

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **18.04.2024** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No : -
Petition No : CP(IB)/3(CHE)/2023
Name of Petitioner :
& Hyflux Engineering India Pvt Ltd
Name of Respondent :
Section : Sec 10 Rule 7 of IBC, 2016

ORDER

Present: Ld. Counsel Shri. Rajkumar Jhabakh for the Petitioner.

Vide separate order announced in open court, the petition is allowed.

The petitioner company is admitted into CIRP.

Shri. Ranganathan has been appointed as IRP.

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**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

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-Sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/IB/3(CHE)/2023

*(Filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

*In the matter of **Hyflux Engineering (India) Private Limited***

Hyflux Engineering (India) Private Limited

Plot No.15, Ground Floor, Rajas Garden, Phase II,
Noombal, Chennai – 600 077

... Corporate Applicant

Order Pronounced on 18th April, 2024

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SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Corporate Applicant: Raj Jhabakh, Advocate

ORDER

(Heard Through Video Conferencing Mode)

Under Consideration is an Insolvency & Bankruptcy Application filed u/s 10 of the Insolvency & Bankruptcy Code, 2016 (“**the Code**”) by one **Hyflux Engineering (India) Private Limited** (in short, “**the Corporate Applicant**”) for initiation of Corporate Insolvency Resolution Process (CIRP) under Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, ‘**I&B Rules 2016**’), following a default

in meeting the financial obligations to its Operational Creditors and other Creditors as shown in the Company Petition filed in Form-VI.

2. From Part-I of the application, it is seen that the Corporate Applicant is a Private Limited company incorporated on 26.12.2005 bearing CIN: U41000TN2005PTC058429 and the Registered Office of the Corporate Applicant as per the application is stated to be situated at Plot No.15, Ground Floor, Rajas Garden, Phase II, Noombal, Chennai- 600 077.

3. From Part-II of the application, it is seen that the Corporate Applicant has proposed one Mr. G.Ramachandran as the IRP and has also filed his written consent in Form-2.

4. Part-III of the application discloses the details of the total amount of default with respect to Operational Creditors as Rs.26,66,67,279.08/- (Rupees Twenty Six Crores Sixty Six Lakhs Sixty Seven Thousand Two Hundred and Seventy Nine and Eight Paise). The list of documents to prove the existence of debt is as follows:

- a) Letter from Hyflux Membrane Manufacturing (s) Pte. Ltd (One of the Operational Creditor).

- b) Balance Sheet for the last two Financial Years confirming the amounts due and payable.
- c) Dues as per Statement of Accounts
- d) Invoices and Bill of Entry

5. The Applicant has filed audited financial statements for the year ended 31.03.2021 & 31.03.2022 and auditors' provisional financial statement for the period from 01.04.2022 to 10.11.2022 reflecting the default of payment to the Financial Creditor.

6. The Applicant Company has also placed on record that the Company had passed a Board resolution on 12.10.2022 for initiating a Corporate Insolvency Resolution process under Section 10 of the Code. Apart from this, the Corporate Applicant has filed a Special Resolution which was passed on 12.10.2022 for the consent to initiate the CIRP Process of the Company.

7. On this application, this Tribunal vide order dated 16.01.2023 directed the applicant to serve the copy of the application to the Creditors of the Corporate Applicant and file affidavit of Service.

8. The Applicant has filed an Affidavit of Service vide *S.R.No.713* dated *14.02.2023* complying with the order of this Tribunal dated 16.01.2023. As per the Affidavit of Service, the Creditors received the notice through RPAD on the following dates:

S.NO.	NAME OF THE CREDITORS	DELIVERED ON
1	Elo Living	27.01.2023
2	Hyflux Engineering Pvt Ltd	27.01.2023
3	Hyflux Ltd	27.01.2023
4	Hyflux Lifestyle Products India Pvt Ltd	31.01.2023 (Returned on stating item returned unclaimed 01.02.2023)
5	Hyflux Membrane Manufacturing (S) Pte. Ltd	27.01.2023
6	Hydrochem (S) Pte Ltd	27.01.2023
7	Hyflux SIP Pte Ltd	27.01.2023
8	Hyflux Technology (India) Pvt Ltd	31.01.2023 (Returned on stating item returned unclaimed 01.02.2023)
9	Spring Environment Ltd	Yet to be delivered

9. It is seen from the above table that 3 creditors namely Hyflux Lifestyle Products India Pvt Ltd, Hyflux Technology (India) Pvt Ltd and Spring Environment Ltd have not been delivered. It is stated in para 4 of

the Affidavit of service that the above 3 Respondents have been served along with documents vide e-mail dated 17.01.2023 and the same was acknowledged by the creditors on 27.01.2023 and 19.01.2023 respectively.

10. Order dated 08.06.2023, reveals that there are two promoters of the Company viz., Spring Environment Ltd having 99.998% shareholding and Hyflux International Ltd having 0.002% shareholding. Both are situated at British Virgin Islands. It is seen that some of the creditors have also gone into liquidation. Further, this Tribunal directed the applicant to file Status of Creditors Audited/ Unaudited Financial Statements for the year ended 31.03.2023.

11. Pursuant to the directions of this tribunal vide order dated 08.06.2023, the applicant has filed a Memo dated 11.07.2023 vide S.R.No.2871 along with the Status of Creditors, statement of affairs as on 10.11.2022, copy of the Audited Financial Statements for the year ended 31.03.2023, copy of the Tracking status for Spring Environment Ltd, and Copy of the relevant documents relating to EGM dated 12.10.2022.

12. From the documents filed along with the type set of document, more particularly the balance sheet, it is seen the Corporate Debtor has

committed 'default' in respect of the dues to the Operational Creditors and as such in term of Section 10(4) of IBC, 2016 the present Application filed by the Corporate Application is required to be admitted. We order accordingly.

13. The Corporate Applicant has proposed the name of **Mr. G.Ramachandran** as the Interim Resolution Professional (IRP). However, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January 2024 – June 2024 appoints *Mr. T.Ranganathan* with *IBBI/IPA-003/ICAI-N-00364/2021-2022/13807 (Email Id: balrang2000@yahoo.co.in)* (whose AFA is valid till **20.09.2024**) as Interim Resolution Professional. *Mr. T.Ranganathan* shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

14. The Applicant is directed to pay a sum of **Rs.3,00,000/- (Rupees Three Lakhs Only)** to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him.

15. As a consequence of the Application being admitted in terms of Section 10 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

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

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, 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 or a similar grant or right during moratorium period;

16. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

17. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

18. Based on the above terms, the Petition stands **admitted** in terms of Section 10 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order

forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

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SANJIV JAIN
MEMBER (JUDICIAL)