

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH IV
COMPANY PETITION NO.IB-3055/ND/2019

[Under Section 10 of the Insolvency and Bankruptcy Code, 2016 and Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.]

IN THE MATTER OF:

Global Energy Talent Private Limited

Registered office at:
C-72, Sadbhawanana Apartments,
Ashok Vihar Phase – IV,
New Delhi - 110052

.... CORPORATE APPLICANT

And

Registrar of Companies, NCLT of Delhi & Haryana

4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi-110019

Regional Director (NR), Ministry of Corporate Affairs

B-2 Wing, 2nd Floor,
Paryavaran Bhawan,
CGO Complex,
New Delhi – 110003

.... INFORMING PARTIES

ORDER DELIVERED ON: 12.01.2022

CORAM:

DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)

MS. SUMITAPURKAYASTHA
HON'BLE MEMBER (TECHNICAL)

For the Applicant : Mr. Deepender Hooda
For the ROC : Ms. Sweety Kumar, AROC
For the R-3 and R-4 : Mr. Shobhit Nanda, Mr. Prithvi Kapur.
Mr. Saaaduzzaman, Advs.

ORDER**PER- DR.DEEPTI MUKESH, MEMBER (JUDICIAL)**

1. This is an application filed under section 10 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the AAA Rules') through and by Mr. Manoj Dangwal authorized vide Board Resolution dated 11.09.2019 for initiation of Corporate Insolvency process in respect of Global Energy Talent Private Limited, the Corporate Debtor being the Corporate Applicant itself.
2. The Applicant has submitted that the Company was incorporated under the provisions of Companies Act, 1956 on 15.02.2008 having CIN No. U74140DL2008PTC174088 and having registered office at C-72 Sadbhawana Apartments, Ashok Vihar Phase- IV New Delhi-110052. The applicant is engaged in the business of rendering consultancy services to various corporate/commercial entities in India and abroad.
3. The applicant submits that in May 2008, Mr. Aditya Kumar one of the acquaintances of the company's Director was inducted as Director of the applicant company. Thereafter in the year 2009-10, Mr. Aditya Kumar had expressed his intention to extend finance facility in the form of interest free loan to the corporate applicant. The offer of Mr. Aditya Kumar was accepted by management of the company and an amount of Rs.30,00,000/- was

disbursed on loan. Again in 2010-11, an additional loan of Rs.10,00,000/- was also disbursed to the corporate applicant.

4. It is submitted that one of the operational creditors of the applicant company, Mr. Vikram Jhunjhunwala had joined the company as Chief Finance Officer, who was later inducted as Director of the company on 15.02.2014. That during his Directorship he rendered financial consultancy services to corporate applicant for which he was paid monthly consultancy fee by the company. The said consultancy fee was later converted into loan to the applicant company. Mr. Vikram Jhunjhunwala resigned from the Board of Applicant Company on 14.11.2016. Consequently, an amount of Rs.24,84,866/- is due and payable to him as financial Debt on account of consultancy fee due till December 2016.
5. It is further averred that looking into the financial conditions, the other Directors of the company i.e. Mr. Virender Kumar Ahuja and Mr. Yagya Ahuja also contributed to the finances and consented to convert their respective salaries into loans to the corporate Applicant. Moreover, also made cash arrangements for expenses and amounts towards reimbursements available to the corporate Applicant as loans. Therefore, a total amount of Rs.59,94,780/- and Rs.41,40,487/- is due and payable by the corporate Applicant to Mr. Yagya Ahuja and Mr. Virender Kumar Ahuja respectively.

6. The applicant states that one of the Directors, Mr. Aditya Kumar resigned from the company in June 2017.

7. The applicant submits that one Mr. Mohamed Hesham Mohamed Amin BashaMashaa filed a petition under Section 9 of the I& B code against the corporate Applicant for his alleged outstanding and recoverable amount of USD 21,564. He further submits that the said application was filed taking advantage of the similarity in names of the two companies being Global Energy Talent, Mauritius and Global Energy Talent Private Limited. It is the contention of the applicant that Section 9 application was filed with malicious intent to mislead the Hon'ble NCLT, Delhi. In the meantime, an order initiating CIRP was passed against the corporate Applicant vide order dated 19.12.2018 and moratorium was declared.

8. It is further submitted that aggrieved by the order initiating CIRP, one of the Directors of the suspended Board of applicant, filed an appeal before the NCLAT and disclosed the precise details of the entity and stated that the order dated 19.12.2018 has been passed owing to the mistaken identity of the corporate Applicant. The Hon'ble NCLAT vide order dated 31.07.2019 allowed the appeal and set aside the order dated 19.12.2018 of NCLT thereby allowing the corporate Applicant to function independently. However, pursuant to the order initiating CIRP and public announcement, the employees of the corporate applicant, fearing its likely impact on their salary, employment and career prospects left the company without handing over their charge and company's assets and documents in their

possessions. Further due to unexpected abandonment of employment by the company's employees left the company in lurch. All operations and functions of Applicant Company came to abrupt halt and standstill and the ongoing projects of the company could not be completed, due to which the company became non-performing. Therefore, losses were incurred owing to the failure of Applicant Company to perform as per agreement, therefore, the agreements were terminated and the clients refused to make payment for the works already performed.

9. The applicant company which was a going concern did not conduct any business for a long time. The applicant also had to vacate the leased premises. Moreover, the corporate Applicant is left with no other assets except for a laptop and a pen drive. Hence the corporate applicant has virtually become a defunct entity which is unable to make payment to its creditors. One of the creditors Mr. Aditya Kumar has even served a Demand Notice under Section 8 of the I & B code for repayment of its debts of Rs.2,16,36,853/-.

10. That Mr. Virender Kumar Ahuja and Mr. Yagya Ahuja, being the Directors of applicant company filed affidavit and stated that the company owes a sum of Rs.41,40,478/- and Rs.59,94,780/- respectively to them.

11. That one of the Creditor Mr. Aditya Kumar filed objection to the application and stated the following:

- a) That an application bearing no. CP (IB) 2734/2019 was filed on 22.10.2019 and is pending adjudication before the Adjudicating Authority. The claim of the said application is of Rs.1,38,85,666/- out of which INR 92,14,328 is the principal amount and interest of INR 46,71,338. The said amount has also been admitted by the corporate debtor in its balance sheet for financial year 2017-18.
- b) That despite being aware of the pendency of the aforementioned application, the applicant has deliberately failed to inform this bench of the existence of the pending application.
- c) That as per the audited financial statement of FY 2018-19, it was recorded that the corporate debtor has receivables to the tune of INR3,10,85,361/-. However, as per provisional statement upto 6th November 2019, the total amount of trade receivables has been recorded as nil.
- d) The corporate debtor claimed that the present application has been filed by the shareholders of the corporate debtor. Further the claim of Directors that they had no knowledge of the present application is false as the Board Resolution for authorization of the present application being filed has been signed by one of the Directors of the corporate debtor, being Ms. Tanya Bhatnagar.

Hence, the present application being filed with a malicious intent becomes inoperative in terms of Section 65 of I& B code.


12. The Corporate Applicant has referred to the minutes of the Extraordinary General Meeting dated 11.09.2019, wherein the members of the Corporate

Applicant interalia had resolved by way of Special Resolution in the said meeting as follows: -

“RESOLVED THAT *Mr. Manoj Dangwal, Sr. manager Finance, of the company is hereby authorized to take steps to initiate proceedings for Corporate Insolvency Process of the Company (Corporate Debtor) under the provisions of Insolvency and Bankruptcy code, 2016...*”

The corporate Applicant has also enclosed the extracts of the meeting of Board of Directors dated 11.09.2019 in support of the authorization for pursuing the present application.

13. The Corporate Applicant has disclosed that the total outstanding amount payable to financial creditors and other expenses is Rs. 9,016,720/-. The advance salary Payable is Rs. 1,97,607/-. The applicant has also filed a loan repayment and settlement agreement entered into with Mr. Vikram Jhunjhunwala dated 21.11.2017, the audited balance sheets of the financial years 2016-17, 2017-18.

 14. That the Income Tax Department inspite of repeated opportunities have not filed their reports.

15. That the ROC has filed its report dated 26.02.2020 and stated the following:

- a) As per the latest shareholding pattern of the company as on 31.03.2019 is enclosed in form MGT-7 and is reproduced herein below:

Sr.No.	Name Of Shareholder	Type Of Share	No. Of Shares
1.	M/S Global Energy Talent, Mauritius	Equity	6,967,12
2.	Aditya Kumar (Nominee Of M/S Global Energy Talent, Mauritius)	Equity	Nil
	Total	Equity	6,967,12

b) No inquiry inspection and legal action has been proceeded or is pending against the corporate Applicant. Further as on date no complaint against the corporate Applicant is pending with the office of ROC.

16. That during the course of hearing Mr. Aditya Kumar and Vikram Juhnjunwala stated that they have no objection to the application being allowed and the same was recorded vide order dated 10.02.2021. The other creditors being Mr. Yagya Ahuja and Mr. Virender Kumar Ahuja filed reply to the application and also stated that they have no objection to the application being admitted, the same was also recorded vide order dated 26.03.2021.

17. Considering the documents on record and submissions of the counsel, it is observed that the applicant has annexed extracts of Special Board Resolution seeking initiation of CIRP against itself. However, it is undoubtedly clear that there is existence of Debt and default has occurred. It is relevant to highlight the case of *Unigreen Global Private Limited Vs. Punjab national bank & Ors.* (2017 SCC Online NCLAT 566) wherein the

Hon'ble NCLAT has held that the test laid down by the Hon'ble Supreme Court with regards to applications by financial creditors under Section 7 in M/s. Innoventive Industries Ltd. versus ICICI Bank &Anr. (2018 1 SCC 407) is applicable to Section 10 i.e. the moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless incomplete. The relevant extracts of the order is reproduced herein as follows:

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 informations 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.

It is further observed that the application is complete as per Section 10 of the Code.

18. As a sequel to above discussion, we admit the application declaring moratorium with consequential directions as mentioned below:

I. "Moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

- 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.

- II. The supply of essential goods or services to the corporate applicant as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- III. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

19. The Corporate Applicant has proposed the name of Mr. RajendraKumar having registration No. as IBBI/IPA-001/IP-P00461/2017-2018/10804, and having office at C-72, Sadbhawana Apartments, Ashok Vihar-4, New Delhi-110052 to be appointed as Interim Resolution Professional of Corporate Applicant. During the perusal of documents on record, it is found that the address of IRP mentioned in Form-2 is that of the registered office of the Corporate Debtor. Considering the stated fact, it will not be proper to appoint the said IRP as proposed by the CorporateApplicant, since the independence and transparency in conducting CIRP will be in question. Hence, we appoint Mr. Pankaj Kumar Singhal having registration no. IBBI/IPA-002/IP-N00532/2017-18/11561 and email id: aprassociatellp@gmail.com.

20. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code. That this Bench hereby appoints Mr. ^{Pankaj} Rajendra Kumar ^{Singhal} as IRP of the

corporate applicant. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

21. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP, Mr. Pankaj Kumar Singhal to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.
22. A copy of the order shall be communicated to the Corporate Applicant by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



Sumita Purkayastha
Member (T)



Dr. Deepti Mukesh
Member (J)