IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT-III

IB - 231/ND/2024

Order 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:

M/s. ADVANCE RECYCLING SOLUTIONS LLP

LLPIN: -AAM-9268

Having its registered office: -

Khasra No. 71/6/2 & 72/10/1/2, Swaran Park Industrial Area,

Mundka, North West, Delhi, India- 110041

Through its Partner:

Mr. Rohit Gidwani

..... Corporate Applicant/Debtor

Order Pronounced On: 19.11.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL) SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant: Mr. Varun Sharma, Mr. Akhil B. Kukreja, Ms. Sanchita Chamoli Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This is an application filed by M/s. Advance Recycling Solutions LLP, through its Partner, Mr. Rohit Gidwani, the Corporate Applicant under Section 10 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking to initiate Corporate Insolvency Resolution Process (CIRP).

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- 2. The Corporate Applicant was incorporated on 05.07.2018 as a Limited Liability Partnership under the name and style of "Advance Recycling Solutions LLP". The Corporate Applicant's registered office is situated in Delhi and therefore, the LLP was registered with ROC, Delhi. Since, the registered office of the Corporate Applicant is situated in Delhi, this Hon'ble Tribunal has the jurisdiction to adjudicate the present Application.
- 3. The Corporate Applicant comprises two designated partners, namely, Mr. Rohit Gidwani and Mrs. Pooja Sharma, each holding a 50% shareholding. Presently, the Corporate Applicant conducts its operations from its registered office situated at Khasra No. 71/6/2 & 72/10/1/2, Swaran Park Industrial Area, Mundka, North West, Delhi, India-110041.
- 4. The business activities of the Corporate Applicant encompass the manufacturing and trading of machinery and equipment of diverse types and descriptions, notably machine tools and implements. Specifically, the Corporate Applicant engages in the manufacture, production, repair, alteration, conversion, reconditioning, preparation for sale, purchase, sale, hiring, importation, exportation, leasing, trading, and dealing of machine tools and implements, alongside other machinery, plant equipment, articles, apparatus, appliances, component parts, accessories, fittings, and related items at various stages or degrees of manufacture and process.
- 5. The Corporate Applicant, after having incurred huge losses, resulting in complete erosion of its net worth, has filed the present Application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") for revival of its business operations. On account of huge losses and erosion of net worth, the Corporate Applicant is facing acute shortage of working capital funds to meet its operating expenses which has led to defaults in payment of its financial as well as operational debts.
- 6. For the purpose of this Application, the Corporate Applicant has identified an aggregate operational debt of Rs. 3,20,51,601/- (Rupees Three Crores Twenty Lacs Fifty-One Thousand Six Hundred and One Only) for the period from 01.04.2023 to 31.03.2024, along with an aggregate financial debt of Rs. 1,51,68,743/- (Rupees One Crore Fifty-One Lacs Sixty-Eight Thousand Seven Hundred and Forty-Three Only) for the same period.

- 7. In view of mounting operational and financial debt, the Corporate Applicant is facing difficulty in sustaining its business operations and has therefore filed this present Application to resolve its debts and to revive itself into a sustainable enterprise. The Corporate Applicant, through a special resolution passed on 02.04.2024, unanimously decided to pursue the resolution process under Section 10 of the IBC.
- 8. The said operational debt comprises of:
- (i) Account Ledgers maintained by the Corporate Applicant of the creditors; and
- (ii) Demand Notices received from some of the Creditors.
- 9. The said financial debt comprises of:
- (i) Comprehensive Loan Account documents from HDFC Bank; and
- (ii) Detailed Loan Account Statements issued by HDFC Bank.
- 10. The total outstanding debt of the Corporate Debtor as on the date of filing of the present Application amounts to Rs. 4,72,20,344/- (Rupees Four Crore Seventy-Two Lacs Twenty Thousand Three Hundred and Forty-Four Only).
- 11. It is submitted that, for the purposes of the present Application, the calculation of both the operational and financial debts have been conducted for the period spanning from 01.04.2023 to 31.03.2024. However, in accordance with the provisions delineated under Section 10 of the IBC, it is mandated that a statement of affairs of the Corporate Applicant be compiled up to a date not preceding 14 days from the date of the Application.
- 12. The Corporate Applicant, within the initial eighteen months subsequent to its incorporation on 05.07.2018, experienced substantial growth in its business endeavors and secured contracts from diverse clientele.
- 13. However, thereafter, the Corporate Applicant encountered significant setbacks attributable to various economic and commercial factors, culminating in a net loss amounting to Rs. 5,38,41,037/- (Rupees Five Crores Thirty-Eight Lacs Forty-One Thousand and Thirty-Seven Only) for the fiscal year concluding on 31.03.2024. During the preceding financial year of 2023-24, the Corporate Applicant incurred considerable losses, a trend anticipated to persist should the Corporate Applicant persist in its operations as an "ongoing concern.".

- 14. In view of the shortage of working capital funds and increasing operational costs, the Corporate Applicant is unable to discharge its statutory and contractual obligations and has accumulated operational as well as financial debt which it is unable to resolve on its own. Through this present Application, the Corporate Applicant seeks resolution of the operational as well as financial debt such that the Corporate Applicant could revive itself so as to benefit the creditors of the Corporate Applicant. The funds available with the Corporate Applicant are barely sufficient to pay the salaries of the employees and fixed costs required to ensure continuity of Corporate Applicant as on-going concern basis. The acute shortage of funds has created a deficit in availability of working capital funds and the Corporate Applicant is in default with respect to payment of its operational and financial debt.
- 15. The reasons for accumulation of operational and financial debt are as follows:
- (i) The Corporate Applicant is facing challenges in carrying on business Corporate Applicant on a "going concern basis". The revenues from the operations have not been sufficient to meet the expenses of the Corporate Applicant. As on 31.03.2024, the Corporate Applicant recorded a net revenue of Rs. 7,74,67,357/- (Rupees Seven Crores Seventy-Four Lacs Sixty-Seven Thousand Three Hundred and Fifty-Seven Only), however, the same was not enough match the net expenses of the Corporate Applicant, which came to Rs. 13,13,08,394/- (Rupees Thirteen Crores Thirteen Lacs Eight Thousand Three Hundred and Ninety-Four Only). The Corporate Applicant incurred a net loss of Rs.5,38,41,037/- (Rupees Five Crores Thirty-Eight Lacs Forty-One Thousand and Thirty-Seven Only) has been recorded in Corporate Applicant's Provisional Statement of Profit and Loss for the year ended on 31.03.2024.
- (ii) The net amount of assets which is inclusive of non-current asset including Property, Plant and Equipment & Intangible Assets as well as Current Assets including Inventories, Trade receivables, Cash and Cash Equivalent, Short Term Loan & Advances and Other current Assets of the Corporate Applicant as on 31.03.2024 are worth only Rs. 2,04,77,202/- which is totally insufficient to pay off the regular day to day operational expenses, let alone the accumulated operational debt of Rs. 3,20,51,601/-, as well as the financial debt of Rs. 1,51,68,743/-.

16. Though the Corporate Applicant is making earnest efforts to continue the business operations and making earnest endeavors to pay for its employees and manage its fixed costs, the Corporate Applicant is voluntarily filing an Application under Section 10 IBC to seek resolution of the Corporate Applicant with the intent to revive itself to the benefit of all its employees, creditors and stakeholders. The present Application is in line with the objective of the IBC which lay emphasis on resolution of stressed assets so as to revive them such that the resources are mobilized in most efficient manner which would in turn benefit all the direct and indirect stakeholders and creditors.

17. Analysis and Findings

- **i.** We have heard the Ld. Counsel for the Corporate Applicant and perused the documents submitted by him.
- ii. The Ld. Counsel for the Corporate Applicant submitted that the Corporate Applicant, which was incorporated on 05.07.2018, initially experienced significant growth in its business operations and secured contracts from a diverse clientele. However, it subsequently encountered substantial setbacks due to various economic and commercial challenges, resulting in a net loss of Rs. 5,38,41,037/- (Rupees Five Crores Thirty-Eight Lacs Forty-One Thousand and Thirty-Seven Only) for the financial year ending on 31.03.2024. The Corporate Applicant is facing severe financial distress and is unable to continue its business operations on a "going concern" basis.
- iii. On perusal of the provisional Financial Statement of Profit and Loss of the Corporate Debtor for the year ending on 31.03.2024, it is observed that the revenues generated from the Corporate Applicant's business operations are insufficient to meet its operational expenses. It is pertinent to state that as of 31.03.2024, the Corporate Applicant recorded net revenue of Rs. 7,74,67,357/- (Rupees Seven Crores Seventy-Four Lacs Sixty-Seven Thousand Three Hundred and Fifty-Seven Only), whereas the total expenses amounted to Rs. 13,13,08,394/- (Rupees Thirteen Crores Thirteen Lacs Eight Thousand Three Hundred and Ninety-Four Only). Consequently, the Corporate Applicant incurred a net loss of Rs. 5,38,41,037/- (Rupees Five Crores Thirty-Eight Lacs Forty-One Thousand and Thirty-Seven Only).

- iv. This Adjudicating Authority vide Order dated 08.05.2024 and 28.05.2024 directed the Ld. Counsel to serve notice along with a copy of the application on the HDFC Bank by all modes and file proof and affidavit of service within one week and granted The HDFC Bank one week time to file its reply affidavit.
- **v.** However, even after the service of notice to HDFC Bank, the Court Officer also sent E-notice to the HDFC Bank vide E-mail dated 22.07.2024. No one appeared on behalf of the HDFC Bank even after the service of notice being complete. Despite repeated opportunities given to HDFC Bank, the sole Financial Creditor of the Corporate Applicant, none appeared on behalf of the Bank and no reply affidavit has been filed by the Bank.
- **vi.** The Corporate Applicant in compliance with Order dated 06.08.2024, filed additional documents including a copy of the Master Facility Agreement dated 06.03.2021 executed between the Financial Creditor/HDFC Bank Limited and the Corporate Applicant. Copy of the Sanction Letters dated 06.03.2021, 01.02.2023 and 16.04.2024 were also attached.
- vii. The Ld. Counsel for the Corporate Applicant submitted that although the Petitioner has served notice and a copy of the application upon HDFC Bank Limited as directed by this Hon'ble Tribunal, it is pertinent to submit that under the statutory scheme of the IBC, there is no mandatory requirement for this Hon'ble Tribunal to issue notice to the creditors of the Corporate Applicant, such as HDFC Bank Limited in the present case. This view has been affirmed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in SBMC Aviation Capital Limited v. IRP of Go Airlines (India) Limited, 2023 SCC OnLine NCLAT 230, wherein the Hon'ble NCLAT observed:

"17. The above judgment of this Tribunal does make it clear that in facts of each case, it is for the Adjudicating Authority to take a decision as to whether time is to be granted to any objector or intervenor in a proceeding and the above judgment does not hold in any manner that as and when any objector comes before the Adjudicating Authority in a proceeding, as a matter of right, he has to be given opportunity to file his objection to the proceeding. The Adjudicating Authority has to take a decision on case-to-case basis.

- 18. The present is a case where Application under Section 10 was filed on 02.05.2022 and on 04.05.2022 it came for hearing. The learned Counsel for the Appellant had appeared and was head by the Adjudicating Authority. The Adjudicating Authority however took a view that it was open for the objector to file an Application under Section 65 even after admission of Section 10 Application.
- 19. As noted above, since the statutory Scheme does not contain any obligation of issuing notice to the creditors by the Corporate Applicant, any objector appearing at the time of hearing has to be heard and the objection may be noted by the Adjudicating Authority and thereafter the appropriate decision can be taken.

We, thus, conclude that the mere fact that no notice was issued to the creditors or any opportunity was given to the objectors before proceeding to hear, the Corporate Applicant, cannot be held to vitiate any procedure or violating the principles of natural justice, more so when objectors were heard by the Adjudicating Authority."

- viii. In light of the foregoing case, we are of the considered view in the event any objector or creditor to an application under Section 10 of the IBC files objections before this Adjudicating Authority, it must consider such objections while adjudicating the application. However, in the absence of any objector, this Adjudicating Authority is not under any obligation to issue notices to such objectors or creditors. Therefore, the failure to appear before this Hon'ble Tribunal should not hinder the present proceedings.
 - Authority has the jurisdiction to adjudicate upon the instant application, which has been filed by a Limited Liability Partnership (LLP), seeking initiation of the Corporate Insolvency Resolution Process (CIRP). This is because Section 10 of the IBC allows for an application to be initiated by a "corporate applicant." As per the definition provided under Section 3(7) of the IBC, the term "corporate applicant" not only includes a company as defined in clause (20) of section 2 of the Companies Act, 2013 but also encompasses a Limited Liability Partnership as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008.

x. Further, placing reliance on the finding of the Hon'ble NCLAT in the case of M/s. Unigreen Global Pvt Ltd. Vs. Punjab National Bank, 2017 SCC Online NCLAT 610 wherein it was held that:

"20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Sub-section (4) of section 7 is similar to that of Sub-section (4) of section 10. Therefore we, hold that the law laid down by the Hon'ble Supreme Court in "Innoventive Industries Ltd. (Supra) is applicable for Section 10 also, wherein the Hon'ble Supreme Court observed as "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 may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority".

It is therefore clear that once the Corporate Applicant has proved that it is in default in respect of the debts due and payable, the application is required to be admitted. Considering the submissions made and documents placed on record, we find that the debt is due and payable by the Corporate Applicant to Operational Creditors.

xi. The Corporate Applicant has filed a list of Operational Creditors along with the respective amounts due to them. A copy of Demand Notices received from the Operational Creditors is also attached with the present petition.

xii. An Affidavit dated 17.04.2024 has been filed under Section 65B of the Evidence Act, 1872 by Mr. Rohit Gidwani, Designated Partner of the Corporate Applicant stating that "the information contained in the computer print known as the Ledger Account/ Loan Account Statements have been taken from my personal laptop, i.e., Apple MacBook" and the same has been taken on record.

xiii. The application is free from defects and complete in all aspects as required under the law. The Application 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.

xiv. We hold that the default stands established and there is no reason to deny the admission of the present application. The present application is made bona fide and not to defraud the creditors. Hence, we are inclined to admit

this application.

18. Order

In light of the above facts and circumstances, it is ordered as follows:-

i. The Application bearing IB-231/ND/2024 filed by the Corporate Applicant

under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or

"Code") r/w Rule 7 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), in

respect of M/s. Advance Recycling Solutions LLP, the Corporate Applicant

is admitted.

ii. We also declare a moratorium in terms of Section 14 of the Code. The

necessary consequences of imposing the moratorium flows from the

provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following

prohibitions are imposed:

"(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 assets 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;

(d) The recovery of any property by an owner or lessor, where such

property is occupied by or in the 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 licence, permit, registration, quota, concession, clearance 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;]"

- iii. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- iv. As per the proposal given by the Corporate Applicant, Mr. AMIT OJHA (Registration No. IBBI/IPA-002/IP-N01005/2020-2021/13275) is appointed as the IRP for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan. The Written Consent in Form-2 dated 17.04.2024 and the Registration Certificate of the proposed IRP which is filed along with the Application. The ICSI Institute of Insolvency Professionals had issued the Authorization for Assignment dated 04.12.2023 which is valid from 04.12.2023 to 03.12.2024 which is filed along with the Application.
- **v.** We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to the admission of this application under Section 10 of the Insolvency & Bankruptcy Code, 2016.

- vi. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the exmanagement or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing a appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
- **vii.** The IRP/RP shall submit to this Adjudicating Authority periodical reports on a quarterly basis with regard to the progress of the CIRP in respect of the Corporate Applicant.
- **viii.** The Corporate Applicant to pay to IRP a sum of Rs.2,00,000/- (Rupees Two 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.
 - **ix.** The IRP/RP shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - **x.** Additionally, the Corporate Applicant shall serve a copy of this Order on the IRP and on the Registrar of Companies, Delhi 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.

xi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

-Sd-

-Sd-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)