



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT- II)**

**Item No. 205**  
**IB-107/ND/2023**

**IN THE MATTER OF:**

**Vihaan Exims Company Pvt. Ltd. ... Applicant/Petitioner**

**Versus**

**Yes Bank Ltd. Ors. ... Respondent**

**Under Section: 10 of IBC, 2016**

**Order delivered on 23.10.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ**  
**HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH**  
**HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Bharti Nawlani along with CA Rakesh  
Jindal

**For the Respondent** : Adv. Siddharth Jain, Adv. Shubham Saigal for R1

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

The present petition has been preferred under Section 10 of IBC, 2016, praying therein:

1. Admit the present application and order initiation of Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016.
2. Pass any other/further order(s) to protect the interest of the Applicant as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.

2. The amount of debt and default has been mentioned in Part-III of the application which reads thus:

PART-III	
PARTICULARS OF FINANCIAL DEBT / OPERATIONAL DEBT	
1. NAME(S) OF FINANCIAL CREDITORS(S) AND OPERATIONAL CREDITORS	1. <b><u>FINANCIAL CREDITOR:</u></b> i) YES BANK LIMITED  ii) SHAKUNTALAM SECURITIES PVT LTD  2. <b><u>OPERATIONAL CREDITORS:</u></b> VARIOUS OPERATIONAL CREDITORS TOTALING RS. 18,86,177/- AS PER THE LIST ATTACHED AS ANNEXURE II



2.	ADDRESS OF CORRESPONDENCE OF THE FINANCIAL CREDITOR/OPERATIONAL CREDITORS(S)	<p><b>1. FINANCIAL CREDITOR:</b></p> <p><b>YES BANK LIMITED</b> ADDRESS AT - 5A/15, TILAK NAGAR, NEAR SUBHASH NAGAR, METRO STATION, DELHI - 110018</p> <p><b>SHAKUNTALAM SECURITIES PVT. LTD.</b> ADDRESS AT - 130, 1<sup>ST</sup> FLOOR, D MALL, NETAJI SUBHASH PLACE, PITAMPURA, DELHI - 110034</p> <p><b>2. OPERATIONAL CREDITOR:</b> ADDRESSES OF VARIOUS OPERATIONAL CREDITORS AS PER THE LIST IS MARKED AND ANNEXED AS ANNEXURE II</p>			
3.	TOTAL DEBT RAISED AND AMOUNT IN DEFAULT	<p><b>1. FINANCIAL CREDITOR:</b></p> <p><b>1. SECURED LOAN</b> (BANKS AND FINANCIAL INSTITUTIONS)</p> <p><b>1. YES BANK LIMITED</b> BRANCH OFFICE - 5A/15, TILAK NAGAR, NEAR SUBHASH NAGAR, METRO STATION, DELHI - 110018</p> <p>THE AMOUNT OF TOTAL DEBT RAISED WAS RS. 20,30,00,000 AND AMOUNT IN DEFAULT IS MENTIONED AS UNDER:</p>			
		S. NO.	NATURE OF FACILITY	LIMIT SANCTIONED	BALANCE O/S. (In default) (RS.)
		1.	ECLGS (TERM LOAN)	RS. 3,30,00,000 AS PER SANCTION LETTER DATED 26-10-2020	RS.3,30,00,000
		2.	CASH CREDIT	RS. 17,00,00,000/-	RS. 4,05,81,868.85/-
			<b>TOTAL</b>	<b>RS. 20,30,00,000/-</b>	<b>RS. 7,35,81,868.85/-</b>
		<p>COPY OF RECALL NOTICE DATED 25-06-2021 BY THE BANK (FINANCIAL CREDITOR) IS MARKED AND ANNEXED HERewith AS ANNEXURE - I A</p> <p>PROVISIONAL FINANCIAL STATEMENTS ARE MARKED AND ANNEXED HERewith AS ANNEXURE - IV</p>			



	<p><b><u>II. SHAKUNTALAM SECURITIES PVT. LTD.</u></b></p> <p>THE AMOUNT OF TOTAL DEBT RAISED WAS RS. 10,96,597 AND AMOUNT IN DEFAULT IS RS. 10,96,597.</p> <p><b><u>2. OPERATIONAL CREDITORS:</u></b></p> <p>THE TOTAL AMOUNT OF Rs. 18,86,177/- (RUPEES EIGHTEEN LAKH EIGHTY SIX THOUSAND ONE HUNDRED SEVENTY SEVEN ONLY) IS DUE AND PAYABLE BY THE CORPORATE DEBTOR TOWARDS OPERATIONAL CREDITORS AS PER THE PROVISIONAL FINANCIAL STATEMENTS OF CORPORATE DEBTOR AS ON 31-12-2022. DETAILS ARE MARKED AND ANNEXED HEREWITH AS ANNEXURE – II.</p> <p>THE PROVISIONAL ACCOUNTS OF THE CORPORATE DEBTOR AS ON 31-12-2022 ARE ANNEXED HEREWITH AND MARKED AS ANNEXURE – V C</p>
<p>4. DATE WHEN THE FINANCIAL/ OPERATIONAL DEBT WAS INCURRED</p>	<p><b><u>I. FINANCIAL CREDITOR:</u></b></p> <p><b>I. SECURED LOAN</b></p> <p><b>A. BANKS AND FINANCIAL INSTITUTIONS</b></p> <p><b><u>YES BANK LIMITED</u></b></p> <p>BRANCH OFFICE – 5A/15, TILAK NAGAR, NEAR SUBHASH NAGAR METRO STATION, DELHI - 110018</p> <p>FINANCIAL DEBT INCURRED ON AVAILMENT OF FINANCIAL FACILITIES SANCTIONED BY YES BANK LIMITED VIDE SANCTION LETTER DATED 26-10-2020. SANCTION LETTER IS MARKED AND ANNEXED HEREWITH AS ANNEXURE – I B</p> <p><b><u>2. OPERATIONAL CREDITORS:</u></b></p> <p>THE TOTAL AMOUNT OF Rs. 18,86,177/- (RUPEES EIGHTEEN LAKH EIGHTY SIX THOUSAND ONE HUNDRED SEVENTY SEVEN ONLY) IS DUE AND PAYABLE BY THE CORPORATE DEBTOR TOWARDS OPERATIONAL CREDITORS WAS INCURRED ON VARIOUS DATES AGAINST PURCHASE OF GOODS ETC.</p>



5.	<p>PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR.</p> <p>ATTACH A COPY OF A CERTIFICATE OF THE REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)</p>	<p><b>1. FINANCIAL CREDITORS:</b></p> <p><b><u>SECURED LOAN</u></b> (BANKS AND FINANCIAL INSTITUTIONS)</p> <p><b><u>1) YES BANK LIMITED</u></b> BRANCH OFFICE – 5A/15, TILAK NAGAR, NEAR SUBHASH NAGAR METRO STATION, DELHI - 110018</p> <ul style="list-style-type: none"> <li>MORTGAGE OF IMMOVABLE PROPERTY ZP 32, LAND AREA ADMEASURING 162 Sq. Mtrs. SITUATED AT PITAMPURA, NEW DELHI</li> <li>MORTGAGE OF SHOP UNIT NO. 115 &amp; 116, ON FIRST FLOOR, ADMEASURING 292.10 SQ. FT., D MALL, BUILT ON PLOT BEARING NO. A-1, WAZIRPUR DISTRICT CENTRE, NETAJI SUBHASH PALACE, PITAMPURA, NEW DELHI</li> </ul> <p>*THE SECURITY HAS ALREADY BEEN SOLD &amp; PROCEEDS HAS BEEN PAID TO YES BANK LIMITED.</p>
		<ul style="list-style-type: none"> <li>LOAN IS SECURED BY HYPOTHECATION OF BOOK DEBTS, CURRENT ASSETS, MOVABLE FIXED ASSETS, PERSONAL GUARANTEES AND UNDER THE EMERGENCY CREDIT LINE GUARANTEE SCHEME OF THE NATIONAL CREDIT GUARANTEE TRUSTEE COMPANY LTD.</li> </ul> <p>SANCTION LETTER DATED 26.10.2020 IS ANNEXED HEREWITH AND MARKED AS ANNEXURE – I B</p> <p><b><u>UNSECURED LOAN</u></b> <b><u>SHAKUNTALAM SECURITIES PVT. LTD.</u></b> NO SECURITY</p> <p><b>2. OPERATIONAL CREDITORS</b> NO SECURITY</p>
6.	<p>DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS</p>	<p>NIL</p>
7.	<p>RECORDS OF DEFAULTS WITH THE INFORMATION UTILITY, IF ANY</p>	<p>NOT AVAILABLE</p>
8.	<p>LIST OF DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO</p>	<p><b>1. FINANCIAL CREDITOR:</b></p> <p><b>1. SECURED LOAN</b> (BANKS AND FINANCIAL INSTITUTIONS)</p>



<p>PROVE THE EXISTENCE OF FINANCIAL / OPERATIONAL DEBT AND THE AMOUNT IN DEFAULT</p>	<p><b>YES Bank Limited</b></p> <ul style="list-style-type: none"><li>• COPY OF RECALL NOTICE DATED 25-06-2021 BY THE BANK IS MARKED AND ANNEXED HEREWITH AS ANNEXURE - I A</li><li>• SANCTION LETTER DATED 26.10.2020 IS MARKED AND ANNEXED HEREWITH AS ANNEXURE - I B</li><li>• SARFAESI NOTICE UNDER SECTION 13(2) DATED 10.05.2021 IS MARKED AND ANNEXED HEREWITH AS ANNEXURE - I C</li><li>• POSSESSION NOTICE DATED - 27.08.2021 ISSUED BY YES BANK IS MARKED AND ANNEXED HEREWITH AS ANNEXURE - I D</li><li>• A COPY OF TRIPARTITE AGREEMENT DATED - 29.09.2021 IS ANNEXED AND MARKED HEREWITH AS ANNEXURE - I E</li><li>• A COPY OF ORDER OF DEBT RECOVERY TRIBUNAL-III, DELHI DATED - 29.03.2022 IS MARKED AND ANNEXED HEREWITH AS ANNEXURE - I F</li></ul>
	<p><b>2. OPERATIONAL CREDITORS:</b></p> <p>THE TOTAL AMOUNT OF Rs. 18,86,177/- (RUPEES EIGHTEEN LAKH EIGHTY SIX THOUSAND ONE HUNDRED SEVENTY SEVEN ONLY) IS DUE AND PAYABLE BY THE CORPORATE DEBTOR TOWARDS OPERATIONAL CREDITORS AS PER THE PROVISIONAL ACCOUNTS OF CORPORATE DEBTOR AS ON 31-12-2022. DETAILS ARE ANNEXED AND MARKED AS ANNEXURE - II</p> <p>THE PROVISIONAL ACCOUNTS OF THE CORPORATE DEBTOR AS ON 31-12-2022 ARE ANNEXED HEREWITH AND MARKED AS ANNEXURE - V C.</p>



3. The balance sheet indicating the financial status of the Petitioner Company as on 31.12.2022 has been placed on record as Annexure- IV to the application. The consent of the Resolution Professional (Form-2) under sub-rule (1) of Rule 9 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is available on record as Annexure- IIIA to the application. The IP whose name has been proposed as IRP has made a declaration that no disciplinary proceedings are pending against him. Relevant excerpt of the Form-2 reads thus:

- certify that there are no disciplinary proceedings pending against me with the Board or Indian Institute of Insolvency Professionals of ICAI;
- affirm that I am eligible to be appointed as an interim resolution professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

4. The Board Resolution dated 29.11.2022 regarding filing of the present petition has been placed on record as Annexure- IIIB to the present petition. The Resolution reads thus:

#### BOARD RESOLUTION

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF VIHAAN EXIMS COMPANY PRIVATE LIMITED (CIN: U51909DL2009PTC192273) HELD 29/11/2022 AT 03.00 P.M. AT ITS REGISTERED OFFICE, 115-116, D MALL, A-1, WAZIRPUR DISTRICT CENTRE, NETAJI SUBHASHI PLACE, NEW DELHI DL-110034**

Appointment of Mr. Umesh Gupta to act as Interim Resolution Professional for the purpose of Application under Section 10 of Insolvency and Bankruptcy Code, 2016

“RESOLVED THAT Mr. Umesh Gupta, a Insolvency Professional, registered with Insolvency and Bankruptcy Board of India, vide registration No. IP No.IBBI/IPA-001/IP-P00848/2017-18/11431, he and is hereby appointed to act as Interim Resolution Professional of the Company for the purpose of application to be filed with National Company Law Tribunal, New Delhi under Section 10 of Insolvency and Bankruptcy Code, 2016.

FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, Mr. Jatin Jain, Director of the Company be and is hereby authorised to do all acts, deeds, matters and things as deem necessary, proper or desirable and to sign and execute all necessary documents, vakalatnama, applications and returns along with filing of necessary E-form with the Registrar of Companies, Delhi.”

5. The Shareholders of the Petitioner Company in EGM also passed a special resolution regarding initiation of the process under Section 10 of IBC,



2016. The special resolution dated 25.11.2022 placed as Annexure- VIIB to the petition reads thus:

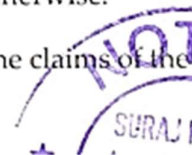
**CERTIFIED TRUE COPY OF THE SPECIAL RESOLUTION PASSED AT THE EXTRA-ORDINARY GENERAL MEETING OF THE MEMBERS OF VIHAAN EXIMS COMPANY PRIVATE LIMITED (CIN U51909DL2009PTC192273) HELD ON 25/11/2022 AT 01.00 P.M. AT ITS REGISTERED OFFICE 115-116, D MALL, A-1, WAZIRPUR DISTRICT CENTRE, NETAJI SUBHASH PLACE, PITAMPURA, NEW DELHI-110034 INDIA**

**"RESOLVED THAT approval of the Members be and is hereby accorded for initiating Corporate Insolvency Resolution Process u/s 10 of The Insolvency and Bankruptcy Code, 2016 and that the application be filed by the company in Form No. 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by any of the Director, authorised by the Board, before the National Company Law Tribunal and the board is authorized to do all the acts, including but not limited to appointment of Interim Resolution Professional, Advocates, Chartered Accountants, Company Secretary, Insolvency Professional etc"**

**6.** Our attention could be drawn to the affidavit dated 06.04.2024 filed on behalf of the Petitioner uploaded on DMS on 09.04.2024. In para 2 of the affidavit, the deponent namely Mr. Jatin Jain, authorized signatory, deposed that the present application is not collusive and has not been filed to overreach any judicial proceedings for debt recovery or otherwise. Para 2 of the affidavit reads thus:

**2.** That, as per the order of the Hon'ble Adjudication Authority National Company Law Tribunal dated 14.03.2024 (*Enclosed herewith as Annexure 1*), I state as under:-

- a.** That, the current application is not collusive and has not been filed to overreach any judicial proceedings for debt recovery or otherwise.
- b.** That, the current application has not been filed to defeat the claims of the Operational Creditor in any manner.

  
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**7.** On service of notice, one of the Creditor viz. J. C. Flowers, was represented before us. Today, Mr. Jatin Jain, Ld. Counsel appearing for the J.C. Flowers Services, submitted that Yes Bank could assign the amount of debt to his client J.C. Flowers Assets Reconstruction Pvt. Ltd. and further submitted that the Creditor has no objection to admission of the petition and commencement of CIRP qua the Company.



8. No infirmity or deficiency is pointed out in the application by the Ld. Counsel appearing for the Creditor.

9. At this stage, Ld. Counsel appearing for the Creditor (J.C. Flowers Services) submitted that the amount of debt due to the Yes Bank Ltd/assignee indicated in the application is less while the actual amount payable is more. It is clarified that we have not determined the amount of debt and have admitted the application because the amount of default is more than Rs. 1 crore. It would be open to the Creditors to stake their respective claims before the IRP and the IRP would examine/verify the same without being influenced by averments made in the application.

10. In view of the aforementioned, **the application deserves to be admitted. Order accordingly. In the wake, moratorium provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (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.



**11.** As proposed by the Petitioner **Mr. Umesh Gupta**, having Registration IBBI/IPA-001/IP-P00848/2017-2018/11431 is appointed as IRP. It is further ordered that:

“**Mr. Umesh Gupta** shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.”

**12.** The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

**13.** A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

**14. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.**

**Sd/-**  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**