



**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH,
COURT-I**

CP (IB) No. 582 of 2024

Under Section 10 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority rules, 2016).

In the matter of

Bhagyaodaya Infrastructure Development Limited

CIN: L65990MH1974PLC017178

Having its Registered Office at -

3rd Floor, Orbit Terraces, 64, N.M Joshi Marg,
Lower Parel (W), Mumbai-400013

... Corporate Applicant

Order Delivered on: 27.11.2024

Coram:

Shri. Prabhat Kumar

Justice V. G Bisht

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Corporate Applicant:

Adv Shrey Shah i/b Hudda Associates



ORDER

Per: Prabhat Kumar, Hon'ble Member (Technical)

1. This Company Petition is filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“**IBC Rules**”) by Bhagyaodaya Infrastructure Development Limited (“**Corporate Applicant**”), seeking to initiate its Corporate Insolvency Resolution Process (“**CIRP**”). The said application is being preferred by the Corporate Applicant owing to financial stress faced by it, consequent to which it is not in a position to repay the debts due to its creditors.

Brief Facts of the case

2. The Corporate Applicant is a Public Limited company incorporated on 06.02.1974 after the name Bhagyoday Investment Company Limited which later got its name changed to Bhagyodaya Marketing Company Limited and then to Bhagyodaya Infrastructure Development Limited under Companies Act, 1956. Its Corporate Identity Number (“**CIN**”) is L65990MH1974PLC017178. Its registered office is at 3rd Floor, Orbit Terraces, 64, N.M Joshi Marg, Lower Parel (W), Mumbai-400013. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Corporate Applicant is engaged in the business of construction of real estate infrastructure projects in India or elsewhere, on its own and/or through others and/or in association of others.
4. The Corporate Applicant submits that the Company has been incurring losses and is not in a position to pay off its creditors. There are Secured Financial Creditors Unsecured Financial Creditors and Operational Creditors in the Corporate Applicant. The total debt amounting to default is Rs. 19,59,03,555/- (Rupees Nineteen Crores, Fifty-Nine Lakhs, Three Thousand, Five Hundred and Fifty Only).
5. The Corporate Applicant submits that it has secured various credit facilities, including cash credits, term loans, letters of credit, and other facilities, as agreed from



time to time with the Financial Creditor. These facilities are secured by the hypothecation of the Corporate Applicant's goods, movable assets, machinery, and other properties, including but not limited to, title deeds, contracts, engagements, securities, and the invocation of both a personal guarantee by Shri Ravi Kiran Aggrawal and a corporate guarantee from M/s Orbit Corporation Ltd vide guarantee agreements on specific dates of availing the facility, all in accordance with the terms and conditions specified by the Financial Creditor.

6. The Corporate Applicant submits that the as per the Letter of agreements dated 14.07.2010, 26.08.2011 and 24.12.2012 the Corporate Applicant has availed Working capital and/ or Term Loan facilities against the collaterals such as Agreement of Loan cum hypothecation, Guarantee Agreement of Corporate Guarantor, Guarantee Agreement of Personal Guarantor and Supplemental Agreement of Loan cum hypothecation on multiple dates ranging from 11.07.2024 to 24.12.2012. The guarantee has also been invoked as per the Guarantee agreements dated 11.07.2024 and 26.08.2011 for the aforementioned facility.
7. It is submitted by the Corporate Applicant that due to the hostile business environment and economic circumstances, the Corporate Applicant was unable to repay the outstanding amounts to the Financial creditors amounting to Rs.16,46,22,232/- and Operational creditors amounting to Rs. 3,12,81,323/- making a default in repayment of debt over years, as stated in the Part IV of the Application. The Corporate Applicant further submits that the total debt due to the Secured Financial Creditors, as per details given in the application, is as follows:

Sr. No.	Name of the Financial Creditor of the Corporate Applicant	Debt Amount (In Rupees)
1.	SBI-TL (C&I) Corporate-32802459338	5,38,47,620
2.	SBI -TL Funded Interest- 32728769110	1,28,38,347
3.	State Bank of India A/c- 31278873587	6,46,83,609
	Total	13,71,69,576



8. The Corporate Applicant submits that the total debt due to the unsecured Financial Creditors is as follows:

Sr. No.	Name of the Financial Creditor of the Corporate Applicant	Debt Amount (In Rupees)
1.	Orbit Corporation Limited (Under Liquidation)	3,32,52,656
	Total	3,32,52,656

9. The debt fell due on various occasions and default occurred. The Corporate Person has produced Provisional Balance Sheet as on 31.03.2024. It is seen that revenue from operations of the Corporate Applicant is NIL as on 31.03.2024 showing that the Corporate Applicant is unable to pay the debt.
10. This Tribunal had directed the Corporate Applicant, vide Order dated 20.08.2024 to place on record the affidavit of the Board of Directors of the Company, stating that they will extend full cooperation in the event the Company Petition is admitted and will provide all required information and documents, including the books of account of the Corporate Debtor and they will make the necessary arrangements to fund the CIRP. The Corporate Applicant has complied with the said directions and the same was taken on record vide Order dated 19.09.2024.
11. On 19.09.2024, the counsel for Financial creditor, State Bank of India had appeared seeking liberty to file their Vakalatnama and raise objections, however on the next hearing that is on 14.10.2024, none appeared on their behalf. Later, on 11.11.2024, the counsel for Financial creditor, State Bank of India had appeared and made a statement that the *“State Bank of India has no objections, if this Petition is admitted and CIRP is initiated against the Corporate Applicant.”*

**Statutory Compliances**

12. The Corporate Applicant has enclosed a copy of Resolution passed by the Board of Directors at the meeting held on 30.04.2024 for initiating Corporate Insolvency Resolution Process u/s 10 of the Code.

"RESOLVED THAT pursuant to the provisions of section 10 of Insolvency Bankruptcy Code, 2016 (hereinafter referred as "IBC"), and other applicable provisions of IBC and in accordance with the Memorandum and Articles of Association of the Company and such other competent authority(ies) as may be applicable and with the consent of the shareholders and Board of the Directors be and is hereby accorded to initiate corporate insolvency resolution process by filing the application under the aforesaid section of IBC and as per other applicable terms and conditions mentioned in the section and as placed before the Board...."

13. The Board of Directors of the Corporate Applicant in the aforesaid meeting had also authorized Mr. Mahendra Kumar Bholan Yadav (DIN: 02140240), Director of the Company, to file necessary application under the Code before the Tribunal.
14. Further, the Corporate Applicant has also enclosed the Audited Financial Statements for the years 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-22, 2022-2023. The Corporate Applicant has also enclosed the Provisional Balance Sheet as on 31.03.2024.
15. The Corporate Applicant has suggested the name of Mr. Vimal Kumar Agrawal having Registration no. IBB/IPA: 001/IPA-P00741/ 2017-18/11247 for appointment as the Interim Resolution Professional ("IRP"). The proposed IRP has also submitted his Consent in Form 2 confirming eligibility and that there are no disciplinary proceedings pending against him.
16. This application is filed as per Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 in Form-6. Required information is also furnished therein.



17. This application was filed on 07.04.2024 and there are multiple dates given as the date of debt incurred by the Corporate Applicant. However, the financial statement placed on record acknowledges the existence of debt and the default therein. Hence, the application falls within the limitation period of three years.
18. After hearing the submissions and upon perusing the supporting documents annexed with the Petition, this Bench is of the view that the application made by the Corporate Applicant is complete in all respects as required by law. It clearly shows that the Corporate Applicant is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority **admits** this Petition and orders initiation of CIRP against the Corporate Applicant.
19. Hence, the above CP (IB) No. 582 of 2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against.
20. There shall be a moratorium under Section 14 of the IBC, in regard to the following:
- i. *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;*
 - ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
 - iii. *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 (SARFAESI) Act, 2002;*
 - iv. *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

Notwithstanding the above, during the period of moratorium: -



- i. *The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;*
- ii. *That the provisions of Sub-Section (1) of Section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;*

21. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
22. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
23. **Mr. Vimal Kumar Agrawal** having Registration no. **IBB/IPA: 001/IPA-P00741/2017-18/11247**, having registered address at C-4, Ground Floor, Shanti Jyot Co-op. Hsg. Society, Balaji Nagar, Bhayandar (West), Thane-401101. Email Id: office@vpagrawal.in, is hereby appointed as the IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
24. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – 1

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25. The Registry is directed to communicate this Order to the Corporate Applicant and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
26. A copy of this Order be sent to the Registrar of Companies, Mumbai, Maharashtra, 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.

Sd/-

Prabhat Kumar
Member (Technical)

/JJ/

Sd/-

Justice V.G Bisht
Member (Judicial)