

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER**

**SHRI VELAMUR G. VENKATA CHALAPATHY,  
HON'BLE TECHNICAL MEMBER**

**IA No. 150/JPR/2024**  
**& CP No. (IB)- 74/10/JPR/2023**

**IN THE MATTER OF:**

**SIMNA EXIM INDIA PRIVATE LIMITED**

**...Corporate Debtor/ Applicant**

**VERSUS**

**BANK OF BARODA**

**...Respondent/ Creditor**

**MEMO OF PARTIES**

**SIMNA EXIM INDIA PRIVATE LIMITED**

S-15, RIICO Industrial Area,  
Bhilwara- 311001 (Rajasthan)

**...Corporate Debtor/ Applicant**

**VERSUS**

**BANK OF BARODA**

R. C. Vyas Colony Branch,  
Bhilwara- 311001 (Rajasthan)

**...Respondent/ Creditor**

**AND IN THE MATTER OF:**

**IA No. 150/JPR/2024**

**MEMO OF PARTIES**

**BANK OF BARODA**

R. C. Vyas Colony Branch,  
Bhilwara- 311001 (Rajasthan)

**IA No. 150/JPR/2024**  
**& CP No. (IB)- 74/10/JPR/2023**

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**Also At:**

ROSARB Branch, 13, Airport  
Plaza, Durgapura, Jaipur-  
302018 (Rajasthan)

...Applicant

**VERSUS****SIMNA EXIM INDIA PRIVATE LIMITED**

S-15, RIICO Industrial Area,  
Bhilwara- 311001 (Rajasthan)

...Respondent

For the Applicant : Nitesh Shrivastava, Adv.  
For the Respondent : Shivangshu Naval, Adv.  
Akanksha Noval, Adv.

**Order Pronounced On: 18.12.2024****ORDER****Per: Shri Deep Chandra Joshi, Judicial Member**

1. The instant Application is filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') for initiation of Corporate Insolvency Resolution Process ('CIRP') in respect of *M/s Simna Exim India Pvt. Ltd.*, the Corporate Debtor being the Applicant Company itself. The instant Application is filed through its director, *Mr. Imtiyaz Ali Quazi*, who has been authorized vide Board Resolution dated 10.11.2023.
2. The Applicant, '*M/s Simna Exim India Private Limited*', is a company incorporated under the provisions of the Companies Act, 2013 on 25.04.2013 bearing CIN U14200RJ2013PTC042248. The registered office

*IA No. 150/JPR/2024*  
& *CP No. (IB)- 74/10/JPR/2023*

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of the Applicant company is situated at S-15, RICCO Industrial Area, Bhilwara- 311001 (Rajasthan). The Company has authorized share capital of Rs. 21,00,000/- (Rupees Twenty- One Lakhs Only) and paid-up share capital of Rs. 1,00,000/- (Rupees One Lakh Only).

3. The Applicant has submitted that the Company was operating as a going concern and was engaged in the business of Metals and Minerals products. The company intended to expand its business in the year 2013-14 and therefore, availed term loan facilities amounting to Rs. 76 lakhs and working capital facilities amounting to Rs. 45 lakhs from the Bank of Baroda ('BoB'/'Bank') vide loan cum hypothecation agreement dated 05.07.2013.
4. Owing to its rapid growth in business, the Applicant Company renewed the existing credit facilities from Rs. 45 lakhs to Rs. 90 lakhs vide supplemental loan cum hypothecation agreement dated 21.05.2018. In addition to the existing financial facilities and to obtain liquidity support after being affected by COVID- 19 pandemic, the Applicant Company further availed a working financial facility under BGECLS 3.0 Extension scheme amounting to Rs. 27 lakhs from the BoB vide loan cum hypothecation agreement dated 21.12.2021.
5. Due to COVID- 19, the Applicant Company had incurred heavy losses. Later, due to unavailability of funds with the company, the account of the Corporate Debtor was classified as NPA on 30.06.2023. The recovery

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proceedings were initiated by the BoB due to continuous default in the repayment of the instalment/ interest/ principal debt in existing financial facility by the Applicant company. The Bank has issued a notice under Section 13(2) of the SARFAESI Act, 2002 on 17.08.2023 and directed the Company to repay a sum of Rs. 1.20 crores within 60 days from the receipt of such notice. Thereafter, the Applicant company sent a letter on 14.10.2023 to recall the notice dated 17.08.2023 and not to take any action.

6. Further, the Applicant company received a letter dated 27.10.2023 from BoB stating that reply under reference dated 14.10.2023 is rejected and further requesting the Applicant company not to take any legal steps against the Bank and to repay the entire dues with interest. The Applicant company is not a going concern anymore since 2022-23 the business operations have been stopped and the directors are trying to settle the existing defaults.
7. The Applicant company by way of special resolution passed in the EGM held on 07.11.2023 sought consent of its members/ shareholders to initiate Corporate Insolvency Resolution Process ('CIRP') in accordance with IBC, 2016. The Board of Directors of the Corporate Debtor in its Board meeting dated 10.11.2023 after considering the financial position of the Corporate Debtor and defaults committed by the Applicant, have sought initiation of CIRP and preferred the present Application under Section 10 of the Code, 2016.

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8. The Applicant has annexed particulars of Financial Creditor/ Operational Creditor in Part III of Form-6 of the Application. The Applicant has submitted that as per the Part-III of the Application, the total amount of default of the Company is Rs. 1,20,99,319.91/- (Rs. One Crore Twenty Lakhs Ninety- Nine Thousand Three Hundred Nineteen and Ninety- One Paisa Only) of the BoB, Financial Creditor as on 17.08.2023.
9. The Applicant has filed an Affidavit of Service vide Diary No. 42/2024 dated 03.01.2024 in compliance of the Order dated 20.12.2023. Thereafter the BoB has filed its reply vide Dairy No. 2100/2024 dated 30.08.2024 wherein, stated the following:

9.1 The Application filed by the Applicant under Section 10 of the IBC is completely bereft of merit and is without any basis and is utterly misleading, misconceived and thus, deserves to be dismissed in limine. It is apparent that the Corporate Debtor has not approached this Adjudicating Authority with clean hands and has knowingly and deliberately suppressed and concealed material facts to mislead this Adjudicating Authority and obtain reliefs from it in an oblique manner. The Corporate Debtor has diverted the loan amount sanctioned to it by the Respondent Bank by transferring the same into personal accounts of the directors, its sister concern and guarantors. The captioned Petition is a blatant attempt of the promoters- directors of the Corporate

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Debtor conspiring to play fraud upon this Adjudicating Authority as well as the Respondent Bank with the sole intention of derailing, stalling and frustrating the Respondent Bank's recovery process under the SARFAESI Act, 2002.

- 9.2 It is humbly submitted that the Respondent Bank is a secured creditor and the sole financial creditor as per the books of accounts maintained by the Corporate Debtor. The total outstanding amount legally due and payable to the Respondent Bank by the Corporate Debtor as on 13.08.2023 was Rs. 1,20,99,319/- (Rupees One Crore Twenty Lakh Ninety-Nine Thousand Three Hundred Nineteen only) along with future interest at the contractual rate on the aforesaid amount together with incidental expenses, cost, charges etc.
- 9.3 On 05.07.2013, the Respondent Bank, having its branch at RC Vyas Colony, Bhilwara Branch had granted various credit facilities (loan) of Rs. 1,21,00,000/- (Cash Credit Facility of Rs. 45,00,000/- and Term loan of Rs. 76,00,000/-) to the Corporate Debtor. The said loan account of the Corporate Debtor has been transferred to Bank of Baroda, ROSARB Branch, Jaipur. It is submitted that the said term loan was granted for the purpose of purchasing plant and machinery and other miscellaneous fixed assets and for installing new plant and machinery. Cash Credit facility was granted for the purpose of meeting working

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capital requirement.

In order to secure the timely repayment of the said credit facility(s) credit, the Corporate Debtor had inter alia created charge over the following:

**a. Primary Security:**

- Hypothecation of Stock & Book Debts
- First charge over entire Fixed Assets of the company including Equitable Mortgage over of factory & building situated at plot Araji no. 1940,1941,1942 (measuring 2530.00 Sq mts. 1940/1 & 1941/1 (measuring 2530 Sy mtrs) Near Bera Chouraha Balesariya Road, village-Bera, Banera, Bhilwara

**b. Collateral Securities**

- Equitable mortgage of Residential house admeasuring 860.00 Sq ft. situated at LIG Quarter, Plot No. A-13, Bhopalpura (Shastri Nagar), Bhilwara standing in the name of Smt. Shahnaz Banu W/o Sh. Ikhtiyar Ali Kazi.
- Extension of Equitable mortgage of Residential house admeasuring 838.50 sqft. situated at LIG Quarter No. L-13, Bhopalpura (Shastri Nagar), Bhilwara standing in the name of Smt. Samjida Bano Wo/ Sh Mukhtiyar Ali Kaji.
- Equitable mortgage of Residential plot admeasuring 1250.00 Sq ft. situated at Plot No.- B-94, situated at Back side of Vimal Sagar

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School, Pur Road, Lucky Nagar, Bhilwara standing in the name of Sh. Mukhtiyar Ali.

9.4 Thereafter, in 2018 the cash credit limit was increased by another 45,00,000/- in addition to the cash credit limit of Rs. 45,00,000/- granted on 2013. Hence, the total cash credit limit was revised 90,00,000/- in the year 2018. Thereafter, a sum of Rs. 27,00,000 was sanctioned to the Corporate Debtor as additional working capital term loan in view of COVID-19 as a special case. All the movable and immovable assets mortgaged with the Respondent Bank by the Corporate Debtor for the grant of credit facility(s) are in the name of the Corporate Debtor and that an amount of Rs. 1,21,00,000/- has been secured by way of creating charge on the movable and immovable property(s) by way of creation of equitable mortgage and hypothecation respectively.

9.5 The Corporate Debtor has slyly transferred the loan amount to the personal accounts of its directors, personal guarantors, relatives and sister concern (Simna Mineral Industries, through its proprietor *Samjida Bano*, *Aamna Enterprises* through its proprietor *Mukhtyar Ali Quazi*) which reeks of its mala fides and clearly shows its intention to defraud the Respondent Bank. The sums transferred by it from its loan account to the personal accounts of its directors, personal guarantors

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and sister concern are as under:

<b>Transactions in the account number 30200500000025</b>			
<b>Sr. No.</b>	<b>Date</b>	<b>Amount</b>	<b>Remarks</b>
1.	06-04-21	67000	Transferred to Samjida Banoo Quazi A/c 30200100004141
2.	12-04-21	200000	Transferred to Simna Mineral Industries A/c 30200500000019
3.	12-04-21	60000	Transferred to Imitiyaz Ali A/c 30200100009446
4.	27-04-21	285000	Transferred to Simna Mineral Industries A/c 30200500000019
5.	19-06-21	150000	Transferred to Simna Mineral Industries A/c 30200500000019
6.	25-06-21	122000	Transferred to Simna Mineral Industries A/c 30200500000019
7.	16-08-21	110700	Transferred to Simna Mineral Industries A/c 30200500000019
8.	04-09-21	100000	Transferred to Imitiyaz Ali A/c 30200100009446
9.	04-09-21	25000	Transferred to Mukhtyar Ali Quazi A/c 30200100004509
10.	16-09-21	165000	Transferred to Simna Mineral Industries A/c 30200500000019
11.	07-10-21	68500	Transferred to Samjida Banoo Quazi A/c 30200100004141
12.	26-10-21	148000	Transferred to Simna Mineral Industries A/c 30200500000019
13.	26-10-21	175000	Transferred to Simna Mineral Industries A/c 30200500000019
14.	11-11-21	125000	Transferred to Mukhtyar Ali Quazi A/c 30200100004509
15.	12-11-21	85000	Transferred to Aamna Enterprises A/c 30200400000179
16.	12-11-21	70000	Transferred to Mukhtyar Ali Quazi A/c 30200100004509
17.	16-11-21	8000	Transferred to Aamna Enterprises A/c 30200400000179
18.	23-11-21	25000	Transferred to Imitiyaz Ali A/c 30200100009446

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19.	25-11-21	50000	Transferred to Mukhtyar Ali Quazi A/c 30200100004509
20.	18-12-21	150000	Transferred to Aamna Enterprises A/c 30200400000179
21.	21-12-21	650000	Transferred to Simna Mineral Industries A/c 30200500000019
22.	21-12-21	1000000	Transferred to Mukhtyar Ali Quazi A/c 30200100004509
23.	22-12-21	200000	Transferred to Aamna Enterprises A/c 30200400000179
24.	22-12-21	250000	Transferred to Simna Mineral Industries A/c 30200500000019
25.	23-12-21	200000	Transferred to Aamna Enterprises A/c 30200400000179
26.	23-12-21	25000	Transferred to Imitiyaz Ali A/c 30200100009446
27.	24-12-21	85000	Transferred to Aamna Enterprises A/c 30200400000179
28.	07-01-22	45000	Transferred to Aamna Enterprises A/c 30200400000179
29.	04-06-22	148000	Transferred to Simna Mineral Industries A/c 30200500000019
			Total: Rs. 47,92,200/-

9.6 The Corporate Debtor has wilfully defaulted in repayment of loan and has filed the present application for purposes other than resolution. The intent of the Corporate Debtor is to stall and frustrate the recovery proceedings initiated by the Respondent Bank under the SARFAESI Act, 2002. The demand notice dated 17.08.2023 under Section 13(2) of SARFAESI Act issued by the Respondent Bank to the Corporate Debtor. In reply to the said notice, the Corporate Debtor has denied that it has not made any default in repayment of loan.

9.7 Further, it was contended that the Corporate Debtor under the

SARFAESI proceedings denied that it defaulted in repayment of the loan and called upon the Bank to withdraw its demand notice dated 17.08.2023 which was given in pursuance to declaration of NPA on 30.06.2023. In contrary to its earlier stance, the entire basis of default taken by the Corporate Debtor in the instant proceedings is based on the Demand Notice. Taking such contrary stances shows its intention to defraud the Bank and to stall the recovery proceedings.

9.8 In this regard, it would not be out of place to mention that the Corporate Debtor is an MSME entity and as per the applicability of Section 240 A of IBC, MSME entities have been granted a special status and are protected from the applicability of Section 29A of IBC, implying that the Corporate Debtor would not be barred from presenting its own resolution plan or the Corporate Debtor could even raise a dummy Resolution Applicant and present a resolution plan, unlawfully and illegally undercutting share of the Respondent Bank in the assets of the Corporate Debtor and discounting on the rights and remedy(s) of the Respondent Bank, which are otherwise available to it in law. In support of its contention the Bank also relied upon the Judgement of the Hon'ble Supreme Court in the matter of *Ramjas Foundation and Anr. vs. Union of India and Ors.* (2010) 14 SCC 38.

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10. Thereafter the Respondent Bank ('BoB) has filed an Interlocutory Application ('IA') (IBC) No.150/JPR/2024 vide Dairy No. 609/20234 dated 11.03.2024 under Section 65 of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 for seeking dismissal of the main Petition and appropriate directions against the Corporate Debtor for fraudulent and malicious initiation of the insolvency resolution process under Section 10 of the Code, 2016. In the instant IA Respondent Bank has reiterated the same as mentioned in the Reply to the main Petition.
11. The Corporate Debtor filed has filed its reply to the aforementioned IA vide Dairy No. 1490/2024 dated 12.06.2022, stating as follows:
- 11.1 The Bank has filed the frivolous Application to halt the bonafide Petition filed under Section 10 of the IBC by the Corporate Debtor. There is no provision as per which a Financial Creditor can object to admission of the Section 10 Petition which has been filed by the Corporate Debtor on occurrence of default in repayment of debts.
- 11.2 It is submitted that the Application filed by the Bank is frivolous in nature and is causing delay in admission of the Petition. The Bank has no statutory right to object to the admission of the Petition.
- 11.3 It is stated that the NCLT may as its discretion may issue notice and give opportunity to the Financial Creditor to file reply however at the pre-admission stage, the financial creditor cannot seek relief by way of

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filing an IA seeking investigation onto the conduct of the Corporate Debtor. Further, merely on the basis of the Bank Statement, the Bank cannot allege that the Petition filed under Section 10 is for fraudulent purposes other than resolution of the Corporate Debtor.

11.4 By way of the instant Application the Bank has made an attempt to show the ordinary business transactions as fraudulent transactions without any supporting documents and details. It is apposite to mention that the relief sought in the instant IA cannot be granted by this Adjudicating Authority at the pre-admission stage. The Code has provided sufficient remedies and safeguards, directing investigation into the affairs of the Corporate Debtor as per Sections 43,44,45,49,50 of the Code.

11.5 It is stated that in garb of the instant IA, the Bank is seeking to sabotage the existence of the Corporate Debtor by taking draconian actions under the SARFAESI Act whereas, the code envisages and promote the resolution of debts of the Corporate Debtor and give a fresh life to a debt-ridden Corporate Debtor.

11.6 It is submitted that the Corporate Debtor has not diverted any loan amount sanctioned by the Bank and the loan amount has been utilized towards the purpose for which it was availed. It is also denied that the

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Petition under Section 10 has been filed with the intend to derail any recovery process under the SARFAESI Act, 2002.

11.7 It is stated that the amount has been utilized towards the ordinary business transactions and no amount has been diverted as alleged in the present IA. The Corporate Debtor is maintaining proper books of accounts to substantiate that no amount has been diverted. Further, the amount has been paid towards the purchase of the goods from the related parties. All the transactions are business transaction and can be substantiated through tax invoices against which payments were made towards supply of goods by *M/s Simna Mineral Industries* and *M/s Aamna Enterprises*.

11.8 Additionally, the Corporate Debtor in support of its arguments relied on the following cases:

- I. *Unigreen Global (P) Ltd. Vs Punjab National Bank, [2018] 90 taxman.com 17*
- II. *Pondicherry Extraction Industries (P.) Ltd. Vs Bank of Baroda (2021) ibclaw.in 17 NCLAT*

12. The Corporate Debtor has filed its written submissions *vide* Diary No. 2786/2024 dated 18.11.2024 whereby reiterating the submissions made in the Petition and it relied on the following Case Laws:

- III. *Unigreen Global (P.) Ltd. Vs Punjab National Bank, New Delhi [2018] 89 taxmann.com 17(NCL-AT)*
- IV. *Pondicherry Extraction Industries Pvt. Ltd. Vs Bank of Baroda Company Appeal (AT) (Ins) No. 471/2020*

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- V. *JR Foods Limited in CP(IB)/84(CHE)/2021*  
 VI. *Allahabad Bank Vs Poonam Resorts Ltd. (2020) ibclaw.in 100 NCLAT*

13. The Bank has filed its written submissions *vide* Diary No. 2847/2024 dated 22.11.2024 whereby reiterating the submissions made in the Reply and IA and it relied on the following Case Laws:

- I. *M/s Getz Cables Private Limited & Anr. Vs Northern Arc Capital Limited in CP(IB) 749/ND/2023 & IA/1955/2024*  
 II. *Wave Megacity Centre Private Limited Vs Rajesh Taneja and Ors. Company Appeal (AT)(Insolvency) No. 918/2022*  
 III. *Ramjas Foundation and Anr. Vs Union of India and Ors. (2010) 14 SCC 38*  
 IV. *West Bengal State Electricity Board Vs Dilip Kumar Ray Civil Appeal No. 5188/2006*  
 V. *Mansukhlal Magan Bhai Bakrania PG of Europa Foams Private Limited Vs PG Masukhlal Magalbhair Bakarannia and Anr. IA/472(AHM) 2024 in CP(IB) 61/AHM/2024*

14. We have heard the Ld. Counsels for the parties and perused the averments made in the Petition, Reply, Affidavits, and Interlocutory Application along with the documents enclosed therein.

15. Before deliberating on the merits of the instant case, it is relevant to refer Sections 10 and 11 of the Code, 2016. Section 10 and 11 are as follow:

***“10 Initiation of corporate insolvency resolution process by corporate applicant***

*(1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.*

*(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.*

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*[(3) The corporate applicant shall, along with the application furnish the information relating to--*

*(a) its books of account and such other documents relating to such period as may be specified;*

*(b) the resolution professional proposed to be appointed as an interim resolution professional.*

*(c) 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, as the case may be, approving filing of the application.]*

*(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order--*

*(a) admit the application, if it is complete; 2[and no disciplinary proceeding is pending against the proposed resolution professional]; or*

*(b) reject the application, if it is incomplete: 2[or any disciplinary proceeding is pending against the proposed resolution professional:]*

*Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.*

*(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.”*

**“Section 11: Persons not entitled to make application.**

*The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:—*

*(a) a corporate debtor undergoing a corporate insolvency resolution process 1[or a pre-packaged insolvency resolution process]; or*

*[(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or]*

*(b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or*

*[(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or]*

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*(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.*

*[Explanation [I]: For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor].*

*[Explanation II : For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.]*

16. In an application under Section 10, the financial creditor or operational creditor may dispute that there is no default or that debt is not due and is not payable in law or in fact. They may also oppose admission on the ground that the Corporate Applicant is not eligible to make application in view of ineligibility under Section 11 of the Code, 2016. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11, the Adjudicating Authority has no option but to admit the application, unless it is incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.
17. Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the information as required to be submitted in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 subject to ineligibility prescribed under

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Section 11. If all information is provided by an applicant as required under Section 10 and Form 6 and if the Corporate Applicant is otherwise not ineligible under Section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground.

18. Any fact unrelated or beyond the requirement under IBC or Forms prescribed under Adjudicating Authority Rules are not required to be stated or pleaded. Non-disclosure of any fact, unrelated to Section 10 and Form 6 cannot be termed to be suppression of facts or to hold that the Corporate Applicant has not come with clean hand except the application where the 'Corporate Applicant' has not disclosed disqualification, if any, under Section 11. Non-disclosure of facts, such as that the 'Corporate Debtor' is undergoing a corporate insolvency resolution process; or that the 'Corporate Debtor' has completed corporate insolvency resolution process twelve months preceding the date of making of the application; or that the corporate debtor has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under the said Chapter; or that the corporate debtor is one in respect of whom a liquidation order has already been made can be a ground to reject the application under Section 10 on the ground of suppression of fact/not come with clean hand.
19. The Respondent Bank has taken the objection that the Corporate Debtor has filed Section 10 Petition maliciously and illegally to circumvent the due

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process of law and sabotage or subvert the proceedings under the SARFAESI Act, 2002.

20. In order to deal with the contention raised by the Bank it is relevant to refer the Judgement of the Hon'ble NCLAT in the matter of *Getz Cables Private Limited Vs State Bank of India & Ors.* in Company Appeal (AT) (Insolvency) No. 1953/2024 wherein it was held that:

*“30. We in the present case are considering the question as to whether rejection of Section 10 application on the ground of invoking Section 65 is justified or not. There are no other facts and ground pleaded to prove any fraudulent and malicious intent by the CD in filing Section 10 application. For allowing Section 65 application, fraudulent and malicious intent of CD has to be proved from some materials on record. Merely because proceeding under Section 13, sub-section (2) and (4) has been initiated by the creditor prior to filing of Section 10 application, cannot be a ground to hold that Section 10 application is filed with malicious and fraudulent intent. For proving fraudulent and malicious intent, something more is required to be pleaded and proved apart from initiation of proceedings under Section 13, sub-section (2) and (4) by the creditor against the Corporate Applicant.*

*33. As observed above, the basis of rejection of Section 10 application is the finding by the Adjudicating Authority that application has been filed with malicious and fraudulent intent to delay and halt the recovery proceedings. There mere fact that application is filed, consequent of which the recovery proceedings may be halted, cannot lead to conclusion that intent and purpose of the application is malicious and fraudulent. We, thus, are satisfied that Adjudicating Authority committed error in allowing Section 65 application filed by the SBI.”*

21. In view of the aforementioned Judgement it becomes clear that pendency of proceeding under the SARFAESI Act, 2002 against the Corporate Debtor before the learned Debt Recovery Tribunal cannot be a ground to reject an

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application under Section 10, if the application is complete in all other aspects as provided under the provisions of law. Further, it is pertinent to note that the Adjudicating Authority is not required to disclose the extraneous factors unrelated to the Resolution Process in terms of Section 10 or Form 6.

22. At this juncture it becomes incumbent to deal with the IA(IBC) No. 150/JPR/2024 filed the Bank under Section 65 of the Code, 2016 alleging fraudulent and malicious initiation of proceeding by the Corporate Debtor under Section 10. To deal with aforementioned IA it is relevant to refer Section 65 of the Code:

***“Section 65. Fraudulent or malicious initiation of proceedings***

*(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

*(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*

*(3) If any person initiates the pre-packaged insolvency resolution process--  
(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or*

*(b) with the intent to defraud any person,  
the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”*

23. The instant IA has been filed alleging that the Corporate Debtor had transferred a considerable amount to its directors/personal guarantors and

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sister concerns. Further it has been alleged that the Corporate Debtor has intentionally defaulted in the repayment of the loan.

24. A perusal of the aforementioned transactions makes it conspicuous that any individual transaction does not involve any substantial sum of money and the same were entered on different occasions spanning over a year. Further, we cannot rule out the possibility that the alleged transactions can be a part of normal day-to-day business transactions. Moreover, at this stage given the dearth of the relevant material on record, it cannot be determined that the alleged transactions were undertaken for fraudulently initiating the CIRP. Thus, we are of the opinion that the instant IA does not fulfil the requirements as provided under Section 65 of the Code, 2016. Therefore, we are not inclined to grant any relief sought in *IA(IBC)150/JPR/2024*. It goes without saying that the aforementioned observations will not curtail the filing of any PUFEE transactions application if it is found that the same has been undertaken by the Corporate Debtor.
25. In view of the foregoing, the captioned Petition filed under Section 10 of the Code is maintainable.
26. There is no dispute that the Company has admittedly defaulted in payment of its debt which is over the threshold prescribed 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.

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27. In compliance of the requirements of Section 10 (3)(a) of the Code and rules framed thereunder, the Applicant Company has filed copies of Financial Statements of the Corporate Debtor for the Financial Years ending on 31.03.2021 and 31.03.2022. Additionally, in compliance with Section 10(3)(b) of the Code, the Applicant has proposed the name of *Mr. Umang Jain* as the Interim Resolution Professional ('IRP'). However, at the later stage, the Applicant has proposed the name of *Mr. Kamal Kumar Jain* as the IRP. The Applicant Company has obtained written communication in Form-2 from the Insolvency Professional for appointment as an IRP. In Form-2 filed, it has been affirmed by the proposed IRP. He is a registered Insolvency Professional and qualified to practice as an Insolvency Professional. Further, it has been affirmed/ confirmed that no disciplinary proceedings are pending against the proposed IRP.
28. In view of the above, it is clear that a default has occurred, the present Application under Section 10 is complete and that the Applicant is not ineligible under Section 11 of the Code. Further, it is evident that the requirements prescribed under sub-section 3(a) and (b) of Section 10 of the Code have also been complied with.
29. 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

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mandates the Adjudicating Authority to admit the Application if it is complete.

30. In view of the foregoing, we are satisfied that the present Application is complete and that the Corporate Debtor has committed a default. Therefore, since, the Application is complete, we are hereby admitting the same under section 10(4)(a) of the Code. The CIRP shall commence from the date of this order under sub-section 5 of Section 10 of the Code.

31. 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.*

32. 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 the 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.*

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33. *Mr. Kamal Kumar Jain* holding IP Registration No. *IBBI/IPA-001/IP-P00092/2017-18/10192* is appointed as Interim Resolution Professional, who shall take statutorily prescribed steps inter-alia as envisaged under Section 15, 17 and 18 of the Code. Further, the IRP is directed to submit his report at the earliest. The Applicant shall deposit a sum of Rs. 1,00,000/- (Rupees One Lakh Only) to the bank account of the abovementioned IRP within 10 days from the pronouncement of this order.
34. The order of moratorium shall have effect from the date of this order till the completion of the CIRP as per sub-section (4) of Section 14 of the Code.
35. Let a copy of this order be supplied to the Applicant as well as the Interim Resolution Professional to carry out the CIRP at the earliest. A copy of this order shall also be communicated to IBBI for its records.
36. Therefore *CP No. 74/10/JPR/2023* stands admitted and the *IA(IBC) No. 150/JPR/2024* stands dismissed and disposed off.

Sd-  
**DEEP CHANDRA JOSHI,**  
**JUDICIAL MEMBER**

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**VELAMUR G. VENKATA CHALAPATHY,**  
**TECHNICAL MEMBER**