



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **22.08.2025** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Win Hide Pvt. Ltd

MAIN PETITION NUMBER : CP(IB)/9(CHE)/2023
(IA/MA) APPLICATION NUMBERS
IA/1171(CHE)/2024

ORDER

CP(IB)/9(CHE)/2023
IA/1171(CHE)/2024

Present: Mr. Koteswara Rao, Ld. Counsel for Operational Creditors.
Mr. T.Jayashankar, Ld. Counsel for Petitioner.

Vide separate Order pronounced in open Court, Application IA/1171(CHE)/2024 is dismissed. The Petition is admitted. The CIRP is initiated against the company i.e. Win Hide Pvt. Ltd.

Mr. G.S.Sudhir is appointed as IRP.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

MS

Date: 22.08.2025



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

In the matter of Win Hide Private Limited

CP(IB)/9(CHE)/2023

*(Filed under Section 10 of the Insolvency and Bankruptcy Code 2016
r/w Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

Win Hide Private Limited

CIN: U19120TN2013PTC093321

No.88/1, Old Thiruthani Road

Ranipet, Walajah Taluk

Vellore District, Tamil Nadu – 632 402

... Corporate Applicant

Along with

IA(IBC)/1171/(CHE)/2024

in

CP(IB)/9(CHE)/2023

*(Filed under Section 60 (5) of the Insolvency and Bankruptcy Code 2016
R/w, Rule 11 of the NCLT Rules, 2016)*

M/s. Aleena Leather Exports

No.378, Ambur Road

Bakkalapalli

Pernambut – 635 810

.... Applicant

Vs

Win Hide Private Limited

CIN: U19120TN2013PTC093321

No.88/1, Old Thiruthani Road



Ranipet, Walajah Taluk
Vellore District, Tamil Nadu – 632 402

... Respondent

Order pronounced on 22nd August, 2025

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Corporate Applicant : T. Jayasankar, Advocate
For M/s Aleena Leather Exports: E.K Kumaresan, K. Nagendra Prasad,
G. Prabhu, V. Kishorkumar, G. Vignesh,
A. Vineshma Gracey, Advocates
For M/s B. Amanulla Sons,
M/s NASFAR,
M/s Simbi Trading Company,
M/s SN Leather Exports,
M/s SR Leather Exports,
M/s Vini Vibi Trades : P. James Victor Rajkumar, Advocate
For M/s Sha Kamalchand Multanmal : Akhil Bhansali K.M,
Aasim Shehzad, Siddarth. P, Rana
Prithvi, M. Sree Vishwanthini,
Advocates
For M/s Vesthon Exports : J. Abdul HAdi, S. Selvakumar
For M/s Kongu Tannery,
Kongu Leather Company,
B.G Leathers : H. Mohammed Farook,
K. Koteswara Rao, S. Vinodh Pandiyan ,
Advocates

COMMON ORDER

1. By this common order, we dispose of CP(IB)/9(CHE)/2023 filed by **Win Hide Private Limited** (hereinafter referred to as “**Petitioner/Corporate Applicant**”) under Section 10 of IBC, 2016 and IA(IBC)/1171(CHE)/2024 filed by one of the operational creditors of the



Corporate Applicant viz., **M/s. Aleena Leather Exports** against the Corporate Applicant under Section 60(5) r/w Section 65 of IBC, 2016.

CP(IB)/9(CHE)/2023

2. This is a Petition filed under Section 10 of the Insolvency & Bankruptcy Code, 2016 (IBC, 2016) by **Win Hide Private Limited** (hereinafter, Corporate Applicant) for initiation of Corporate Insolvency Resolution Process (CIRP) under Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, 'I&B Rules 2016'), following a default in meeting the financial obligations to its Financial Creditors (Secured/Unsecured Creditors) and Operational Creditors and other Creditors as shown in the Petition filed in Form-VI.

Particulars in Form – VI filed by the Corporate Applicant

3. In Part-I of the Petition, it is stated that the Corporate Applicant is a Private Limited company incorporated on 14.10.2013 bearing CIN: U19120TN2013PTC093321. The Registered Office of the Corporate Applicant is situated at No: 8B/1, Old Thiruthani Road, Ranipet, Walajah Taluk, Vellore District, Tamil Nadu- 632 402.

4. In Part-II of the petition, it is stated that the Corporate Applicant has proposed Mr. Y.N. Ramachandran as the IRP. He has filed his written consent in Form-2. The AFA of the proposed IRP was valid till 23.06.2024. It is also seen from the IBBI website that his AFA has expired



and the Insolvency Professional has not renewed his AFA subsequent thereto.

5. Part-III of the Petition, discloses the details of the total amount of default with respect to Financial Creditors as Rs. 1,02,34,554.58 (Rupees One Crore Two Lakhs Ninety-Nine Lakhs One Thousand Five Hundred and Forty-Four Only), Operational Creditors as Rs. 22,14,70,490/- (Twenty-Two Crores Fourteen Lakhs Seventy Thousand Four Hundred and Ninety), Workmen and Employees dues as Rs. 13,07,521 (Thirteen Lakhs Seven Thousand Five Hundred and Twenty-One) and Statutory dues as Rs. 11,96,352 (Eleven Crores Ninety-Six Thousand Three Hundred and Fifty-Two). The total debt dues amount to Rs. 23,42,08,917 (Rupees Twenty-Three Crores Forty-Two Lakhs Eight Thousand and Nine Hundred and Seventeen only). The date of default as per Part III of the Petition is 21.10.2022. The list of documents to prove the existence of debt is as follows:

- a) Copy of certificate of registration of charge as Annexure I
- b) Copy of demand notice dated 03.11.2022 issued by Aleena Lether Exports as Annexure II
- c) Copy of the legal notice dated 29.12.2022 issued by Priti Sales Corporation as Annexure II (1)
- d) Written communication dated 10.01.2023 in Form 2 by the proposed Interim Resolution Professional as Annexure III
- e) Copy of Audited Financial Statement for the years ended 31.03.2019 and 31.03.2020 and 31.03.2021 as Annexure V(1)
- f) Copy of Provisional Financial Statement for the period from April 1, 2021 to 31.03.2022 and 1.04.2022 to 31.12.2022 as Annexure V(2)
- g) Statement of Affairs as on 22.10.2022
- h) List of the Corporate Debtor's Assets and Liabilities as on 31st December, 2022 as Annexure VI(1)



- i) List of Financial Creditors Name and addresses with amounts owed to each one of them till 31-December-2022 along with Ledger Statement as Annexure VII (1)
- j) List of Operational Creditors Names and addresses with amounts owed to each one of them till 31-December2022 along with Ledger Statement as Annexure VII (2)
- k) List of Workmen & Employees Particulars of debts owed by the Corporate Debtor as on 31-December2022 along with Ledger Statement as Annexure VII (3)
- l) Particulars of debts owed by the Corporate Debtor to Statutory Authorities dues as on 31-December2022 along with Ledger Statement as Annexure VII (4)
- m) List of Particulars of Sundry Debtor owed to the Corporate Debtor as on 31-December-2022 along with Ledger Statement as Annexure VII (5)

Submissions made in the petition

6. It is stated that the Corporate Applicant was incorporated on 14.10.2013 in the state of Tamil Nadu with an objective to carry on the business of leather products and manufacturers of rubber, leather, imitation, leather cloth, leather bags, leather material required by trade and industry, tour and travel requisites, items required for personal use like purses and pouches, travel kits, travel bags and allied material. It is stated that the Corporate Applicant was promoted by Mr. Venkataswamy Selvakumar and his associate.

7. It is stated that over the time, the Corporate Applicant earned a place for itself in the industry of manufacturing leather/ allied products and developed a sound customer-base both in the domestic and international markets. However, the Corporate Applicant suffered severe setback due to shortage of working capital funds and delayed



realisation of receivables on account of COVID which induced closure of its operations. Consequently, the Corporate Applicant defaulted in its obligations to its financial creditors, suppliers, employees and statutory authorities.

8. It is stated that the promoter of the Corporate Applicant sold his personal property to settle the debts due to its secured financial creditors, however, the funds so obtained aided in clearing only part of the Corporate Applicant's debt. The Corporate Applicant tried to revive its operations by enlisting the support of its suppliers to continue the supply of raw materials but, was not successful.

9. It is stated that this Tribunal had directed the Corporate Applicant to settle the dues of one of its suppliers, Priti Sales Corporation, by issuing post-dated cheques payable in six instalments. However, only two instalments could be paid and the remaining four instalments could not be paid due to paucity of funds.

10. It is stated that the Corporate Applicant received a Demand Notice from one of its Creditors, Aleena Leather Exports, to clear the dues failing which it indicated to initiate CIRP against the Corporate Applicant.

11. It is stated that factors like downward economic slowdown, lack of demand for leather products, etc. also contributed to the Corporate Applicant's downfall.



MEMO FILED BY THE APPLICANT

12. During the hearing on 10.03.2023, the Tribunal directed the Corporate Applicant to provide the particulars of the CIRP pending against the Corporate Applicant. In compliance thereof the Corporate Applicant filed memo vide S.R. No. 1580 dated 11.04.2023.

13. It is stated that IBA 923 of 2019 was filed by one of the Operational Creditors of the Corporate Applicant, Priti Sales Corporation, under Section 9 of the IBC, 2016 for initiation of CIRP against the Corporate Applicant. Thereafter, a Joint Memo of Compromise was entered into between the Corporate Applicant and Priti Sales Corporation on 14.11.2019. The Tribunal, taking into consideration the Joint Memo of Compromise dated 14.11.2019 dismissed IBA/923/2019 vide order dated 03.12.2019. Since the IBA/923/2019 was 'dismissed as withdrawn', there is no CIRP proceedings pending against the Corporate Applicant except the present petition "CP(IB)9(CHE)/2023".

AFFIDAVIT OF STATEMENT OF OBJECTION FILED ON BEHALF OF OPERATIONAL CREDITORS M/S. KONGU LEATHER COMPANY AND M/S. KONGU TANNERY

14. Two of the Operational Creditors/ Objectors of the Corporate Applicant viz., M/s Kongu Leather Company and M/s Kongu Tannery, HUF filed an Affidavit of Statement vide S.R. No. 3754 dated 11.09.2023.



15. It is stated that the closing balance as on 31.12.2022 of M/s.Kongu Tannery is Rs.3,36,55,369/- and that of M/s Kongu Leather Company is Rs.3,51,01,854/-. However, as per the petition, outstanding balance as on 31.12.2022, of M/s. Kongu Tannery is Rs.1,94,45,353/- and of M/s Kongu Leather Company, is Rs.3,33,98,824/-. Therefore, the figures stated in the petition do not represent the actual financial position of the companies.

16. It is stated that Selvakumar, one of the directors of the Corporate Applicant holds the position of director in several other companies namely, Harisvanikk Leders Pvt Limited, Zubron Leders Pvt Limited, Amaze Leders Chemie Pvt Limited, Adrith Leders Pvt Limited, and Ranipet Leather Manufacturing Enterprise Pvt Limited. It is contended that this information should be taken into consideration while assessing the financial position of the Corporate Applicant and the responsibilities of the parties involved. It is stated that outstanding payments due from the director's own companies, Central Winner Asia Limited and Harisvanikk Leders Pvt Limited have been shown in the petition and the inclusion of these amounts in the application misrepresents the true financial status of the Corporate Applicant.

17. It is stated that Deenadayalan Siranjeevi, an employee of the Corporate Applicant was inducted as a director of the Corporate Applicant on 01.04.2022, replacing Varatharajulu Jayalakshmi. This change raises concerns and merits investigation into the motives behind such changes.



18. It is stated that there are several companies disclosed in the petition namely, Saniya Impex, Sara Leather International, Verizon World, Harisvanikk Leders Pvt Limited, T Senthil Kumar, Niyo Enterprise, Vesthon Exports, MSN Exports, Vista Shoes, Jai Impex, and Zubron Leders Pvt Limited, that may have engaged in bill trading. Hence, a thorough stock audit and income tax audit are required to uncover any discrepancies related to these bill trading practices and ascertain the true financial condition of the companies involved.

19. It is stated that the petitioner has not submitted a stock statement, which is necessary for understanding the inventory position of the company. This omission raises doubt about the transparency and accuracy of the information presented in the petition. Further, in order to effectively scrutinize the accounts of the Corporate Applicant, the tally data pertaining to the creditors mentioned in the petition should be analysed to verify the accuracy of the financial statements and to identify any inconsistencies or manipulations.

20. It is stated that Corporate Applicant has not filed copies of income tax returns for the Financial Years 2021-22 and 2022-23 which are required to evaluate the financial health of the companies and for a comprehensive analysis.

21. It is stated that while input tax credit refunds have been availed, the outstanding amounts owed to MSME suppliers have not been



cleared. This points to potential irregularities in the financial operations of the companies and necessitates a deeper investigation.

22. It is stated that there seems to be misrepresentation in the shareholding pattern of the Corporate Applicant since originally, the shareholders were different. Further, the resolutions produced by the Corporate Applicant cannot be considered because the same are not substantiated with the minutes of Extraordinary General Meeting meetings, minutes of Board Meetings, attendances register, proof of service of delivery of notice to prove that the meetings had taken place.

23. It is stated that there are catena of judgements where it was held that when a Section 10 application is filed by the management of the Corporate Applicant with the intention to defraud its creditors, such an application ought not to be entertained. In order to initiate CIRP proceedings, there must be a bonafide interest in revival of the Corporate Applicant rather than the object of dissolution of the Corporate Applicant by simply showing the proof of debt and default. Section 10 of IBC, 2016 must not be an alternative when Section 271-272 of the Companies Act, 2013 could not be invoked.

Affidavit of Statement of Objection filed on behalf of Operational Creditors M/s. Vesthon Exports

24. Another Operational Creditor/ Objector of the Corporate Applicant viz., M/s Vesthon Exports, represented by one of the partners



of the firm, Ashraf Ali, filed an Affidavit of Statement vide S.R. No. 4223 dated 04.10.2023.

25. In addition to the submissions made by M/s Kongu Leather Company and M/s Kongu Tannery, HUF in their Affidavit of Statement dated 11.09.2023, the firm herein has made the following submissions.

25.1. It is stated that M/s. Vesthon Exports is carrying on wholesale business at No. 15, Sai Nagar Annex, Chinmaya Nagar, Koyambedu. Chennai – 600 092.

25.2. It is stated that the closing balances as per the books of the M/s Vesthon Exports differ from the balances mentioned in the application. The closing balance, as per the books of M/s Vesthon Exports is Rs.90,71,210.74 whereas the outstanding balance as per the books of the Corporate Applicant is Rs.2,23,709.60. Hence, the figures stated in the books of the Corporate Applicant do not accurately represent the actual financial position of the companies.

25.3. It is stated that the Corporate Applicant represented by its directors issued cheque vide Cheque No. 000675 dated 04.01.2023 for a sum of Rs. 90.00.000/- drawn on ICICI Bank, Vellore Gandhi Nagar Branch, in order to discharge its liability. However, the cheque was dishonoured and returned to M/s Vesthon Exports. Thereafter, the Operational Creditor/ Objector initiated the criminal proceeding against the Corporate Applicant under Negotiable Instruments Act, 1881, and the same is pending decision. It is stated that in order to escape such



criminal proceedings and cheat the operational creditors, the Corporate Applicant is misusing the provisions of Section 10 of IBC, 2016. It is stated that the Corporate Applicant cannot be allowed to escape the criminal act committed by it on the strength of such petition.

Memo for Clarification

26. During the hearing on 28.08.2023, B.G. Leathers, the landlord/ Operational Creditor of the Corporate Applicant submitted that the Corporate Applicant has already vacated the premises and the address mentioned in the petition is incorrect. This Tribunal directed the Corporate Applicant to clarify the same. In compliance of the directions of this Tribunal dated 28.08.2023, the Corporate Applicant filed Memo of Clarification vide S.R. No. 4232 dated 04.10.2023.

27. It is stated that the Corporate Applicant had entered into a Factory Lease Agreement with B.G Leathers on 28.08.2014. Pursuant to the agreement, the Corporate Applicant remitted the security deposit to B.G. Leathers and thereafter, remitted the monthly rent in a timely manner. However, B.G. Leathers refused to furnish invoices towards the rent paid. A tripartite agreement was entered into between the Corporate Applicant, Effluent Treatment Company and B.G. Leathers on 05.08.2015. The Corporate Applicant obtained a Factory License and other registrations required for the factory operations under various statutory provisions. From January, 2022, the Corporate Applicant engaged workers for carrying out the factory operations. On 05.08.2022



and 06.08.2022, B.G Leathers, without issuing any notice of termination of tenancy, attempted to close the factory main gate thereby interfered with the peaceful possession of property occupied by Corporate Applicant.

28. It is stated that the Corporate Applicant filed a case, Case No. RLROP No. 01/2022, against B.G. Leathers before the District Munsiff cum Judicial Magistrate Court, Ranipet, seeking for an order restraining the landlord from interfering with the tenancy rights of the Corporate Applicant in the premises and to allow the Corporate Applicant to operate the factory. During the pendency of the case, a settlement was arrived at between Corporate Applicant and the landlord vide Compromise Agreement dated 26.10.2022, based on which the case was disposed of by the District Court as settled out of Court vide order dated 15.02.2023.

29. It is stated that the present petition was filed before this Tribunal on 12.01.2023 prior to order of the District Court, Ranipet dated 15.02.2023.

30. It is stated that even after entering into the Compromise Agreement dated 26.10.2022, the landlord, B.G. Leathers did not allow the Corporate Applicant to remove its equipment from the premises.

31. It is stated that the creditors of the Corporate Applicant have filed criminal cases against its directors before various courts.



32. It is stated that, for the aforesaid reasons, the Corporate Applicant could not take steps to change the address of its registered office.

Memo filed by the Counsel for the Operational Creditors/ Objectors

33. The Objector/ Operational Creditor of the Corporate Applicant i.e., NASFAR represented by its proprietor Mohamed Attaullah filed a memo vide S.R. No. 4239 dated 05.10.2023; SN Leather Exporters represented by its proprietor, Sowahar Sadiq, filed a memo vide S.R. No. 4240 dated 05.10.2023; Vini Vibi Traders Exports represented by T Vinodkumar filed a memo vide S.R. No. 4241 dated 05.10.2023; B. Amanullah Sons represented by A. Rahamathulla filed a memo vide S.R. No. 4242 dated 05.10.2023; Simbi Trading Company represented by A Najumudeen filed a memo vide S.R. No. 4243 dated 05.10.2023; and SR Leather Exports represented by Jhair Hussain filed a memo vide S.R. No. 4244 dated 05.10.2023. The submissions made by the Operational Creditors/ Objectors are as below,

33.1. It is stated that the Objectors personally visited the mentioned Registered Office of the Corporate Applicant at No.8B/ 1, Old Tiruthani Road, Ranipet, Walajah Taluk, Vellore District – 632 402, and noticed that the Corporate Applicant already vacated the premises on 31.10.2022.

34. It is stated that now the premises is being used by M/s. B.G. Leathers who is the Landlord and one of the objectors in the present petition.



35. It is stated that the Corporate Applicant has knowingly filed this vexatious petition before this Tribunal by mentioning an incorrect address, which belongs to a third party. The Corporate Applicant has failed to follow the mandatory Section 12 of Companies Act, 2013 for change of Registered office.

36. It is stated that the Corporate Applicant has filed the present petition with malicious intent in a fraudulent manner which is covered under Section 65(1) of the Code, and is liable to be penalised. It is prayed that this Tribunal may consider and take on record the memo in view of the preliminary objections and dismiss the petition.

Counter Affidavit of Sha Kamalchand Multanmal

37. The Operational Creditor, Sha Kamalchand Multanmal represented by its proprietor Dharnendra Ashok Mehta, has filed affidavit vide S.R. No. 3949 dated 14.09.2023.

38. It is stated that the Corporate Applicant failed to fulfil its financial obligations towards both its Financial and Operational Creditors, in addition to defaulting in its statutory dues.

39. It is stated that as per the Corporate Applicant's financial records, the outstanding amount owed to the Objector stands at Rs.34,84,785/- (Rupees Thirty-Four Lakhs, Eighty-Four Thousand, Seven Hundred and Eighty-Five rupees only). While the Corporate Applicant made a partial payment of Rs. 5,71,563/- (Rupees Five Lakhs, Seventy-One Thousand,



Five Hundred and Sixty-Three rupees only), the remaining balance as on the date remains as Rs. 29,13,222/- (Rupees Twenty-Nine Lakhs, Thirteen Thousand, Two Hundred and Twenty-Two rupees only).

40. It is stated that as per the Auditor's Report and Director's Report, the Corporate Applicant achieved a substantial level of revenue during the Financial Year 2018 2019. Additionally, noteworthy income was generated through the export of goods, totalling to Rs.13,15,00,000/- (Rupees Thirteen Crores and Fifteen lakhs only). Further, the Corporate Applicant possesses assets of significant value.

41. It is stated that if the petition is admitted and a resolution is pursued through the IBC channels, the proposed waterfall mechanism will pose a grave concern for the operational creditors. The petition of this mechanism could lead to substantial "haircuts" on the amounts owed to them. This situation not only undermines their legitimate claims but also jeopardizes their ability to recover a fair and reasonable portion of the debts owed.

42. It is stated that instead of pushing the Corporate Applicant into insolvency and subsequent resolution proceedings, an alternative approach that considers the collective interest of all the creditors, may be arrived at. By granting a time extension for the repayment of debts, creditors can navigate towards the revival of the Corporate Applicant's business operations. This approach aligns with the broader goal of



preserving viable business and safeguarding creditors' interests in the long run.

43. It is stated that the Corporate Applicant is engaged in a business that has shown promise in terms of revenue generation. The financial statements and reports presented indicate that the Corporate Applicant's revenue from both domestic and export operations has been noteworthy. Further, the ownership of valuable assets enhances the prospects of business's viability. Instead of prematurely resorting to insolvency, exploring avenues for business revival should be prioritized.

44. It is stated that as per the records maintained by the Corporate Applicant, the outstanding debt payable to him amounts to Rs. 29,13,222/-. While the Corporate Applicant has made a partial payment, but all the significant portion of the debt remains unpaid. However, given the revenue generated and the available assets, there is potential for a more structured repayment plan that would not only benefit creditors but also enable the Corporate Applicant to continue its operations.

45. It is prayed that rather than proceeding with the admission of the present petition, the approach may be to go to an alternative process that grants all the creditors to recover a fair and reasonable portion of the debts owed. This pragmatic approach could provide the Corporate Applicant with an opportunity to rectify its financial situation and pave



way for a sustainable business revival, thereby safeguarding the interests of all stakeholders involved.

Memo filed by the Landlord and Objector – M/s. B.G. Leathers represented by the managing partner Mr. G. Yogeswaran

46. The landlord/ Operational Creditor of the Corporate Applicant has filed by way of Memo dated 19.09.2023 vide S.R. No. 4019.

47. It is stated that the Objector is a registered Partnership Firm and absolute owner of the factory premises located at No. 8B/1, Old Thiruthani Road, Ranipet Walajah Taluk, Vellore District, Tamil Nadu 632402, Tamil Nadu. The factory premises was previously let out to the Corporate Applicant under a Factory Lease Agreement dated 28.08.2014, where the Corporate Applicant had carried on the business of manufacturing leather products.

48. It is stated that since Corporate Applicant had been a chronic defaulter of rent, the Objector requested it to vacate the let-out premises and hand over the vacant possession of the same. This being the case, the Corporate Applicant filed a case against B.G. Leathers, RLTOP No. 01/2022, before the District Munsiff cum Judicial Magistrate Court, Ranipet, seeking for an order restraining B.G. Leathers from interfering with the tenancy right of the Corporate Applicant except by due process of law.



49. It is stated that during the pendency of the RLTOP case, an amicable settlement was arrived at between the Objector herein and the Corporate Applicant, vide Compromise Agreement dated 26.10.2022 wherein the Corporate Applicant agreed to vacate the let-out premises on or before 31.10.2022. Accordingly, a Memo of Compromise was filed before the District Court and RLTOP No.01/2022 was disposed of as settled out of court vide order dated 15.02.2023.

50. It is stated that in terms of the Compromise agreement dated 26.10.2022, the Corporate Applicant vacated and handed over the vacant possession of the let out premises to B.G. Leathers on 31.10.2022 which is evidenced by their letters dated 23.12.2022, 28.12.2022 and 30.12.2022. It is stated that after handing over the possession of the premises, the same is being utilised by B.G. Leathers. It is no longer having any office in the premises at No.8B/1, Old Thiruthani Road, Ranipet Walajah Taluk, Vellore District, Tamil Nadu 632402, as it was vacated by them as early as on 31.10.2022 as aforesaid. While this being so, it is shocking to note that the Corporate Applicant has mentioned the previous address No.8B/1, Old Thiruthani Road, Ranipet Walajah Taluk, Vellore District -632402, Tamil Nadu, in the above C.P (IB) No. 9 of 2023, in utter misuse. It clearly shows that the Corporate Applicant is falsely mentioning the said address in its all contacts, communications and correspondence which gravely affect its day to day administration, as their customers are invading to its factory premises, even after eighteen months, since it changed the address by vacating the premises in the old address



No.8B/1, Old Thiruthani Road, Ranipet Walajah Taluk, Vellore District, Tamil Nadu 632402, which is not its existing address.

51. It is stated that for this reason the petition may be rejected by the Tribunal considering it as vexatious with costs and penalty as laid down under Section 65(1) of the Code for initiating the Insolvency Resolution Process in a fraudulent manner with a malicious intent.

**Additional Reply Statement filed on behalf of Operational Creditors
M/s Kongu Leather Company and M/s. Kongu Tannery**

52. The operational creditors, Kongu Tannery filed an Additional Reply Statement vide S.R. No. 249 dated 12.01.2024 in compliance with the directions of this Tribunal dated 09.01.2024.

53. It is stated that the Corporate Applicant had initially filed a financial statement along with petition without audit report and thereafter it filed another audit report as per the directions of the Tribunal.

54. It is stated that there are lot of discrepancies in the initial financial statement and the subsequent financial statement filed by the Corporate Applicant. The first financial statement for the Assessment Year 2022-23 shows loss of Rs.6,65,44,436/36 and in the same year, audited balance sheet shows loss of Rs. 3,37,86,833/-.



55. It is stated that the difference in two financial statements filed by the Corporate Applicant reveals that the statements are not genuine and they are fabricated with malafide intention.

56. It is stated that in the audit report for the Assessment Year 2023-24 the auditor observed that proper stock records are not maintained by the Corporate Applicant and the method of valuation of closing stocks is not ascertainable.

57. It is stated that the Corporate Applicant has not deducted and paid TDS under relevant section and not filed the return. It means that the corporate applicant has done bill trading and thereby took out the funds.

58. It is stated that the information about debtors and creditors is not ascertainable. It is not impossible to obtain external confirmation from the debtors and creditors for their relevant outstanding balances.

59. It is stated that the debtors and creditors outstandings are for a period of more than 90 days and the payments to some of the suppliers are not within 180 days from the date of invoice.

60. It is stated that the Corporate Applicant has not followed the first in first out payment system and there by cheated the genuine suppliers like the operational creditors herein.



61. It is stated that the application filed by Corporate Applicant under Section 10 of IBC, 2016 is flawed and lacks substantial evidence to support the claims made.

Reply Filed as Counter Affidavit by Aleena Leather Exports Operational Creditor in the petition

62. One of the Operational Creditors of the Corporate Applicant viz., M/s Aleena Leather Exports (hereinafter, Aleena Leather) has filed its reply to the petition filed by Corporate Applicant vide S.R.No. 1937 dated 18.04.2024

63. It is stated that the petition is not maintainable in the eyes of law. The averments and allegations of the Corporate Applicant are denied as false, frivolous, misleading, ill-advised, vexatious and a deliberate attempt to abuse the process of law beside being motivated.

64. It is submitted that, Aleena Leather is primarily involved in the business of processing the leather from buffalo raw to wet blue since 2008.

65. It is stated that Corporate Applicant was carrying on the business of leather products and manufacturers of rubber leather imitation, leather cloth, leather bags, leather material required by trade and Industry, tour and travel requisites, items required for personal use like purses and pouches, travel kits, travel bags and allied material. The Corporate Applicant, had a business relationship for over more than 10



years and supplied finished products of wet blue goods which consists of Buffalo and cow.

66. It is stated that, the initial transactions arising out of the invoices were cleared in time by the Corporate Applicant. From the year 2016, the invoices were paid irregularly and from 2020 no payments were made. Invoices of Rs.1,08,80,048/- due and payable by the Corporate Applicant, remain unpaid till today. The Corporate Applicant has admitted the dues and there is no dispute as to the amount due (i.e., Rs. 1,08,80,048/-) for the despatch of goods to the Corporate Applicant for the period from 11.10.2020 to 10.05.2022. It is stated that GST statutory dues were also claimed from the Corporate Applicant for the pending invoices.

67. It is stated that in the case of *Innovative Industries Ltd. v. ICICI Bank [Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017]*, the Hon'ble National Company Law Appellate Tribunal (NCLAT) has held that:

"The NCLT have discretion to reject the debtor's application under section 10 of IBC on the ground that where the debtor has made an application for CIRP with malicious intention to take advantage of the moratorium provisions of the IBC."

68. It is stated that in the case of *Leo Duct Engineers and Consultants Ltd Company Appeal (AT) (Insolvency) No. 100 of 2017*, it was held as under,



“The corporate debtor ”Leo Duct had an outstanding liability of Rs.32 crores towards Banks. Since, the Leo Duct was not in a position to discharge its liability, so, it made an application u/s 10 of IBC to initiate CIRP. The moment NCLT admits of application u/s 10 of the IBC 2016 it has to declare moratorium. Somehow Banks who had already initiated proceedings under SARFAESI Act 2002 got to know regarding moving of the application of CIRP by LeoDuct in the NCLT, therefore, they approached NCLT to dismiss application made by LeoDuct, positing such move being a blatant abuse of law. NCLT, Mumbai held that for admission of CIRP by corporate applicant including corporate debtor under Section 10, the adjudicating authority has to consider the merits of each case and to see beyond what meets the eye, and also requires due application of mind before taking any decision. It has been further held by NCLT that application for CIRP should be rejected on the following grounds:-

- 1) Where initiation of the CIRP shall cause irreparable loss and injury to the creditors and an uncalled for protection to the borrowers and various guarantors.*
- 2) Where the admission of the CIRP would have a serious impact on the financial creditors who have already set the wheel in motion to secure their debts*

In view of the above, it requires conditions whether:-

- 1) the debtor has made an application for CIRP with malicious intention to take advantage of the moratorium provisions of the IBC.*
- 2) initiation of the CIRP shall cause irreparable loss and injury to the creditors and an uncalled-for protection to the borrowers and various guarantors.*



3) the admission of the CIRP would have a serious impact on the financial creditors who have already set the wheel in motion to secure their debts.

4) Where the corporate debtor does not disclose all the facts including facts in relation to the debts owed by it to its creditors. the NCLT have discretion and may reject the corporate debtor's application for CIRP under Section 10 of IBC.

69. It is stated that without due or any prior notice, the Corporate Applicant has initiated the CIRP before this Tribunal under Section 10 of IBC, 2016.

70. It is stated that, the Form 3 demand notice sent in the name of Aleena Leathers Exports which is marked as Annexure-II in CP No. (IBC)/09/CHE/2023 is fraudulent/ false. It is stated that the Form 3 demand notice was not issued by Aleena Leather. The operational creditor has not issued any notice under IBC, 2016 to the Corporate Applicant. It is stated that the Corporate Applicant, seemingly to circumvent its financial obligations to the creditors, has opted to file the instant petition.

Rejoinder filed by the Applicant to the Counter filed by Aleena Leathers Exports

71. The Corporate Applicant has filed its Rejoinder vide S.R. No. 2067 dated 26.04.2024.



72. It is stated that in the case of *Leo Duct Engineers and Consultants (supra)*, the objection was raised by the Financial Creditors (i.e. Banks). Moreover, the Financial Creditors had already taken steps to recover its due under the SARFAESI Act 2002. However, in the present case, the objection is raised by one of the 148 Trade Creditors. In addition, no Financial Creditors/major Trade Creditors has raised any objections. It is stated that for these reasons, the verdict in the case of Leo Duct Engineers and Consultants is not applicable to the present case.

73. It is stated that the Demand Notice dated 03.11.2022 issued by Aleena Leathers enclosed as Annexure-II of the application was received by the Corporate Applicant and there is no malicious intention on the demand notice. It is stated that the Corporate Applicant is not pressing/depending/relied on the disputed document claimed by the trade creditor (Aleena Leathers Export) to support the case in CP(IBC)/9(CHE)/2023. Even without such document the corporate debtor is eligible to file this petition under section 10 of IBC, 2016.

IA(IBC)/1171(CHE)/2024

74. This is an Interim Application filed by one of the operational creditors of the Corporate Debtor, M/s. Aleena Leather Exports seeking the following reliefs,

- a. *To dismiss the petition in CP(IB)/ 9(CHE)/ 2023, filed under Section 10 of IBC as it is not maintainable, devoid of merits and thus render justice.*



- b. To impose penalty under section 65(1) for initiating the Insolvency Resolution process in a fraudulent manner with a malicious intent to defraud the stakeholders.*
- c. To pass such orders or further orders which deem to be fit and proper in the interest of justice.*

Submissions made by the Applicant in IA(IBC)/1171(CHE)/2024

75. It is stated that the Applicant is a proprietorship concern involved in the business of processing the leather unit from buffalo raw to wet blue since 2008. The Applicant herein is one of the operational creditors of the Corporate Applicant. The Corporate Applicant and the Applicant herein had a business relationship for over more than 10 years. The initial transactions arising out of the invoices were cleared in time by the Corporate Applicant. However, since 2016, the Corporate Applicant was making irregular payments. The Corporate Applicant has not made any payments of the invoices raised by the Applicant since 2020, which remain due and payable.

76. It is stated that the Corporate Applicant has admitted that an amount of Rs. 1,08,80,048/- is due and payable to the Corporate Debtor on account of 54 invoices raised for the despatch of goods to the Corporate Applicant from 11.10.2020 to 10.05.2022. The ledger books of the Applicant from the year 01.04.2017 to 31.03.2023 also reflect the same.



77. It is stated that in the order dated 09.06.2023 passed by this Tribunal in CP(IB)/9(CHE)/2023, the Tribunal has directed the Corporate Applicant to provide copy of the petition to all of its 148 creditors. In compliance to the said order, the Corporate Applicant served the copy of the application to the Applicant herein.

78. It is stated that the Form 3 demand notice allegedly sent by the Applicant herein that is annexed and marked as Annexure II in CP(IB)/9(CHE)/2023 was not issued by the Applicant herein. Hence, the said demand notice is fraudulent /false.

79. It is stated that the Corporate Applicant is trying to utilize the IBC proceedings to make its illegal acts as legal and has filed the petition fraudulently with malicious intent. The section 10 application has not been filed with the intent of genuine resolution of the insolvency of the Corporate Applicant rather to save the Corporate Applicant from its responsibilities, liabilities and prosecution.

FINDINGS OF THIS TRIBUNAL

80. Heard the Ld. Counsel for the parties and perused the documents placed on record.

81. The Corporate Applicant, Win Hide Private Limited, has filed the CP(IB)/9(CHE)/2023 under Section 10 of IBC, 2016 for initiating CIRP proceedings on account of default in repayment of debt committed by it. In Part IV of the petition, the Corporate Applicant has disclosed that



it has committed a total default of Rs. 23,42,08,917/- (Rupees Twenty-Three Crores Forty-Two Lakhs Eight Thousand and Nine Hundred and Seventeen only). However, several operational creditors have filed their objections to the admission of the petition under Section 10 of IBC, 2016. Hence, this Tribunal addresses the objections raised by the operational creditors before considering the admissibility of CP(IB)/9(CHE)/2023.

Objections curable by the Resolution Professional

82. Three of the operational creditors/ objectors i.e., M/s Kongu Leather Company, M/s Kongu Tannery (Kongu group) and M/s. Vesthon Exports have objected to the Section 10 petition on the ground that there are mismatches in the outstanding dues to the objectors herein as per the books of the Corporate Applicant and the books of the operational creditors.

83. The Kongu Group has submitted that certain outstanding debts of the Corporate Applicant are due from the companies wherein the Corporate Applicant's directors hold position of directorship. According to the Kongu Group, such outstanding receivables appearing in the balance sheet portrays an unrealistic financial position of the Corporate Applicant by exaggerating its financial distress.

84. The Kongu Group has also raised concerns regarding the change in directorship of the Corporate Applicant prior to filing the Section 10 petition, possible bill-trading transactions carried out with other companies and incomplete/ stock records of the Corporate Applicant.



However, according to the Corporate Applicant, such allegations are the unproven assertions.

85. This Tribunal is of the view that such alleged ledger misstatements, qualifications in the audit report, irregular/missing income tax returns do not warrant the rejection of a petition filed under Section 10 of IBC, 2016. Such defects pertaining to the books of the Corporate Applicant do not require the investigation by this Tribunal at the stage of admission of Section 10 petition. These aspects may be investigated upon, verified and reconciled by the Resolution Professional after the initiation of the CIRP process under the direction of the Committee of Creditors. Moreover, in case the Resolution Professional/ Liquidator finds that the directors of the Corporate Applicant have carried out any activities/ transactions that are harmful to the creditors or other stakeholders of the Corporate Applicant, the Resolution Professional/ Liquidator is at liberty to file avoidance applications.

Pending criminal prosecutions

86. M/s. Vesthon Exports has alleged that Cheque No. 000675 dated 04.01.2023 for Rs. 90,00,000 drawn by the Corporate Applicant on ICICI bank was dishonoured and consequently, a complaint under Negotiable Instruments Act, 1881 (NI Act, 1881) was filed. According to the objector, the present Section 10 petition is an attempt by the Corporate



Applicant to escape liability arising out of criminal prosecution by misusing the provision of moratorium under Section 14 of IBC, 2016.

87. The objector herein has not placed any document on record to prove the existence of pending criminal prosecution under the Negotiable Instruments Act, 1881 against the Corporate Applicant. Nonetheless, in terms of Section 138 read with section 141 of NI Act, 1881, in addition to the Corporate Applicant, the liability for dishonour of cheques can be imposed on, *“every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company”*.

88. The Hon’ble Supreme Court in the case of *P. Mohanraj and Ors. vs. Shah Brothers Ispat Pvt. Ltd. (Civil Appeal No. 10355 of 2018)* has considered the issue ‘whether a cheque institution or continuation of a proceeding under Section 138/141 of the Negotiable Instruments Act can be said to be covered by the moratorium provision under Section 14 of the IBC, 2016’. While interpreting the scope of Section 14 of IBC, 2016, it was held that moratorium under Section 14 of IBC, 2016 does not protect natural persons and only applies to the Corporate Debtor. The relevant paragraph is extracted hereunder,

“77. Thus, for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply



only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.”

89. Therefore, even on the imposition of moratorium under Section 14 in the event of admission of the instant Section 10 petition, criminal proceedings against the directors can be continued. The admission of the Corporate Applicant to insolvency proceedings does not prejudice the objector in any way.

Registered office of the Corporate Applicant

90. The former landlord of the Corporate Applicant, M/s. B.G. Leathers and operational creditors of the Corporate Applicant i.e., M/s. NASFAR; M/s. SN Leather Exporters; M/s. Vini Vibi Traders Exports; M/s. B. Amanullah Sons; M/s. Simbi Trading Company; M/s. SR Leather Exports, M/s. Aleena Leather Exports have complained that the Corporate Applicant has misrepresented its registered office in the Section 10 petition since it has already vacated the premises in terms of compromise with its the landlord dated 26.10.2022.

91. It is seen from the order dated 15.02.2023 in RLTOP 01/2022 that the petition was dismissed as settled out of Court. The present petition was filed before this Tribunal on 12.01.2023 even before the order of the District Munsif Court cum Judicial Magistrate, Ranipet District in RLTOP 01/2022 dated 15.02.2023. The Corporate Applicant in its Memo for Clarification vide S.R. No. 4232 dated 04.10.2023 has undertaken to



comply with the requirement of Section 12 of Companies Act, 2013 regarding disclosure of registered office.

92. This Tribunal is of the view that wrong disclosure of registered office of the Corporate Debtor is a procedural error which is curable. Moreover, since the present petition was filed before this Tribunal on 12.01.2023 prior to order of the District Court, Ranipet dated 15.02.2023, we find no intent on the part of the Corporate Applicant to mislead. The disclosure of outdated registered office address is not fatal to present Section 10 petition.

Objection under Section 65 of IBC, 2016

93. Section 65 of the IBC, 2016 empowers the Adjudicating Authority to impose a penalty on any person who initiates insolvency resolution process **fraudulently or with malicious intent** for any purpose other than resolution of the Corporate Debtor. Section 65 of IBC, 2016 is extracted hereunder,

“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 a 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.”

94. The Hon’ble NCLAT in the case of ***Getz Cables Pvt. Ltd. v. State Bank of India and Anr. Company Appeal (AT) (Insolvency) No.1953 of 2024*** considered the scope of the terms fraudulent and malicious intent. Simply to put, fraud consists of elements of deceit coupled with injury whereas malice is a wrongful act done without lawful justification. The relevant paragraphs of the order are extracted hereunder,

“16. Necessary ingredients, which required to be proved under Section 65, sub-section (1) are that proceedings are initiated fraudulently or with malicious intent for any purpose other than for the resolution of insolvency. Both expression – fraudulent and malicious has definite connotation. The expression ‘fraudulently’ has been explained in Advanced Law Lexicon by P Ramanatha Aiyar 6th Edition in following words:

“Person does a thing fraudulently if he does it with an intent to defraud, and so to constitute fraud two elements are necessary – deceit, and injury and loss to some person.”



17. Another expression which occurs in Section 65 is 'malicious intent'. *Advanced Law Lexicon* by P Ramanatha Aiyar define the word 'malice' in the legal sense in following words:

"1. The intent, without justification or excuse, to commit a wrongful act. 2. Reckless disregard of the law or of a person's legal rights."

There is also a second definition, which is as follows:

"Malice in the legal sense imports (1) the absence of all elements of justifications, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause to particular harm which is produced or harm of the same general nature, or (b) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such harm may result....

18. The Hon'ble Supreme Court has defined 'malice' in (2003) 8 SCC 567 – *Chairman & MD. BPL Ltd. vs. S.P. Gururaja and Ors.* in paragraph 21, in following words: "21. Malice in common law or acceptance means ill will against a person, but in the legal sense it means a wrongful act done intentionally without just cause or excuse."

95. The Hon'ble NCLAT in the case of *Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 99 of 2020*, held that a petition under Sections 7, 9, or 10 of the IBC cannot be rejected solely on the ground of lack of intent for resolution, unless there is explicit documentary proof of fraudulent or malicious intent. Therefore, it is not enough that there is an absence of lack of intent for resolution of the corporate debtor but there is necessary mandate for



fraud or malicious intent. The relevant paragraphs are extracted hereunder

“34. Section 65 of the Code provides for penal action for initiating Insolvency Resolution Process with a fraudulent or malicious intent or for any purpose other than the resolution. However, the same cannot be construed to mean that if a petition is filed under Section 7, 9, or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the Adjudicating Authority on the ground that the intent of the Applicant/Petitioner was not resolution for Corporate Insolvency Resolution Process. As the proceedings under IBC are summary in nature, it is difficult to determine the intent of the Applicant filing an application under Section 7, 9, or 10 of the Code unless shown explicitly by way of documentary evidence. This situation may arise in specific instances where a petition is filed under IBC specifically with a fraudulent or malicious intent.

96. The Hon’ble NCLAT in the case of ***Amour Infrastructure LLP Vs. Digital Integrated Technologies Pvt. Ltd. (Company Appeal (AT) (Ins.) No. 884 of 2022 & I.A. No. 2458 of 2022)***, held that an Adjudicating Authority cannot make a finding of fraud/ malice unless it is specifically pleaded and backed by documentary evidence. The relevant paragraphs are extracted hereunder

“5. Learned Counsel for the respondent has referred to the findings in paragraph 26 of the order which is to the following effect:

“From these facts, we have got reasonable basis to reach to a conclusion that application filed under Section 7 is a mechanism whereby financial creditor is trying to settle personal scores and put undue pressure on the corporate debtor. hence, we have no hesitation in holding that this



application has been filed with malicious intent and for purposes other than the Resolution of Insolvency of the Corporate Debtor. We further find that corporate debtor is a solvent company”

8. Observations made in paragraph 26 is that Financial Creditor is trying to settle personal scores and put undue pressure on the Corporate Debtor. We are of the view that for proving the ingredient of Section 65 there has to be adequate pleadings and findings. Observations made in paragraph 26 does not fulfill the requirement of Section 65 so as to reject the Section 7 application.”

97. The Hon’ble NCLAT in the case of *Wave Megacity Centre Pvt. Ltd. vs. Rakesh Taneja & Ors. (2023)*, held that that Section 10 cannot be permitted as a device to shield the Corporate Applicant from liability of fraudulent activities or siphoning of funds. The Hon’ble NCLAT held that in cases where fraud or malicious intent has been demonstrated, the Adjudicating Authority is not bound to initiate CIRP against the Corporate Applicant under Section 10 of IBC, 2016. The relevant paragraph is extracted below,

“ 15. When finding recorded by the Adjudicating Authority is that Section 10 Application has been initiated fraudulently and maliciously, even if there is debt and default, the Adjudicating Authority is not obliged to admit Section 10 Application. Section 10 and Section 65, which are part of the same statutory scheme needs to be read together to give effect to the legislative scheme of the Code. In event CIRP is initiated by a corporate applicant fraudulently with malicious intent for any purpose other than the resolution of insolvency, holding it that it is obligatory for the Adjudicating Authority to admit Section 10 Application, will be contrary to the statutory scheme under Section 65. In event conditions under Section 65 are fulfilled, Section 10 Application can be rejected, even if debt and default is proved.



Thus, Section 65 has to be read as enabling provision to reject an application even on proving of debt and default Section 10 Application is not to be obligatorily admitted."

98. Based on the precedents discussed above, it is clear that Section 65 being penal in nature, requires strict proof to demonstrate such fraud or malicious intent, and cannot be invoked on the basis of suspicion, technical irregularities, or unsubstantiated assertions.

99. In the present case, the Objectors/ Operational Creditors have not demonstrated any such deceit, ill will or lawfully unjust intention of the Corporate Applicant in initiating CIRP proceedings or corresponding injury suffered by such Objectors/ Operational Creditors. On the contrary, this Tribunal is of the view that admission of the Corporate Applicant will protect the rights of operational creditors collectively.

100. In the present case, the objections are mere assertions unsupported by material evidence. No supporting forensic or statutory material has been produced as envisaged in *Amour Infrastructure (supra)*, and thereby, the allegations of the operational creditors remain unsubstantiated.

101. The facts of *Wave Megacity Centre (supra)* wherein it was held by Hon'ble NCLAT that Section 10 petition was filed fraudulently, are distinguishable from the present case. In *Wave Megacity Centre (supra)* there were 285 cases pending against the Corporate Debtor, proof of siphoning of funds from homebuyers were there i.e., First Information



Reports registered with EOW against the Corporate Debtor, all of which proved the malicious intent of the Corporate Debtor to protect itself from such liabilities, responsibilities and prosecution by invoking Section 10 of IBC, 2016. Hence, there was material evidence to prove that the ingredients of Section 65 of IBC, 2016 were satisfied.

102. It is well settled that malicious/ fraudulent intent under Section 65 requires high threshold and cogent evidence. The mere fact that benefit of moratorium will be vested with the Corporate Applicant or there are pre-existence of disputes is insufficient to refuse admission of a petition under Section 10 of IBC, 2016.

103. The allegations made by the operational creditors in the present case such as bill-trading, governance lapses or intent to scuttle pending cases are unsubstantiated by concrete proof. Such allegations relate to procedural irregularities, curable defects or transactions for which adequate remedies are provided under the IBC regulatory framework. Moreover, the concerns raised by the operational creditors regarding pursuing remedies under NI act, 1881 have also been addressed by this Tribunal.

104. We find that the objections raised in the present case, when measured against these authorities, fall short of the standard required. Accordingly, we hold that case under Section 65 of IBC, 2016 is not made out.

105. Accordingly, IA(IBC)/1171(CHE)/2024 is **dismissed**.



Admissibility of the Section 10 petition

106. This Tribunal refers to the decision of the Hon'ble Supreme Court of India, in *Unigreen Global Private Limited vs. Punjab National Bank and Ors. Company Appeal (AT) (Insolvency) No. 81 of 2017*, where this Tribunal noticing similarities between Section 7 and Section 10 of the IBC held that, two factors are common i.e, the debt must have fallen due and there must be a default in debt. In paragraphs 20 and 21, following have been held:

“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.



107. In view of the principle established in Unigreen Global (supra), this Tribunal examines the existence of debt and default, completeness of application in Form-VI and existence of proper authorisation.

108. It is seen that the Board of Directors of the Corporate Applicant has passed a board resolution pursuant to Section 10(3) on 10.10.2022 approving filing of petition under Section 10 of IBC, 2016. The board resolution authorised Mr. Venkatasamy Selvakumar and Mrs. Dheenadayalan Serananjeevi to file application on behalf of the Corporate Applicant before the Tribunal. The Corporate Applicant has also filed Form – 32 dated 14.10.2023 as proof of appointment of Mr. Venkatasamy Selvakumar and Rajesh B as directors of the Corporate Applicant and Form DIR 12 for appointment of Dheenadayalan Seranjevi as the director with effect from 01.04.2022. The MCA master data of the Corporate Applicant also reflects the same. (The Board Resolution dated 10.10.2022, Form – 32 dated 14.10.2023 and Form DIR 12 is annexed and marked as *Annexure A*, *Annexure-G* and *Annexure-H* of the Memo dated 10.02.2025)

109. The notice of EGM for passing resolution for filing the petition under Section 10 was issued in 10.10.2022. Accordingly, the EGM was conducted on 04.11.2022 at the registered office of the Corporate Applicant and a special resolution was passed in favour of filing a petition for initiation of CIRP under Section 10. It is seen that there are two shareholders in the Corporate Applicant, out of which V. Jayalakshmi holding 80% of shareholding attended the EGM physically



and B. Rajesh holding 20% shares attended the meeting through video conference. Both have voted in favour of the resolution. (The notice of EGM dated 10.10.2022, Extract of the Resolution Passed at the EGM held on 04.11.2022 and List of shareholders as on 04.01.2023 is annexed and marked as *Annexure B*, *Annexure C* and *Annexure D* of the Memo dated 10.02.2025)

110. On perusal of part III of the petition filed by the Corporate Applicant it is seen that there are 2 secured financial creditors, 4 unsecured financial creditors and 148 operational creditors in the Corporate Applicant. The Corporate Applicant has committed default of Rs. 1,02,34,554.58 pertaining to financial creditors, Rs. 21,14,70,490/- pertaining to the Operational Creditors, Rs. 13,07,521/- pertaining to Workmen and Employees and Rs. 11,96,352/- towards statutory dues. The date of default is stated to be 21.10.2022.

111. As proof of default in repayment of debt, the Corporate Applicant has placed on record demand notice in Form 3 dated 03.11.2022 issued by one of the Operational Creditors of the Corporate Applicant i.e., M/s Aleena Leather Exports claiming outstanding dues of Rs. 1,08,80,048/- outstanding from 11.10.2020 till the date of issue of notice. M/s Aleena Leather Exports has averred that the Form-3 demand notice claimed to be issued by it in the petition filed by the Corporate Applicant and annexed as Annexure II of the petition was not actually issued by it. Per contra, the Corporate Applicant has submitted that the demand notice dated 03.11.2022 was actually received by it from the Corporate



Applicant. Nonetheless, the demand notice is not the sole document relied upon by the Corporate Applicant to prove the maintainability of the Section 10 petition. The Petitioner disclaims reliance on that annexure. This Tribunal is of the view that the impugned form 3 demand notice, is immaterial to the admission of the Section 10 petition as it does not require any prior demand notice. There is no effect of alleged forged Form-3 attributed to Aleena Leather in the present petition. The validity of the Form-3 notice, even if disputed, it does not impact the maintainability of the Section 10 petition.

112. The Corporate Applicant has also placed on record the legal notice issued by M/s Priti Sales Corporation dated 29.12.2022 for payment of Rs. 4,27,899/-. It is seen from the sales notices that the Corporate Applicant has defaulted in the payment of dues from 04.05.2018 till 19.12.2019. The Corporate Applicant vide memo dated 07.04.2023, has submitted that M/s Priti Sales Corporation had filed IBA 923 of 2019 under Section 9 of IBC, 2019 against the Corporate Applicant. The Application came to be disposed vide order of this Tribunal dated 03.12.2019 as 'dismissed as withdrawn' with liberty to approach this Tribunal afresh for non-adherence of the Joint Memo of Compromise dated 14.11.2019. It is observed that the demand notice has been issued by Priti Sales subsequent to the disposing of the IBC Application by the Tribunal.



113. On perusal of the order of the Hon'ble High Court of Madras dated 04.04.2025 in Crl.O.P.No.13147 of 2023 and Crl.M.P.No.7977 of 2023, it is seen that proprietor of Everwin Tanners supplied wet blue to the Corporate Applicant which failed to make payments for the materials supplied and defaulted to the tune of Rs.13,57,875/-. Hence, Crime No.50 of 2023 under Section 420 and 506(1) of IPC was registered as against the then directors of the Corporate Debtor, Selva Kumar and V. Jeyalakshmi at Ranipet Police Station.

114. On perusal of the order of the Hon'ble High Court of Madras dated 04.04.2025 in Crl.O.P.No.18335 of 2023 and Crl.M.P.No.12195 of 2023, it is seen that another private company was supplying leather materials to the Corporate Applicant from 2009 to 2022 for which the Corporate Applicant failed to make payments for the materials supplied and defaulted to the tune of Rs.4,07,83,348/-. Further, the Corporate Applicant suggested the private company to supply leather materials to Central Winner Asia Ltd., China for the sum of Rs.63,01,285/-. Since the Corporate Applicant had an outstanding due of Rs.6,87,57,223/- to the de-facto complainant, Crime No.496/2022 under Section 420 of IPC was registered as against the then directors of the Corporate Applicant, Selva Kumar and V. Jeyalakshmi at Ranipet Police Station.

115. The Hon'ble High Court of Madras in its common order dated 04.04.2025 in Crl.O.P.No.13147 of 2023 and Crl.M.P.No.7977 of 2023 and common order dated 04.04.2025 in Crl.O.P.No.18335 of 2023 and Crl.M.P.No.12195 of 2023, considered both the transactions to be



business transactions not fitting the criteria under Section 420 of IPC. Hence, the complaints registered in the Ranipet Police Station were quashed.

116. This Tribunal is satisfied that the documents placed on record clearly establish that the Corporate Applicant is unable to discharge its admitted liabilities to its creditors. The requirement of existence of debt and default stands satisfied. We are of the view that this Company application is required to be admitted under Section 10 of the IBC, 2016. We order accordingly.

117. The Corporate Applicant has proposed the name of **Mr. Y.N. Ramachandran** as the Interim Resolution Professional (IRP). However, since the AFA of the proposed IRP is not valid. Therefore, we appoint **Sudhir G S** having **Registration No. IBBI/IPA-001/IP-P-02744/2022-2023/14183** (E-mail ID: *sudhircaip@gmail.com*) forming part of the Panel of IPs recommended by IBBI in accordance with, “Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2024” for the period of July 1, 2025 to December 31, 2025, as the IRP in the present application. The IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate



Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

118. The Corporate Applicant has annexed the name and address of its Sundry Debtors along with the outstanding due as *Annexure VII(5)*. The IRP/ RP is directed to pursue the Sundry Debtors and take steps for realisation of amounts due to the Corporate Applicant

119. The IRP/ RP is directed to update its registered office address with the MCA portal and ensure compliance under Section 12 of Companies Act, 2013.

120. As a consequence of the Application being admitted in terms of Section 10 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent 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 respondent 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 respondent.



Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

121. However, during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to
 - (a) such transactions, agreements or other arrangement as may be notified by the Central Government in



consultation with any financial sector regulator or any other authority;

- (b) a surety in a contract of guarantee to a corporate debtor.

122. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

123. The Corporate Applicant is directed to pay a sum of **Rs. 3,00,000/- (Rupees Three Lakhs Only)** to the Interim Resolution Professional to meet out the expenses and to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

124. The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the Corporate Applicant maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors



are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the Corporate Applicant, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for



government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Tribunal immediately after a month of the initiation of the CIRP.

125. The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

126. Based on the above terms, the Petition stands **admitted** in terms of Section 10 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)