

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**DIVISION BENCH, COURT-1, AHMEDABAD**

ITEM No.301  
C.P.(IB)/47(AHM)2023

**Under Section 10 of IBC 2016**  
**IN THE MATTER OF:**

Q Top Fab Engineering Pvt Ltd

.....Applicant

**Order delivered on: 06/04/2026**

**CORAM:**

MR. SHAMMI KHAN, HON'BLE MEMBER (J)

MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

**ORDER**  
**(Hybrid Mode)**


The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

— SD —

**SANJEEV SHARMA**  
**MEMBER (TECHNICAL)**

— SD —

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT-I, AHMEDABAD**

**CP (IB) No. 47/AHM/2023**

*(An application 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: Q Top Fab Engineering Pvt Ltd**

**Q Top Fab Engineering Pvt Ltd**

Registered office at:

18, Dharmanandan Soc.,  
IOCL Road, Ichchhapore, Hazira,  
Surat Gujarat 394510 India

**...Applicant/Corporate Debtor**

**VERSUS**

**1. Punjab National Bank**

Having its address at:

Mid Corporate Centre (MCC)  
2nd Floor, Udhna Teen Rasta  
Surat-394210

**2. Phoenix ARC Private Limited**

Having its addresss at:

5th Floor, Dani Corporate Park,  
158, CST Road, Kalina,  
Santacruz (E), Mumbai – 400098

**...Respondents**

**Order Pronounced On: 06.04.2026**



**C O R A M:**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**

**SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)**

**A P P E A R A N C E:**

For the Applicant : Mr. Nipun Singhvi, Adv.  
For the Respondent Mr. Dhruv Kumar S Chauhan,  
Adv. for R-1 PNB  
Mr. Arpit Singhvi, Adv. for R-2  
Phoenix ARC Ltd.  
For the Income Tax Ms. Kinjal Trivedi, Jr. Standing  
Dept. counsel

**O R D E R**  
**Per Bench**

1. This Company Petition is filed on 19.01.2023 through e-mode by the Applicant- **Q Top Fab Engineering Pvt Ltd** (hereinafter referred to as 'Corporate Applicant') under Section 10 of the IBC, 2016 read with Rule 7 of the IB (AAA) Rules, 2016 for initiation of Corporate Insolvency Resolution Process, appointment of Interim Resolution Professional and declaration of moratorium for default in payment of debt of Rs. 1,27,12,528/- (Rs One Crore twenty-seven lakhs twelve thousand five hundred and twenty-eight only) as on 30.09.2022.
2. On perusal of Part I of Form 6, it is revealed that the Corporate Applicant- **Q Top Fab Engineering Pvt Ltd is**



the Corporate Applicant, having its registered address at 18, Dharmanandan Soc., IOCL Road, Ichchhapore, Hazira Surat GJ 394510.

3. On Perusal of Part-II of Form-6, it is revealed that the Applicant has proposed the name of Mr. Pramod Kumar Dokania having IBBI Registration Number IBBI/IPA-001/IP-P-01994/2020-2021/13062, having registered office at: Tower 54, Flat 1101, Future Towers. Amanora Park Town, Hadapsar, Pune 411028 for the appointment of IRP under Section 13(1)(c) of the IBC, 2016.
4. On perusal of Part III of Form 6, it is revealed that the Particulars of the Financial Creditors namely Punjab National Bank and HDFC Bank. The debt raised against PNB as stated by the Applicant is of Rs. 85,00,000 and amount in default including interest against PNB as stated by the Applicant is of **Rs. 1,27,12,528.**
5. The Applicant has placed the **facts** through this Petition in the following manner: -

5.1 It is submitted that the Applicant is a Company incorporated under the provisions of the Companies Act, 1956 having CIN U28113GJ2010PTC063383 and



is engaged in the business of manufacturing fabricated metal products, having its registered office at Ichhapore, Hazira, Surat, Gujarat.

- 5.2 It is submitted that the Applicant Company has been adversely affected due to the outbreak of COVID-19 pandemic, which caused severe disruption in business operations, supply chains, and financial stability, leading to a significant downturn in its business activities.
- 5.3 It is submitted that due to the financial stress caused by the pandemic, the Applicant Company defaulted in repayment of its financial obligations, including secured and unsecured loans, and was unable to service its debts in the ordinary course of business.
- 5.4 It is submitted that the Applicant had availed credit facilities from Punjab National Bank, including a mortgage loan of approximately Rs. 92,74,000/- and cash credit facilities, and substantial amounts remained outstanding along with accrued interest as on the relevant dates.
- 5.5 It is submitted that the Applicant Company had also availed unsecured loans from various parties, which were outstanding and contributed to its deteriorating financial position.
- 5.6 It is submitted that initially the Applicant Company had been servicing its debts regularly; however, due to continued financial distress, it defaulted in repayment



of dues, and consequently, the financial creditor issued reminder notices and initiated recovery actions.

- 5.7 It is submitted that an application C.P. (IB)-856/NCLT/AHM/2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 was filed by an operational creditor, namely Avon Engineering, before this Tribunal, which is pending adjudication and disputed by the Applicant Company.
- 5.8 It is submitted that the Applicant Company had also filed an application IA No. 144 of 2021 in C.P. (IB)-856/NCLT/AHM/2019 under Section 65 of the Code seeking dismissal of the said Section 9 application on the ground of malicious intent, which is pending consideration.
- 5.9 It is submitted that the Applicant had further filed an Interlocutory Application IA 253 of 2020 in C.P. (IB)-856/NCLT/AHM/2019 for impleadment of ex-directors, which was disposed of by this Tribunal vide order dated 27.07.2022, and an appeal against the said order was also preferred Company Appeal (AT) (Insolvency) No. 1334 of 2022 against order dated 27.07.2022 before the Hon'ble NCLAT, which came to be dismissed vide order dated 11.11.2022.
- 5.10 It is submitted that despite several efforts to manage its financial affairs and discharge its liabilities, the



Applicant Company failed to regularize its accounts and repay its outstanding dues.

- 5.11 It is submitted that in view of its inability to pay debts and absence of viable alternatives, the Applicant Company resolved to initiate Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016.
- 5.12 It is submitted that the Board of Directors of the Applicant Company, in its meeting held on 29.11.2022, approved the financial statements and resolved to initiate CIRP, and subsequently, the shareholders in the Extraordinary General Meeting held on 30.11.2022 approved the initiation of CIRP and appointment of Interim Resolution Professional.
- 5.13 It is submitted that the Applicant has proposed the name of an Interim Resolution Professional and has obtained consent in Form-2 in accordance with the provisions of the Code.
- 5.14 It is submitted that the Applicant Company has filed the present application within the prescribed limitation period and satisfies the definition of “Corporate Debtor” and “debt” under Sections 3(8) and 3(11) of the Insolvency and Bankruptcy Code, 2016.
6. The Petitioner Company has relied upon the following documents which are as under: -



- i. Copy of Minutes of EGM and Board meetings held on 30/11/2022 and 29/11/2022 [ANNEXURE A-Colly]
- ii. Copy of Certificate of Charge issued by ROC [ANNEXURE B].
- iii. Reminder Notices from PNB and HDFC bank [ANNEXURE C].
- iv. Copy of Sanction Letter [ANNEXURE D].
- v. Mortgage of Assets (registered charge issued by ROC) [ANNEXURE E].
- vi. Ledger of PNB OD A/c since 2020 [ANNEXURE F].
- vii. Notice of default from PNB [ANNEXURE G].
- viii. Copy of Master data of M/s Q TOP FAB ENGINEERING PRIVATE LIMITED [ANNEXURE H].
- ix. Copy of last work order detail [ANNEXURE I].
- x. Copy of list of unsecured loan as on 12/10/2022 (same as on 28.11.2022) and Notices from HDFC Bank [ANNEXURE J].
- xi. Copy of the Notice [ANNEXURE K].
- xii. Copy of the last order dated 10.11.2022 in IA No. 144 of 2021 in C.P. (IB)- 856/NCLT/AHM/2019 [ANNEXURE L].
- xiii. Copy of final order dated 27.07.2022 in IA 253 of 2020 passed by NCLT Ahmedabad bench [ANNEXURE M].
- xiv. Copy of the final order dated 11.11.2022 in Company Appeal (AT) (Insolvency) No. 1334 of 2022[ANNEXURE N].



- xv. Consent in Form 2 from Proposed Interim Resolution Professional [ANNEXURE I].
  - xvi. Copy of Audited Financial statement of the corporate debtor for FY 20-21 and FY 21-22 [ANNEXURE II].
  - xvii. Provisional Financials for FY 22-23 till 28th November 2022 [ANNEXURE III].
  - xviii. Statement of affairs as on 28<sup>th</sup> November 2022 [ANNEXURE IV].
  - xix. Copy of AOA and MOA of the company along with MCA form 32 filed for MD appointment [ANNEXURE V].
7. Pursuant to the order dated 01.03.2023, the Applicant filed an affidavit of service on 15.05.2023 vide Inward No. D-1693.
  8. In compliance with order dated 16.05.2023, the Applicant filed another affidavit of service on 03.07.2023 vide Inward No. D-2385.
  9. Furthermore, in compliance with order dated 28.08.2023, the Applicant filed an additional affidavit on 19.10.2023 vide Inward No. 4155 to place on record certain documents pertaining to Corporate Applicant.
  10. Along with the same, the Applicant filed another additional affidavit on 19.10.2023 vide Inward No. D-1373 to submit



one letter, pendrive with 2 envelopes containing three demand drafts amounting to Rs. 7.50 Lakhs. The same has been placed with the safe custody of Joint Registrar of NCLT, Ahmedabad Bench.

11. The Income Tax Department filed its report on 20.11.2023 vide Inward No. D-4541. The following were the observations made by the Income Tax Department:

11.1 It is submitted that the report has been forwarded by the office of the Principal Commissioner of Income Tax, Surat, through the Senior Standing Counsel, placing on record details regarding outstanding demand, pendency of proceedings, and carry forward of losses/unabsorbed depreciation of the Corporate Debtor.

11.2 It is submitted that the said report has been prepared pursuant to communication received from the Standing Counsel intimating the hearing before this Tribunal and seeking relevant details in respect of the Corporate Debtor.

11.3 It is submitted that as per the demand recovery module of the Income Tax Department, there is no outstanding tax demand against the Corporate Debtor.



- 11.4 It is submitted that as per the ITBA system and the report of the Assessing Officer, no proceedings are pending against the Corporate Debtor before the Income Tax Department.
- 11.5 It is submitted that the assessment proceedings for Assessment Year 2017-18 have been completed under Section 143(3) of the Income Tax Act, 1961 and the returned income has been accepted.
- 11.6 It is submitted that details of losses to be carried forward and unabsorbed depreciation have been provided, which indicate that for Assessment Years 2021-22, 2022-23 and 2023-24, the total brought forward losses available for set-off amount to Rs. 5,34,369/- and unabsorbed depreciation amounts to Rs. 17,37,388/-.
- 11.7 It is submitted that the said figures are supported by returns filed by the Corporate Debtor, including return for AY 2023-24, and relevant extracts have been annexed with the report.
- 11.8 It is submitted that the Income Tax Department is presently not in possession of complete documents to offer detailed comments on the proceedings pending before this Tribunal, and the same have been requested from the Standing Counsel.

12. Moreover, in compliance with order dated 20.10.2023, the Applicant filed an additional affidavit on 07.12.2023 vide



Inward No. D-4922 to seek the confirmation of dues from the debtors of the Corporate Debtor through speed post and e-mail.

13. In compliance of order dated 06.12.2023, the Applicant filed an additional affidavit on 07.02.2024 vide Inward No. D-4922 to place on record the confirmation of receivables from debtors.
14. Additionally, the Applicant filed a Pursis on 03.06.2024 vide Inward No. D-4357 to place on record the final order passed by the Hon'ble NCLAT in Company Appeal (Ins.) 609 of 2024.
15. In compliance with order dated 04.06.2024, the Applicant filed an additional affidavit on 06.11.2024 vide Inward No. D-8120 to file the annual report of Corporate Applicant for the Financial Year 2023-24.
16. The Applicant filed in compliance with order dated 03.06.2025, the Applicant filed its written submission on 08.07.2025 vide Inward No. D-4524.



17. However, this Tribunal vide order dated 01.09.2025 directed the Applicant to issue fresh notice to the Respondents/FCs. In compliance of the said order, the Applicant filed an Affidavit of Service on 03.10.2025 vide Inward No. D-6656.
18. The Applicant in compliance with order dated 30.09.2025, filed an additional affidavit on 18.11.2025 vide Inward No. D-7043 to submit the undertaking by all the directors of the Corporate Applicant to provide necessary cooperation during the CIRP of the Corporate Applicant. However, the said affidavit contained the undertaking of only two directors of the Corporate Applicant.
19. In light of the same, the Tribunal vide order dated 17.10.2025 directed the Applicant to file additional affidavit to place on record the undertaking by the remaining director of the Corporate Applicant. The Applicant in compliance of the said order filed two additional affidavit on 18.11.2025 vide Inward No. D-7676 to submit the undertaking by the remaining director of the Corporate Applicant to provide necessary cooperation during the CIRP of the Corporate Applicant, to produce details of all the directors of Corporate Applicant such as email address, current address of



residence, mobile number. Along with the same, the Applicant deposited three demand drafts totalling to Rs. 7,50,000/-. The copy of the said demand drafts are annexed as Annexure-3 with the additional affidavit and the originals of the same are provided in Cover letter through sealed envelope which is marked as Annexure – 4 with the additional affidavit.

20. Along with the same, in compliance of order dated 19.11.2025, the Applicant filed Affidavit of Service on 19.12.2025 vide Inward No. D-8719.
21. In compliance of order dated 19.12.2025, the Applicant filed Pursis on 02.02.2026 vide Inward No. D-939 to carry out amendment in the cause title of the Petition by replacing HDFC Bank /R-2 with Phoenix ARC Private Limited as HDFC has assigned its debt to Phoenix ARC Private Limited.
22. In compliance of order dated 19.12.2025, the R-1/PNB filed its Affidavit of Reply on 02.02.2026 vide Inward No. D-869 wherein the following contentions were stated:

22.1 It is submitted that the present Affidavit in Reply has been filed by the Financial Creditor opposing the



Section 10 Petition and denying the averments made therein as being false, incomplete and inconsistent with the records of the Bank.

- 22.2 It is submitted that the Applicant has failed to provide complete and correct details as mandated under the Insolvency and Bankruptcy Code, 2016 and the allied Rules and Regulations, and has filed the present Petition with an oblique intention to defraud the creditors.
- 22.3 It is submitted that the Applicant Company had approached the Bank in the year 2011 seeking financial assistance and was sanctioned a Cash Credit facility of Rs. 60,00,000/-, pursuant to which various loan and security documents were executed in favour of the Bank.
- 22.4 It is submitted that thereafter, in the year 2014, the Applicant sought enhancement of the said facility, and the Bank enhanced the Cash Credit limit from Rs. 60,00,000/- to Rs. 85,00,000/- vide sanction letter dated 26.03.2014, and fresh security documents were executed.
- 22.5 It is submitted that the Applicant Company had from time to time acknowledged its liability towards the Bank by issuing balance confirmations and reflecting the dues in its Balance Sheets, including for the financial year ending 31.03.2019.



- 22.6 It is submitted that despite contractual and statutory obligations, the Applicant failed to submit its Balance Sheets for subsequent financial years and has not produced the same along with the present Petition.
- 22.7 It is submitted that the Applicant committed defaults in repayment of its dues, resulting in classification of its account as Non-Performing Asset (NPA), and despite repeated reminders, failed to regularize the account.
- 22.8 It is submitted that consequently, the Bank issued Demand Notice dated 15.04.2021 under Section 13(2) of the SARFAESI Act, 2002 for recovery of its dues.
- 22.9 It is submitted that the contention of the Applicant attributing financial distress to COVID-19 pandemic is incorrect, as the records of the Bank reflect persistent defaults and lack of financial discipline even prior to the pandemic.
- 22.10 It is submitted that the objections raised by the Applicant against the SARFAESI notice were rejected by the Bank as frivolous and filed beyond the statutory period.
- 22.11 It is submitted that the Applicant has failed to furnish complete books of accounts as required under Section 10(3)(a) of the Insolvency and Bankruptcy Code, 2016, and the Statement of Affairs filed is incomplete and unsupported by annexures.



- 22.12 It is submitted that the Applicant has not provided correct and complete particulars in Part III of the Petition, particularly with respect to the date of incurrence of financial/operational debt, rendering the Petition defective.
- 22.13 It is submitted that the Bank has already initiated recovery proceedings by filing Original Application No. 710 of 2023 before the Debts Recovery Tribunal-II, Ahmedabad for recovery of an amount of Rs. 14,56,68,119.54/- and has also initiated measures under the SARFAESI Act.
- 22.14 It is submitted that the present Petition has been filed with an ulterior motive to stall the legitimate recovery proceedings initiated by the Bank and is not a bona fide attempt for resolution under the Code.
- 22.15 It is submitted that the Applicant has failed to produce sufficient documentary evidence and has filed incomplete documents, thereby rendering the Petition non-maintainable.
- 22.16 It is submitted that the Applicant has referred to the pendency of a Section 9 Petition filed by M/s. Avon Engineering; however, the status and outcome of the said proceedings have not been properly disclosed.
- 22.17 It is submitted that the Applicant has taken contradictory stands by disputing the claim of the Operational Creditor while simultaneously reflecting



the same as contingent liability and acknowledging the debt in its financial statements.

22.18 It is submitted that in view of non-disclosure of material facts, incomplete documentation, and abuse of process of law, the present Petition is liable to be rejected.

23. In compliance of order dated 19.12.2025, the R-2/Phoenix ARC Private Limited filed its Affidavit of Reply on 03.02.2026 vide Inward No. D-942 wherein the following contentions were stated: -

23.1 It is submitted that the present Affidavit in Reply has been filed by Respondent No. 2 opposing the Section 10 Petition and denying all averments made therein, save and except those specifically admitted, as being false, misleading and contrary to record.

23.2 It is submitted that Respondent No. 2 is an assignee of the loan originally granted by HDFC Bank Limited pursuant to an Assignment Agreement dated 26.03.2025, whereby the financial assets along with underlying securities stood assigned in its favour.

23.3 It is submitted that the present Petition is defective and not maintainable as the alleged special resolution is invalid, inasmuch as the notice of Extraordinary General Meeting and the meeting itself were



conducted on the same day in violation of the provisions of the Companies Act, 2013.

- 23.4 It is submitted that the authorization filed in Form 32 for initiation of proceedings is defective and the Application does not disclose the date of default or record of default in Part III of Form 6, thereby rendering the Petition incomplete.
- 23.5 It is submitted that the Applicant Company had availed a Business Loan of Rs. 20,00,000/- from HDFC Bank Limited on 06.07.2017 and had agreed to repay the same in 51 equated monthly instalments, and relevant loan documents have been executed.
- 23.6 It is submitted that the Applicant committed persistent defaults in repayment of instalments, leading to initiation of legal proceedings by the lender.
- 23.7 It is submitted that a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed in respect of cheque dishonour, wherein the competent court at Surat vide judgment dated 23.10.2024 convicted the Applicant Company and its Director and imposed sentence and payment directions.
- 23.8 It is submitted that the Applicant preferred an appeal against the said conviction and deposited the cheque amount before the Surat Court, and the matter was disposed of before the Lok Adalat on 13.09.2025, however, the said amount remains deposited and unappropriated.



23.9 It is submitted that as per the Statement of Account maintained by Respondent No. 2, a sum of Rs. 6,35,187/- remains due and payable by the Applicant Company.

23.10 It is submitted that the present Petition has been filed without disclosing complete and material facts and documents and is therefore liable to be dismissed.

23.11 It is submitted that the Petition is not a bona fide attempt for resolution but has been filed to avoid repayment of legitimate dues and to stall recovery proceedings.

23.12 It is submitted that in view of the defects in the Petition, non-disclosure of material particulars, and conduct of the Applicant, the present Petition is liable to be rejected.

24. In compliance of order dated 03.02.2026, the Applicant filed Affidavit of Rejoinder against the Reply filed by R-1/PNB on 24.02.2026 vide Inward No. D-1734 stating the following: -

24.1 It is submitted that the averments, allegations and objections raised by the Respondent Bank are misconceived, legally untenable, contrary to the provisions of the Insolvency and Bankruptcy Code, 2016 and are aimed at frustrating the statutory right of the Corporate Debtor to seek resolution under Section 10 of the Code.



24.2 It is submitted that the Respondent Bank has itself admitted the sanction of loan, execution of loan and security documents, and the existence of financial liability and default, including classification of the account as NPA, thereby establishing the existence of “financial debt” and “default” within the meaning of the Code.

24.3 It is submitted that initiation of recovery proceedings by the Respondent Bank under the SARFAESI Act, 2002 and issuance of demand notices further corroborate the subsistence of debt and default and the financial distress of the Applicant.

24.4 It is submitted that the allegation of non-furnishing of books of account and financial records is incorrect, as the Applicant has duly complied with the requirements of Section 10(3) of the Code by furnishing all requisite documents including financial statements, details of assets and liabilities, and information relating to the proposed Interim Resolution Professional.

24.5 It is submitted that the Applicant has already placed on record audited financial statements for the relevant financial years along with provisional financial data, which clearly reflect the financial position and distress of the Company.

24.6 It is submitted that the Board Resolution and Special Resolution passed by the shareholders approving



initiation of CIRP have been duly annexed and comply with statutory requirements, thereby negating the objections raised by the Respondent Bank.

24.7 It is submitted that even if the exact date of default is not expressly stated, the same can be reasonably inferred from the documents on record, including loan documents, account statements and recovery notices, as recognized in judicial precedents.

24.8 It is submitted that pendency of proceedings under the SARFAESI Act or before the Debts Recovery Tribunal does not bar initiation of CIRP under Section 10 of the Code, and such proceedings are merely recovery mechanisms which do not curtail the statutory right of the Corporate Debtor.

24.9 It is submitted that once CIRP is admitted, such recovery proceedings are stayed by operation of moratorium and therefore cannot be a ground to allege mala fide intent under Section 65 of the Code.

24.10 It is submitted that the objections raised by the Respondent Bank regarding suppression of facts or non-disclosure are baseless, and the Applicant has made full and complete disclosure of all material facts before this Tribunal.

24.11 It is submitted that the earlier Section 9 application filed by M/s. Avon Engineering has already been dismissed by this Tribunal vide order dated 04.12.2023, thereby establishing that no operational



debt was payable and negating reliance placed by the Respondent Bank on such proceedings.

24.12 It is submitted that in view of the above facts and settled legal position, the objections raised by the Respondent Bank are devoid of merit and the present Petition under Section 10 is maintainable and deserves to be admitted.

24.13 The Applicant has relied upon the case of Company Law Tribunal in ***M/s. Geocon Infra Pvt. Ltd. vs. M/s. Brij Gopal Construction Company Pvt. Ltd., [CP IB -514/ND/2022]*** wherein the Adjudicating Authority held that even though the specific date of default was not expressly mentioned in the application, the same could be inferred from the supporting documents on record, and accordingly the application was admitted. Applying the same settled legal principle to the present case, it is respectfully submitted that the loan documents, financial statements, account statements, and recall and recovery notices issued by the Respondent clearly establish the occurrence and subsistence of default. Therefore, the objection raised by Respondent No. 1 is hyper-technical, devoid of merit, and cannot render the present Application defective, particularly when the existence of financial debt and default is clearly established from the records placed before this Hon'ble Tribunal.



25. In compliance of order dated 03.02.2026, the Applicant filed Affidavit of Rejoinder against the Reply filed by R-2/ Phoenix ARC Private Limited on 24.02.2026 vide Inward No. D-1735 stating the following:

25.1 It is submitted that the averments, allegations and objections raised by Respondent No. 2 are misconceived, legally untenable, contrary to the provisions of the Insolvency and Bankruptcy Code, 2016 and are made with an intent to frustrate the statutory right of the Applicant to seek resolution under Section 10 of the Code.

25.2 It is submitted that the objection regarding invalidity of the Extraordinary General Meeting is erroneous, as the EGM was duly convened and held in compliance with the provisions of the Companies Act, 2013, and there is no prohibition in law against holding the meeting on the same day where shareholders are present and consent to the same.

25.3 It is submitted that the shareholders of the Applicant Company, being fully aware of the financial distress, unanimously passed the Special Resolution approving initiation of CIRP, and the said resolution constitutes valid authorization in terms of Section 10(3)(c) of the Code.

✓ 25.4 It is submitted that the Board of Directors had duly  
L1 authorized initiation of proceedings and authorized



the signatory to file and pursue the present Petition, and the resolutions passed by the Board and shareholders are valid, lawful and enforceable.

- 25.5 It is submitted that the objection regarding defect in authorization, including reliance on Form 32, is baseless and hyper-technical, and cannot defeat substantive compliance of statutory requirements.
- 25.6 It is submitted that the objection regarding absence of specific date of default is untenable, as the date of default can be reasonably inferred from the documents placed on record including loan documents, financial statements, account statements and recovery notices.
- 25.7 It is submitted that reliance is placed on judicial precedent wherein it has been held that non-mention of exact date of default is not fatal if the same can be inferred from supporting documents.
- 25.8 It is submitted that the financial debt and default stand admitted and established from the records of the Respondent itself, including loan documents and recovery proceedings.
- 25.9 It is submitted that the Applicant has defaulted in repayment of loan facilities due to financial constraints and cash flow issues, which led to initiation of recovery proceedings by the lender.
- 25.10 It is submitted that the existence of financial debt and default forms the very foundation for invoking Section



10 of the Code, and the averments made by Respondent No. 2 in fact support the maintainability of the present Petition.

25.11 It is submitted that the present Application has been filed bona fide in view of the admitted financial distress and inability of the Applicant to discharge its liabilities, with the objective of achieving resolution under the framework of the Code.

25.12 It is submitted that the objections raised by Respondent No. 2 are devoid of merit and liable to be rejected, and the present Petition deserves to be admitted for initiation of CIRP.

25.13 The Applicant has relied upon the case of Company Law Tribunal in ***M/s. Geocon Infra Pvt. Ltd. vs. M/s. Brij Gopal Construction Company Pvt. Ltd., [CP IB -514/ND/2022]*** wherein the Adjudicating Authority held that even though the specific date of default was not expressly mentioned in the application, the same could be inferred from the supporting documents on record, and accordingly the application was admitted. Applying the same settled legal principle to the present case, it is respectfully submitted that the loan documents, financial statements, account statements, and recall and recovery notices issued by the Respondent clearly establish the occurrence and subsistence of default. Therefore, the objection raised by Respondent No. 2 is hyper-technical, devoid of merit, and cannot render the present Application



defective, particularly when the existence of financial debt and default is clearly established from the records placed before this Hon'ble Tribunal.

26. In compliance of order dated 03.02.2026, the R-2/ Phoenix ARC Private Limited filed its written submission on 25.02.2026 vide Inward No. D-1799.
27. In compliance of order dated 03.02.2026, the R-1/ PNB filed its written submission on 27.02.2026 vide Inward No. D-1825.
28. Along with the same, the Corporate Applicant filed revised Chronology of Events on 17.03.2026 vide Inward No. 2386.
29. We have heard the submissions advanced by the Learned Counsel for the Applicant/Corporate Debtor, the Learned Counsel appearing for Respondent No.1/Punjab National Bank and Respondent No.2/Phoenix ARC Private Limited, and have carefully perused the pleadings, documents and material placed on record.
30. The present Petition has been filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 by the Corporate Applicant seeking initiation of Corporate Insolvency



Resolution Process on the ground of its inability to pay its debts.

31. At the outset, it is pertinent to note that the scope of enquiry under Section 10, though primarily confined to existence of “debt” and “default” and completeness of the application under Section 10(3), is not so mechanical as to permit admission of every application irrespective of its intent. The Adjudicating Authority is duty bound to examine whether the application has been filed bona fide for resolution of insolvency or as a device to abuse the provisions of the Code.
32. From the material available on record, it is not in dispute that the Corporate Applicant had availed credit facilities from Respondent No.1/PNB, which were enhanced from time to time, and had also availed loan facilities from HDFC Bank, which now stands assigned to Respondent No.2/Phoenix ARC. The loan documents, account statements, demand notices and financial records clearly indicate that financial debt exists.



33. It is further evident that the Corporate Applicant committed defaults in repayment of its dues, resulting in classification of its account as Non-Performing Asset (NPA). Respondent No.1 has issued demand notice dated 15.04.2021 under Section 13(2) of the SARFAESI Act, 2002 and has initiated further recovery proceedings, including filing of Original Application before the Debts Recovery Tribunal, Ahmedabad.

34. Thus, the existence of financial debt and occurrence of default stand established and are not seriously disputed by either side.

35. However, the crucial question that arises for consideration is whether the present Petition has been filed as a genuine attempt to resolve insolvency or as a tactical device to stall the recovery proceedings initiated by the Financial Creditors.

#### **A. CONTENTIONS OF THE RESPONDENTS**

36. Respondent No.1/PNB has, inter alia, contended that:

- i. the Applicant has failed to furnish complete and correct particulars as required under the Code;



- ii. the Petition is defective for non-disclosure of material particulars including date of default;
- iii. the Applicant has not produced complete financial records and books of accounts;
- iv. the account had already been declared NPA and SARFAESI proceedings were initiated much prior to filing of the present Petition;
- v. recovery proceedings before the DRT are pending for substantial amounts; and
- vi. the present Petition has been filed with an ulterior motive to stall recovery proceedings and is not bona fide.

37. Respondent No.2/Phoenix ARC has further contended that:

- i. the Petition is defective and not maintainable due to invalid authorization and defective special resolution;
- ii. the Applicant has failed to disclose complete particulars including record of default;
- iii. the Applicant has committed persistent defaults and has been subjected to legal proceedings including proceedings under Section 138 of the Negotiable Instruments Act;
- iv. the Petition is filed with mala fide intent to avoid repayment; and
- v. the application deserves to be dismissed on account of suppression of material facts and abuse of process.

## **B. CONTENTIONS OF THE APPLICANT**

38. The Applicant has, in its rejoinder, contended that:



- i. existence of financial debt and default stands admitted by the Respondents themselves;
- ii. pendency of SARFAESI/DRT proceedings does not bar initiation of CIRP;
- iii. all requirements under Section 10(3) have been complied with by filing financial statements, statement of affairs and other documents;
- iv. non-mentioning of exact date of default is not fatal as the same can be inferred from records;
- v. the Board Resolution and Special Resolution are valid and duly passed; and
- vi. the Petition has been filed bona fide in view of financial distress caused due to business downturn, including COVID-19 impact.

### **C. ANALYSIS AND FINDINGS**

#### **• Existence of Debt and Default**

39. There is no dispute that financial debt exists and that default has occurred. The Respondents themselves have admitted sanction of loan facilities, execution of documents, classification of account as NPA and initiation of recovery proceedings. Accordingly, the requirement of “debt” and “default” stands satisfied.

←

✓



We consider relevant to refer to the chronology of events leading to the filing of the present petition. These are given below:

- The Punjab National Bank sanctioned credit facilities of Rs 92.74 lakhs on 03.03.2011 and assets were mortgaged, or charge were created in favour of the Bank on 08.03.2011.
- PNB issued notice under section 13(2) of SARFAESI Act, 2002 on 15.04.2021 after declaring the account of the Corporate Debtor as NPA on 03.04.2021.
- HDFC Bank issued notice under section 138 of the Negotiable Instrument Act on 03.08.2021.
- Application under section 10 of the IBC, 2016 was filed on 19.01.2023.

40. On being directed by this Adjudicating Authority vide order of 04.06.2024, the Petitioner filed a copy of annual report of the Corporate Debtor for the financial year 2023-2024 on 28.10.2024. Information relevant to the proceedings is given below:

- Demands of Rs 7,13,29,794 for financial years 2013-14 and 2015-16 for Service Tax, Rs 39,67,691 for GST (up to FY 2020-21), Income Tax Rs 1,45,990 and Rs 4,27,290 for AY 2012-2013 and 2013-2014 are outstanding.



- The company had no revenue from operations for the financial years ending 31.03.2023 and 31.03.2024 and no business activities. There has not been any change in the liabilities and assets during the period of 2023-2024. The figures of long-term loans and advances and non-current assets of Rs 1,06,000 and Rs1,27,435 continues to be same. Short term loans and advances of Rs 86,16,434 also remains the same. There was trade receivable of Rs 27,06,546 as on 31.03.2023 which is reduced to ZERO. There is no inventory in the company. The other expenses of the company which were Rs10,000 in FY 2022-2023 have increased to Rs 2,70,75,546 during FY 2023-2024. These are not actual expenses but constitutes of Rs 2,70,65,546 as bad debts written off. It is noted that the company has written off its receivables when this Tribunal asked it to submit the details of sundry debtors and their confirmations.
- There is no immovable property in the company.

41. At this stage, it is necessary to address the apparent inconsistency between the report of the Income Tax Department indicating absence of outstanding demand and the disclosures in the Annual Report reflecting substantial statutory liabilities. The said inconsistency has not been explained by the Corporate Applicant and raises serious



concerns regarding the accuracy and completeness of its disclosures.

42. On being directed by this Tribunal vide order of 28.08.2023, the Petitioner filed copy of balance sheet for the year ending 31.03.2023. The annual report shows that the company has no business, no inventory, and no employees during the year. No change in the receivables, creditors and loans and advances during the year.
43. The Petition shows that the company had provided security of/hypothecation of entire stock of raw material, stock in process, finished goods, consumable stores, and spares and book debts to PNB. However, the records show that no such assets are available, and the book debts have been written off.
44. Page 116 to 224 of the Petition contains annual report for the years 2019-2020 and 2020-2021. There has been no business in the company after 01.04.2020. No employees since FY 2020-2021. There were loans from ICICI Bank and HDFC Bank secured against the machinery. The company had no inventory as on 31.03.2021 though the PNB Loan



was secured against the hypothecation of entire stock of gas, stoves, accessories, spare and book debts of the company.

45. This office directed the Corporate Debtor to submit confirmations for receivables from debtor vide order of 20.10.2023. A compliance affidavit was filed on 05.12.2023. The Affidavit states that the company has asked confirmation of dues from the debtors through speed post and e-mail but no confirmations are filed. It is noted that the CD wrote off all the receivables in the accounts as discussed above. Receivables were of Rs 2,70,65,546 which are written off. Loans and advances are of Rs 80,22,692 which are also not recovered.

46. This Tribunal is conscious of the settled legal position that mere pendency of proceedings under the SARFAESI Act or before the Debts Recovery Tribunal does not per se bar admission of an application under Section 10 of the Code. However, the judicial position as evolved in recent precedents clearly mandates that where the initiation of CIRP is found to be a device to derail or defeat recovery proceedings, such application is liable to be rejected as an abuse of the process of law.



47. The Hon'ble NCLAT in ***Agroha Paper Industries Pvt. Ltd. v. Bank of Maharashtra, (2024) ibclaw.in 456 NCLAT***, has held that a Section 10 application filed after initiation of SARFAESI proceedings, with the intent to stall recovery, cannot be permitted and is liable to be dismissed as lacking bona fides. The relevant extract of the said judgement is as follows:

"16. There is no quarrel over the fact that Section 10 vests rights on the Corporate Debtor to resolve their insolvency. However, one cannot lose sight of the fact that this protective umbrella over the assets of the Corporate Debtor is not misused or abused in a manner so as to become a tool for deriving undue advantage at the cost of insolvency resolution which objective unequivocally resonates in the preambular aspirations of the IBC. We are of the considered view that the Adjudicating Authority rightly deprecated the Appellant Company for having filed the application under Section 10 of IBC after unsuccessfully trying at pre-empting recovery proceedings undertaken by the Respondent Bank. We are therefore inclined to agree with the Adjudicating Authority that the bonafide of the Appellant in filing of the Section 10 application was doubtful and that the filing was done for reasons other than insolvency resolution and therefore deserves to be dismissed.

17. For the foregoing reasons as discussed, we find no good reasons which warrants any interference in the impugned order. The Appeal is found to lack merit and is dismissed. No costs."

48. Similarly, in ***Wave Megacity Centre Pvt. Ltd. v. Rakesh Taneja & Ors., (2023) ibclaw.in 05 NCLAT***, the Hon'ble Appellate Tribunal has held that Section 65 of IBC 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. The relevant extract of the said judgement is as follows:

*“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.** The present is a case where it has been held that Application under Section 10 has been maliciously and fraudulently initiated for the purpose other than for the resolution of insolvency.”*

49. This Tribunal also takes note of the decision in **Jakhodia Traexim Pvt. Ltd., (2026) ibclaw.in 183 NCLT**, wherein it has been held that the Petition under Section 10 of the IBC is not maintainable if the promoters’ primary intent is not a bona fide resolution, but rather to secure admission under the IBC, trigger the moratorium, and consequently stall all recovery proceedings. The relevant extract of the said judgement is as follows:



“11. On perusal of the records, it is observed that the present application had been filed with a fraudulent intent to deprive the creditor of their rightful dues. On the basis of aforesaid material, we are of view that the Corporate Debtor trying to seek benefit of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 and other advantages in accordance with other provisions of the IBC.

12. 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 “if a corporate debtor has adopted measures to defraud creditors or has malicious intent behind filing an application under Section 10 of the IBC, such an application is liable to be rejected. The tribunal underscored that the IBC should not be used as a tool to circumvent legitimate dues owed to creditors.”

13. It is an inevitable conclusion that the Corporate Debtor has filed the application not for the genuine purpose of resolution, but rather with an ulterior motive to prevent HDFC Bank from recovering its legitimate dues from the corporate debtor.

14. Further, it is on record that HDFC Bank Financial Creditor has strongly opposed the admission of section 10 application by filing their detailed counter reply. Upon careful consideration, it is evident that the promoters’ primary intent is not a bona fide resolution but rather to secure admission under the Insolvency and Bankruptcy Code (IBC), trigger the moratorium, and consequently stall all recovery proceedings.

**15. The Adjudicating Authority have discretion to reject the debtor’s application where the debtors misuse the provisions for CIRP under the IBC. Moreover, the IBC, as a special legislation, is designed to facilitate genuine insolvency resolution and not to be exploited as a shield against creditor rights. Any misuse of its provisions to create an unfair advantage for one party at the expense of another goes against the fundamental objectives of the Code. Therefore, such an attempt to manipulate the insolvency framework must be viewed critically to prevent any abuse of the process.**

16. For the aforesaid reasons, we are of the view that the present application is not maintainable and is hereby dismissed. Accordingly, C.P. (IB) No. 156/ND/2025 stands dismissed without cost.”

50. Applying the aforesaid settled principles to the facts of the present case, this Tribunal records the following findings: -



- i. The account of the Corporate Applicant had already been classified as NPA and recovery proceedings under SARFAESI Act had been initiated well prior to filing of the present Petition;
  - ii. Proceedings before the Debts Recovery Tribunal were also initiated for substantial recovery;
  - iii. The present Petition has been filed subsequent to such recovery measures; and
  - iv. The conduct of the Applicant, including incomplete disclosures and shifting stands, raises serious doubts regarding its bona fides.
51. Based on the information available on the records, the business of the company was in the field of fabrication. It had no immovable property or factory building. There has been no business in the company since FY 2020-2021. No employees, no inventory and there have been no movements in the receivable and payables by the company. The company has not taken any steps to recover the loans and advances, debtors etc.
52. The above financial position clearly establishes that the Corporate Applicant has no business operations, no inventory, no employees and no tangible assets, and has ceased to be a going concern at the time of filing of petition under section 10 of the IBC, 2016.



53. The objections raised by the Respondents regarding incomplete particulars, absence of clear date of default, and defective disclosures further reinforce the conclusion that the present Petition has not been filed with the requisite transparency expected under the Code.
54. This Tribunal further holds that the Application suffers from material deficiencies, including absence of a clearly stated date of default and inconsistencies in financial disclosures, thereby failing to satisfy the mandatory requirements under Section 10(3) of the Code.
55. Based on the facts of the case, the Petition has not been filed with the objective of resolution of insolvency. There is practically nothing in the company other than the dues to the secured creditors. Moreover, this Tribunal finds substance in the contention of the Respondents that the primary intent of the Applicant is to trigger the moratorium under Section 14 of the Code and thereby stall the ongoing SARFAESI and DRT proceedings. Such an approach is contrary to the spirit and object of the Insolvency and Bankruptcy Code, 2016, which is meant for resolution of



insolvency and not for providing a protective umbrella against recovery actions.

• **Bona Fides of the Application**

56. The most critical factor for consideration is the bona fide intent of the Applicant.

57. The following factors cumulatively lead this Tribunal to question the bona fides of the Petition:

- i. initiation of SARFAESI and DRT proceedings prior to filing of the Petition;
- ii. No active business in the company since FY 2020-2021 and no efforts made to keep the company as going concern. It is not a genuine case of resolution of any insolvency.
- iii. timing of the Petition after coercive recovery steps;
- iv. incomplete and piecemeal disclosures;
- v. persistent defaults even prior to COVID-19, as pointed out by Respondent No.1; and
- vi. conduct of the Applicant in pursuing the Petition.

58. The plea of financial distress due to COVID-19, though noted, does not adequately explain the timing of invocation



of Section 10, particularly when defaults predate the pandemic.

59. This Tribunal is therefore of the considered opinion that the dominant intent of the Applicant is to invoke moratorium under Section 14 of the Code and thereby stall the SARFAESI and DRT proceedings.

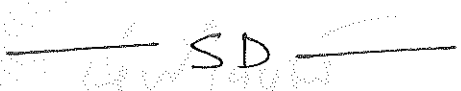
60. Such use of the Code is contrary to its object, which is resolution of insolvency and not protection against recovery.

61. In view of the aforesaid detailed analysis: -

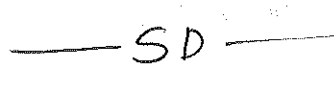
- i. Though existence of debt and default stands established;
- ii. The conduct of the Applicant and surrounding circumstances clearly indicate lack of bona fide intent;
- iii. There are no assets, no business, no employees and the Corporate Debtor is not a going concern. It is not a genuine and fit case for resolution of insolvency.
- iv. The present Petition is found to be a tactical measure to frustrate recovery proceedings under SARFAESI Act and before DRT; and
- v. The same amounts to abuse of the process of law.
- vi. Further, in absence of any business operations, assets or revival potential, initiation of CIRP would be an exercise in futility and contrary to the objective of value maximization under the Code.



62. Accordingly, this Tribunal holds that the present Company Petition filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 does not merit admission.
63. The Petition bearing **CP (IB) No. 47/AHM/2023** is, therefore, **dismissed**.
64. The three Demand Drafts amounting to Rs. 7.50 Lakhs submitted/filed with Joint Registrar of NCLT, Ahmedabad Bench be returned to the Corporate Applicant.
65. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities. No order as to Costs.

  
**SANJEEV SHARMA**  
**MEMBER (TECHNICAL)**

Jeel /LRA

  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**