

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II)
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 117/Chd/Hry/2021

**Under Section 10 and Rule 7 of
the Insolvency & Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016**

In the matter of:

Office Beanz Private Limited

having its registered office at
220, Suncity Success Tower,
Sector-65, Gurgaon, Haryana-122001

.... Corporate Applicant/Corporate Debtor

Judgment delivered on: 01.03.2024

**Coram: HON'BLE DR. P.S.N. PRASAD, MEMBER (JUDICIAL)
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

Present:

For the Petitioner-

Mr. M. Datta with Ms. Rajni Narula, Advocates

For Respondent No. 64

Ms. Achintaya Soni, Advocate

Per: Dr. P.S.N. Prasad, Member (Judicial)

Umesh Kumar Shukla, Member (Technical)

ORDER

This petition has been filed for initiating Corporate Insolvency Resolution Process in respect of Corporate Debtor, **Office Beanz Private Limited** under Section 10 of Insolvency & Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') in Form No.6 as prescribed under sub-rule (1) of Rule 7

of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules').

2. This petition has been filed in pursuance of the resolution passed in the meeting of members of the Corporate Applicant held on 17.11.2020 by Mr. Sharad Bajaj, Director, who has been authorised to file this petition under Section 10 of the 'Code' vide Board Resolution dated 17.11.2020 of **OFFICE BEANZ PRIVATE LIMITED** (Annexure-VII of the Volume-VII of the main petition). Thus the 'Corporate Debtor' falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code. The contents of the application are supported by the affidavit of Mr. Sharad Bajaj, Director and Authorised signatory, which is on Page No. 60-B and 60-C of the petition.

Fact of the Case

3. The Corporate Debtor (hereinafter referred to as the 'corporate applicant') was incorporated on 05.04.2018, having been allotted CIN U74999HR2018PTC073422. Its registered office is at 220, 2nd Floor, Success Tower Golf Course Extension Road, Gurgaon-122001, Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copies of Company's Master Data, Certificate of Incorporation, Memorandum of Association and Articles of Association of the 'Corporate Applicant' are attached at Volume VIII of the main petition.

4. The nominal share capital and the paid-up share capital of the Corporate Applicant is ₹1,000,000/-.

5. It is stated in the synopsis to the petition that the Corporate Applicant is

engaged in the business of leasing, sub-leasing and similar/related activities. The Corporate Applicant, leased various premises from the Operational Creditor(s), which in turn the Corporate Applicant further leased/ sub-leased to various Customer(s)/ Client(s)/ Lessee(s)/ Sub-Lessee(s). The business arrangement and liabilities that arose/ became payable towards the Corporate Applicant, were duly met and satisfied within their due/ scheduled or prescribed periods. The premises that were leased from the Operational Creditor(s) and subsequently further leased/ sub-leased to various Customers/Lessee(s)/ Sub-Lessee(s) were based on Registered Lease(s) and used for office/commercial purposes. The Corporate Applicant, to service and maintain the leased premises, availed various service and maintenance facilities from various Vendor(s), for cost(s) and expense(s) as agreed between the Corporate Applicant and the particular Vendor. The Corporate Applicant had been making all necessary payments towards their dues for the various services and maintenance facilities rendered by the Vendor(s), in terms of Bill(s)/ Invoice(s) as were raised by the Vendor(s).

6. It is further stated in the synopsis to the petition that with the outbreak of the pandemic in March, 2020, the leased premises which the Corporate Applicant had leased and thereafter/ subsequently further leased/ sub- leased fell vacant. With "office-goers" impelled to work from home, offices became empty and lost their demand. Resultantly, the leases and sub-leases executed by the Corporate Applicant with its Lessee(s) and Sub-Lessee(s) stood terminated. Post termination and gradual vacation of the various leased premises, the Corporate Applicant was no longer able a) to sustain itself and/ or pay the lease rentals due and in favour of the various Landlord(s); and b) to meet or render payment for their dues towards services and management facilities. Consequently, while on one hand, the

Corporate Applicant lost their entire Income, on the other, their lease rental(s) towards the Landlord(s) and dues for maintenance / service facilities continued to mount/ gather. This resulted in a mismatch and a deficit, the Corporate Applicant could not overcome. Though, they immediately/ or at the earliest terminated all their lease(s) and handed/ returned back possession, the Landlord(s)/ Lessor(s) continually insisted for lease rental(s) for the period commencing from the onset of the pandemic till actual takeover or for the remainder of the lock-in period, despite the termination of their Lease(s). Likewise, the Vendor(s) providing the maintenance and service facilities are equally insistent for dues during this period. Such insistence and demands cannot be complied or met with by the Corporate Applicant. Neither the Corporate Applicant is in possession of such funds nor is the Corporate Applicant capable of generating such income/ profits/ revenue in present or in future to meet such liabilities as claimed and sought by the various Operational Creditors.

7. As per the Memorandum of Association of the Corporate Applicant (Volume-VIII of the main petition), the main objects of the Corporate Applicant are:

- “1. To carry on the business of Creation and Co-working of spaces for Entrepreneur
2. To promote, establish, develop, improve, administer, own and providing services regarding incubation centers, office space by its own/ Venture or through public private partnership basis for the growth and development of industries”

8. The Corporate Applicant, in Part-III of Form No. 6 have mentioned the particulars of creditor-wise operational debt and the demand notices/invoices of the operational creditors enclosed with the petition reveals that the due date of payments are falling within Section 10A period.

9. The Corporate Applicant has also enclosed the copy of the audited financial

statements for the financial years 2019-20 & 2020-21 and provisional financial statements as on 08.02.2021, which are at Annexures V of Volume-VII of the main petition.

10. This Adjudicating authority, vide order dated 28.07.2021, directed to issue notice of the petition to Registrar of Companies, NCT of Delhi and Haryana, Income Tax Department through the Nodal Officer- Principal Chief Commissioner of Income Tax, NWR, Aaykar Bhawan, Sector 17-E, Chandigarh, IBBI and unsecured creditors to show cause as to why this petition be not admitted.

11. Further, This Adjudicating authority, vide order dated 26.10.2021 in IA No. 509/2021, allowed the Corporate Applicant to send the notices through email instead of speed post, as there are more than 83 respondents and also directed the Corporate Applicant to adopt the substituted mode of service by publishing in two daily newspapers i.e. one English and one Hindi having wide circulation in the area and file affidavit of service supported by postal receipt, tracking report, copy of email and clippings of newspapers, if applicable, on or before the next date of hearing i.e. 29.11.2021.

12. The petitioner has stated to be filed the compliance affidavit of the order dated 28.07.2021 vide diary no. 471/01 dated 26.10.2021, and affidavit of service vide diary no. 471/02 order dated 17.11.2021. The learned counsel has also placed on record the paper clippings of the of paper publication of notice in Hindi and as well as English version i.e. "Pioneer" dated 07.11.2021. The report of the Income Tax Department dated 25.11.2021 was filed vide diary no. 00471/8 dated 07.03.2022 mentioning no outstanding demands as per the ITD system. Further, the proposed Insolvency Professional has also filed an affidavit stating that there is no

disciplinary proceeding pending against him in Annexure-III of Volume-VII of the main petition. The copy of the relevant books of accounts of the corporate applicant evidencing the default to creditors is attached as Annexure-III of the main petition.

13. This Adjudicating authority, vide order dated 13.09.2023, in terms of their instructions received from the Principal Bench, New Delhi, directed the Corporate Applicant to submit the following:

1. Latest audited financial results for the year ending 31.03.2023 containing position of loans & advances, debtors and inventory along with auditor's report.
2. Financial/Books of accounts in a pen-drive.
3. Provide for the fee of the IP/RP for a period of 6 months.
4. An affidavit to the effect that it has not received any SARFESI notice and that this application is not to defeat the purposes of law.

14. The compliance to the above order dated 13.09.2023 passed by this Adjudicating authority, has stated to have been made by the Corporate Applicant, however, instead of latest audited financial results for the year ending 31.03.2023 along with auditor's report, the applicant has furnished the Report of Chartered accountant dated 03.10.2023, which states that no business activities have been carried out since the date of the last available provisional financial statements i.e. 08.02.2021 till 26.09.2023. A cheque bearing no. 002752 dated 05.10.2023 towards fee of IRP and affidavit of compliance deposing the absence of any notice any proceedings under SARFAESI act was filed vide diary no. 00471/18 dated 09.10.2023.

Reply filed by the Creditors

15. Reply was filed by Creditor Nos. 2,3,4,5,6,8 vide spl diary no. 141,142,143,

144, 140, 145 respectively dated 01.06.2022 vide which it has been stated that:

- (i) The Corporate Applicant is solvent as evident from the amount of assets. The Corporate Applicant only to wriggle out of its liabilities towards the genuine creditors has escalated the dues of other creditors, who are believed to be family members, relatives, shareholders, agents or associates of the directors and management of the Corporate Applicant. The Corporate Applicant is liable to disclose his association with all the creditors named in the main petition and also by disclosing that whether there was any claim made by any of them against the Corporate Applicant or not.
- (ii) The Corporate Applicant has intentionally shown escalated bogus liabilities and also siphoned-off money of the corporate applicant in the shape of salaries, withdrawals and other perks to the directors and management of the corporate Applicant including their family members, relatives, shareholders, agents and other allied associates. The Corporate Applicant is liable to disclose the amount of salaries, perks etc. withdrawn by the directors and management of the Corporate Applicant from the date of incorporation of the Corporate Applicant till date.
- (iii) There is no evidence to show that the claim had been lodged with the corporate applicant by any such creditor and the same was lying unpaid.
- (iv) The Corporate Applicant has only to escalate its dues shown one of its Directors, namely Sh. Ravi Raj Chawla by alleging his claim of Rs.3,90,000/-, which is wrong and incorrect.

- (v) The lease deed dated 10.12.2019 (page no. 316) alleged to have been executed with one Texmaco Infrastructure and Holding Limited for about 15 years with lock-in period of 5 years, is neither signed nor duly stamped nor registered and the same is not binding and no dues could flow from the said alleged lease deed to the alleged operational creditor.
- (vi) The lease deed dated 11.11.2019, which is alleged to have been executed with one Vintage Bio Fuels Private Limited for 5 years with lock-in period of 5 years, is neither duly stamped nor registered and therefore the same is not binding and no dues could flow from the said alleged lease deed to the alleged Operational Creditor.
- (vii) The Corporate Applicant has filed various leases with the main petition even when the corporate applicant is not even a signatory to such lease deeds executed with such alleged Operational Creditor.
- (viii) The Corporate Applicant, despite having means and resources had also not deposited the amount of TDS with the Department, for which they are liable to be prosecuted.

16. Reply was filed by Creditor No. 9 vide diary no. 00471/17 dated 07.10.2022, vide which it vehemently denied that it owes any legal debt in the Corporate Applicant as revered in the main petition. It is stated that the Corporate Applicant has erroneously quoted the particulars of security as mentioned in the main petition. Further, the Corporate Applicant is not insolvent and application has not been filed bona fide as the Corporate Applicant, on Page 8 of the captioned Section 10 Application, has declared its assets to be worth Rs.12,21,42,941/-. It is also stated that the Corporate Applicant has disclosed the particulars of its Financial

Creditors/ Operational Creditors in its Section 10 Application from Pages 8 to 60, a perusal of the same would make it evident that out of the 83 operational creditors listed, 21 are shown to effectively owe money to the Corporate Applicant and if the Corporate Applicant does indeed have debt owed to it, it must form a part of its income, whereas on Page 8 of the Section 10 Application, the Corporate Applicant has declared its income to be "nil." The Corporate Applicant, under the garb of voluntary CIRP, is attempting to use this Section 10 Petition to recover money from its debtors, which is against the essence and intent of the Insolvency and Bankruptcy Act, 2016. If the Corporate Applicant intends to recover money from its debtors, it may do the same before the appropriate forum via a recovery suit.

17. Consolidated reply was filed by Creditor Nos. 31-40 and 43A through Respondent No. 37 vide diary no. 00471/15 dated 15.09.2022. It is stated in the reply that:

- (i) The application has been filed on specious grounds, on the basis of doubtful and self-serving documents and true facts have not been disclosed. The only reason the above application has been filed is to stymie the efforts of the creditors to recover monies due to them, to avoid paying statutory dues and to hide the misdeeds and frauds perpetrated by the management of the company.
- (ii) The whole purpose of opening and running the company was to siphon off money, but the advent of Covid-19 pandemic derailed the siphoning scheme. The Directors and the management of the company knew beforehand of the actual financials of the company and the money that had been siphoned off. Instead of recovering loaned amounts and taking

steps to manage the company and its debts, the Directors and management wilfully planned to take the company towards bankruptcy.

- (iii) A bare perusal of the self-serving records created by the company officials show that no steps were ever taken to minimize the loss or recover loans, in any manner.
- (iv) The petitioner has filed the present application relying on a provisional financial statement dated 08.02.2022. The CA, who has made the provisional financial statement, has taken pains to reiterate that the provisional financial statement has been made on the basis of the Tally Data given by the petitioner company. At one place in the report, the CA has written in his own hand that the financial statement has been made on the basis of Tally Data and that they take no responsibility. Thus, the financial statement has not been made on the basis of the actual data of the company and its records but on the basis of the Tally Data provided by the petitioner to serve its own ends and thus being in violation of the statutory requirement, renders the application invalid and in violation of the provisions of the IBC Act and rules. A further perusal of the Disclaimer shows that the petitioner did not supply the actual account books or the vouchers/bills to the CA. Thereby leading the CA to add an observation that out of 43 Invoices of vendors, that were randomly checked. 13 bills were missing. In fact, if the bills supplied were properly checked, then it would show that a substantial number of them are for non-existent services or goods or duplicates non-existent supply of services or goods already supplied by another vendor etc.
- (v) It has been mentioned in para no 1 and 8 that the company is allegedly

facing some litigation and it is apparent that just for the sake of creating a fictional erosion of net worth, the facts have been hidden with malice aforethought. The bills/ invoices/ financial statements have been manipulated and all efforts are being made to cover up the criminal misdeeds of the Directors and company management. In case there were actually any cases pending with financial implications that would erode the net worth of the company then there could be reason for not disclosing. The fantastical manipulation of the financial figures and fictional invoices generated to create debt has no better example than the money spent on security services. The petitioner has shown a fantastical expense for security, the security expenses as on 31.03.2020 were Rs.24,81,135/-, while the security expenses as on 03.02.2021 were Rs.30,36,305/- These security expenses are inexplicable for office in commercial buildings, which already have security. And most surprisingly as Covid 19 restrictions were imposed on 25th March 2020 and offices were shut down, and as has been pleaded by the petitioner, its business suffered with offices being shut down, yet the expense on security has inexplicably increased by appx. Rs.6 lacs. However, the most shocking manipulation of fictitious expenses is the invoice attached at Pg. 1615, wherein during the height of Covid-19, more than Rs.5.50 lacs is shown to be spent on security. It is not within the realm of logic that security expenses would increase, as offices in commercial buildings, with their own security are shut. This clearly shows that the invoices are manipulated, forged and self-serving documents created to show fictitious erosion of the company's net worth.

(vi) A perusal of the incomplete records attached with the present application shows that from its inception the company had been formed with a view to conduct illegal business by rotating black money, false billing and for illegally profiting the Directors. On 01.04.2019 a huge amount of Rs.42,50,000/- was transferred to a company - M/s Roofontop Internet Ventures Pvt. Ltd., wherein one of the directors of petitioner company, Mr. Sharad Bajaj (DIN-01879319) was one of the two directors. It is not stated anywhere in the documents attached as to why the money was transferred. The above company is a mere shell company with a paid up capital of Rs.1 lac and no information is available on its business. the necessary documentation has not been attached as is mandatory as per Form 6 mandated under

(vii) The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016...Annex IV and V of the above Form have not been properly fulfilled. In compliance with Annex IV, the relevant books of accounts evidencing default to creditors have not been attached. As had been stated by the C.A./auditor only Tally data has been given and the proper accounts along with supporting documents have not been given.

18. Reply was filed, vide diary no. 00471/7 dated 21.02.2022, by Respondent no. 74, which is a Company registered under the Companies Act, 2013 carrying on the business of Internet Service Provider and is being represented by its Authorized Representative Sh. Prafulla Rocky authorized via Board Resolution dated 13.11.2021. It is stated that:

(i) The matter was filed with mala fide intention, wrong declaration,

suppressing and concealing the material facts from this tribunal.

- (ii) The Corporate Applicant had availed internet facilities from the answering Operational Creditor and the Corporate Applicant was allotted 7 accounts by Answering Operational Creditor. The answering Operational Creditor had been issuing invoices to the Corporate Applicant and has an outstanding of Rs.11,55,043/- (inclusive of GST and TDS) as on 01st April, 2021 (copy of invoices and ledger account has been annexed as Annexure-2 & Annexure-3).
- (iii) That the contents of Part III of the above-mentioned application are wrong and denied for want of knowledge pertaining to Operational Creditor No. 1 to 73 and Operational Creditor No. 75 to 83 for want of knowledge as the same does not pertain to answering Operational Creditor. The contents of corresponding Para pertaining to Operational Creditor No. 74, i.e., the answering Operational Creditor are admitted save to the extent that Corporate Applicant has dues towards answering Operational Creditor No. 74 and the address of the answering Operational Creditor No.74.
- (iv) The Corporate Applicant has a debt of Rs.11,55,043/- towards the answering Operational Creditor No. 74 as per their ledgers and invoices due.
- (v) The contents of Para 12 of the Application are wrong and denied for want of knowledge as the same pertains to the Corporate Applicant's accounts.
- (vi) It is prayed to admit the claim of the operational creditor.

Rejoinder by the Corporate Applicant

19. The Corporate Applicant has filed rejoinder, vide diary no.00471/13 dated 25.07.2022, to the reply filed by Respondent nos. 1 to 6. has vehemently denied the contentions made. It is denied that the Corporate Debtor is solvent. It is contended that all lease deeds are duly signed and registered. Owing to the onset of pandemic since 2020, registration could not be completed. It is denied that the Corporate debtor has not deposited TDS with the competent department.

Analysis and Findings

20. We have heard the learned counsel for the corporate applicant and learned counsel for the operational creditors and have gone through the records.

21. The issue of lease deeds raised by the creditors have been examined and it is found that in lease deeds namely of creditor no. 12 (HBR Chemicals Private Limited),13 (Saroj Gupta),14 (Jitender Rajpal Akkshay Arora), 15 (Alka Bajaj), 16 (Samyak Metals Pvt. Ltd.), 41 (M/s Prudent Real Estates & Developers LLP+) and 42 (M/s Fiji Fibrematics Private Limited), the Corporate Debtor is not signatory, but one Mav Epic Ventures LLP is the signatory, which is a shareholder of Corporate Debtor. Further, two lease deeds with creditor no. 9 (Texamco Infrastructure and Holding Limited) and 43C (Vintage Bio Fuels Private Limited) are not signed and three lease deeds of creditor no. 25 (Shri Anubhav Barry), 43 (Smt. Ushi Dhawan) and 43B (Smt. Anila Varma Shri Shiv Kumar Varma), although stated to be attached, have not been enclosed with the petition.

22. As per sub-section (3) of Section 10 of the IB Code, the corporate applicant shall, along with the application, furnish the information relating to its books of account and such other documents for such period as may be specified. Rule 7(1)

of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 prescribes that a corporate applicant, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 10 of the Code in Form 6, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India. Instructions to Form 6 prescribes that in case of operational debt, (i) copy of invoice/ demand notice served by an operational creditor on the corporate debtor and (ii) record of default obtained through the information utility or all documents listed in serial number 8 of part-III of this application and the copy of the relevant books of accounts of the corporate debtor evidencing the default to creditors need to be attached with the application. Further, the copies of audited financial statements of the corporate debtor for the last two financial years and the provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application also need to be attached with the application.

23. The petitioner has filed its audited financial statements for the years 2018-19, 2019-20 and provisional financial statements for the year 2020-21 as on 08.02.2021. It is noted that the provisional financial statements as on 08.02.2021 provided by applicant has been certified by Sushma Bindal, Chartered Accountants (Partner, RSAK & Associates), on 08.02.2021, but does not contain the Unique Document Identification Number (UDIN)¹. As per the information available on the

¹ UDIN is 18-Digits system generated unique number for every document certified/ attested by full-time practicing Chartered Accountants. The UDIN System has been developed by Institute of Chartered Accountants of India (ICAI) to facilitate its members for securing the documents, reports, certificates signed/ certified/ issued by them, so as to prevent the misrepresentation/ forgery caused by Non Chartered Accountants. The Portal provides ease of e-verification to the Regulators, Banks, other stakeholders etc., whereby they can verify the documents and ascertain the authenticity thereof as to whether such documents have been certified by full-time Practicing Chartered Accountants.

website of ICAI, UDIN has been made mandatory for all kinds of the certifications, GST and tax audit reports and other audit, assurance and attestation functions undertaken/ signed by full-time practicing Chartered Accountants in phased manner as per following schedule:

- a) For all Certificates w.e.f. 1st February, 2019.
- b) For all GST and Tax Audit Reports w.e.f. 1st April, 2019.
- c) For all other Audit, Assurance and Attestation functions w.e.f. 1st July, 2019.

24. Since the provisional financial statement for the year 2020-21 (upto 08.02.2021) submitted by the Corporate Applicant does not contain UDIN and is thus unverifiable. Moreover, the Chartered Accountants certifying the provisional financial statement (page 1748 of the petition) has put a disclaimer written by hand as below.

Notes to accounts & significant accounting policies 23
 The schedules referred to above & notes attached, form an integral part of the Balance Sheet.

Auditor's report
 As per separate report of even data attached

For R S A K & Associates
 (Chartered Accountants)
 FRN: 023935N

For and on behalf of the Board of Managing Director
 Office Beanz Private Limited
 For OFFICE BEANZ PVT. LTD.
 Managing Director Sharad Baja
 (Director)
 DIN: 01879319
 Director

Place: New Delhi
 Date: 08/02/2021

Handwritten Disclaimer:
 Disclaimer: We have prepared this Provisional Financial statement on the basis of tally data given to us. Please see the attached Disclaimer report of pages three attached with this report. we are Sounter signing this report without any risk & responsibility

Handwritten: Copy 1/2

25. Sub-section (4) of Section 10 of the IB Code says that the Adjudicating Authority by an order:

“(a) admit the application if it is complete (and no disciplinary proceeding is pending against the proposed resolution professional); or

(b) reject the application, if it is incomplete (or any disciplinary proceeding is pending against the proposed resolution professional).

Provided that the 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.”

26. Thus, the Provisional Financial Statements, which contain the disclaimer with handwritten note of the Chartered Accountants and also does not contain the UDIN clearly cast a shadow to the authenticity of the Provisional Financial Statements.

27. The applicant in Form 6 has mentioned the date of default as 01.04.2021. However, a close examination of the legal/demand notices served by the operational creditors shows that the date of default falls in the Section 10A period as the demand notices/ invoices of the operational creditor are all dated during section 10A period. Section 10A of IB Code, 2016 is reproduced below:

“10A.Suspension of initiation of corporate insolvency resolution process: notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

28. In **Ramesh Kymal vs Siemens Gamesa Renewable Power Pvt Ltd (2021) 3 SCC 224**, the Supreme Court the Hon'ble Supreme Court, while dismissing section 9 appeal in para 16 has clarified-

“16. Section 10A is prefaced with a non-obstante provision which has the effect of

overriding Sections 7, 9 and 10. Section 10A provides that:

(i) no application for the initiation of the CIRP by a corporate debtor shall be filed; (ii) for any default arising on or after 25 March 2020; and

(iii) for a period of six months or such further period not exceeding one year from such date as may be notified in this behalf.

The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP of a corporate debtor "for the said default occurring during the said period". The explanation which has been inserted for the removal of doubts clarifies that Section 10A shall not apply to any default which has been committed under Sections 7, 9 and 10 before 25 March 2020."

29. In our considered view, Section 10A is attracted, therefore, the Corporate insolvency resolution process cannot be initiated against the Corporate Applicant in the given facts and circumstances of the matter.

30. The application filed by the Corporate Applicant is devoid of merits and therefore the same is dismissed without cost.

-Sd-

(Umesh Kumar Shukla)
Member (Technical)

-Sd-

(Dr. PSN Prasad)
Member (Judicial)

March 01, 2024

Reet