

**THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**AT NEW DELHI**

**Company Petition No. (IB)-940 (ND)/2018**

**Under Section 10 of the Insolvency and Bankruptcy Code, 2016**

In the matter of:

M/s Astonfield Solar (Gujarat) Private Limited

.....Applicant/ Corporate Debtor

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

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| <b>For the Petitioner(s)</b> | Mr. Sumit Pahwa, Advocate<br>Mr. Varun Sharma, Advocate |
| <b>For the Respondent(s)</b> | Mr. Ashish Rana, Advocate                               |

**Judgment delivered on: 20.11.2018**

**ORDER**

**Per Ms. Ina Malhotra, Member (J)**

1. This is an application filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for brevity the 'Code') read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules') for initiation of Corporate Insolvency Resolution Process in respect of the applicant company itself.

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2. The Applicant company, 'M/s Astonefield Solar (Gujarat) Private Limited was incorporated on 10.11.2008 under the companies Act, 1956 bearing CIN No. U40106 DL2008 PTC227040. The Applicant Company has its registered at 311 B/C/D, South Court Saket, New-Delhi-110017 within the territorial jurisdiction of this Tribunal.
3. The present application has been filed by the applicant company, pursuant to a Board Resolution dated 25<sup>th</sup> July, 2018 for commencement of Corporate Insolvency Resolution Process *inter alia* on the ground to overcome the distress situation and also to restructure by way of adopting the corporate insolvency resolution process under the Code.
4. As per averments, the corporate debtor set up a solar generation plant at Nayaka in District Patan in Gujarat and commenced its operations in December, 2012. Due to heavy rainfall in July, 2015, severe damage was faced by the plant causing shut down for 2 months. They lodged a claim with the insurance company for business loss and property damage and the insurance company made a total settlement of Rs. 10,04,91,971/-.
5. As per the averments, the applicant company had availed various finance assistance from Export-Import Bank of India, but due

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to operational damage it had become difficult for the corporate Debtor to repay its loans, as per schedule agreed upon for availing financial assistance.

6. On January, 30 2018, the Corporate Applicant met with the representatives of the Export-Import Bank and PFC to put forward a restructuring proposal for the repayment of loans. However, they could not arrive at an possible agreement. The plant which was merely operating at 15% of its total capacity generated only a nominal revenue, insufficient to meet the liabilities of the Corporate Debtor.

7. The Loan account maintained with Exim Bank turned sticky, and the account of the applicant was declared as a Non-Performing Asset (NPA) vide letter dated 4<sup>th</sup> May, 2018.

Exim Bank vide its mail dated 31<sup>st</sup> May, 2018, informed the corporate Debtor that on 17<sup>th</sup> May, 2018 they had crystallized the loan liability from foreign currency to Indian rupees.

8. There is no dispute that the applicant company has admittedly committed default which is much more than the minimum amount of default of Rupees one lakh fixed under Section 4 of the Code and therefore is entitled to file the present application in terms of sub section (1) of Section 10 of the Code. The Corporate Debtor is desirous of implementing a debt restructuring plan.

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9. The Applicant has affirmed that corporate applicant is not disqualified in terms of provisions of Section 11 of the Code to file and maintain their prayer under Section 10 of the Code. The affidavit further confirms that no CIRP has ever been initiated nor any liquidation order or winding up order made against them.
10. In compliance of the requirements of Section 10 (3) (a) of the Code read with Annex-V of Form 6 of the Rules, the applicant company has filed copies of audited financial statements of the Corporate Debtor for the financial years i.e. 2015-16 to 2017-18 and provisional statements from April 1, 2018 to July 15, 2018.
11. Further in compliance of Section 10 (3) (b) of the Code the applicant has proposed the name of Mr. Gurpreet Singh, registration no. IBBI/IPA-001/IP-N00475 /2017-2018/11384 as the Interim Resolution Professional. The applicant company has obtained a written communication in Form-2 from the Insolvency Professional for appointment as an IRP. In the Form-2 filed along with the application it has been affirmed by the Proposed IRP that he is a registered Insolvency Professional and qualified to practice as an Insolvency Professional. Further it has been affirmed that there are no disciplinary proceedings pending against the proposed IRP.
12. In view of the above it is clear that a default has occurred and the present application under Section 10 is complete and that the



applicant is not ineligible under Section 11 of the Code. Further all requirements prescribed under sub-section 3 (a) and (b) of Section 10 of the Code have also been complied with.

13. The Corporate Debtor has also placed on record a special resolution passed by the shareholders, ratifying the decision to file the present petition in terms of the amended provisions of Sec 10. The particulars of the debt owed by the Corporate Debtor, with amounts due to each of them have also been furnished.

14. The Insolvency and Bankruptcy Code, 2016 is a complete Code in itself. The provisions of the Code are to be mandatorily followed. Adherence to the statutory requirements has to be in toto. Section 10 (4) (a) of the Code mandates the Adjudicating Authority to admit the application if it is complete. When the language of the Code is clear and explicit, the Adjudicating Authority must give effect to it, whatever be the consequences.

15. In view of the above, we are satisfied that the present application is complete and that the applicant corporate debtor has committed a default. Therefore, as the application is complete the present petition is Admitted.



16. A moratorium in terms of section 14 of the Code is being issued prohibiting the following:

- *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;*
- *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- *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 Act, 2002;*
- *recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

It is further directed that:

- *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.*
- *The provisions of sub-section (1) of section 14 of the Code shall not apply to such transactions as may be notified by*




*the Central Government in consultation with any financial sector regulator.*

17. As proposed, Mr. Gurpreet Singh, registration no. IBBI/IPA-001/IP-N00475 /2017-2018/11384 is appointed as the Interim Resolution Professional, who shall take statutory steps as envisaged under Section 15, 17 and 18 of the Code. The IRP is directed to submit his interim report. A part from publication, she shall also issue notices to all creditors as reflected in the records of the Corporate Debtor.

18. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process as per sub-section (4) of Section 14 of the Code.

Let the copy of the order be supplied to the parties including the interim resolution professional.

19. Be listed on 4<sup>th</sup> January, 2019 for further proceedings.

  
**Ina Malhotra**  
**Member (J)**