

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through Physical Hearing/VC Mode (Hybrid))

C.P.(IB)No.16/BB/2023
Application U/s. 10 of IBC, 2016
R/w Rule 7 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Flow Bangalore Waterjet Pvt. Ltd.

No.6/12, Gurappa Avenue, Primrose Road,
Bangalore – 560 025.

- Petitioner/Corporate Applicant

Order delivered on: 13.09.2024

CORAM: 1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Jitendra C.P.

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present Petition has been filed on 10.11.2022 under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC/ Code**'), read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **M/s. Flow Bangalore Waterjet Pvt. Ltd.** (for brevity 'Petitioner/Corporate Applicant') *inter alia* seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of itself i.e., **M/s. Flow Bangalore Waterjet Pvt. Ltd.** The total amount of default committed as per the Corporate Applicant is Rs.7,86,46,880/- (Rupees Seven Crore Eighty-Six Lakh Forty-Six Thousand Eight Hundred and Eighty Only). In Part-III of Form No.6 filed with the Petition, the following information is given:

<p>3.Total debt raised and amount in default</p>	<p>Total debt raised:</p> <p>Rs.7,86,46,880/- (Rupees Seven Crore Eighty-Six Lakh Forty-Six Thousand Eight Hundred and Eighty Only).</p> <p>Amount in Default- Rs.7,86,46,880/- (Rupees Seven Crore Eighty-Six Lakh Forty-Six Thousand Eight Hundred and Eighty Only).</p> <p>Flow Asia Corporation advanced a total sum of INR 3,09,04,138/- (Three Crore Nine Lakh Four Thousand One Hundred and Thirty-Eight Only) to the Corporate Applicant for provision of services.</p> <p>Additionally, there are certain trade receivables due from the Corporate Applicant amounting to INR 1,76,11,946/- (One Crore Seventy-Six Lakh Eleven Thousand Nine Hundred and Forty-Six Only).</p> <p>Flow International Corporation has advanced a total sum of INR 36,61,805 (Thirty-Six Lakh Sixty-One Thousand Eight Hundred and Five Only) to the Corporate Applicant for provision of services to company. Additionally, there are certain trade receivables due from the Corporate Applicant amounting to INR 2,64,68,991 (Two Crore Sixty-Four Lakh Sixty-Eight Thousand Nine Hundred and Ninety-One Only)</p> <p>Accordingly, on 10th April 2021, both the above mentioned creditors of the Applicant sought repayment of the outstanding dues payable to them from the Applicant.</p> <p>On 15th April 2021, the Corporate Applicant responded to the demands of the Creditors expressing its inability to repay the outstanding dues.</p>
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2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner in the Company Petition as follows:

- i. M/s. **Flow Bangalore Waterjet Private Limited** (for brevity 'Petitioner/Corporate Applicant) is a Company incorporated under the provisions of the Companies Act, 1956, on 01.09.2010, having CIN:U31104KA2010FTC055032. Its Authorised Share Capital is Rs.1,00,000/- divided into 10,000 Equity shares of Rs.10/- and Paid-up Share Capital of Rs.1,00,000/- divided in to 10,000 Equity shares of Rs.10/-. The Petitioner was engaged in business of providing technologically advanced, environmentally sound solutions to the manufacturing and industrial cleaning markets.
 - ii. It is stated that the Company's total liabilities exceed its total assets, and its net worth has been fully eroded. The Company has total asset of INR 2,11,95,178/- whereas, the total liabilities stands as INR 7,88,76,744/-. The Company has an accumulated loss of Rs.5,77,81,566/- due to which its net worth has fully eroded. The Company has significant accounts payable amounting to INR 7,86,46,880/-. The creditors of the Applicant sought repayment of the outstanding dues payable to them from the Applicant. The Applicant responded to the demands of the creditors expressing its inability to repay the outstanding dues.
3. After a careful examination of the facts of the case it clearly shows that there was a debt due and there was a default of the same. It is also observed that the Petitioner Company was not earning sufficient profit to repay its debts. The Petition was supported with the Special Resolution passed on 20.12.2021 by the Board of Directors of the Corporate Applicant. Further, the Corporate Debtor filed a Memo vide diary no.2765 dated 29.05.2023 that the two major Creditors of the Corporate Applicant i.e. Flow Asia Corporation and Flow International Corporation have given their no objection for initiation of CIRP.
4. The Petition is also supported by an Affidavit dated 16.06.2023 that the Petitioner does not suffer from any disqualification U/s 11 of the IBC, 2016. In compliance to the direction issued by this Adjudicating Authority vide order dated 11.12.2023, the Petitioner has filed a compliance memo vide diary no.6523 dated 27.12.2023 enclosing

various details. Further an affidavit dated 21.12.2023 was also filed along with this memo to the effect that the Petitioner Company has not received any notice under SARFESI Act and the present application is not to defeat the provisions of law and also an affidavit stating that there are no legal proceedings pending, which is taken on record.

5. This Adjudicating Authority has issued notice to the Creditors on 01.03.2023. In pursuant to the notice both the Creditors have sent a letter to this Adjudicating Authority on 29.05.2023 stating that they have no objection for the initiation of CIRP proceedings of the Petitioner Company.
6. Heard the learned Counsel for the Petitioner Company and we have carefully perused the pleadings of the party and the extant provisions of the Code and the law.
7. As per Section 10 of Insolvency and Bankruptcy Code, 2016 a Corporate Applicant can file an application before the Adjudicating Authority, seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor that has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudicating Authority, in a prescribed form by enclosing the following:
 - a. The information relating to its books of account and such other documents for such period as may be specified:
 - b. The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and
 - c. The Special resolution passed by shareholders of the Corporate Debtor or the resolution passed by at least three-fourth of the total number of partners of the Corporate Debtor, as the case may be, approving filing of the application.

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

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

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

“...20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Sub-section (4) of Section 7 is similar to that of sub-section (4) of Section 10. Therefore we, hold that the law laid down by the Hon'ble Supreme Court in “Innoventive Industries Ltd. (Supra) is applicable for Section 10 also, wherein the Hon'ble Supreme Court observed as “The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority”.

21. In an application under Section 10, the ‘financial creditor’ or ‘operational creditor’, may dispute that there is no default or that debt is not due and is not payable in law or in fact. They may also oppose admission on the ground that the Corporate Applicant is not eligible to make application in view of ineligibility under Section 11 of the I&B Code. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11, the Adjudicating Authority has no option but to admit the application, unless it is incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.

22. Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the information as required to be submitted in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 subject to ineligibility prescribed under Section 11. If all informations are provided by an Applicant as required under Section 10 and Form 6 and if the Corporate Applicant is otherwise not ineligible under Section 11, the Adjudicating Authority is bound to admit the application and cannot reject the application on any other ground.

23. Any fact unrelated or beyond the requirement under I & B Code or Forms prescribed under Adjudicating Authority Rules (Form 6 in the present case) are not required to be stated or pleaded. Non-disclosure of any fact, unrelated to Section 10 and Form 6 cannot be termed to be suppression of facts or to hold

that the Corporate Applicant has not come with clean hand except the application where the “Corporate Applicant” has not disclosed disqualification, if any, under Section 11. Non-disclosure of facts, such as that the ‘Corporate Debtor’ is undergoing a corporate insolvency resolution process; or that the ‘Corporate Debtor’ has completed corporate insolvency resolution process twelve months preceding the date of making of the application; or that the corporate debtor has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under the said Chapter; or that the corporate debtor is one in respect of whom a liquidation order has already been made can be a ground to reject the application under Section 10 on the ground of suppression of fact/not come with clean hand.

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

9. It is seen from the Audited Financial Statement for the year ended March 31, 2023 and March 31, 2022 that the Corporate Applicant was having substantial losses. On 11.12.2023, the Petitioner’s Counsel was directed to file latest Audited Balance Sheet and the said direction is complied with vide diary No.6523 dated 27.12.2023 and the same is taken on record. The balance sheet shows that the Company was having losses for the period ended 31st March, 2023 & 31st March, 2022. Apart from losses there is no revenue from operations as seen from the Balance sheet as at 31.03.2023 & 31.03.2022.

10. The Corporate Debtor satisfies the conditions for initiating an Application U/s 10 of the Code viz., there is an existence of debt, there

is a default and the Corporate Debtor is not disqualified U/s 11 of the Code. The Board of Directors of the Corporate Debtor unanimously passed a Special Resolution in the Extraordinary General meeting held on 20.12.2021 for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.

11. In view of the above facts and circumstances of the case, and the settled position of law on the issue; and by exercising powers conferred on this Adjudicating Authority, U/s 10 (4)(a) of the Code, we do hereby **admit C.P.(IB) No.16/BB/2023** by initiating Corporate Insolvency Resolution Process (CIRP) in respect of **M/s. Flow Bangalore Waterjet Private Limited**. We declare Moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

12. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.

13. Under Clause (b) of Section 10(3) of the Corporate Applicant is bound to propose the name of the Registered Resolution Professional to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2, furnished by Shri Srinivas Thatikonda, a registered Insolvency Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that presently he is serving as Interim Resolution Professional/Resolution Professional/Liquidator in six other proceeding under the Code so far. He has also certified that no disciplinary proceedings are pending against him with the Board or ICSI Institute of Insolvency Professionals. His Registration number is IBBI/IPA-002/IP-N00631/2018-2019/11886. We find that written consent furnished by the proposed Interim Resolution Professional is in order.

14. In view of the above, we appoint **Shri Srinivas Thatikonda**, Insolvency Professional, bearing Registration No. IBBI/IPA-002/IP-N00631/2018-2019/11886, Contact No.9538869662 email:srinivas@srinivasthatikonda.com, having registered address at Flat No.006, Nanda Ashirwad Apartments No.1, Canara Bank Colony, 02nd Main, Chandra Layout, Bengaluru-560072 as Interim Resolution Professional, with the following directions:-

- a. The term of appointment of Shri Srinivas Thatikonda shall be in accordance with the provisions of Section 16(5) of the Code;
- b. In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and

custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- c. The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- d. The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- e. It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- f. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a committee of creditors and shall file a report, certifying of the committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee

within seven days of filing the report of constitution of the committee; and

- g. The Interim Resolution Professional is directed to send regular progress report to this Adjudicating Authority every fortnight.

15. Registry is directed to communicate this order to the parties and send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

16. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith.

Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-
(K. BISWAL)
MEMBER (JUDICIAL)