



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

CP (IB) No. 50/MB/2021

Under section 10 of IBC, 2016

In the matter of

**XYLEM INTEGRATED SOLUTIONS
PRIVATE LIMITED,
(CIN U74999MH2016PTC286518)**

4th floor, AJ House, Marol Maroshi Road,
Andheri (East), Mumbai - 400059, Maharashtra
India.

... Corporate Applicant

Order delivered on: 21.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicants : Mr. Nausher Kohli, Ld. Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Company Petition is filed by XYLEM INTEGRATED SOLUTIONS PRIVATE LIMITED (hereinafter called Corporate Applicant), under Section 10 of Insolvency and Bankruptcy Code 2016 ("the Code") read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating



Authority) Rules 2016, for initiation of Corporate Insolvency Resolution process.

2. The Corporate Applicant says that its registered office is at 4th floor, AJ House, Marol Maroshi Road, Andheri (East), Mumbai - 400059, Maharashtra India, incorporated on 04.10.2016 vide CIN U74999MH2016PTC286518 on the file of Registrar of Companies, Mumbai, having paid up share capital of Rs. 1,69,01,000.
3. The Corporate Applicant submits that they are engaged in the business of providing Mint Hotels and Suits in different part of India. Company is going through severe loss since over a year.
4. The Company is in default to various lenders since 2 years and the total outstanding debt is Rs. 16,27,33,466/-. The foregoing paragraph consist of list of various lenders for amount of default received by the company.
5. List of financial Creditors are as follows:
 - a. A sum of Rs. 3,50,00,000/- (Rs.) under agreement dated 30.11.2019 from APAC Financial Services. The same was thereafter extended by availing top up facility for Rs. 64, 00,000/- on 14.07.2020, a sum of Rs. Rs. 50,00,000/- under agreement dated 22.04.2019 from Bifco Leasing & Financial Pvt. Ltd; a sum of Rs. 15, 00,000 under agreement dated 01.10.2019 from Inditrade Fincrop Ltd. (JRG); a sum of Rs. 20, 00,000/- under agreement dated 11.04.2019 from HDFC Bank; a sum of Rs. 15, 10,000/- under agreement dated 25.09.2019 from Incred Financials; a sum of Rs. 60,00,000/- under agreement dated 02.04.2019 from Tata Capital Financial Services. The same was thereafter extended by availing top up facility for Rs. 5,62,523/- on 30.07.2020. a sum of Rs. 1,50,00,000/- under agreement dated 24.06.2019 from Mahaveer Finance India Ltd; a sum of Rs. 20,60,000/- under agreement dated 02.11.2019 from Neogrowth



Credit Pvt. Ltd; a sum of Rs. 2,012,318/- under agreement dated 29.08.2019 from RBL Bank The same was thereafter extended by availing top up facility for Rs. 294,277/- on 31.07.2020; a loan under agreement dated 17.03.2020 from SSA Finserv.

- b. After analysing the above given details of Financial Creditors, the total of Loan Amount which is outstanding is Rs. 56,632,376- as on 05.12.2020 and the total default amount for Operational Creditors' is Rs. 10,61,01,000/-.
6. Further, the Corporate Applicant has also enclosed the audited financial statements for the years, 2017-18 and 2018-2019.
 7. After going through the material on record, we have noticed that the Corporate applicant has filed a resolution passed in the meeting of board of directors held on 25.10.2020 authorising Mr. Sanjay Coutinho, the director to file an application. However, the application in form NCLT 2 as well as Synopsis nowhere states that any resolution has been passed by the shareholders of the applicant in its general meeting. However, the applicant placed on record a copy of special resolution stated to have been passed in the meeting of shareholders held on 28.10.2020 whereby the shareholders have consented to filing of an application u/s 10 of the Code. No copy of the minutes of the said meeting or notice of shareholder's meeting together with explanatory statement or the proof of filing of said resolution with MCA in MGT-14 for registration of said resolution has been filed. In the absence of text of the minutes recording the attendance and voting of the shareholders or copy of MGT-14 has filed with MCA we are unable to satisfy whether any Special Resolution for filing an application u/s 10 of the Code was passed and if passed, what were the grounds of resolving so. We noticed that no MGT-14 recording a Special Resolution dated



28.10.2020, as required u/s117 of the Companies Act 2013, is available under the company documents at www.mca.gov.in.

8. The relevant part of the Sec 10 of IBC reads as follows:

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.

(3) The corporate applicant shall, along with the application, furnish-

(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 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.]

9. For all the aforementioned reasons as stated above, this bench is of the view that present application is not in accordance with the mandate of Section 10(3)(c) of the Code. Therefore, the present petition is dismissed as not maintainable in terms of provision contained in Sec 10(3)(c) of IBC,2016.

ORDER

I. The petition bearing CP(IB) 50/MB-IV/2021 filed by XYLEM INTEGRATED SOLUTIONS PRIVATE LIMITED, the Corporate debtor/Applicant, under section 10 of the IBC read with rule 7(1) of the



Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) is **dismissed.**

- II. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
21.03.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)