IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

C.P.(IB)No.216/BB/2020
U/S.10 of IBC, 2016
R/w. Rule 7 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Steel Hypermart India Private Limited
MANNAT –
No.2/1A, Nanjappa Road,
Shanthi Nagar,
Bengaluru – 560 027 - Petitioner/Corporate Debtor

Order delivered on: 24th November, 2021

Coram: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Petitioner	:	Shri A.S.Sathish Kumar, PCS
For the Indian Bank	:	Shri H.R.Katti
For the ABFL	:	Shri Rawley Muddappa

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. C.P.(IB)No.216/BB/2020 has been filed by M/s. Steel Hypermart India Private Limited ('Petitioner/Corporate Applicant'), U/s.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 M/s. Steel Hypermart India Private Limited. The total amount of debt and default committed as per the Corporate Applicant is Rs.181,24,67,000/- (Rupees One Hundred and Eighty One Crores Twenty Four Lakhs Sixty Seven Thousand only).

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2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

i) M/s. Steel Hypermart India Private Limited (hereinafter referred to as Petitioner/Corporate Applicant) is a Private Limited Company, was incorporated on 16.08.2004, in the State of Karnataka under the name and style of Singhi Udyog Private Limited. The name was subsequently changed to Steel Hypermart India Private Limited on 09.07.2009, bearing CIN: U27101KA2004PTC034499 under the provisions of Companies Act, 2013. Its Authorised Share Capital is Rs.20,00,00,000/- divided into 2,00,000 Equity Share of Rs.1000/- each and Paid-up Capital is Rs.19,95,24,000/- divided into 1,99,524 Equity Shares of Rs.1000/- each full paid. It is involved in manufacture of Basic Iron and Steel.

ii) The Corporate Debtor continues to enjoy the trust and confidence of the stakeholders in the steel industry. Trouble started for the Corporate Debtor, when the GST Department raided its locations during Jan 2019 and confiscated the godowns and stock stored thereon, besides slapping a demand for Rs.5,23,50,918/- and penalty of Rs.134,51,04,794/-, albeit the fact that the Corporate Debtor does not owe any amount towards GST. The Corporate Debtor has challenged this demand and penalty in the Hon'ble Madras High Court, which is pending adjudication. Following the seizure, the Corporate Debtor's operations came to a grinding halt and consequently the Corporate Debtor defaulted in meeting its financial obligations. This resulted in Indian Bank and Bank of Baroda (then known as Vijaya Bank) classifying the Corporate Debtor's accounts as non-performing assets on 30.04.2019 and 29.05.2019 respectively and both these Banks initiated recovery proceedings by serving Demand Notices U/S.13(2) of the SARFAESI Act, 2002.

iii) Efforts to settle the dues with the Bankers through OTS failed and the Corporate Debtor therefore has no other option but to resolve the debt-ridden situation through the support of outside investors, albeit the fact that the Corporate Debtor has a clear road map to revive its operations and towards this end, has initiated talks with potential investors who have indicated their willingness to steps in as strategic investors and given the promising outlook, these investors will in all likelihood support the Promoters by participating in a Resolution Plan, which will help put the Corporate Debtor back on track and hence this initiative.

iv) 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 and hence this Application is filed for initiation of a CIRP U/S.10 of the Code. The shareholders of the Corporate Debtor unanimously passed a special Resolution in the Extraordinary General meeting held on 28.11.2020 seeking for initiation of CIRP. The Board of Directors of the Corporate Debtor in its meeting held on 30.11.2020, authorized Mr. Mahendra Kumar Singhi, to sign and file the instant C.P. (Annexure VII (B) & (C) at pages 114 and 115).

3. Indian Bank, one of the Financial Creditor of the Corporate Debtor has filed its objections dated 12.03.2021, inter alia, stating as follows:

i) The Application is an abuse of process of law adopted by the Applicant to thwart the legal efforts being undertaken by the Respondent Bank under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the recovery of Debts due to Banks and Financial Institutions Act, 1993, for recovering huge public money to the tune of Rs.199,80,99,091/- as on 30.10.2020 plus future interest/other charges/expenses from the Applicant.

ii) It is submitted that the Applicant has with a malafide intention furnished incorrect information regarding Operational Creditors as on 04.12.2020 in its Application. In Annexure VI (c) (2) page No.85 the Applicant has shown only one Operational Creditor i.e. the Commissioner of Income Tax (TDS) for Rs.11,72,800/-, whereas in the Provisional Balance Sheet as on 04.12.2020, under liabilities head Rs.3,48,000/- has been shown

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as Trade Payables and Notes on Accounts as on 04.12.2020 (page 76), Note No.E, also shows Rs.3,48,000/-, as Trade Payables. The Respondent submits that with a malafide intention the Applicant has neither provided the details of persons to whom this amount is payable not it has been shown in the list of Operational Creditors.

iii) The Respondent states that before submitting the Application U/S.10 for initiating insolvency proceedings, the Applicant has written off huge amount of its debts which were hypothecated to the Respondent Bank as security for the credit facilities availed by the Applicant from the Respondent Bank.

iv) As per Audited Financial Statement 2019 – 2020 (Annexure-V(2), the Applicant has with ulterior motive and unauthorizedly written off Debts to the tune of Rs.2,39,94,609/- (page-67, Note No.W, Notes to Profit and Loss Statement). Similarly in the year ending 2019, the Applicant has written off Debts to the tune of Rs.9,08,77,325/- (Page 47 of Annexure V(I). The Memorandum and Articles of Association of the Applicant does not allow it to write off the debts. It is submitted that it has come to know about the writing off Debts by the Applicant when it submitted its audited balance sheets before this Adjudicating Authority, as the Applicant did not provide the audited balance sheets to the Respondent Bank despite repeated requests in this regard.

v) The Respondent submits that a major portion of written of debts relates to the sister concerns/related parties of the Applicant which are given below:

a) M/s. Steel Shoppe Prop. Sh. Mahendra Kumar Singhi who is the Director of Applicant.

b) M/s. Ferrum Merchant, Prop. Sh. Mahendra Kumar Singhi who is the Director of Applicant.

c) M/s. Ferrous and Alloys, Prop. Sh. Mahendra Kumar Singhi who is the Director of Applicant.

d) M/s. Jindal Steels, Prop. Mrs. Meenal Surana who is the shareholder of the Borrower Company/Applicant.

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e) M/s. Salem Steel, Prop. Mrs. Meenal Surana who is the shareholder of the Borrower Company/Applicant.

f) M/s. Metal Craft, a partnership firm having Sh. Mahendra Kumar Singhi as one of the Partners.

vi) The Respondent Bank submits that it has lodged a Criminal Complaint dated 23.12.2020 to CBI against the Applicant and its Directors and its Statutory Auditors in respect of fraudulent acts committed by the Applicant to defraud the Respondent Bank as well as the other member Bank i.e. Bank of Baroda (erstwhile Vijaya Bank).

vii) The Respondent Bank has conducted 'Forensic Audit' of the Applicant which revealed glaring irregularities in the accounts of the Applicant and the conduct of the Account by the Applicant.

viii) It is submitted that the Applicant has not submitted any revival plan/ scheme/restructuring plan for the Applicant Company. Since the main Unit is under seizure of the GST Authorities, no work is going on in the Unit as admitted by the Applicant.

ix) The Respondent Bank submits that following cases/proceedings are pending in respect of the Applicant:

a. Respondent Bank has initiated action under SARFAESI Act and put up 5 equitable mortgaged properties for e-auction under on 30.12.2020. The Applicant/Borrower has approached DRT by filing an S A No.472/2020 and after hearing on 29.12.2020, the Adjudicating Authority has permitted the Bank to go ahead with the e-auction with a direction not to confirm the sale. The matter is posted to 30.03.2021 for hearing.

b. Out of the 4 personal properties, one property has been e-auctioned for Rs.204 Lakhs against the Reserve Price of Rs.127 Lakhs. The successful bidder has remitted 25% of the bid amount. The said e-auction has not been confirmed in view of the pendency of the interim order of the DRT as aforesaid.

c. The Respondent Bank has again put up the remaining properties for e-auction under SARFAESI Act on 26.02.2021. The

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Applicant/Borrower has again approached DRT by filing an SA No.77/2021 and after hearing, the Tribunal has permitted the Bank to go ahead with the e-auction with a direction not to confirm the sale. However, the sale could not be materialized for want of bidders. The matter is posted to 30.03.2021 for hearing.

d. The Unit was seized by GST Authorities as the Applicant/Borrower has indulged in "Circular Trading" as informed by Tax Authorities. Now the Company is not functioning. Subsequently the unit situated at Jigini was released by GST Authorities as directed by High Court in a W.P. filed by the Applicant/Borrower. The Borrower has closed down the Jigini Unit. The Unit situated at Hosur is still under seizure of GST.

e. Respondent Bank has filed Original Application in O.A.No.1482 of 2019, before DRT Bengaluru against the Applicant and guarantors/mortgagers and the same is pending.

f. The Applicant/Borrower has filed a W.P.No.4777/2020 before the High Court, Karnataka against classification of the account as a Willful Defaulter vide Letter dated 14.02.2020 issued by the Bank. An interim stay has been issued in the matter and the same is pending as on date.

g. On the basis of Complaint made by the Respondent Bank against the Applicant and its Directors, the CBI Bangalore has registered a case and the same is under investigation. However, the Borrower has approached the High Court by filing a Criminal Petition No.919/2021 and interim order has been issued in the matter and the same is pending as on date.

x) The Applicant has not provided the copy of its relevant Books of accounts evidencing default to the Creditors as required under IBC, 2016 and simply stated that it is not available which shows that either the Applicant is not maintaining its books as per law or deliberately suppressing the facts.

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xi) It is submitted that in order to defraud the creditors, the Applicant has fraudulently reduced the recoverable amount from its debtors as shown in Annexure-VI (2) page No.81. The value of trade receivables as on 04.12.2020 has been shown as Rs.64,53,22,900/- and the realizable value has been drastically reduced without any basis and criteria to Rs.19,35,96,870/- without the consent of Respondent Bank to whom these receivables are hypothecated as security for the credit facilities availed by the Applicant from the Respondent Bank and Bank of Baroda.

xii) It is submitted that only one immovable property belong to the Company and other 4 properties belong to the Directors/Guarantors, against which the Bank has issued Notice under 13 (4) of SARFAESI Act.

4. Aditya Birla Finance Limited (in short ABFL), another Secured Financial Creditor of the Corporate Debtor has filed its statement of objections dated 07.04.2021, by inter alia stating as follows:

i) The Secured Financial Creditor No.2 i.e., Aditya Birla Finance Limited has filed the present statement of objection inter alia for the purpose of placing on record its legal position with regard to its secured assets and also objections regarding the Application filed U/S.10 of IBC, 2016.

ii) It is submitted that the Petitioner had applied for a loan of Rs.14,00,00,000/- in the month of September 2018 with a repayment tenure of sixty months.

iii) It is submitted that the Petitioner had paid the EMI till January 2020. Due to COVID-19, RBI had issued specific Notifications from time to time to grant moratorium. It is further submitted that the Petitioner had sent emails requesting ABFL to grant the moratorium to the Petitioner. Accordingly, the moratorium was granted to the Petitioner till August 2020.

iv) As per the directions issued by the Hon'ble Supreme Court the loan accounts not declared as Non-Performing Assets (NPA) as on August 31st should not be classified under the said category till further orders. The said directions of the Hon'ble Supreme Court has put an effective

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ban on classification of bad loans. However, the blanket ban on classification on NPAs was lifted by the Hon'ble Supreme Court in the month of March 2021. Hence the loan account of the Petitioner is not declared as NPA by ABFL as on today although the Petitioner did not prefer to pay any loan installments till date. It is pertinent to note at this juncture that as on March, 2021 the outstanding amount payable by the Petitioner is Rs.12,64,71,689/-.

v) It is submitted that the Petitioner Company has mortgaged 3 acres of land with ABFL to avail the said loan.

vi) It is submitted that the main reason assigned by the Petitioner to prefer the Petition under Section 10 of the Code is that the GST Department has raised the Petitioner's location during January 2019 and confiscated the godowns and stocks stored therein, besides slapping a demand of Rs.5,23,50,918/- and penalty of Rs.134,51,04,794/-. It is also contended by the Petitioner that it does not owe any amount towards GST. The Petitioner also contended that it has challenged the said Penalty before the Hon'ble Madras High Court, which is pending adjudication. However, the Petitioner has not provided any iota of proof regarding the confiscation of godown and stocks or regarding the inability to do any business transactions. Hence the contention of the Petitioner is unreasonable.

vii) It is further submitted that every citizen is duty bound to pay GST as per the CGST Act. It is the Petitioner Company who avoided the GST by involving in unethical practices. Now after suffering GST and penalty imposed by the GST authority, have preferred the shortcut novel method and approached this Adjudicating Authority to save itself from the penalty of GST authority and other liabilities. It is submitted that in the voluntary winding up of the Company the Directors of the Company are free from any personal liability. Hence to avoid the liability, the Petitioner has approached this Adjudicating Authority with unclean hands.

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viii) It is submitted that form the Statement of Accounts filed by the Petitioner Company, GST and penalty on GST which is pending adjudication and the list of creditors shown in the statement of accounts clearly show that the Petitioner Company is not a solvent Company. It is further submitted that the Provident Fund due and Workmen dues are not disclosed by the petitioner. As per Judgment of the Hon'ble Supreme Court, Provident Fund and Workmen dues shall get priority over all other Debts including secured creditors. Further unpaid tax due and corporate tax whether income tax, Goods and Services Tax qualified to be operational debt. Only to avoid such payment the Petitioner has preferred the present Petition and the same needs to be dismissed in limine.

ix) It is submitted that the Petitioner had filed W.P.No.2253/2019 before the Hon'ble High Court of Karnataka at Bengaluru, against the Commercial Tax Authorities, where it is clearly mentioned that the Petitioner holds controlling shareholdings in another Company M/s. Singhi Buildtech Pvt. Ltd. Both the Companies are promoted by the same individuals though it belongs to same family.

x) The Petitioner is using layers of subsidiaries to avoid GST and other liabilities. If the petition is allowed the Directors of the Company wash away their liabilities and walk away freely. Hence the frivolous Petition filed by the Petitioner is not maintainable.

xi) It is submitted that the CBI has registered a Bank fraud case against the Petitioner Company. When that being the case the Petitioner has hidden those facts from this Adjudicating Authority and filed the instant Petition which needs to be dismissed in limine.

5. The learned Counsel for the Petitioner has filed rejoinder dated 13.04.2021 to the Reply filed by the Secured Financial Creditor, inter alia stating as follows:

i) The Corporate Debtor does not deny that it has borrowed from the Secured Financial Creditor; and nor does it deny that it has defaulted in meeting its obligations to the Secured Financial Creditor.

ii) The Secured Financial Creditors have also alleged that the present Petition has been filed only to circumvent the process already initiated

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by the Financial Creditor under the SARFAESI Act, 2002, which is at an advanced stage and by the GST Authorities and have therefore prayed before the Adjudicating Authority to dismiss the Petition.

iii) In this context, the Corporate Debtor placed reliance on the judgment passed by the Hon'ble National Company Law Appellate Tribunal in the case of Leo Duct Engineers & Consultants Vs. Canara Bank and Standard Chartered Bank (Company Appeal (AT) Insolvency No.100 of 2017) enclosed as Annexure A1, *wherein the Hon'ble Appellate Tribunal laid down 3 pre-requisites for admission of application of a Corporate Applicant made u/S.10 of the Code viz.,*

a. Existence of debt

b. Occurrence of default; and

c. The Corporate Applicant not suffering for any disqualifications laid down u/S.11 of the Code.

And further went on to add that if 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 u/S.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.

iv) In Leo Duct Engineers & Consultants Limited Vs. Canara Bank & Standard Chartered Bank, the Hon'ble Appellate Tribunal observed that similar issue fell for consideration before the Appellate Tribunal in Unigreen Global Private Limited Vs. Punjab National Bank and Others (Company Appeal (AT) Insolvency No.81/2017).

v) The objections of the Financial Creditors are therefore totally baseless and do not hold any merit, albeit the fact that they have filed their objections with mala fide intent not only to mislead this Adjudicating Authority but also to unnecessarily delay the commencement of the CIRP.

6. Heard Shri A.S.Sathish Kumar, learned Authorised Representative appearing for the Petitioner and Shri H.R.Katti, learned Counsel for the Indian Bank and

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Shri Rawley Muddappa, learned Counsel for the ABFL, on perusal of the pleadings of the record.

7. Before we advert to the facts of the case, it is relevant to note down the following provisions of law:

"Section 10-

(1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application, furnish-

(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 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.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of application, by an order-

(a) Admit the application, if it is complete (and no disciplinary proceeding is pending against the proposed resolution professional); or

(b) Reject the application, if it is incomplete (or any disciplinary proceeding is pending against the proposed resolution professional):

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section."

"Section 11-

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:-

(a) A corporate debtor undergoing a corporate insolvency resolution process (or a pre-packaged insolvency resolution process); or

(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or;

(b) A corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

(ba) [a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or]

(c) A corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or

(d) A corporate debtor in respect of whom a liquidation order has been made."

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) In *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 <u>"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".</u>

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.

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25. Similarly, if any action has been taken by a 'Financial Creditor' under Section 13(4) of the 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.

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43. At this stage, it is desirable to state that the Central Government in Form 1 or 5 or 6 of the 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016,' has not provision for the parties to state whether any winding up proceeding has been initiated or liquidation order has been passed against the Corporate Debtor or not. No provision has been made there in for the parties to state whether any of clause of Section 11 is attracted or not.

44. Non-disclosure of such relevant facts in the relevant Form 6, may be a ground to reject the Application but a person can plead that the Form does not stipulate to disclose any ineligibility under Section

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11. Therefore, we are of the view that the Central Government should make necessary amendment in the relevant Form 6 appended to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which will enable the Adjudicating Authority to decide at the time of admission whether any fact has been suppressed or the person has come with the clean hand or not. We hope and trust that appropriate modification of the relevant Rules and Forms shall be made by the Central Government."

ii) In *Pondicherry Extraction Industries Pvt. Ltd. Vs. Bank of Baroda, in Company Appeal (AT) (Ins) No.471 of 2020,* dated 20.01.2021, the Hon'ble NCLAT following the case of *Unigreen Global Pvt. Ltd.* (supra), observed as under:

".....15. As we held in the case of Unigreen Global Pvt. Ltd. (supra) *that if any action has been taken by the Financial Creditor under SARFAESI Act, 2002 against the Corporate Debtor or a suit is pending against the Corporate Debtor under Section 19 of DRT Act before a Debt Recovery Tribunal or appeal pending before the Debt Recovery AT cannot be a ground to reject an application under Section 10 of I&B Code. In the present case the financial creditor has initiated proceedings under SARFAESI Act against the borrower. The Applicant being a guarantor has filed the application under Section 10 of I&B Code hence the Adjudicating Authority has drawn an inference that the corporate applicant has filed the application under Section 10 with an intention to defeat the SARFAESI measures initiated by the financial creditor. Thus the Application is filed with an ulterior motive. We are unable to agree with the finding of ld. Adjudicating Authority and hold that this fact is unrelated and beyond the requirement under I&B Code or forms prescribed under the Adjudicating Authority Rules. Therefore, the application cannot be rejected on this ground."*

iii) 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'.

iv) 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

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filed under Section 10 of the IBC, 2016, can be rejected on the ground that the 'Corporate Debtor' is earning sufficient profit.

9. After a careful examination of the facts of the case clearly shows that, there was a debt due and there was a default of the same. The Financial Creditors who opposed the Petition failed to contradict the same. It is also not their case that the Petitioner Company was earning sufficient profit to repay its debts. It is also not their case that the Petition was not supported with the special resolution passed by the shareholders of the Corporate Debtor at their EGM held on 28.11.2020 and approved the initiation of the CIRP against the Petitioner/Corporate Debtor.

10. The Financial Creditors who opposed the Company Petition, also failed to show that the Petitioner/Corporate Debtor is in any way disqualified to file the Company Petition under Section 11 of the IBC, 2016.

11. In the circumstances and for the aforesaid reasons and in view of the settled position of law, as referred above, the instant Company Petition is admitted, being complete. We declare the 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.

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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 (page Nos.24 to 25) furnished by Shri B. Ramana Kumar, 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 one 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-P00657/2017-2018/11140. We find that written consent furnished by the proposed Interim Resolution Professional is in order.

14. In view of the above, we appoint Shri B. Ramana Kumar, Insolvency Professional, bearing Registration No. IBBI/IPA-001/IP-P00657/2017-2018/11140, email Id: ramanakumar@ovopaxlegal.com, Mobile No. 98411 13024, address: House No.51A (14), Dr. Ranga Road, Mylapore, Chennai – 600 004 as an Interim Resolution Professional, with the following directions:-

    i) The term of appointment of Shri B. Ramana Kumar shall be in accordance with the provisions of Section 16(5) of the Code;

    ii) 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

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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;

iii) 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;

iv) 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;

v) 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;

vi) 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

vii) 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-	-sd-
(MANOJ KUMAR DUBEY)	**(AJAY KUMAR VATSAVAYI)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Shruthi