



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

CP (IB) No.174/BB/2023

Application U/s. 10 of the Insolvency & Bankruptcy Code, 2016
R/w Rule 7 of the Insolvency & Bankruptcy (Application to Adjudicating
Authority) Rules, 2016

IN THE MATTER OF:

Four Flavours LLP

LLPIN: AAD-8427,
Having registered office at: No. 133/2,
4th Floor, Janardhan Towers
Residency Road,
Bengaluru- 560025

... Petitioner/Corporate Applicant

Order delivered on: 20/11/2024

Coram: Hon'ble Shri. K. Biswal, Member (Judicial)

Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For Petitioner Company : Shri Ricab Chand
For Creditor : Shri Karthikeyan M.C.

O R D E R

Per: K. Biswal, Member (Judicial)

1. The present Petition, CP (IB) No. 174/BB/2023, has been filed on 17.10.23 by Four Flavours LLP ('Petitioner/Corporate Applicant') under section 10 of IBC, 2016, r/w. Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of itself, Four Flavours LLP. The total amount of default committed as per the Corporate Applicant is Rs. 1,14,39,302/- (Rupees One Crore Fourteen Lakhs Thirty Nine Thousand Three Hundred and Two Rupees Only).
2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

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- (i) The Petitioner LLP has been incorporated on 28th April 2015 having registered office at No.133/2, 4th Floor, Janardhan Towers Residency Road, Bengaluru- 560025 bearing LLPIN: AAD-8427 in the name of M/s Four Flavours LLP.
- (ii) Mr. Deepak Shinde ('Respondent/ Creditor') residing at no. 10, Castle Street, Ashoknagar, Bengaluru- 560025, who is the absolute owner of the non-residential building bearing Municipal No. 120 situated at Brigade Road, Bangalore and constructed a building therein and offered to lease commercial space, having a carpet area of 6000 sq. ft. in the ground floor and mezzanine floor with super built area of 7800 sq. ft., hereinafter referred to as the 'Leased Premises', to the Petitioner during March, 2015.
- (iii) Disputes arose between the Petitioner and the Respondent when Petitioner defaulted in payment of dues, which were referred to arbitration. The matter came to be registered as A.C. No. 111/2017. The Learned Arbitrator passed the Arbitral Award dated 14th August 2018 in A.C. No., 111/2017 directing the Corporate Applicant herein to pay a sum of Rs.66,12,315/- along with interest @12% per annum towards the outstanding rent amount to the Creditor herein.
- (iv) On 11/02/2019, Mr. Deepak Sindhe filed execution proceedings against Four Flavours LLP in Execution Petition No.623/2019 before the Hon'ble XLII Addl. City Civil and Sessions Judge, Bengaluru and the same is pending before the Hon'ble Court.
- (v) Being aggrieved by the Arbitral Award dated 14th August 2018, the Corporate Applicant filed an Arbitration Suit in Comm. A.S. No.252 of 2018 before the Hon'ble LXXXIII Addl. City Civil and Sessions Judge, Bengaluru and the same was dismissed vide judgment dated 3rd October 2020.
- (vi) Thereafter, the Corporate Applicant herein filed an appeal before the Hon'ble High Court of Karnataka in Commercial




Appeal No.92 of 2021 wherein the Arbitral Award was upheld vide judgment dated 21st September 2021.

- (vii) On 23rd November 2021, the Corporate Applicant herein filed a Review Petition in Review Petition No.355/2021 against the judgment dated 21st September 2021 passed by the Hon'ble High Court of Karnataka and the same came to be dismissed vide order dated 25th February 2022.
 - (viii) The Arbitral Award was also upheld by the Hon'ble Supreme Court in SLP(C) No.2453/2022 vide order dated 21st February 2022.
 - (ix) Hence, the Corporate Applicant is now in default of total outstanding debt of Rs. 1,14,39,302/- as per the Arbitral Award dated 14th August 2018. However, the Corporate Applicant is incapable of settling the aforementioned outstanding debt. Hence this application.
3. The Learned Counsel for the Respondents, has filed objections vide diary no. 01044, dated 18/06/2024, which contains as follows;
- i. The Petition filed by Corporate Applicant for initiation of CIRP under section 10 of IBC, 2016 is not maintainable either in law or facts and circumstances.
 - ii. The Petition suffers from an inordinate delay of 5 years from date of default and has been filed by Corporate Applicant with mala fide intention as a last resort to escape liability under execution proceedings and denying the legally enforceable debt payable to Creditor under section 36 of the Arbitration and Conciliation Act, 1996.
 - iii. The Respondent has filed an execution petition no. 623/2019 before Hon'ble XLII Addl. City Civil and Sessions Judge, Bengaluru which is still pending.
 - iv. The Respondent in the execution petition no. 623/2019, had filed an Interlocutory Application under Order 21 Rule 30 of Code of Civil Procedure 1908 for the arrest of the designated partner on 19.09.2023 and the present Petition is filed only to stop the arrest of the designated partner.



- v. The Petitioner wants to defraud the Creditor and has taken contradictory stands when declaring about assets of the LLP, stating that LLP has no assets which is a contrary view from that of the deposition of designated partner in the Execution Petition No. 623/2019, wherein he admitted that LLP has assets.
4. The Petitioner have filed the Rejoinder, vide, Diary No: 2166, dated 05.04.2024 and contended as under:
- i. It is submitted that the Application is complete as there is an existence of debt, there is a default and the Corporate Applicant is not disqualified under Section 11 of the IBC, 2016, therefore it is maintainable.
 - ii. In response to the contention of delay in filing by the Respondents, the Petitioners submit that it has challenged the arbitral award dated 14th August, 2018 and the matter was finally disposed by the Hon'ble Supreme Court by order dated 21st February, 2022, in SLP (c) No. 2453/2022. Further it is submitted that it is settled law that Appeal is continuation of the original proceedings, thus the question of delay does not arise.
 - iii. The Petitioner further submits, that the proceedings under Order 21 Rule 30 have no relevance as far as Corporate Applicant is concerned. With regards to assets, the Petitioner reiterates that there are no assets with Corporate Applicant, the Restaurant which was the only asset, situated at the leased premises was ultimately handed over to the Respondent during the pendency of the arbitral proceedings.
 - iv. The Petitioner submits that the Arbitral Award dated 14th August 2018 was challenged by the Petitioner before Hon'ble City Civil Court and thereafter before the Hon'ble High Court and thereafter Hon'ble Supreme Court, where matter was finally disposed on 21st February 2022 and therefore, there was no finality to the Award.
 - v. Petitioner also denies that there has been any fraud as alleged, and has submitted that the Hon'ble City Civil Court has passed order dated 2nd September, 2023 in IA no. III, IV, VI and VII in execution petition no.



623/2019, which has refuted such contentions and has recalled the warrant of attachment movables dated 01.10.2021.

5. On 07/02/2024, this Tribunal directed the Ld. Counsel for the Petitioner to file a) Latest Audited Financials containing position of Loans and Advances, Debtors and Inventory along with Auditors report b) Financials/Books of accounts in a pen drive along with last three years of Audited Balance Sheet. c) Affidavit regarding pending legal proceedings. d) An affidavit to effect that it has not received any notice under SARFESI Act and that this application is not to defeat the provisions of law. e) Affidavit under Section 11 of the IBC Code, 2016. The compliance of the said direction was made vide Diary No. 1245, dated 23/02/2024 and the same is taken on record.
6. Heard the Learned Counsel for the Petitioner & Respondent and we have carefully perused the pleadings of the parties 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 Applicant 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 Applicant or the resolution passed by at least three-fourth of the total number of partners of the Corporate Applicant, as the case may be, approving filing of the application.Further, as per sub-section 4 of Section 10 the Adjudicating Authority can admit an application if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.



8. After perusing the contents of the Application, the following issues arise for consideration, namely:
- A. Whether there is a debt and default?
 - B. Whether pendency of execution proceedings bar an Application from being admitted under Section 10 of IBC, 2016?
9. The audited financials for the year 2021-2022, 2022-2023 were attached along with the petition. It is seen that the Corporate Applicant was having substantial Losses. The financial statements of Corporate Applicant are attached as **Annexure J & K** to the Petition.
10. On the objections raised by Respondents stating that there was a delay of 5 years in filing the Petition and the Petitioner contending that the matter was finally disposed by the Hon'ble Supreme Court by order dated 21st February, 2022, in SLP (c) No. 2453/2022 after a series of proceedings, as mentioned by the Petitioner. And that it is settled law that Appeal is continuation of the original proceedings, thus the question of delay does not arise. Reliance must be placed upon the matter of *Worldview Tours Pvt. Ltd. (CP IB No. 865/ND/2020)*, where the NCLT New Delhi Bench-V by order dated 09.03.2021 has held that the Limitation Act, 1963 under Section 10 of IBC is not applicable and has further stated in para 15:

“The Hon'ble Supreme Court in the case of B.K. Educational Services Pvt. Ltd. V. Parag Gupta and Associates [AIR 2018 SC 5601] has held that Section 238A of the IBC is only applicable to Section 7 and 9 of the IBC. There is no mention of the same being applicable to an application under Section 10 of the IBC. In fact, para 28.3 of the Committee Report (cited above) has been instrumental in determining the ambit of Section 238A in the said case and thus, it is humbly submitted that the recommendations of the Committee be taken as the intention of the legislature and Section 238A be held inapplicable to an application under Section 10 of the IBC.”

In view of the aforementioned order, it is held that there is no delay in filing of the Application by the Corporate Applicant under section 10 of the IBC, 2016 due to the non-application of The Limitation Act, 1963.



11. 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 was not earning sufficient profit to repay its debts. In the present Petition the arbitral award, establishes debt as **Rs. 1,14,39,302** (Rupees One Crore Fourteen Lakhs Thirty Nine Thousand Three Hundred and Two only) and date of default as **14/08/2018**, the date on which the arbitral award was given. Further, the Petition was supported with the special resolution passed by the Designated Partners of the Corporate Applicant. The special resolution is marked as **Annexure A** to the Petition.
12. On the objections raised by Respondents stating that pendency of execution proceedings bars application from being admitted under Section 10 of IBC, 2016, the Petitioner in its written submission, vide diary no. 6164 dated 04/11/24, has relied upon the judgement given by Hon'ble NCLAT in *RNY Health Services Pvt. Ltd. v/s Bourn Hall International India Pvt. Ltd. (2021 SCC OnLine NCLAT 2598)*, wherein order passed by Chandigarh bench was re-affirmed by the Hon'ble NCLAT. In the order, an execution petition was filed before the District Judge in Gurgaon in view of arbitration award passed against the Corporate Applicant in parallel to section 10 proceedings before NCLT Chandigarh Bench. The Bench admitted the Corporate Applicant under section 10 of IBC, 2016 and the same was upheld by the NCLAT.
13. 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 in *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.

24. 1st Respondent –financial creditor has referred to pendency of a Civil Suit between 'Mayank Maheshwari v. Anurag Garg' and another suit between 'Sh. Jagar Nath Mehto v. Vedika Overseas Tradex Ltd.' . Pendency of such suits cannot be a ground to deny admission of an application under Section 10, if all the information in terms of Section 10 of the I & B Code and Form 6 has been supplied by a Corporate Applicant/Corporate Debtor and the application is otherwise complete. Non-mentioning of suit(s)




pending between the parties cannot termed to be suppression of facts nor can be a ground to reject the application. In fact, once the application under Section 10 is admitted, all such related proceedings, including suits for recovery of moveable or immovable property of the Corporate Debtor and other proceeding cannot proceed further in any Court or Tribunal or Authority in view of order of 'moratorium' as may be declared under Section 13 and prohibition that may be imposed under Section 14 of I & B Code."

In view of the aforementioned order, pendency of execution proceedings presents no bar in admitting application under section 10 of IBC, 2016.

14. The Corporate Applicant 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 Applicant is not disqualified U/s 11 of the Code. The Designated Partners of the Corporate Applicant unanimously passed a Special Resolution dated 15.04.2023 for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.
15. The Applicant has suggested a qualified Resolution Professional namely Mr. Hari T Devadiga, with Registration No. *IBBI/IPA-002/IP-N002/2018-19/12351*, who has also filed his written Consent in Form-2 dated 11/10/2023, by inter alia declaring that he is eligible to be appointed as resolution professional in respect of the corporate applicant and there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
16. In view of the above facts and circumstances of the case, and the settled position of law on the issue; and by exercising powers conferred on this Adjudicating Authority, U/s 10 (4) (a) of the Code, **we do hereby admit CP(IB) 174/BB/2023** by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Four Flavours LLP. 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.
17. 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.
18. 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 Mr. Hari T Devadiga, a registered Insolvency Professional with IBBI. He has also certified that no disciplinary proceedings are pending against him with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is *IBBI/IPA-002/IP-P-N002/2018-19/12351*. We find that written consent furnished by the proposed Interim Resolution Professional is in order.
19. In view of the above, we appoint Mr. Hari T Devadiga, Insolvency Professional, bearing Registration No. *IBBI/IPA-002/IP-N002/2018-19/12351*. email Id devadiga_hari@hotmail.com Mobile No. 9341259302, address: No.3 Devi Krupa 7th Main, III Phase, Ayappa Nagar, K.R Puram, Bangalore, Karnataka-560036, with the following directions:-
- a. The term of appointment of Mr. Hari T Devadiga shall be in accordance with the provisions of Section 16(5) of the Code;
 - b. In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor



shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

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



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

20. A copy of this order be communicated to all the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

-Sd-

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

-Sd-

**(K. BISWAL)
MEMBER (JUDICIAL)**