

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-IV

C.P(IB)-600(ND)/2021

**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. IT POWER CONSULTING PRIVATE LIMITED  
.... CORPORATE APPLICANT/PETITIONER

**VERSUS**

M/s. IT POWER CONSULTING PRIVATE LIMITED  
.... CORPORATE DEBTOR

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (J)**

**SH. L.N. GUPTA, HON'BLE MEMBER (T)**

**Order Delivered on: 10.08.2022**

**ORDER**

**PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

This is an application filed by M/s. IT Power Consulting Private Limited having CIN: U31101DL1997PTC348169 under Section 10 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'Code, 2016') read with Rule 7 of the Insolvency and Bankruptcy (Application to adjudicating Authority) Rules, 2016 (for brevity 'the AAA Rules') for initiation of Corporate Insolvency Resolution Process (for brevity 'CIRP') against M/s. IT Power Consulting Private Limited, the Corporate Debtor being the Corporate Applicant itself, following a default in meeting the financial obligations to its Financial Creditor (unsecured creditor), Operational Creditors and other creditors as per the averments and records presented before us.

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2. The Corporate Applicant is a private limited company incorporated on 16.01.1997 under the provision of the erstwhile Companies Act, 1956 having CIN: U31101DL1997PTC348169 and registered office situated at H.No.-C-50 Basement Shivalik, South Delhi, New Delhi -110017. The Corporate Applicant had started its operations with a vision to set up a big base into providing technical, engineering and advisory services to public and private sector clients in all aspects of sustainable energy.
3. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:-
  - a) The Corporate Applicant submits that the Corporate Applicant majorly deals in 1) CDM, 2) Energy Efficiency and 3) Renewable Energy and the given services are in great demand considering the thrust by the government on promoting the renewable energy sector.
  - b) The Corporate Applicant received the assistance from M/s.IT Power Limited by way of providing advisory services till 31.03.2014 for which tax invoices were also raised. The Corporate Applicant further submits that Corporate Applicant failed to make payment to the outstanding tax invoices and consequently an amount of Rs.2,57,96,556/- is outstanding as the operational debt in the books of the Corporate Applicant.
  - c) The Corporate Applicant submits that the Corporate Applicant had received financial assistance as well as certain services from M/s. ITP Senergy Limited to run an on-going project of the Corporate Applicant. The Corporate Applicant further submits that the Corporate Applicant had defaulted in payment of Rs.6,23,24,969/- towards financial debt and Rs.1,60,83,556/- towards operational debt due to M/s. ITP Senergy Limited.
  - d) The Corporate Applicant submits that M/s. IT Power Consulting Private Limited ('Corporate Applicant'), M/s. ITP Senergy Limited, M/s. IT Power Limited were under the same management and



control, therefore the funds were used by the Corporate Applicant on the basis of availability.

- e) The Corporate Applicant submits that the Corporate Applicant continued to operate its business in the hope that it will be able to run around in the coming time but unfortunately it could never pick up the business volumes despite getting timely financial and other assistance as the market for CDM and Energy Efficiency was shrinking and becoming more competitive, consequently, the Corporate Applicant had huge overheads, remained in losses and currently had no business.
- f) The Corporate Applicant placed on record the audited financial statements for the financial year 2019-2020, 2020-2021 and the audited financial statements dated 20.09.2021 of the Corporate Applicant reflecting the default of payment to the financial creditors and operational creditors.
- g) The Corporate Applicant has referred to the minutes of the Annual General Meeting dated 20<sup>th</sup> September, 2021, wherein the members of the corporate debtor inter alia after due discussions and deliberation had resolved by way of Special Resolution to file an application under Section 10 of the Code, 2016. The relevant extract of the special resolution dated 20<sup>th</sup> September, 2021 is reproduced herein below in verbatim:-

*“Resolved that approval of members of the Company be and is hereby accorded for initiating a Corporate Insolvency Resolution Process against the Company under Section 10 of the Insolvency and Bankruptcy Code, 2016 and that the application filed by the company in Form 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Ms. Akansha Chaurey, Director of the Company before the National Company Law Tribunal, pursuant to the resolution passed by the Board of Directors at their meeting held on 13<sup>th</sup> September, 2021”.*



- h) The Corporate Applicant submits that the instant petition is filed in Form -6 under Rule-7 of the IBC- Application to Adjudicating Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process in respect of the Corporate Applicant under Section 10 of the Code, 2016 for the reason that the Corporate Applicant was unable to meet its day to day financial requirements and unable to pay its Financial Creditors and Operational Creditors for the reason that the condition of marketing is not favourable and also competing marketing scenario leads to become debt strapped company.
- i) The Corporate Applicant submits that it has defaulted in repayment of total debt of Rs.10,42,15,081/- which includes outstanding financial debt of Rs.6,23,34,969/- and outstanding operational debt of Rs.4,18,80,112/-
- j) The Corporate Applicant submits the below mentioned documents to prove the existence of default of the financial debt:-
- i. Ledger of financial creditor from 01.04.2011 to 20.09.2021 showing outstanding dues and evidencing the default of creditors.
  - ii. Ledger of operational creditors from 01.04.2011 to 20.09.2021 showing outstanding dues and evidencing the default of creditors.
  - iii. Certificate of default dated 25<sup>th</sup> January, 2022 given by M/s. Behl & Chander, Chartered Accountants, the statutory auditor of the Corporate Debtor reflecting the default of repayment by the Corporate Applicant to its Financial Creditors and operational Creditors.
4. This Tribunal vide interim order dated 12.04.2022, had directed the Corporate Applicant to issue notice to the Statutory Authorities i.e., the Registrar of Companies, NCT of Delhi and Haryana and the corned Income Tax Department for submitting the objections, if any to the instant petition filed by the Corporate Applicant under Section 10 of the Code, 2016. The Corporate Applicant had placed on record the affidavit dated 12.05.2022 evidencing the service of notice to all the concerned statutory authorities in compliance of order dated 12.04.2022. We observe that pursuant to the

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*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.*



notice issued, no objector had come forward, accordingly, the matter is proceeded ex-parte.

5. We have heard Ld. Counsel for the Corporate Applicant and perused the averments made in the application, affidavits filed by the Corporate Applicant. The relevant documents annexed with the respective submissions have been examined.
6. At this juncture, we have 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*



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*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 Tribunal or appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10, if the application is complete."*

7. 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 financial 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)/600/(ND)/2021)** in terms of Section 10 of the Code and CIRP is initiated against M/s. IT Power Consulting Private Limited.
8. The Corporate applicant in Part-II of Form 6 has proposed the name of Mr. Yogesh Kumar Gupta, for appointment as Interim Resolution Professional having registration number IBBI/IPA-003/IP-N00078/2017-18/10701. We observe that the Insolvency and Bankruptcy Board of India (Disciplinary Committee) in exercise of the powers conferred under section 220 (2) of the Code read Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 suspended the registration of Mr. Yogesh Kumar Gupta having Registration No. IBBI/IPA-003/IPN00078/2017-18/10701 for a period of three years w.e.f. 31<sup>st</sup> July, 2022.

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9. Accordingly, this bench appoints Mr. Vijay Kumar Sharma having IBBI Registration IBBI/IPA-001/IP-P02595/2021-2022/13960 and e-mail id [cavijaysharma@gmail.com](mailto:cavijaysharma@gmail.com) as the Interim Resolution Professional of the corporate debtor. Mr. Vijay Kumar Sharma is appointed as Interim Resolution Professional of the Corporate Debtor subject to the condition that no disciplinary proceedings are pending against him. The authorization for assignment and specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures be made as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
10. We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional immediately (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.
11. We direct the Corporate Applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Vijay Kumar Sharma 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.
12. 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,*

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- decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”*

Explanation.-For the purposes of this sub-section, it is hereby clarified that 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, sectorial 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.

19. 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.
20. 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 Tribunal with a prayer for passing a appropriate orders. 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.

21. 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.

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**(L.N. GUPTA)**  
**MEMBER (T)**

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**(DHARMINDER SINGH)**  
**MEMBER (J)**