



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH - V**

**C.P. (I.B) No. 269/MB/2024**

**Under Section 10 of the Insolvency and  
Bankruptcy Code, 2016 read with Insolvency and  
Bankruptcy (Application to Adjudication  
Authority) Rules 2016**

**In the matter of**

**FORBES TECHNOSYS LIMITED**

A Company incorporated under the Companies Act  
1956 having its registered office address at Ground  
Floor, Torana Apartment Sahar Road, Andheri  
(East) Airport Mumbai, Maharashtra India 400 099

**.....Corporate Applicant**

**Order Dated: 24.03.2025**

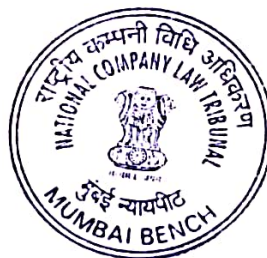
**Quoram:**

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

**Appearances:**

**For the Corporate Applicant: Adv. Bhanu Chopra (PH)**



**ORDER**

Per: Madhu Sinha, Member (Technical)

1. The present company petition is filed on 20.02.2024 by Forbes Technosys Limited (hereinafter referred to as the Corporate Applicant) having under section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") seeking to initiate Corporate Insolvency Resolution Process (CIRP) as the Corporate Applicant has committed default in paying financial debt of Rs. 1,65,33,33,413.74/- and operational debt of Rs. 16,04,02,675.76/-. The due dates vary as the debts fell due on varied and different dates.
2. The averments made by the Corporate Applicant are summarized as under:-
  - a. The Corporate Applicant bearing CIN: U29290MH1991PLC062425, having registered office at Ground Floor, Torana Apartment Sahar Road, Andheri (East) Airport Mumbai, Maharashtra India 400 099, was incorporated on 9<sup>th</sup> July, 1991.
  - b. On the above stated date, it was incorporated with the name "Wandel & Goltermann & Forbes Limited". However, on 28<sup>th</sup> July, 2004 a fresh certificate of incorporation consequent on change of name was issued. The new name borne by the corporate applicant is its present name, i.e. "Forbes Technosys Limited". The corporate applicant is in the business of manufacturing payment processing and transaction automation (kiosks) machines such as Automated Teller Machines (ATMs) and Automatic Ticket Vending Machines (AVMs). Its main source of revenue came from manufacture and sale of kiosks. The business operations of the corporate applicant were severely interrupted due to onset of Covid-19 pandemic.
  - c. The corporate applicant has defaulted in paying Rs. financial debt of Rs. 1,65,33,33,413.74/- and operational debt of Rs. 16,04,02,675.76/-. The names of the financial creditors along with the corresponding outstanding financial debt as on 07.02.2024 are as follows-

Name of the Financial Creditors	Amount in Default
Forbes and Company Limited	726,930,811.06
Forbes Campbell Finance Ltd.	48,057,763



Shapoorji Pallonji & Company Pvt. Ltd. (erstwhile Shapoorji Pallonji & Company Ltd.)	Perpetual Debt (A)- Rs. 617,500,000 ICD(B)- Rs. 183,409,520.38 <b>Total (A + B) Rs. 800,909,520.38</b>
Volkart Fleming Shipping & Services Ltd.	37,703,688
Shapoorji Pallonji Dev Managers Pvt. Ltd. (formerly Lucrative Properties Pvt. Ltd.)	39,731,631.29
<b>Grand Total</b>	<b>1,653,333,413.74</b>

- d. The operational debt of Rs. 160,402,675.76/- is due to more than 200 operational creditors as on 07.02.2024. The details of every operational creditor along with the corresponding amount due to it is placed on record of this Hon'ble Tribunal.
- e. Additionally, vide an additional affidavit placed on record, the corporate applicant further submitted that as on 31<sup>st</sup> march, 2024 it has outstanding liabilities to the tune of Rs. 179.07 crores out of which a sum of Rs. 161.92 crores is owed to group companies and rest to its operational creditors. As against this, the corporate applicant has generated a revenue of only Rs. 1.10 crores in the Financial Year 2023-2024.
- f. The Board of Directors in its meeting held on 31<sup>st</sup> January, 2024 resolved to initiate CIRP against the corporate applicant vide section 10 and further resolved that any Director/Managing Director/Chief Financial Officer of the corporate applicant to represent the corporate applicant and to all acts in relation to the section 10 legal proceedings and all matters connected there with and incidental there to.
- g. The Corporate Applicant has placed on record the Special Resolution passed by the members of the corporate applicant in the General Meeting held on 12<sup>th</sup> February, 2024 to file an application under section 10 of the Code.



- h. The corporate applicant has placed on record Audited Balance Sheet for the financial years 2021-2022 and 2022-2023. Copy of provisional Balance Sheet of the Corporate Debtor up to 31<sup>st</sup> December, 2023 is also placed on record of this Hon'ble Tribunal.
- i. There are a more than 10 cases of civil, criminal and insolvency nature filed by and against the corporate applicant which are currently *sub-judice*. The details of the same have been placed on record of this Hon'ble Tribunal by the corporate applicant.
- j. It is further submitted that, on additional affidavit, by the corporate applicant, that no amount of money is due to any bank/financial institutions and consequently there are no pending proceedings and/or notices issues under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The corporate applicant also submitted that the present petition is not filed to defraud any creditors or defeat provisions of any law and that it is not disqualified under section 11 of the code from filing/maintaining the present petition.

### **Findings**

3. We have heard the counsel appearing for the Corporate Applicant and perused the documents placed on record of this Hon'ble Tribunal.
4. This Bench vide order dated 08.07.2024, directed the Corporate Applicant to serve notice to the creditors with respect to the present petition through paper publication in 2 newspapers i.e. one vernacular language and one in English language within a period of 10 days. The Corporate Applicant has complied with the same and has filed Compliance Affidavit thereby enclosing there with proof of service. Intervention Petition IB/50/2024 has been filed by an operational creditor named Panache Digilife Ltd., who has objections to the present petition being admitted, which has been separately dealt with by this Hon'ble Tribunal in detail and has ultimately being rejected.
5. Further, as per Section 10(4) of the Code, the Adjudicating Authority can admit the Petition under Section 10 of the Code if the same is complete and no



disciplinary proceedings are pending against the proposed Resolution Professional. Further, in the matter of M/s Unigreen Global Private Limited Vs. Punjab National Bank & Ors. In Company Appeal (AT) (Insolvency) No. 81 of 2017 dated 01.12.2017 Hon'ble NCLAT has observed 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. sub-section (4) of Section 7 is similar to that of sub -section (4) of Section. 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".*

.....  
*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 as 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...."*



7. The Petition shows that the Corporate Applicant is in default of debt as is also evidenced by the Books of account. It is also seen from the Audited Financial Statements for the year ended 2022-2023 and copy of provisional Balance Sheet upto 31<sup>st</sup> December 2023. There are a more than 10 cases of civil, criminal and insolvency nature filed by and against the corporate applicant which are currently *sub-judice*.

8. We have perused the financial statements, the list of Creditors. We have also perused various demand notices placed on record by the operational creditors which are attached from pages 115 to 221 of the present petition. One demand notice dated 22.06.2021 particularly mentions Rs. 4,86,73,111/- as the amount of default meaning thereby that the corporate applicant has defaulted on payment of more than Rs. 1 crore qua individual operational creditor as well as all of them combined together. We have also perused the special resolution passed by the members wherein it was resolved that the Corporate Applicant is not in a position to repay the debts and therefore the Corporate Insolvency Resolution Process under Section 10 of the IBC needs to be initiated. We are satisfied that the Corporate Applicant has made a case for initiation of the CIRP under Section 10 of the IBC.

9. In view of the above facts and circumstances of the case, and the settled position of law and by exercising the powers conferred on this Adjudicating Authority under Section 10(4) (a) of the Code, we hereby Admit CP 269 of 2024 by initiating Corporate Insolvency Resolution Process (CIRP) against Forbes Technosys Limited.

10. It is ordered in following terms:

**ORDER**

a. The above Company Petition No. (IB) 269 (MB)/2024 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Forbes Technosys Limited.

b. This Bench hereby appoints Mr. Rakesh Kumar Jindal, Registration No: IBBI/IPA-002/IP-N01148/2021-22/13963 as the Interim Resolution



Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Corporate Applicant shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Applicant including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the Corporate Applicant in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Applicant.

e. That the supply of essential goods or services to the Corporate Applicant, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of section 31 or passes an order for liquidation of corporate applicant under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Applicant will vest in the IRP/RP. The suspended directors and employees of the Corporate



Applicant shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Applicant. Accordingly, this Petition is admitted. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

//VLM//

Sd/-

**REETA KOHLI**  
**MEMBER (JUDICIAL)**



Certified True Copy

Copy Issued "free of cost"

On 05/5/2025

*[Signature]* 05/05/25

Deputy Registrar

National Company Law Tribunal Mumbai Bench

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-V

IVN.P No. 50 of 2024  
In  
C.P. No. 269 of 2024

Under Section 10 of Insolvency &  
Bankruptcy Code, 2016

IVN.P No. 50 of 2024

**Panache Digilife  
Ltd.**

....Applicant/Intervenor-  
Operational Creditor

vs.

**Forbes Technosys Limited**

.....Respondent/Corporate  
Debtor

In the matter of

M/s Forbes Technosys Limited

.....Petitioner/Corporate Debtor

**Order Dated: 24.03.2025**

**Quoram:**

Hon'ble Reeta Kohli, Member (Judicial)  
Hon'ble Madhu Sinha, Member (Technical)

**Appearance through VC/Physical/Hybrid Mode:**

For the Intervenor: CS Suman Dhamecha (PH)  
For the Respondent: Adv. Bhanu Chopra (PH)



**ORDER**

*Per: Madhu Sinha, Member (Technical)*

1. *The Applicant has sought the following reliefs from this Hon'ble Tribunal:*
  - a) *This Hon'ble Tribunal be pleased to permit the intervener to intervene in the aforesaid Insolvency Petition and make necessary representations to oppose the admission of the aforesaid petition;*
  - b) *That this Hon'ble Tribunal be pleased to reject/dismiss the aforesaid Insolvency Petition as the same has been filed by corporate debtor with a fraudulent and malicious intent;*
  - c) *Pending the hearing, stay the proceedings under the main matter i.e. CP(IB) 269 (MB) of 2024*
  - d) *Interim reliefs as prayed in prayer clause (iii) above;*
  - e) *Any other further relief as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case*
  - f) *Grant the costs of the application.*

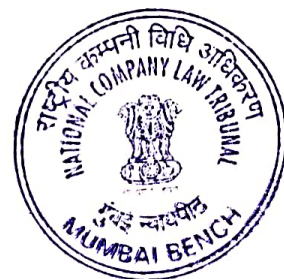
**Brief Facts and Submission by the Applicant**

1. It is the case of the intervener that the respondent has filed the section 10 petition to defraud the present intervener who is the operational creditor of the corporate debtor/respondent. The corporate debtor and its officers are thus liable to punishment under section 65 of the Code along with its other relevant provisions.
2. In order to bring to light how the section 10 petition filed by the corporate debtor is a mere sham it is essential to understand the factual matrix of the case. The corporate debtor had purchased computer systems, kiosks, related incidental accessories from the operational creditor from time to time. Never did the corporate debtor raise any objection regarding quality, quantity or merchantability of goods either orally or in writing. The final invoices raised



and sent were duly received by the corporate debtor. One of the terms and conditions as stipulated on the invoices was that the payment would be made within 90 days from the date of the invoice failing which interest @ 18% p.a. would be levied.

3. The intervener sent a Demand Notice under section 8 of the Code, dated 11<sup>th</sup> July, 2023, to the corporate debtor demanding payment of principal amount of debt to the tune of Rs. 2,46,21,094.47/-. The corporate debtor sent a reply to the above stated notice dated 21<sup>st</sup> July, 2023 in which unsubstantiated allegations were raised with *mala fide* intention of denying payment to the intervener. Additionally, the corporate debtor also claimed that it was a victim of fraud by certain vendors of the corporate debtor along with its employees. Therefore, transactions entered into between such vendors and the corporate debtor since 2015 aggregating to a value of more than Rs. 25 crores were under scrutiny and investigation. Further based on E&Y's report dated 23<sup>rd</sup> October, 2019, it had come to the knowledge of the corporate debtor that on account of this fraud fabricated invoices were raised against which no goods were actually received by the corporate debtor. Consequently, a criminal complaint was filed on 12<sup>th</sup> October, 2019 against the fraudulent employees (namely, Ex Chief Financial Officer, Mr. Vijay Lahoti and Ex Purchase Manager Mr Anant Chaudhruri. It is pertinent to note that no other employee has been subjected to any kind of action.) and vendors by the corporate debtor.
4. Thereafter, the intervener registered the debt on NeSL and the corporate debtor vide its reply dated 18<sup>th</sup> December, 2023 raised the same baseless allegations to the demand notice raised on 8<sup>th</sup> December, 2023 through NeSL. Thereafter, the intervener filed a section 9 petition against the corporate debtor however due to certain defects the same could not be registered.
5. Thereafter, the corporate debtor filed a section 10 petition before this Hon'ble Tribunal and by the order dated 10<sup>th</sup> July, 2024, on intervention, this Hon'ble Tribunal directed the corporate debtor to serve copy of section 10 petition to the intervener.



6. The intervener, in the backdrop of the above mentioned factual matrix claims that the section 10 petition filed by the corporate debtor is a sham as material information has been suppressed and distorted which amounts to defrauding this Hon'ble Tribunal and should tantamount to dismissal of the section 10 petition with heavy costs. Some of which are as follows:

- The debt of intervener has been shown at diminished value of Rs, 2 crores when actually the total principal and interest pending is more than Rs. 5 crores, without any evidence, prima facie showing manipulation of the accounts of the corporate debtor..
- About Rs. 4,61,97,449/- out of total operational debt of Rs. 16,04,02,675.76/- is owed to related parties raising serious questions as to authenticity of the list of operational creditors especially when investigation regarding evaluation of operational debts is underway. This ratio would also seriously affect the voting rights of the unrelated operational creditors, who would form part of the Committee of Creditors as the financial creditors are all intercorporate loan from related parties. This figure also contradicts the statement of the operational creditor that the amount of fraud is more than Rs. 25 crores.
- The corporate debtor is guilty of suppressing material fact that a fraud investigation was undertaken by E & Y to investigate the authenticity of liabilities outstanding against the corporate debtor. Report of E & Y is a material fact and its non-disclosure is a material suppression. The Applicant further substantiates its contention through the judgement of the Hon'ble Supreme Court in S.P. Chengalvaray Naidu v. Jagannath (1994 AIR 853) in which it was held:

*"6. ....A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a valid document in order to gain advantage on the other side then he*



*would be guilty of playing fraud on the  
court as well as on the opposite party."*

- Out of 181,37,36,089/- liability amount of corporate debtor, Rs. 165,33,33,413 is inter-corporate deposits belonging to related parties of the corporate debtor.
- The corporate debtor has not clearly provided the its list of assets save as the financial statements to show the solvency or insolvency of the corporate debtor especially when the corporate debtor itself had claimed one month prior to filing the petition that investigation was ongoing to determine the extent of fraud and amount recoverable from various parties. It is pertinent to note that the major ground for non-payment of the amount due to the intervener was the ongoing investigation rather than the incapacity of the corporate debtor from making a payment. Therefore, it is unfathomable that the corporate debtor is insolvent especially when most of the loans shown by the corporate debtor are related party transactions.
- As per index of charges in the latest master data of the corporate debtor, it has an outstanding open charge of Rs. 55,40,151/- and Rs. 64,24,791/- created on 18<sup>th</sup> August, 2023 in favour of DCB Bank Limited and Axis Bank Limited respectively, this position is contrary to what is stated in the section 10 petition. In the said petition, the corporate debtor states no amount is due to any bank or financial institution.
- The section 10 petition is actually a means to terminate the various pending litigations by and against the corporate debtor.
- The order of 16/09/2022 qua which the corporate debtor entered into a composite scheme of amalgamation with Forbes Campbell Services Limited. Although annexed to the section 10 petition, no reference regarding the same is made in the said petition or index of documents so that attention of this Hon'ble Tribunal is not drawn towards to the manner in which this present petition has come to be filed



7. The intervener further relies on the judgement of the Hon'ble NCLAT, in M/s Agroha Paper Industries Private Limited vs. Bank of Maharashtra, *Company Appeal (AT) (Insolvency) No. 1342 of 2023 of 2023* wherein it has been held that:

*"There is no quarrel over the fact that section 10 vests rights on the corporate debtor to resolve their insolvency. However, one cannot lose sight of the fact that this protective umbrella over the assets of the corporate debtor is not misused or abused in a manner so as to become a tool for deriving undue advantage at the cost of insolvency resolution which objective unequivocally resonates the preambular aspirations of IBC."*

8. The Hon'ble Supreme Court has also emphasized on the fact that it is the duty of the corporate debtor to come with clean hands in the matter of Ramjas Foundation v. Union of India, (2010) 14 SCC 38 :

*"The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of grievance and in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other courts and judicial forums. The object underlying the principle is that every court is not only entitled but also duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a*



*bearing on adjudication of the issue(s) arising in  
this case."*

9. The section 10 petition is thus collusive, fraudulent in nature and is intended to cause prejudice to legitimate claims of various creditors, therefore, deserves to be dismissed.

**Submission by Respondent**

10. It is the case of the respondent that creditors do not have a right to be heard at the stage of pre-admission of a Section 10 petition. The intervener can raise its concern during the resolution process by participating in the CoC or may choose to file an application under section 65 of the code. The respondent places reliance on the judgement of the Hon'ble NCLAT in SMBC Aviation Capital Ltd. vs. Interim Resolution Professional of Go Airlines India Ltd. *Abhilash Lal Company Appeal (AT) Insolvency No. 593 of 2023*

*"9. From the submissions, which have been made before us in these Appeal(s), following are the issues, which arise for consideration in these Appeal(s):*

- (1) Whether in a Section 10 Application filed by a Corporate Applicant, it is necessary to issue notice to the creditors to give a hearing or opportunity of hearing to the creditors before admission of Section 10 Application?*
- (2) Whether at the time of hearing of Section 10 Application, if some of the creditors appear and object admission of Section 10 Application alleging that Application has been filed fraudulently Company Appeal (AT) (Insolvency) Nos.593, 603, 604 & 615 of 2023 with malicious intent, Adjudicating Authority is required to first give opportunity to the creditor to file Section*



*65 Application and decide the said Application before proceeding to admit Section 10 Application?*

*(3) Whether Lessors having terminated Lease Agreement in favour of the Corporate Applicant prior to admission of Section 10 Application, the moratorium as directed by order dated 10 May, 2023 cannot be said to be applicable to the assets, which were earlier leased by the Lessor to the Corporate Applicant?*

*16 This Tribunal took the view that there is no prohibition in hearing an objector in proceedings under Chapter III-A of the Code. However, it was further observed that granting time for objection is not a matter of course and has to be limited to exceptional cases. This Tribunal further in paragraph 16 held follows:*

*"16. When we look into the provisions of Section 54A read with Section 54C, it is clear that certain statutory requirements have to be met before the Corporate Debtor can file an Application. If an Application filed under Section 54C does not meet the statutory requirements, it is always open for a person, who has a claim in pre-packaged insolvency resolution process, to point out that Application does not follow the statutory provisions. We have noticed the substance of the objections made by one of the objectors above, which indicate that it has been mentioned that certain Financial Creditors have been treated to be unrelated and their votes have been counted for finding out requisite majority who*

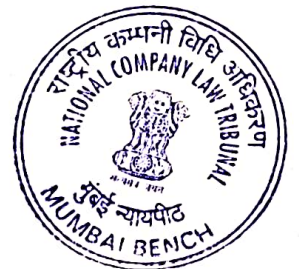


*actually are related Financial Creditors. There are other serious allegations which have been made in the objections against the Corporate Debtor by so called unrelated Financial Creditors, which we need not dwell any further since these are the matters which have to be gone into and decided by the Adjudicating Authority."*

*17. The above judgment of this Tribunal does make it clear that in facts of each case, it is for the Adjudicating Authority to take a decision as to whether time is to be granted to any objector or intervenor in a proceeding and the above judgment does not hold in any manner that as and when any objector comes before the Adjudicating Authority in a proceeding, as a Company Appeal (AT) (Insolvency) Nos.593, 603, 604 & 615 of 2023 matter of right, he has to be given opportunity to file his objection to the proceeding. The Adjudicating Authority has to take a decision on case to case basis.*

*18. The present is a case where Application under Section 10 was filed on 02.05.2022 and on 04.05.2022 it came for hearing. The learned Counsel for the Appellant had appeared and was head by the Adjudicating Authority. The Adjudicating Authority however took a view that it was open for the objector to file an Application under Section 65 even after admission of Section 10 Application.*

*19. As noted above, since the statutory Scheme does not contain any obligation of issuing notice to the*



*creditors by the Corporate Applicant, any objector appearing at the time of hearing has to be heard and the objection may be noted by the Adjudicating Authority and thereafter the appropriate decision can be taken. We, thus, conclude that the mere fact that no notice was issued to the creditors or any opportunity was given to the objectors before proceeding to hear, the Corporate Applicant, cannot be held to vitiate any procedure or violating the principles of natural justice, more so when objectors were heard by the Adjudicating Authority.*

.....

*37. We, thus, are of the view that on the strength of the oral objections which were raised before the Adjudicating Authority on behalf of the Appellant as well as other, which has also been raised in this Appeal, no conclusion can be derived at this stage that Application filed by the Corporate Applicant was fraudulent with malicious intent. We, however, Company Appeal (AT) (Insolvency) Nos.593, 603, 604 & 615 of 2023 hasten to add that Adjudicating Authority has given liberty to the Appellant to file an application under Section 65. It is open for the Appellant to file Section 65 Application with appropriate pleadings and materials and in the event of such Application has been filed, the Adjudicating Authority shall consider the Application in accordance with law without being influenced by any observations made in this order....”*



9. It is absurd that the intervener himself had filed a section 9 petition for CIRP of the corporate debtor (which could not be registered due to non-clearance of defects) which was not registered and now is opposing the same when the same end would be achieved through the means of section 10 petition. CIRP is a process *in rem* not *in personam* and it thus not matter as to who drags the corporate debtor into it especially when it is conducted by an independent Resolution Professional under the supervision of this Hon'ble Tribunal. The section 10 petition is not an attempt to stall the measure taken by operational creditor for recovery of its debt but is in furtherance of the same.
10. It is also the case of the respondent that contrary to settled position of law, the intervener is alleging that CIRP is desired to initiated with an intent to defraud creditors however, the intervener has not substantiated its allegation. The respondent further states that although the name of IRP has been proposed by it, his appointment as the RP will solely be finalised by the CoC and further the respondent has no objection to this Hon'ble Tribunal appointing an IRP for the respondent.
11. The respondent refutes the unsubstantiated allegation of the intervener that the section 10 petition has been filed to escape liability due to the operational creditor. Since there are no financial creditors of the corporate debtor other than financial debt owed to group companies therefore the CoC to be constituted in future would comprise only of operational creditors who would ultimately decide on which resolution plan would be approved, therefore the intervener's interests are not prejudiced against at all.
12. It is further the case of the respondent that its accounts have been duly audited and the Audited Financial Report for the year 2023-2024 has also been placed on record. Thus there cannot be any doubt regarding the authenticity of the same. However, if the applicant can still justify that his claim is rightfully more than double than that of what is reflected in the



audited financial statements, nothing prevents it from filing such claim before the IRP/RP appointed by this Hon'ble Tribunal.

13. The intervener has made various allegations of suppression and dishonesty which again have no merit. They are enumerated below:-

- Firstly, it has alleged that the corporate debtor has failed to highlight that out of Rs. 181,37,36,089/- liabilities on the Corporate debtor about Rs. 163.33.33.413 (Rupees One Hundred and Sixty-Five Crore Thirty-Three Lakh Thirty-Three Thousand Four Hundred and Thirteen only) are inter-corporate deposits belonging to related parties of the Corporate Debtor. But in the same paragraph, the Intervenor acknowledges that in the List of Financial Creditors, the said inter-corporate deposits have been shown to have been received from related parties. In fact, it has been time and again highlighted that the only financial creditors of FTL are its group companies.
- Secondly, the Intervenor has alleged FTL has failed to disclose (i) certain internal investigations which had been ongoing pertaining to their employees and their transactions with the vendors (including the Intervenor; and (ii) a Scheme of amalgamation that it entered into with one of its group companies, Forbes Campbell Services Limited. However, the Intervenor has failed to highlight how either of these two will have any bearing on the present Section 10 Petition or upon the ability of FTL to pay its debts. FTL's duty to disclose all material facts to this Hon'ble Tribunal does not encompass a duty to highlight each and every event/occurrence in relation to the company.
- Lastly, the Intervenor has alleged that FTL continues to owe monies to banks and financial institutions, and has made a dishonest statement that it does not. In support, it relies upon the MCA Master Data which shows that it has an outstanding open charge in favour of DCB Bank Limited and Axis bank Limited. The intervener is well aware that the information available on the portal is often outdated. In support thereof,



the respondent places on record copies of letters issued by the 2 above stated banks confirming that no amounts are due to either of them.

14. Hence in view of the fact that the corporate debtor is genuinely not able to pay its debts, it prays to this Hon'ble Tribunal to dismiss this Intervention Petition and kindly admit the corporate debtor into CIRP by allowing its section 10 petition.

### Findings

15. We have heard the counsels representing both the parties and closely perused all the documents placed on record of this Hon'ble Tribunal.
16. The main prayer of the intervener is that the section 10 petition numbered CP(IB) 269 (MB) of 2024 filed by the corporate be rejected on ab-initio basis, due to the reasons cited by the intervener in the intervention petition. However, the case of the respondent/corporate debtor is that all the reasons cited by the intervener are either unsubstantiated or immaterial and thus have no bearing on this Hon'ble Tribunal adjudicating upon whether the corporate debtor is fit to be entitled into insolvency resolution process or not.
17. We pertinently take note of the fact the intervener itself had filed a section 9 petition against the corporate debtor for getting it admitted into CIRP, however this petition could not be registered due to non-clearance of defects by the intervener. Thus, the intervener wanted to achieve the same end through a different means. Now, when the corporate debtor has proceeded through to achieve the same end which the applicant wanted to achieve, through a different means, i.e. a section 10 petition the applicant is opposing the same and hence the case of the applicant loses strength on this ground.
18. Furthermore, the allegations of the intervener regarding the hidden intent of the corporate debtor to escape liability towards the intervener and its intent to defraud its creditors are absolutely unsubstantiated and are merely speculative. Additionally, whatever is rightfully due to the intervener can be claimed by it by filing its claim to the IRP who is an independent



professional in case the corporate debtor admitted into CIRP and any legal/factual issues at that stage will definitely be adjudicated upon by this Hon'ble Tribunal.

19. The corporate debtor clearly and expressly mentions that in the event of its admission into CIRP the CoC will only comprise of operational creditors as its remaining financial creditors are its group companies. The financial debt owed by it to DCB Bank and Axis Bank have duly been cleared and that is evident from the No Dues Certificate dated 08.08.2024 and 20.09.2024 respectively, placed on record of this Hon'ble Tribunal by the corporate debtor.
20. We also deem it apt to mention that at this pre admission stage, we do not consider that the non-submission of any document including the E&Y Report or suppression of any facts will prejudicially affect our decision to hear the corporate debtor's case for admission. The absence of any material document/fact and its related consequences will be looked into by this Hon'ble Tribunal while deciding the section 10 petition CP(IB) 269 (MB) of 2024 on merit.
21. In conclusion, this Hon'ble Tribunal comes to the conclusion that there is no merit in this Intervention Petition. Hence, IVN.P No. 50/2024 is rejected.

Sd/-

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

//VLM//



Sd/-

**REETA KOHLI**  
**MEMBER (JUDICIAL)**

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On 05/05/2025

*P Singh 05/05/25*

Deputy Registrar

National Company Law Tribunal Mumbai Bench