



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-IV)**

**Company Petition No. (IB)-724 (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 United Artlogistics Private Limited  
CIN: U74120DL2008PTC176499**

**....Corporate Debtor/Corporate Applicant**

**Order Delivered on: 30.01.2023**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**PER: DR. BINOD KUMAR SINHA, MEMBER- TECHNICAL**

The instant application is filed by M/s United Artlogistics Private Limited ('Corporate Applicant') under Section 10 of the Insolvency and Bankruptcy Code, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process as the Corporate Debtor being the Corporate Applicant itself, has committed the default in paying the debt of Rs.1,68,50,733/- owed to the Operational Creditors including Employees and Statutory Authorities.

2. The Corporate Applicant is a private limited company incorporated on 08.04.2008 under the provisions of the erstwhile Companies Act, 1956 having CIN:U74120DL2008PTC176499 and registered office situated at B-601, Navin Apartments, Plot No.13, Sector-5, New Delhi-110087. The Corporate Applicant is engaged in the business of providing services relating to Fine Art logistics solutions to Art galleries, Auction houses,



collectors art fairs and events from the pickup to installation services since 8th April 2008.

3. The averments made by the Corporate Applicant in the application, which are necessary for adjudicating the matter are summarized as under:-

- i. The Corporate Debtor used to handle major events/projects in different locations in India and Pakistan since the incorporation and steady revenues were flowing till the year 2013. In the year 2013, a license agreement was executed on 10.08.2013 between M/s. Indian Trade Promotion Organization and the Corporate Applicant regarding the licensing of the 9109 sq. meter of area for hiring space for holding art exhibition titled United Art Fair, 2013 at the premises of ITPO at Pragati Maidan, New Delhi from 14.09.2013 to 17.09.2013 pursuant to which a dispute arose between the parties and arbitration was invoked as per the ITPO agreement in the year 2016 and Sh. P.K.Malhotra was appointed as sole arbitrator vide letter No. 2/422/L/ITPO/2016 dated 09.09.2016. Thereafter, order was passed by the sole arbitrator in favour of ITPO on 21.08.2017 for recovery of dues towards license fee amounting to Rs. 88,28,062 along with interest.
- ii. The Corporate Debtor being aggrieved had moved in appeal against the order passed by the Sole Arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996 and the same got dismissed vide order dated 26.09.2019. The execution Petition filed by ITPO is pending before the Dwarka District Court, New Delhi.
- iii. The Corporate Debtor was further burdened with initiation of legal proceedings before the Tis Hazari Court by one Mr. Amanpreet Singh, an employee of the Corporate Debtor in the year 2016 for claiming an amount aggregating Rs. 33,95,000/- and the same is still pending.
- iv. The Commissioner of Income Tax passed an order dated 30.10.2019 against the Corporate Debtor for the demand of a statutory operational debt by the Applicant herein amounting to Rs. 46,27,671/- to which the Applicant has objected and the proceeding is still pending.
- v. The Corporate Debtor despite financial burdens and numerous legal proceedings continues to operate the business operations, however with time other expenses increased exponentially and revenue from the business operation was severely affected due to non-payment of debts by the Corporate Debtor which led to the Corporate Debtor becoming almost defunct.



- vi. The Corporate Debtor has also been making losses since financial year 2019-2020 on account of its operations. The accumulated losses at the end of the financial year 2020-21 was Rs.86,61,803/-. However, despite the continuous efforts and attempts, the Corporate Debtor could not revive its business and clear the dues to the Operational Creditors.
  - vii. The Corporate Applicant submits the below mentioned documents to prove the existence of default of the debt:-
    - a) List of names of the Operational Creditors along with their respective addresses and amounts outstanding.
    - b) Copies of Notices including Legal Notices received by Corporate Debtor from Operational Creditors for recovery of dues,
    - c) Copy of the audited Financial Statements for the F.Y. 2019-20 & FY 2020-2021.
3. This Adjudicating Authority vide order dated 06.12.2021 directed the Ld. Counsel for the Corporate Applicant to serve the notice on all the three Operational Creditors ('respondents') by all modes. The Corporate Applicant has complied with the aforesaid direction and submitted affidavit dated 17.12.2021. The Corporate Applicant also filed an affidavit dated 16.05.2022 in compliance to the order dated 26.04.2022 with respect to service upon all the statutory authorities by all the modes.
4. We observe that pursuant to the notices issued, M/s. Indian Trade Promotion Organisation ('IPO') had entered appearance but failed to file reply within time despite several reminders in the matter. M/s. Indian Trade Promotion Organisation had submitted during the hearing dated 26.04.2022 that they do not wish to file any reply. Further, the Registrar of Companies, NCT of Delhi and Haryana filed its report dated 18.08.2022 wherein it was submitted that as per record, the last Balance Sheet and Annual Return filed by the Company was for the Financial Year 2012-2013 was filed and the Company is in default of filing the financials from Financial Year 2013-14 onwards. The Registrar of Companies further submitted that this Tribunal may consider the petition on its merits and pass an order as deemed fit and proper.



5. Since, no objector had come forward and neither any document is available on record to show any objection raised by any creditor or statutory authorities except Registrar of Companies, NCT of Delhi & Haryana, the respondents are proceeded ex-parte.
6. 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.
7. From the submissions made by the Corporate Applicant, it is noted that disputes arose between the parties i.e. the M/s Indian Trade Promotion Organization (ITPO) and the Corporate Debtor which was referred to the sole arbitrator under the ITPO agreement in the year 2016 wherein an award for recovery of dues towards license fee amounting to Rs.88,28,062/- along with interest in favour of ITPO was passed on 21.08.2017. It is further observed that litigation proceeding is also pending against the Corporate Applicant by one of its employee and also the statutory demand of Rs.46,27,671/- raised by Income Tax Department vide order dated 30.10.2019.
8. The aforesaid outstanding liabilities are reflected in the Audited Financial Statements for the year ended 31<sup>st</sup> March 2020 and 31<sup>st</sup> March, 2021, which shows that the Corporate Applicant continuously acknowledges the outstanding operational debt in its balance sheet. Further, the execution Petition filed by ITPO is pending before the Hon'ble Dwarka District Court, New Delhi. Hence, the balance sheet annexed as an affidavit and the list of cases cum operational creditors as on 10<sup>th</sup> November, 2021 submitted with the application is considered as an acknowledgement under section 18 of the Limitation Act, 1961 in view of the judgement of the Hon'ble Supreme Court in the Matter of **Assets Reconstruction (India) Limited versus Bishal Jaiswal and others,**



**MANU/ SC/ 0279/2021.** Further, the claim amount is well above the pecuniary threshold limit of Rs.1 Crores as envisaged in Section 4 of Code, 2016 to initiate the CIRP.

9. The Corporate Applicant, vide its Board resolution dated 20.09.2021, had resolved to file application under Section 10 of the Code, 2016. The members of the Corporate Applicant after due discussions and deliberation had resolved by way of Special Resolution to file an application under Section 10 of the Code, 2016 in their General Meeting dated 25.10.2021. The certified true copy of the Board Resolution dated 20.09.2021 and Special Resolution dated 25.10.2021 is annexed as Annexure 3 of the Company Application.
10. At this juncture, it will be advantageous 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 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.*

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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."*



11. The Corporate Applicant in compliance of this Adjudicating Authority order dated 04.11.2022 had filed an affidavit dated 15.11.2022 providing the status of Loans and Advances of the Corporate Applicant. The Corporate Applicant submits that the advances were given as part payments to various vendors, consultants, fabricators and others for the work which was to be done for exhibitions which was forfeited by the vendors for the breach of contract as the exhibitions were cancelled because of the dispute between the Corporate Applicant and M/s. Indian Trade Promotion Organization. The Corporate Applicant is continuously requesting the debtors for payments but either the advances were forfeited for breach of contract or the debtor become defunct Company or otherwise hit by the Covid-19 Pandemic. The Corporate Applicant further submits that the advances have not been made to the directors, relatives and shareholders.

12. 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 operational 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)/724/(ND)/2021)** in terms of Section 10 of the Code and CIRP is initiated against M/s. United Artlogistics Private Limited.

13. The Corporate Person in Part-II of Form-6 of the Company Application has proposed the name of the Interim Resolution Professional in this application, the registration certificate and written consent of the Proposed IRP in Form-2 is annexed with the application. This Adjudicating Authority hereby appoints Mr. Mohit



Goyal, having registration number IBBI/IPA-001/IP-P02395/2021-22/13636, office at 17, LGF, Defence Enclave, Near Preet Vihar, Delhi-32 with email – id- [camohitgoyal@gmail.com](mailto:camohitgoyal@gmail.com) as the Interim Resolution Professional for Corporate Debtor. The appointed IRP is directed to place on record valid Authorisation for Assignment (AFA) within 3 days of the pronouncement of this order.

14. 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.
15. We direct the Corporate Applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Mohit Goyal 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.
2. 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, 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.”*
- (e) 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, 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.

**Sd/-**  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

**Sd/-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (J)**