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

#### C.P. (I.B) No. 88/KB/2023

A Petition under section 10 of the Insolvency and Bankruptcy Code, 2016 read with rule 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016.

*In the matter of:* 

### Visa Energy Ventures Limited

(CIN: U40108WB2012PLC210199)
Having its registered office at: -

Visa House 8/10, Alipore Road,

Kolkata - 700 027 In.

...Corporate Applicant

#### Coram:

Smt Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Date of Pronouncement: 14.08.2024.

#### Appearances (through video conference/physical hearing)

For the Corporate Applicant : Mr. Mainak Bose, Adv.

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#### ORDER

### Per: Bidisha Banerjee, Member (Judicial)

- **1.** This Court congregated through hybrid mode.
- **2.** Heard the Learned Counsel Mr. Mainak Bose appearing on behalf of the Corporate Applicant.
- 3. The present Petition has been filed by VISA Energy Ventures Limited ('the Corporate Applicant'), under section 10 of the Insolvency and Bankruptcy Code, 2016 ('the Code') for initiation of Corporate Insolvency Resolution Process ('CIRP') against itself. The Application has been filed through its Director Mr. Surendra Nath Ojha, DIN: 02430744, duly authorised vide Board Resolution dated 10 January, 20231.
- 4. The members of the Corporate Applicant have given their consent by way of a resolution passed in the Extra Ordinary General Meeting held on 10 March, 2023 to file the application under section 10 of the Code<sup>2</sup>. The Corporate Applicant was incorporated on 25 April, 1995 under the provisions of the Companies Act, 1956.

#### 5. Submissions on behalf of the Corporate Applicant

- 5.1 The Corporate Applicant i.e., VISA Energy Ventures Limited is a subsidiary of VISA International Limited ('VINL') and is a holding company of VISA Resources India Limited ('VRIL') and VISA Power Limited ('VPL').
- 5.2 The Adjudicating Authority vide its order dated 07 August, 2019, commenced Corporate Insolvency Resolution Process ('CIRP') against VINL.

<sup>1</sup> Page 80 of the Application.

<sup>2</sup> Annexure – E of the Application.

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- 5.3 Subsequently, an application under Section 33(1) of IBC, 2016 was filed before the Adjudicating Authority and liquidation process was initiated in respect of VINL *vide* order dated 11 May 2021. Thereafter, Progressive Star Finance Private Limited, successful bidder, acquired VINL as a going concern under Regulation 32(e) of the IBBI (Liquidation Process) Regulations, 2016.
- 5.4 On acquisition of VINL, Progressive Star Finance Private Limited changed the Board of Directors of VINL along with its subsidiaries i.e., the Corporate Applicant, Fairsnow Aviation Limited and Step-Down Subsidiary VRIL. Since then, the management and affairs of these Companies lie with Progressive Star Finance Private Limited.
- 5.5 Further, by the Order dated 27 December, 2017, the Adjudicating Authorit, initiated CIRP against VISA Power Limited ('VPL'). Consequently, an application under Section 33(1) of IBC, 2016 was filed before the Adjudicating Authority and Liquidation Process was commences against VPL vide dated 11 October.
- 5.6 Also, by the Order dated 29 April, 2022 pronounced by the Adjudicating Authority, CIRP was commenced for VRIL. Consequently, an application under Section 33(1) of IBC, 2016 was filed before the Adjudicating Authority and the Adjudicating Authority by its Order dated 03 January 2023 initiated the Liquidation Process in respect of VRIL.
- 5.7 Both the subsidiary Companies, as well as the holding Company of Corporate Applicant are under liquidation. The Corporate Applicant is having negligible Assets of Rs. 0.002 Crores as against Financial and Operational Liabilities of Rs. 175.21 Crore as per the provisional Financial Statement.

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- 5.8 In an Extra-Ordinary General meeting of the Board of the Corporate Applicant held on 10 March 2023 under Section 10 of the IBC, 2016 should be initiated by the Corporate Applicant.
- The Corporate Applicant has proposed the name of Mr. 6. Bishwanath Choudhary (Regn. No. IBBI/IPA-002/IP-N00597/2018-2019/12042) having email i.d. choudhary bishwanath@rediffmail.com, to function the Interim Resolution Professional (IRP). Mr. Bishwanath Choudhary has submitted his written communication in Form 2. The written communication is annexed to the application and marked as Annexure-X

### **Analysis and Findings**

- **7.** We have heard the learned Counsel appearing for the Corporate Applicant and have perused the documents on record.
- **8.** To consider whether a section 10 application is maintainable by a Corporate Applicant, following factors have to be borne in mind:
  - I. There must be Existence of Debt and Default The Hon'ble NCLAT in Unigreen Global Private Limited vs. Punjab National Bank and Ors (2017 SCC Online NCLAT 566) having compared sections 7 and 10 of the Code has held that the test laid down by the Hon'ble Apex Court with regard to applications by financial creditors under section 7 in M/s. Innoventive Industries Ltd. versus ICICI Bank & Anr. (2018 1 SCC 407) is applicable to Section 10 i.e., the moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it must give notice to the applicant

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to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.

The Hon'ble NCLAT in *Krishna Kraftex Pvt. Ltd. versus HDFC Bank & Ors.* (2018 SCC Online NCLAT 357) set aside the judgment of the Adjudicating Authority which had rejected the application under section 10 on the ground that though the balance sheet of the debtor showed its liability, there was no evidence to show a claim had been lodged with the corporate debtor and was lying unpaid. The Hon'ble NCLAT directed the Adjudicating Authority to admit the application if it was complete.

Letters dated 25 January, 2021, 30 April, 2021 and 09 July, 2021 issued by the Visa Resource calling upon the Corporate Applicant to pay the overdue amount substantiated the fact that the Corporate Applicant has defaulted in the payments of its outstanding dues. Hence, factor 01 is satisfied.

II. **Application** must be complete and Disciplinary **Proceedings** must not be pending against **Interim Resolution Professional** - Section 10 posits that an application may be rejected on two grounds. Firstly, if the application is incomplete i.e. it does not contain 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 approving filing of the application, the information relating to its books of account and such other documents required to be filed in terms of the Code and the relevant rules and regulations, details relating to proposed interim resolution professional etc. However, the Adjudicating Authority shall, before

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rejecting an application, provide 7 days to the applicant to rectify its defects. The second ground for rejection is if any disciplinary proceeding is pending against the proposed resolution professional.

In this regard, reference is made to *Gaja Trustee Company Private Limited & Ors. vs. M/s. Haldia Coke & Chemicals Pvt. Ltd. & Ors.* (2018 SCC Online NCLAT 331), where the Hon'ble NCLAT held that for filing an application praying for initiation of insolvency against another debtor company, the authorisation of the Board of Directors would be sufficient. However, when a debtor company was praying for initiation of insolvency against itself under section 10, then a resolution passed by shareholders would be a mandatory requirement.

It is noted that this Petition is free from defects and complete in all aspects as required under the law. The Petition shows that the Corporate Applicant is in default of a debt that is due and payable, and the default is more than the threshold amount as stipulated under section 4(1) of the Code at the relevant time. The default stands established and there is no reason to deny the admission of the present Petition. The Corporate Applicant has proposed the name of the IRP who has submitted its written consent (section 10(3)(b)).

III. Application not be barred under Section 11 of the Insolvency and Bankruptcy Code, 2016 - Section 11 restricts certain categories of persons from initiating corporate insolvency resolution process i.e. (a) a corporate debtor undergoing a corporate insolvency resolution process; or (b) a corporate debtor having completed corporate

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insolvency resolution process twelve months preceding the date of making of the application; or (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or (d) a corporate debtor in respect of whom a liquidation order has been made.

In *Unigreen Global Private Limited vs. Punjab National Bank and Ors.* (Supra), it was clarified that if any winding up proceeding has been initiated against the corporate debtor by the High Court or Tribunal or liquidation order has been passed, in such case, the application under Section 10 is not maintainable. However, mere pendency of a petition for winding up, where no order of winding up or order of liquidation has been passed, cannot be a ground for rejection. In *Ameya Laboratories Ltd vs. Kotak Mahindra Bank and Ors.* (2017 SCC Online NCLAT 536), the Hon'ble NCLAT has held that when an order for winding up has been passed and subsequently stayed by an appellate authority, but the same is pending against the corporate debtor, the application under section 10 of the Code at the instance of the corporate

There is nothing on record to evince that bar under section 11 of the Code would get attracted.

applicant is not maintainable in view of the bar imposed

IV. The application must be judged only on the basis of the information required under the Code and the accompanying rules and regulations - The Hon'ble NCLAT in Unigreen Global Private Limited vs. Punjab National

under Section 11(d) of the Code.

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Bank and Ors. (Supra) has held that the examination of an application under section 10 must be confined to the record i.e., the information to be provided in the terms of the Code, regulations, rules and form 6 of the Application to Adjudicating Authority Rules, 2016 and extraneous factors need not be considered. Non- disclosure of any fact other than that required as stated aforesaid will not be considered as suppression of facts nor will it amount to the debtor not coming with clean hands except for any disclosure with regard to disqualification under section 11 of the Code. The existence of proceedings under Section 13(4) of the SARFAESI Act, 2002 against the corporate debtor or of a suit against the corporate debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or an appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10 if the application is complete.

In *Gemini Innovations Pvt. Ltd vs. State Bank of India* (2018 SCC Online NCLAT 920), the Hon'ble NCLAT declared that the action of the adjudicating authority in examining the genuineness of the arbitral award on which the debt of the Corporate Debtor was predicated, went beyond the scope of adjudication. The finding that the arbitral award was procured in an unnatural manner and could not be believed was found to be beyond the record i.e. beyond the information required to disclosed and examined in terms of the Code.

In **BCL Homes Ltd. vs Canara Banks & Ors** (2018 SCC Online NCLAT 134), the Hon'ble NCLAT held that the Code, Rules and Regulations do not stipulate that the debtor company has to provide details of the lands sold or assets

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transferred even if the same are transferred to close relatives of the directors of the debtor company prior to the filing of application under Section 10.

In Antrix Diamond Exports Pvt Ltd vs. Bank of India and Ors. (2018 SCC Online NCLAT 33), the adjudicating authority had dismissed the application on the ground that the application was an attempt to scuttle the SARFAESI proceedings and delay the recovery of assets by the creditors. The Hon'ble NCLAT set aside the judgment while holding that the SARFAESI proceedings were an extraneous factor and not required to be disclosed in terms of the Code or form 6. Here, the Corporate Applicant has also filed the Special Resolution passed by shareholders in Extra Ordinary General Meeting dated 23 February, 2022 under section 10(3)(c).

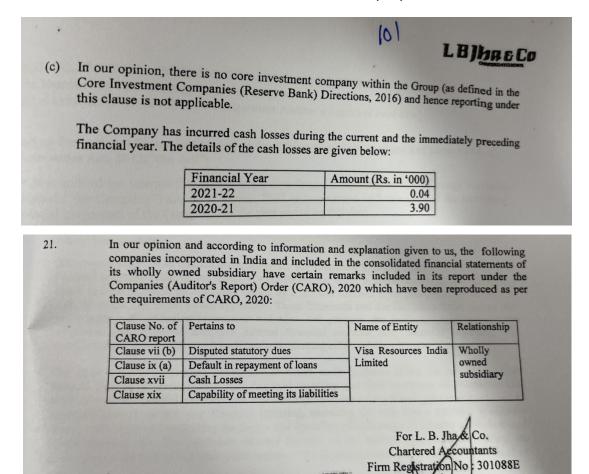
V. The debtor company must not be a profit-making company - In Vyomit Shares Stock & Investments Pvt. Ltd. Vs. Securities and Exchange Board of India (2019 SCC Online NCLAT 287), the Hon'ble NCLAT has held that where an applicant is generating sufficient income and profit, the application filed under section 10 may be rejected on such ground.

The Corporate Applicant has furnished the books of accounts for the relevant period under section 10(3)(a) and prima facie nothing indicates that it is still a profit-making company.

**9.** Further, the Audited Financial Statement for the Financial Year 2021-2022 of the Corporate Applicant, reflects as follows:

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- 10. Therefore, in the light of the facts stated in the application, the evidence placed on record and discussion supra, this Adjudicating Authority admits this Application and orders initiation of CIRP against the Corporate Applicant under the following terms: -
  - (a) The Application bearing *C.P. (I.B) No.* 88KB/2023 filed by the Corporate Applicant under section 10 of the Insolvency & Bankruptcy Code, 2016, is hereby **admitted** for initiating the Corporate Insolvency Resolution Process in respect of Visa Energy Ventures Limited.
  - **(b)** There shall be a moratorium under section 14 of the IBC.
  - (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating

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Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Applicant under section 33 of the IBC, as the case may be.

- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) As per the proposal given by the Corporate Applicant, *Mr. Bishwanath Choudhary (Regn. No.* IBBI/IPA-002/IP-N00597/2018-2019/12042 868) having *email i.d.* choudhary\_bishwanath@rediffmail.com com, is appointed as the IRP for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan.
- Applicant shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the Code. The officers and managers of the Corporate Person 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.
- **(g)** The IRP/RP shall submit to this Adjudicating Authority periodical reports on quarterly basis with regard to the progress of the CIRP in respect of the Corporate Applicant.
- (h) The Corporate Applicant to pay to IRP a sum of **Rs.** 3,00,000/- (**Rupees Three Lakh only**) to meet the initial costs, 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.

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- (i) The Resolution Professional shall conduct CIRP in a timebound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- (j) 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.
- (k) Additionally, the Corporate Person shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Applicant. 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.
- 11. C.P. (I.B) No. 88/KB/2023 to come up on 26.09.2024 for filing the first progress report.
- **12.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

D. Arvind Member (Technical) Bidisha Banerjee Member (Judicial)

The order is signed on 14th Day of August 2024.

Bose, R. K. [LRA]