



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.04/BB/2022**  
**U/s. 10 of the IBC, 2016**  
**R/w Rule 7 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**M/s NYS Granites Impex Private Limited,**  
Registered Office at:  
No. 3603, Ward No-5,  
New Kotwal Peth,  
Ilkal Hungad, Ilkal,  
Karnataka – 587 125

... Petitioner/Corporate Applicant

**Order delivered on: 2<sup>nd</sup> June, 2023**

**Coram:** Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)  
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri Srivatsa Rao

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition, CP (IB) 04/BB/2022, is filed on 02.11.2021 by M/s NYS Granites Impex Private Limited ('Petitioner/Corporate Applicant') under section 10 of IBC, 2016, R/w. Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of itself, M/s NYS Granites Impex Private Limited. The total amount in default is Rs 17,03,82,517/- ( Rupees Seventeen Crore Three Lakhs Eighty Two Thousand Five Hundred Seventeen Only)
2. Brief facts of the case, as mentioned in the Company Petition/Synopsis filed by the Corporate Applicant, which are relevant to the issue in question, are as follows:



- (i) M/s NYS Granites Impex Private Limited (herein after referred to as Petitioner/Corporate Applicant) is a Private Limited Company and was incorporated on 28.02.2012, having CIN: U74999KA2012PTC062761. The registered office of the company is situated at No. 3603, Ward No.5, New Kotwal Peth, Ilkal Hungad, Ilkal Karnataka- 587 125. The Authorized Capital of the Corporate Applicant is Rs. 3,75,00,000/- and the Paid-up Capital is Rs 3,75,00,000/-.
- (ii) It is submitted that the Corporate Applicant is engaged in the business of manufacturing and selling granite products registered under the laws of India. Further, the fixed assets of the Corporate Debtor primarily comprise of land, building and machinery.
- (iii) It is submitted that after the incorporation, the Corporate Applicant was in requirement of funds for the establishment of a medium scale industry, and Corporate Applicant availed term loans in the year 2013-2014. Further, due to the impositions of restrictions by the Hon'ble Supreme Court on undertaking mining operation in Karnataka in July 2011 and further market fluctuations, the Corporate Applicants business came under great strain.
- (iv) The Corporate Applicant was unable to continue servicing its repayment obligations towards the Financial Creditor in the quarter ended on 31.12.2014. Further, the Corporate Debtor has not been operating as a going concern since 2016. Further, on 16.11.2016, for default of financial debt, the financial creditor took possession of the assets of the Corporate Debtor and shut down its factory.
- (v) The loan accounts of the Corporate Applicant were declared as non-performing assets by the Financial Creditor on 30.04.2015. Further, SARFAESI notice dated 18.10.2016 was issued by the Financial Creditor and a substantial portion of the assets of the Corporate Applicant have been sold by the



Financial Creditor and further there is no prospects of revival of the Corporate Debtor.

- (vi) It is contended that the company has a total financial debt of Rs. 17,03,82,517/-.
- (vii) In the above circumstances, the Corporate Applicant has applied before this Tribunal to initiate proceedings under Section 10 of the IBC, 2016 for commencing Corporate Insolvency Resolution Process.

3. In response to the notice issued to Financial creditors as directed vide order dated 18.01.2022; Karnataka State Financial Corporation., the Secured Financial Creditor filed its objections vide dy no 2419 dated 06.06.2022, inter alia, stating as follows:

- (i) The Financial Creditor submits that it has sanctioned a sum of Rs. 925.00 Lakhs on 08.02.2013 and released the full amount. Subsequently, additional loan of Rs. 70.00 Lakhs were released on 26.09.2014 and released Rs. 69 Lakhs. Total released amount is Rs. 994 Lakhs.
- (ii) Further, the Corporate Applicant had mortgaged the property bearing Sy.No. 35/2/5 situated at Bandargal Village, Kushtigi Tq., Koppal Dist. Measuring 01 Acre 38 Guntas along with factory building measuring 2,963.51 Sq.mtrs and an RCC block measuring 145.82 Sq.mtrs. Slurry tanks borewell as primary security. Further, the borrower along with surety has mortgaged collateral security as stated in the sanction letter and mortgaged deed.
- (iii) It is submitted that Corporate Applicant has failed to repay the loan as per the terms and conditions agreed upon by the Applicant. Further, the Financial Creditor has taken over the primary security property u/S 29 of SFC Act in order to recover the dues on 19.11.2016 and has initiated action under SARFAESI Act in respect of secured collateral properties. Further, the corporation took over the physical possession of collateral security under SARFAESI Act on 16.11.2016 and 15.02.2017. All secured collateral properties were sold through



E-auction under SARFAESI Act and for a total sum of Rs. 503.99 lakhs and sale proceeds were adjusted to the loan account of the Corporate Applicant.

- (iv) In spite of sale of plant and machinery and collateral security and after adjustment of sale proceeds to the loan account, the Corporate Applicant loan account shows a huge overdues of Rs. 1,793.94 lakhs as on 10.04.2022.
  - (v) It is submitted that the Financial Creditor has to recover huge dues of Rs. 1,793.94 lakhs from the Corporate Applicant and the its Directors have executed personal guarantee of the loan and if the Corporate Applicant is declared as insolvent, the interest of Financial Creditor will be prejudiced and will cause irreparable loss that would be caused to the Financial Creditor.
4. It is noticed that the Learned counsel for the respondent rendered appearance before this Tribunal on 05.07.2022 and thereafter no representation by him on the next dates of hearing. On 21.09.2022 this Tribunal directs that Representative from the Financial Creditor- KSFC must be present on the next date of hearing. However, the learned counsel for the respondent chose not to render appearance and the matter was reserved for orders on 11.11.2022.
  5. However, on perusal of the petition it is observed that the Petitioner had not filed affidavit for not being disqualified under section 11 of IBC, 2016 and the matter was put for being mentioned on 15.12.2022 and directed the petitioner to file the same and the matter was de-reserved. Order dated 15.11.2022 was compiled vide diary No. 303 dated 17.01.2023; and the affidavit under section 11 was filed with it.
  6. After a careful examination of the facts of the case it clearly shows that, there was a debt due and there was a default of the same. It is also observed that the Petitioner Company was not earning sufficient profit to repay its debts. The Petition was supported with the special resolution passed by the shareholders of the corporate applicant.
  7. Heard Shri Abhijith Atur Learned Counsel for the Petitioner Company and we have carefully perused the pleadings of the party and the extant provisions of the Code and the law.



8. As per Section 10 of Insolvency and Bankruptcy Code, 2016 a Corporate Applicant can file an application before the Adjudicating Authority, seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor that has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudicating Authority, in a prescribed form by enclosing the following:
- a. The information relating to its books of account and such other documents for such period as may be specified;
  - b. The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and
  - 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.

As per 10(4) the Adjudicating Authority can admit an application if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.

9. It is also relevant to note down certain legal principles decided by the Hon'ble NCLAT, New Delhi with regard to the Petitions filed u/S.10 of the IBC, 2016 and the same are as under:

- (i) *M/s. Unigreen Global Private Limited Vs. Punjab National Bank & 3 Ors., in Company Appeal (AT) (Insolvency)No.81 of 2017 dated 01.12.2017, it was observed as under:*

*“...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”.*

*21. 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 I&B Code. 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.*

22. *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 Section 11. If all informations are 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.*

23. *Any fact unrelated or beyond the requirement under I & B Code or Forms prescribed under Adjudicating Authority Rules (Form 6 in the present case) 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.*

- (ii) *In Armada Singapore Pte. Ltd. Vs. Ashapura Minechem Ltd., in I.A.No.3052 of 2019 in Company Appeal (AT) (Insolvency)No.350 of 2019 and batch order dated 30.09.2019, the Hon’ble NCLAT held that a Petition filed under Section 10 of IBC, 2016 is not maintainable without the approval of the shareholders of the Corporate Debtor in its ‘Annual General Meeting’/’Extra-Ordinary General Meeting’.*
- (iii) *The Hon’ble NCLAT in Vyomit Shares Stock & Investments Pvt. Ltd. vs. Securities and Exchange Board of India (SEBI) in Company Appeal (AT) (Insolvency) No.258 of 2019 dated 15.05.2019, held that an Application filed under Section 10 of the IBC, 2016, can be*



rejected on the ground that the 'Corporate Debtor' is earning sufficient profit.

10. It is seen from the Audited Financial Statement for the year ended March 31, 2021 and March 31, 2020 that the Corporate Applicant was having substantial Losses. On 11.11.2022, the Petitioner counsel was directed to file provisional balance sheet as at 31.03.2022 and the said direction is complied vide diary No 18.11.2022 and the same is taken on record. The balance sheet shows that the company was having losses for the period ended 31<sup>st</sup> March, 2022. Apart from losses there is no revenue from operations as seen from the Balance sheet as at 31.03.2020 and 31.03.2021.
11. It is observed that so far as the objection by the KSFC is concerned, it is limited to their borrowings and default amount of Rs. 1,793.94 lakhs. However, it is observed that the present petition is filed by the Corporate Applicant for an amount of Rs. 17,03,82,517/- which has been in default with the Financial Creditor KSFC. It is also further observed that it is not the case of the respondent that the Petitioner is earning sufficient profit.
12. The Corporate Debtor satisfies the conditions for initiating an Application U/s 10 of the Code viz., there is an existence of debt, there is a default and the Corporate Debtor is not disqualified U/s 11 of the Code. The shareholders of the Corporate Debtor unanimously passed a Special Resolution in the Extraordinary General meeting held on 28.09.2021 for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.
13. In view of the above facts and circumstances of the case, and the settled position of law on the issue; and by exercising powers conferred on this Adjudicating Authority, U/s 10 (4)(a) of the Code, we do hereby **admit** CP(IB) 04/BB/2022 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s NYS Granites Impex Private Limited. We declare Moratorium in terms of sub-section (1) of Section 14 of the Code as under:-
  - a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution



- of any judgement, 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.
14. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.
15. Under Clause (b) of Section 10(3) of the Corporate Applicant is bound to propose the name of the Registered Resolution Professional to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2, furnished by Shri Ratnakar Shetty, a registered Insolvency Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that presently he is serving as Interim Resolution Professional/Resolution Professional/Liquidator in two other proceeding under the Code so far. He has also certified that no disciplinary proceedings are pending against him with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-001/IP-P-01630/2019-2020/12718. We find that written consent furnished by the proposed Interim Resolution Professional is in order.
16. In view of the above, we appoint **Shri B. Ratnakar Shetty**, Insolvency Professional, bearing Registration No. IBBI/IPA-001/IP-P01630/2019-2020/12718, email Id [rcshetty.co@gmail.com](mailto:rcshetty.co@gmail.com), address: No. 16,



Skyline Towers, 7<sup>th</sup> Cross, Malleshwaram, Bangalore 560 003 as Interim Resolution Professional, with the following directions:-

- a. The term of appointment of Shri Ratnakar Shetty shall be in accordance with the provisions of Section 16(5) of the Code;
- b. In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- c. The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral
- d. The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- e. It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with management shall



extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- f. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a committee of creditors and shall file a report, certifying of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and
  - g. The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight
17. A copy of this order be communicated to all the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

**-Sd-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**-Sd-**

**(T. KRISHNAVALLI)  
MEMBER (JUDICIAL)**