

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.161/BB/2022**  
**U/s. 10 of the IBC, 2016**  
**R/w Rule 7 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**M/s 10i Commerce Service Private Limited,**  
Registered Office at:  
We work, 1<sup>st</sup> Floor,  
Block L Embassy Tech Village, Outer Ring Road,  
Devarabisanahalli  
Bangalore – 560 103

... Petitioner/Corporate Applicant

**Order delivered on: 09.06.2023**

**Coram:** Hon'ble (Retd.)Justice. T.Krishnavalli, Member (Judicial)  
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Ms. Vaishali Movva

**O R D E R**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition, CP (IB) 161/BB/2022, is filed by M/s **10i Commerce Service Private Limited** ('Petitioner/Corporate Applicant') under section 10 of IBC, 2016, R/w. Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of itself, M/s **10i Commerce Service Private Limited**.
2. Brief facts of the case, as mentioned in the Company Petition/Synopsis filed by the Corporate Applicant, which are relevant to the issue in question, are as follows:
  - (i) M/s **10i Commerce Service Private Limited** (herein after referred to as Petitioner/Corporate Applicant) is a Private Limited Company and was incorporated on 10.03.2015,

having CIN: U72200KA20159PTC079186. The registered office of the company is situated at We work, 1st Floor, Block L Embassy Tech Village, Outer Ring Road, Devarabisanahalli Bangalore – 560 103. The Authorized Capital of the Corporate Applicant is Rs. 5,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each and 4,00,000 Preference Shares of INR 100/- each. The Corporate debtor is engaged in the business of operating an e-commerce platform for the sale of various products and services by third party suppliers to wholesalers and retailers.

- (ii) It is submitted that the Corporate Applicant has obtained the following loans from its shareholders the USD term loan facilities from FSX PTE LTD (Lender 1), an aggregate Principal amount of USD 12,640,000/-(ECB Facility 1) vide a facility agreement dated 06.01.2021; and a subsequent addendum agreement dated 21.01.2021 (“ECB Facility Agreement 1”). Second loan was of an aggregate principal amount of USD 2,000,000 (ECB Facility 2) vide a facility agreement dated 08.07.2021 (“ECB Facility Agreement 2”) and the third amount was for an aggregate principal amount of USD 1,500,000 (ECB Facility 3) vide a facility agreement dated 29.04.2022 (“ECB Facility Agreement 3”). These are the three agreements entered between corporate debtor and Lender 1.
- (iii) It is submitted that the Corporate Applicant has obtained Indian rupee term loans from Mr. Nandan M. Nilekeni (Lender 2), an aggregate Principal amount of INR 88,37,40,000/- (Rupee Facility 1) vide a facility agreement dated 06.01.2021 (“Rupee Facility Agreement 1”), an aggregate principal amount of INR 14,52,44,018 (Rupee Facility 1) vide a facility agreement dated 30.07.2021 (“Rupee Facility Agreement 2”) and an aggregate principal amount of INR 11,25,00,000 (Rupee Facility 3) vide a facility agreement dated 01.04.2022 (“Rupee Facility Agreement 3”). Thus, these are the three agreements entered between corporate debtor and Lender 2.

- (iv) The total amount disbursed by the Lender 1 to Corporate Debtor under ECB Facility Agreements is USD 16,140,000 and the total amount disbursed by the Lender 2 to Corporate Debtor under Rupee Facility Agreements is INR 1,14,14,84,018.
- (v) As per the terms of the Facility Agreements, an interest amount was due and payable by the Corporate Debtor on a quarterly basis from the date of the disbursement of each facility advanced by the Lenders. The corporate debtor has failed to pay and continues to be in default of an interest amount of USD 329,388 under the ECB Facility 1 & 2. Further, an interest amount of INR 2,28,88,707 under the Rupee Facilities Agreements is also under default.
- (vi) The lenders have exercised their rights under the Facility Agreements to accelerate the entire loan and issued the acceleration notices. They declared that all amounts outstanding under Facility Agreements together with accrued interest have become immediately due and payable which includes the entire amount disbursed by the Lenders, the interest amounts at the quarterly Interest Rate (which is 2.03%) which have been overdue and payable (excluding any penal interest as applicable) and the accrued interest at the other interest rate (which is 2.72%) which was payable on the date on which the corporate debtor repays the entire loans as per the Facility Agreements; which is also added in the recall notices issued.
- (vii) Accordingly, the Lender 1 issued notice dated 14.07.2022 demanding payment of USD 16,910,735 as outstanding amounts due and payable as on date of the notice as per the ECB Facility Agreements within 10 days of receipt of such notice by the corporate debtor and the acceleration notice issued by lender 2 demanded payment of an aggregate of INR 1,19,50,41,336 due and payable as on date of the notice as

per the Rupee Facility Agreements within 10 days of receipt of such notice by the corporate debtor.

- (viii) The corporate debtor responded to the acceleration notice issued by Lender 1 and Lender 2 vide letter dated 18.07.2022 acknowledging the default. It was mentioned that the payment obligations under the ECB Facility Agreements and Rupee Facility Agreement (subject to the TDS amount which has already been deposited for each of the quarters) as per the ECB Facility Agreements (Lender 1) was INR 1,18,77,560; per quarter and as per the Rupee Facility Agreements (Lender 2) was INR 51,93,967 for each quarter. Further, the corporate debtor informed Lender 1 and Lender 2 of its inability to pay the defaulted amounts due to insufficiency of funds and requested to waive the requirement of providing a period of 10 days since it is unable to procure funds from its operations or new capital and will not be able to cure or rectify the defaults.
- (ix) It is clear that the Corporate debtor is unable to pay its debts which has been acknowledged by the corporate debtor and hence the members of the corporate debtor have passed a special resolution with 100% majority of those present and voting, inter alia resolving to file an Application under section 10 of the IBC, 2016.
- (x) In the above circumstances, the Corporate Applicant has applied before this Tribunal to initiate proceedings under Section 10 of the IBC, 2016 for commencing Corporate Insolvency Resolution Process.

3. After a careful examination of the facts of the case it clearly shows that, there was a debt due and there was a default of the same. It is also observed that the Petitioner Company was not earning sufficient profit to repay its debts. The Petition was supported with the special resolution passed by the shareholders of the corporate applicant. Further, the Corporate Debtor filed a memo vide diary no. 4205 dated 06.10.2022, that the two major financial creditors of the corporate

debtor i.e., FSX Pte. Ltd and Mr. Nandan M. Nilkani, have given their no objection for initiation of CIRP.

4. The petition was also support by an Affidavit that the Petitioner does not suffer from any disqualification u/s 11 of the Insolvency and Bankruptcy Code, 2016.
5. This Tribunal has issued notice to the creditors on 02.11.2022 and the petitioner counsel has issued a paper publication vide order dated 05.01.2023. In pursuant to notice and paper publication, it is noted that no objections has been received from any creditor.
6. Heard Ms. Vaishali Movva Learned Counsel for the Petitioner Company and we have carefully perused the pleadings of the party and the extant provisions of the Code and the law.
7. As per Section 10 of Insolvency and Bankruptcy Code, 2016 a Corporate Applicant can file an application before the Adjudicating Authority, seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor that has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudicating Authority, in a prescribed form by enclosing the following:
  - a. The information relating to its books of account and such other documents for such period as may be specified:
  - b. The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and
  - c. The Special resolution passed by shareholders of the Corporate Debtor or the resolution passed by at least three-fourth of the total number of partners of the Corporate Debtor, as the case may be, approving filing of the application.

As per 10(4) the Adjudicating Authority can admit an application if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.
8. It is also relevant to note down certain legal principles decided by the Hon'ble NCLAT, New Delhi with regard to the Petitions filed u/S.10 of the IBC, 2016 and the same are as under:

- (i) *M/s. Unigreen Global Private Limited Vs. Punjab National Bank & 3 Ors., in Company Appeal (AT) (Insolvency)No.81 of 2017 dated 01.12.2017, it was observed as under:*

*“...20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Sub-section (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 informations 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. Non-disclosure 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.*

- (ii) *In Armada Singapore Pte. Ltd. Vs. Ashapura Minechem Ltd., in I.A.No.3052 of 2019 in Company Appeal (AT) (Insolvency)No.350 of 2019 and batch order dated 30.09.2019, the Hon'ble NCLAT held that a Petition filed under Section 10 of IBC, 2016 is not maintainable without the approval of the shareholders of the Corporate Debtor in its 'Annual General Meeting'/'Extra-Ordinary General Meeting'.*
- (iii) *The Hon'ble NCLAT in Vyomit Shares Stock & Investments Pvt. Ltd. vs. Securities and Exchange Board of India (SEBI) in Company Appeal (AT) (Insolvency) No.258 of 2019 dated 15.05.2019, held that an Application filed under Section 10 of the IBC, 2016, can be rejected on the ground that the 'Corporate Debtor' is earning sufficient profit.*

9. It is seen from the Audited Financial Statement for the year ended March 31, 2020, March 31,2021 that the Corporate Applicant was having substantial Losses. A copy of Provisional Financial Statement for the period ended July 15, 2022 is attached along with the Petition, which also shows substantial losses. On 23.02.2023, this Tribunal directed the counsel to file audited financials as on March 31, 2022. The compliance filed vide D.No.1212 dated 02.03.2023 which also shows that there is loss.
10. The Corporate Debtor satisfies the conditions for initiating an Application U/s 10 of the Code viz., there is an existence of debt, there is a default and the Corporate Debtor is not disqualified U/s 11 of the Code. The shareholders of the Corporate Debtor unanimously passed a Special Resolution in the Extraordinary General meeting held on 18.07.2022 for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.
11. In view of the above facts and circumstances of the case, and the settled position of law on the issue; and by exercising powers conferred

on this Adjudicating Authority, U/s 10 (4)(a) of the Code, we do hereby admit CP(IB) 161/BB/2022 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s 10i Commerce Services Private Limited. We declare Moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.
12. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.
13. Under Clause (b) of Section 10(3) of the Corporate Applicant is bound to propose the name of the Registered Resolution Professional to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2, Annexure III furnished by Shri Surendra Raj Gang, a registered Insolvency Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that presently he is serving as Interim Resolution Professional/Resolution Professional/Liquidator in three other proceeding under the Code so far. He has also certified

that no disciplinary proceedings are pending against him with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-001/IP-P01066/2017-2018/11773. We find that written consent furnished by the proposed Interim Resolution Professional is in order.

**14.** In view of the above, we appoint Shri Surendra Raj Gang, Insolvency Professional, bearing Registration No. IBBI/IPA-001/IP-P01066/2017-2018/11773, email Id [surendra.raj@in.gt.com](mailto:surendra.raj@in.gt.com), Mobile No. 9717390678, address: GT Restructuring Service LLP, L 41, Connaught Circus, New Delhi, 110001 as Interim Resolution Professional, with the following directions:-

- a. The term of appointment of Shri Surendra Raj Gang shall be in accordance with the provisions of Section 16(5) of the Code;
- b. In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- c. The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral

- d. The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
  - e. It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
  - f. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a committee of creditors and shall file a report, certifying of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and
  - g. The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight
15. A copy of this order be communicated to all the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

**-Sd/-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**-Sd/-**

**(T.KRISHNAVALLI)  
MEMBER (JUDICIAL)**