, all the parameters required for admitting this company under CIRP in terms of Section 10 of I&B Code are made out and accordingly, we admit this application.

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24. In the light of the enumerations supra, the application bearing **C.P.(IB) No. 730/KB/2019**, 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**:

- i.** The Application filed by the **RSI Private 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 Corporate Applicant 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;*

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- 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);*
- 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 proposed the name of “Soumendra Podder” (registration no. IBBI/IPA-001/IP-P00446/2017-18/10789) as **Interim Resolution Professional (IRP)**. Later, the Corporate Applicant through a Supplementary Affidavit dated

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19.12.2023, has asserted that “Due to passage of time, the corporate applicant now proposed the name of **Pratap Mukherjee**, Insolvency professional as proposed IRP in respect of the corporate applicant in place and stead of Mr. Soumendra Podder”. We have perused that there is a written communication and consent of IRP in Form 2, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, annexed as Annexure “A” to the Supplementary Affidavit dated 19.12.2023. 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 “**Pratap Mukherjee**” as per the requirement of the IBBI Regulations. Hence, we **appoint “Pratap Mukherjee”** Registration No. IBBI/IPA-001/IP-P-02515/2021-2022/13851, Email ID: pratapmukherjee62@gmail.com, Address 27/A, Bhattacharjee Para Road, Paschim Barisha, P.O. Thakurpukur, Kolkata, West Bengal - 700063, 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

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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 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

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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.
- 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

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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 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.
- 25.** Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.
- 26.** 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]/ PH (PS)