

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH- SPECIAL BENCH II**

CP (IB) 918/MB/C-II/2020

**In the matter of a Petition under section 10 of the
Insolvency and Bankruptcy Code, 2016**

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In the matter of IGOPL Offshore Private Limited

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IGOPL Offshore Private Limited

[CIN: U11101MH2008PTC183100]

Floral Deck Plaza, A Wing, 6th Floor,

Unit No 603-606, Central MIDC Road, Opp. Seepz,

Andheri (East), Mumbai-400093

... Corporate Applicant/Petitioner

Order delivered on 01.10.2020

Coram:

Janab Mohammed Ajmal Hon'ble Member Judicial

Ravikumar Duraisamy, Hon'ble Member Technical

Appearance:

For the Corporate Petitioner: Mr Raghunath Bhandari, PCS with
Mr Bhubesh Dhumatkar, Advocate

Per: Janab Mohammed Ajmal, Member (Judicial)

ORDER

The Petitioner Company (hereinafter called the Corporate Applicant), through its Managing Director seeks initiation of Corporate Insolvency Resolution Process (CIRP) under section 10 of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Rule 7 of the Insolvency

and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (the Rules).

2. The Corporate Applicant was incorporated on 03.06.2008 having a paid-up share capital of ₹ 24,18,700/- (Rupees Twenty-Four Lakh Eighteen Thousand and Seven Hundred Only) was engaged in the business of sub-sea diving and Grouting.
3. Its Board of Directors of the Corporate Applicant in its meeting held on 30.04.2020 passed a resolution to file a Petition under section 10 of the Code for initiation of CIRP. Mr. Jai Kishan Thappa, Managing Director, has been authorized to sign and submit the same.
4. The Corporate Applicant submits that receivables accumulated over the years couldn't be realized and some of the outstanding amounts were declared as bad debts in the Corporate Applicant's Books of Accounts. Due to the Corporate Petitioner's stressed financial condition, it was not in a position to clear the creditors' debts.
5. The Corporate Applicant states that the receivables from its Debtors stand at ₹ 47,57,79,643/- (Rupees Forty-Seven Crore Fifty-Seven Lakhs Seventy-Nine Thousand Six Hundred Forty-Three Only) against an outstanding amount of ₹ 86,29,98,340 (Rupees Eighty-Six Crore Twenty-Nine Lakh Ninety Eight Thousand Three Hundred and Forty Only) payable to its Creditors. Despite all its efforts to pay and after repayment of a part of the outstanding dues, the balance debt outstanding as reflected in the books of account stand at ₹ 56,24,53,432/- (Rupees Fifty-Six Crore Twenty-Four Lakh Fifty-Three Thousand Four Hundred Thirty-Two

Only), besides the interest component. The interest continues to accrue on these amounts separately as per the terms agreed with individual creditors. The same is evident from the records.

6. It is further submitted that an Application under section 9 of the Code has been filed against the Corporate Petitioner in October 2018 by one of the Operational Creditors. Thereafter almost thirty Petitions have been filed. Some of which are listed for hearing. The Corporate Petitioner further by way of Interlocutory Application No. 1037 of 2020 submits that its financial status is in a precarious condition. It has been unable to pay salary and wages amounting to ₹ 19,34,005/- (Rupees Nineteen Lakh Thirty-Four Thousand and Five) as on 01.07.2020, to its permanent employees for the past 6 months. The Applicant as on 01.07.2020, also owes ₹ 46,73,620/- (Rupees Forty-Six Lakh Seventy-Three Thousand Six Hundred and Twenty) to the Contractual workers. Due to the current pandemic and other legal predicaments, the Petitioner is unable to meet its basic liabilities. Mounting salary burden alone has made it difficult for it to revive.
7. The Corporate Applicant submits that since the Company was engaged in subsea related activities, it had purchased a vessel. It was unable to pay the fuel charges and other outstanding vendor bills, due to which the vendors filed a petition before the Hon'ble High Court of Bombay in its Commercial Division under Admiralty jurisdiction to arrest the Corporate Petitioner's vessel for recovering the amount due. Vendors got the vessel arrested under the Admiralty Law. The copy of the order of arrest dated 07.07.2020 has been filed. It was thus forced to pay the vendors and fuel

bills to the tune of ₹ 29,15,79,335/- (Rupees Twenty-Nine Crore Fifteen Lakh Seventy-Nine Thousand Three Hundred and Thirty-Five) before paying the salaries of the employees, in order to continue with its business activities and generate income and pay other dues and liabilities.

8. The Applicant further states that since the vendors sought to arrest the ships at any time, it disrupted the income generation and added to the financial woes of the Company. Hence, the Petition for Resolution of the Company.
9. The Corporate Applicant by way of Interlocutory Application No. 1037 of 2020 submits that as on 01.07.2020 the mounting interest on the loan amount of ₹ 21,03,67,101/- (Twenty-One Crore Three Lakh Sixty-Seven Thousand One Hundred and One only) is only adding more stress to the Financial status of the Petitioner.
10. The Corporate Applicant submits that the Petitioner also owes ₹ 1,15,77,705/- (Rupees One Crore Fifteen Lakh Seventy-Seven Thousand Seven Hundred and Five Only) to Government of India towards TDS and GST dues.
11. The Corporate Applicant has enclosed the following to the Petition.
 - a. The names and addresses of the Directors and Promoters of the Company along with their respective shareholding.
 - b. Copy of its Certificate of Incorporation dated 03.06.2008.
 - c. Copy of its Memorandum of Association.
 - d. Copy of Board Resolution dated 30.04.2020 approving the filing of the present Application.

- e. List of Financial and Operational Creditors with Names, Address, Total Debts and amount in default.
- f. List of Security with date of its creation and estimated value along with Certificate of charge dated 19.12.2017.
- g. Copies of Audited financial statements of the Corporate Debtor for the last two financial years i.e. 2017-18 and 2018-19.
- h. The Provincial financial statements for the current financial year up to 30.04.2020.

12. We have gone through the Petition and heard the submissions of the learned counsel for the Corporate Applicant.

13. The Corporate Applicant is a Private Limited Company. There are two shareholders of the Company. Sri Jai Kishan Thapa holding 1,67,448 shares (69.23%) and one Ramlingam Natesan holding 74,422 shares (30.76%). The Board comprise of two Directors namely Sri Thapa and Sri Percis Hoshi Dubash. Section 10(3)(c) of the Code requires that a Special Resolution passed by the shareholders of the Corporate Debtor needs to be filed along with the Company Petition. Section 114(2) of the Companies Act, 2013 (the Act) provides that a resolution would be a special resolution when the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting. There is no material on record to indicate that Sri Natesan, the other shareholder, attended the meeting dated 30.04.2020 in which the

resolution was passed. Sri Thapa holding 69.23% shares seems to have only been present. Therefore, the resolution which authorized initiation of a Petition under section 10 of the Code and is relied upon by the Corporate Applicant cannot be taken to be one required under section 10(3)(c) of the Code. The Company Petition therefore is not complete. The same cannot be admitted. Hence ordered.

ORDER

The Company Petition is not admitted. Notice under proviso to section 10(4)(b) of the Code is hereby given to the Corporate Applicant to rectify the defect as indicated above within 7 (seven) days hence. Upon compliance, the matter shall be placed before the appropriate Bench for hearing. On the event of Petitioner's failure to comply the same, the Company Petition shall stand rejected without further reference to the Bench.

Sd/-
JANAB MOHAMMED AJMAL
Member (Judicial)

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

01.10.2020
SAM.