



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**  
**(Division Bench)**

**Item No.-201**  
IB-51/ND/2023

**IN THE MATTER OF:**  
INOX Tubes Pvt. Ltd.

**....Applicant**

**SECTION**  
U/s 10 IBC

**Order delivered on 10.11.2023**

**CORAM:**  
**SHRI MAHENDRA KHANDELWAL,**  
**HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**  
For the Applicant :  
For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets. IB-51/ND/2023 stands **admitted.**

**Sd/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER (T)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW ADJUDICATING AUTHORITY**  
**NEW DELHI BENCH (COURT-V)**

**Company Petition (IB) No. -51 (ND) 2023**

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

**IN THE MATTER OF:**

**M/s INOX TUBES PRIVATE LIMITED**

**CIN: U45400DL2007PTC171815**

**PAN: AABC18001K**

G-39, DDA Flats Ajmeri Gate,  
Behind Raghushree Market,  
Delhi-110006

**...Corporate Debtor/Corporate Applicant**

**Order Delivered on: 10.11.2023**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicant** : Mr. Vinod Chaurasia, Adv.

**For the Respondent** :

**For the HDFC Bank** : Mr. Kunal Tandon, Ms. Richa Sandilya, Ms. Bhavna Vijay, Advs.

**ORDER**

**PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

1. The instant application is filed by M/s INOX Tubes Private Limited ('Corporate Applicant') under Section 10 of the Insolvency and Bankruptcy Code, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process as the Corporate Debtor being the Corporate Applicant itself, has committed the default in paying the debt of Rs. 4,09,14,185.98/- (Rupees



Four Crores Nine Lacs Fourteen Thousand One Hundred Eighty-Five and Ninety-Eight Paise) owed to the Financial Creditors.

2. The Corporate Applicant is a private limited company incorporated on 26.12.2007 under the provisions of the erstwhile Companies Act, 1956 having CIN: U45400DL2007PTC171815 and registered office situated at G-39, DDA Flats Ajmeri Gate, Behind Raghushree Market, Delhi-110006.

3. The averments made by the Corporate Applicant in the application, which are necessary for adjudicating the matter are summarized as under: -

i) That, the Corporate Applicant was incorporated to carry on the business of manufacturing, trading, assembling, dealing, fabricating of all kinds of metal pipes. The company started its operations with a vision to set up as a big steel and iron manufacturer and to distribute all over the country.

ii) That, these types of products were in great demand considering the thrust by the Government to establish such kind of industries in Jammu & Kashmir and Corporate Applicant preferred to establish the same in Kathua District, Jammu. The Corporate Applicant received financial facilities initially from Jammu & Kashmir bank, IndusInd Bank and the same was shifted to HDFC Bank in the year 2005.

iii) That, the Corporate Applicant and the HDFC Bank (Financial Creditor in the present case) entered in to a Loan Agreement dated 26.08.2015, whereby, two types of facilities were provided by HDFC Bank viz. Term Loan of Rs. 20,00,000/- and Cash credit facility of Rs. 3,80,00,000/. The Corporate Applicant was able to repay the term loan which was reduced to Rs. 1,62,528.22 on 30.04.2018 but due to unavoidable circumstances, the Corporate Applicant could not repay the cash credit facilities of Rs. 3,80,00,000/- which was used beyond its limit and became overdue resulting in the account of Corporate Applicant becoming NPA on 29.01.2018 and a notice under section 13(2) of the SARFAESI Act, 2002 was issued by the HDFC Bank on 28.05.2018.



- iv) That, the Corporate Applicant continued to operate its business in the hope that its position might get better with the time, however, failed to reverse its position despite of getting financial and other assistance from HDFC Bank and is currently having accumulated losses of Rs. 98,83,000/- and outstanding dues of Financial Creditor worth Rs. 4,67,75,000/- as per the balance sheet as on 31.03.2022. The Copy of Audited Financial Statements of last two Financial Years i.e., FY-2020-21 and FY-2021-22 along with Audited financial statements dated 26.12.2022 is placed on record.
- v) That, to avail the loan facilities, the Corporate Applicant mortgaged several properties to the HDFC Bank and amongst said properties, the HDFC Bank has sold out residential flat No.11, 2nd Floor, Block A, Bijli Apartments, Situated at Plot No.12, Jarnail Bagh, G.T. Road, Delhi-110033 measuring 1630 sq. ft. for a consideration of Rs. 1,80,50,000/- through e-auction and acquired possession of the same. A copy of the Surrender Letter dated 10.03.2022 issued by the Corporate Debtor & Possession taken over by HDFC Bank dated 25.03.2022 is placed on record.
- vi) That, the HDFC Bank has sent another E-Auction notice dated 06.09.2022 for conducting sale on 16.11.2022 of other properties of the Corporate Applicant.
- vii) That the Corporate Applicant prepared the Audited financial statement as on 26.12.2022 as well as the statement of affairs as required for filing the application u/s 10 of the IBC, 2016. Statement of Affairs of the Corporate Debtor dated 26.12.2022, Income Tax Returns of Last 3 years are placed on record.
- viii) That the Corporate Applicant is unable to remit/pay the dues of Financial Creditor as well as of other Operational Creditors. Accordingly, the Board of Directors of the Corporate Applicant in its meeting held on 30.11.2022 approved to initiate the



Corporate Insolvency Resolution Process u/s 10 of the IBC, 2016 because of the fact that it will not be able to make payment of the financial dues.

ix) That, the Members of the Corporate Applicant in its Extra Ordinary General Meeting (EoGM) held on 02.01.2023 approved to file the application under section 10 of IBC, 2016 for initiating the Corporate Insolvency Resolution Process by passing Special Resolution in this respect and authorized Mr. Hanwant Raj Doshi (Director) to file all such applications and documents as required for this purpose. A copy of EGM resolution along with MGT-14 is placed on record. Hence, the present application has been filed by the Corporate Applicant.

4. This Adjudicating Authority vide order dated 24.01.2023 directed the Ld. Counsel for the Corporate Applicant to serve notice on HDFC Bank and also other three Operational Creditors for appearance as well as for filing objections. The Corporate Applicant, in compliance of the said order dated 24.01.2023 filed an affidavit of service dated 15.02.2023. Pursuant to the issuance of notice, the Objector Bank (HDFC Bank) i.e., the Financial Creditor has appeared before us and made the submissions which are stated below: -

- i) That the present petition is not maintainable as the same being defective/incomplete. As per Section 10 of the IB Code, 2016, an application under Section 10 can only be preferred after approval of the special resolution passed by shareholders of the Corporate Debtor. However, from the alleged resolution, it is evident that only one shareholder i.e., Mr. Hanwantraj Harakchand Doshi, who is also the director of the Corporate Debtor has alone passed the resolution for filing an application under Section 10 of the IB Code, 2016 and has appointed himself to act as the authorised representative for filing the present application.
- ii) That the Applicant in its application stated that the Corporate Applicant is a loss-making company, however, failed to state the



reasons or brought on record any document to evidence that the Corporate Debtor is a loss-making company. No documents have been filed by the Applicant to evidence that any recovery has been sought by any of the Operational Creditors from the Corporate Debtor and the Corporate Debtor has been unable to pay the same.

- iii) That the Applicant in its application has deliberately not disclosed the dues payable to the government and statutory dues like electricity and taxes. Therefore, the present application has been filed only to seek the benefit of Section 14 imposing moratorium against all the actions that are initiated against the Corporate Debtor and with an intent to deny payments to the creditors along with government and statutory dues.
- iv) That the initiation of CIRP would cause irreparable loss to the Financial Creditor who has already set the wheels in motion to secure its debt by putting up for auction the property mortgaged and surrendered by the Applicant in favour of the Bank and the Bank has acquired the symbolic possession of the same in terms of Section 13(2) of the SARFAESI Act vide notice dated 28.05.2018.
- v) That even the debt amount due and payable to the Financial Creditor is wrongly stated in the Application. The actual amount payable by the Corporate Debtor as on 10.03.2023 is Rs. 6,28,68,620.88 (Rupees Six Crores Twenty-Eight Lacs Sixty-Eight Thousand Six Hundred Twenty and Paise Eighty-Eight).
- vi) Hence, the present petition is neither maintainable nor deserves admission in terms of Section 10 of the IB Code, 2016.

5. We have heard Ld. Counsel for the Corporate Applicant and the Objector Bank and perused the averments made in the application, affidavits filed by the Corporate Applicant and the Objector Bank. The relevant documents annexed with the respective submissions have been examined.

6. From the submissions made by the Corporate Applicant, it is stated that the Corporate Applicant availed two credit facilities worth Rs.



4,00,00,000 i.e., Term Loan of Rs. 20,00,000/- and Cash credit facility Rs. 3,80,00,000/- in the year 2015 from the Financial Creditor (HDFC Bank) and the charge was created in favour of the HDFC Bank. The Corporate Applicant was able to repay the term loan which was reduced to Rs. 1,62,528.22 on 30.04.2018. However, due to the downfall in the business operations of the Corporate Applicant, the Corporate Applicant failed to repay the cash credit facilities of Rs. 3,80,00,000 which was used beyond its limits and became overdue. Therefore, the account of Corporate Applicant was classified as Non- Performing Assets (NPA) on 29.01.2018. Thus, the company approached this Adjudicating Authority by filing an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process.

7. Further, a demand notice dated 28.05.2018 was issued by the HDFC Bank under Section 13(2) of the SARFAESI Act, 2002 demanding a sum of Rs. 4,09,14,185.98/- (Rupees Four Crores Nine Lacs Fourteen Thousand One Hundred Eighty-Five and Ninety-Eight Paise). It is further observed that even after getting timely financial and other assistance from HDFC Bank, the Corporate Applicant could not recover the losses. The Corporate Applicant is currently having accumulated losses of Rs. 98,83,000/- and outstanding dues of financial creditor of Rs.4,67,75,000/- as per the balance sheet as on 31.03.2022.
8. At this juncture, it will be advantageous to consider what are the requirements for admitting an application under section 10 of the Code, 2016. For this purpose, it is useful to refer the judgment of the Hon'ble NCLAT in **Unigreen Global Pvt. Ltd. VS. Punjab National Bank & Ors. CA (AT) (Ins. 81/2017)** wherein it was held that:

*“20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Subsection (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 information 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. Nondisclosure 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.*

*xxx xxx xxx*

*25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against Corporate Debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Adjudicating Authority or appeal pending before the Debt Recovery Appellate Adjudicating Authority cannot be a ground to reject an application under Section 10, if the application is complete."*

9. In the present application, it is clear from the facts that there has been a loan amount of Rs. 4,09,14,185.98/- (Rupees Four Crores Nine Lacs Fourteen Thousand One Hundred Eighty-Five and Ninety-Eight Paise) availed by the Corporate Applicant from the Financial Creditor. Later, due to the downfall of the business operations of the Corporate Applicant, the Corporate Applicant was unable to repay the cash credit facilities. The issuance of Demand Notice dated 28.05.2018 shows that there exists a 'debt'. Therefore, the first essential ingredient of Section 10 that there is a debt, stands substantiated.
10. Thereafter, the Corporate Applicant was classified as Non-Performing Assets (NPA) on 29.01.2018 in the books of HDFC Bank i.e. the Financial Creditor in the present application. The updated current amount of debt in default is Rs. 4,09,14,185.98/- (Rupees Four Crores Nine Lacs Fourteen Thousand One Hundred Eighty-Five and Ninety-Eight Paise). The Audited Financial Statements of last two Financial Years i.e., FY-2020-21 and FY-2021-22 along with Audited financial statements dated 26.12.2022 proves that there is default in the repayment of the debt. Further, the claim amount is well above the pecuniary threshold limit of Rs.1 Crore as envisaged in Section 4 of Code, 2016 to initiate the CIRP. Therefore, the essential requirement for an application to be admitted under Section 10 i.e., the 'debt' and 'default' with respect to such debt, stands substantiated.
11. The Financial Creditor i.e., HDFC Bank has raised certain objections vide its reply dated 13.03.2023 that consent of '*all the shareholders*' is required to initiate CIRP u/s 10 of the Code, whereas, in the present case, consent



of only 1 shareholder is placed on record. It is pertinent to mention that the use of words *“the special resolution passed by shareholders of the corporate debtor”* makes it clear that an application for initiation of CIRP under Section 10 of the Code can be filed on the basis of Special Resolution approved by the shareholders. This Adjudicating Authority vide its order dated 07.08.2023 granted 10 days’ time to the Corporate Applicant to file a copy of notice of EoGM and attendance sheet of the said meeting within 10 days of the order, as prayed for by the Corporate Applicant. The Corporate Applicant in compliance of the abovementioned order dated 07.08.2023 filed an affidavit dated 18.08.2023, placing on record the Board Resolution dated 30.11.2022, notice dated 30.11.2022 for calling EoGM on 02.01.2023 and Special Resolution passed in EoGM held on 02.01.2023 along with attendance sheet of members present in EoGM holding 96.64% shares. As per the Special Resolution passed in EoGM dated 02.01.2023, *“the assent of members be and is hereby accorded to the Board to voluntary file an application for initiating CIRP”*. Therefore, we are of the view that the objection raised by the Financial Creditor as to the maintainability of the present petition does not hold ground and the present petition is rightly filed.

12. It is also observed that the Financial Creditor stated that the actual amount payable by the Corporate Debtor as on 10.03.2023 is Rs. 6,28,68,620.88 (Rupees Six Crores Twenty-Eight Lacs Sixty-Eight Thousand Six Hundred Twenty and Paise Eighty-Eight). However, no document has been placed on record by the Financial Creditor to justify this contention. Therefore, an averment without any supporting document in proof of it is mere a contention and can not be taken into consideration.
13. The Corporate Applicant, vide its Board resolution dated 30.11.2022, had resolved to file application under Section 10 of the Code, 2016. The members of the Corporate Applicant had resolved by way of Special Resolution to file an application under Section 10 of the Code, 2016 in their Extra Ordinary General Meeting dated 02.01.2023. The certified true copy of the Board Resolution dated 30.11.2022,



notice of EoGM dated 30.11.2022 and Special Resolution dated 02.01.2023 is annexed as A-3, A-4 & A-5, respectively of the additional affidavit to the Company Application.

14. We are of the view that the existence of debt and default is established and no winding up proceedings are pending against the Corporate Applicant and Corporate Applicant is not covered by the ineligibilities provided under Section 11 of the Code, 2016. We are satisfied that the Corporate Applicant is entitled to move an application under Section 10 of the Code in view of the admitted outstanding operational debt and default of the same by the Corporate Applicant. As a sequel of the above discussion and in terms of Section 10(4) of the Code, 2016, we hereby **admit** the instant Petition **(C.P.(IB)/51/(ND)/2023)** in terms of Section 10 of the Code and CIRP is initiated against M/s. INOX Tubes Private Limited.

a) The Corporate Person in Part-II of Form-6 of the Company Application has proposed the name of the Interim Resolution Professional in this application, the registration certificate and written consent of the Proposed IRP in Form-2 is annexed with the application. This Adjudicating Authority hereby appoints Mr. Rajiv Bajaj, having registration number IBBI/IPA-002/IP-N00276/2017-18/10834, office at LG-B-269, Chhatarpur Enclave, Phase-2, New Delhi-110074 with email – id-rbajajip@gmail.com as the Interim Resolution Professional for Corporate Debtor. The Corporate Applicant is directed vide order dated 28.08.2023 to place on record valid Authorisation for Assignment (AFA) of the appointed IRP and the same has been complied by the Corporate Applicant vide affidavit dated 28.08.2023.

b) We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016 with regard to admission of this



application under Section 10 of the Insolvency & Bankruptcy Code, 2016.

- c) We direct the Corporate Applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Rajiv Bajaj to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Corporate Applicant. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.
- d) We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Adjudicating Authority, 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.”*
- (e) 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,*



*permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.*

16. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
17. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
18. The office is directed to communicate a copy of the order to the Corporate Debtor/ Corporate Applicant, Financial Creditors, the Interim Resolution



Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from the pronouncement of this order.

**Sd/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER (T)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (J)**