

NATIONAL COMPANY LAW TRIBUNA
PRINCIPAL BENCH, NEW DELHI

(IB)-247(PB)/2023

IN THE MATTER OF:

M/s Exotic Buildcon Private Limited

...

Applicant

Order under Section 10 of Insolvency & Bankruptcy Code, 2016.

Order delivered on 03.01.2025

CORAM:

CHIEF JUSTICE (Retd.) SH. RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH KUMAR SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE AND VC)

CLARIFICATION ORDER

1. The order in the matter of M/s Exotic Buildcon was earlier heard and reserved on **08.11.2023**. Thereafter, this Adjudicating Authority has pointed out defects, in the application which were recorded in the Order dated **21.11.2023**. Relevant part of the order dated 21.11.2023 is extracted below:

“5. Although it has been submitted that Notice has been issued to all the Secured and unsecured Creditors & an Affidavit to that effect has been attached. Nevertheless, on perusal of the documents submitted by Applicant, it is found that only a list of secured and unsecured creditors along with the default amount has

been attached. Proof of Service to such creditors has not been placed on record which raises a doubt as to effective service to such Creditors.

6. The applicant has also submitted a list of litigations (Annexure – 7 on Pages 73-87) and an affidavit dated 18.10.2023 stating that this application is not filed to defeat the purposes of Law. However, on perusal of those documents, it is found that a notice dated 01.12.2022 has been served by Excise & Taxation Officer cum Assessing authority, Gurugram for the Recovery of Arrears under HVAT Act, 2003 & CST Act, 1956. Notice dated 24.11.2022 u/s 221(1) of the Income Tax Act, 1966, another Notice dated 29.03.2023 u/s 148A(b) of the Income Tax Act, 1961 has also been put on record. An order dated 29.03.2023 by Mr. Ravi DC/ACIT Central CIR-I, Gurgaon against M/s Exotic Buildcon recording that Corporate Applicant has made a total Bogus purchase of Rs. 40,00,000/- in the form of accommodation entries from various parties controlled by Sanjay Jain Group has been passed which is marked as Annexure – 07 on Pages 84-85 of the Application.

7. Further, warrant of attachment against the movable property of M/s Exotic Buildcon has been issued vide order dated 06.10.2023 by Ld. ADJ Ms. Ruchika Singla, Rohini Courts and has been put up for report of Bailiff on 15.12.2023. It has been recorded in the order that JD Company (M/s Exotic Buildcon) has Assets worth Rs. 101.35 lacs. It has also been recorded that Insolvency Proceedings are initiated against company but moratorium has not been issued till date. The execution order has been obtained by one M/s Medors Biotech Pvt. Limited, whose relation with the Applicant is not known. It is inferred that there must be a decree which is pending for execution against M/s Exotic Buildcon, the Applicant. We may like to mention here that the fact of the execution order has not been put forward by the applicant during oral arguments although they have filed it along with Affidavit in compliance of the Order dated 23.08.2023.

(emphasis supplied)

8. Although, this Adjudicating Authority had admitted the petition in the hearing on 08.11.2023 for initiating CIRP against Applicant but after perusing all the documents put on record by the Applicant, we are of the opinion that initiating CIRP against the Applicant would be interfering with the Jurisdiction of Court of Hon'ble ADJ and in the backdrop of the above-mentioned facts, we find it appropriate to issue notice to all the secured as (IB)-247(PB)/2023 (Exotic Buildcon Private Limited) 5 | Page well as Unsecured Creditors along with Income Tax Authority & Excise & Taxation cum Assessing Authority, Ward 10 Gurugram.

9. The Registry is directed to issue notice to all the creditors along with Income Tax Authority & Excise & Taxation cum Assessing Authority, Gurugram by Email and by Speed Post at their addresses returnable by 20.12.2023. The list of all the creditors with their postal and email addresses has been attached with this order for facilitating the service of the notice by the Registry.

10. Parties are directed to file their response/reply on the next date of hearing.

11. Ld. Counsel for Applicant is also directed to place before us the latest development in execution proceedings before the Ld. ADJ, Rohini Courts Complex.”

2. In compliance of order dated **21.11.2023**, Income tax Department has filed its reply/report dated **22.04.2024**. In response to this report, Counsel for the Applicant has submitted during the proceedings dated 24.07.2024, that she has filed a rejoinder to the reply by Income Tax Department but that is also not available on DMS portal. She undertook to upload the same. Relevant part of the order dated 24.07.2024 is extracted below:

ORDER

Ld. Counsel Ms. Swarnika Aggarwal appeared on behalf of the Petitioner and stated that she has sent a copy of the petition to all the creditors of the company and has filed the affidavit of service. However, the affidavit of service is not uploaded on the DMS. She undertook to upload the same and submit a hard copy before the next date of hearing.

Further, she stated that she has filed a Rejoinder to the reply of the Income Tax Department but that is also not available on the DMS portal. She undertook to upload the same and submit a hard copy before the next date of hearing.

At request and with consent of the parties, list the matter for a physical hearing on **27.08.2024**.

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT
Sd/-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

However, on perusal of the documents on DMS (case management portal) till today, the rejoinder is not seen anywhere. **Therefore, Applicant is directed to get in touch with the registry if it is defect and get the document uploaded on DMS Portal.**

3. Moreover, vide order dated 23.09.2024, Applicant's counsel undertook to file an affidavit setting forth the facts with respect to the execution proceedings in respect of M/s Medors Biotech Private Limited which has not been included in the present CP. Relevant part of the Order dated **23.09.2024** is extracted below:

Ld. Counsel for the petitioner appeared in Court before us and he undertakes to file an affidavit setting forth the facts with respect to execution proceedings in respect of M/s. Medors Biotech Pvt. Ltd. which has not been included in the present CP (IB)-247(PB)/2023 filed under Section 10 of IBC.

List the matter on 22.10.2024.

The same defect is found in this aspect as well. The affidavit post 23.09.2024 regarding the above execution proceedings is not found on DMS. For clarity , we are uploading the screenshot of the DMS Portal below:

The screenshot displays the DMS Portal interface. At the top, there are eight categories with document counts: PETITIONER (8), RESPONDENT (0), INTERVENER (0), ORDERS (24), HIGHER COURT (0), ROC/RD/OTHERS (0), NCLT CORRESPONDENCE / GOVERNMENT (2), and IRP (0). Below this is a 'Petitioner Documents' section with a table listing documents for 'EXOTIC BUILDCON PRIVATE LIMITED'.

Document Type	Documents	Date/Time	View
EXOTIC BUILDCON PRIVATE LIMITED			
Proof-of-Service	EXOTIC-IA-SENT-TO-IBBI.pdf	07-04-2023 05:05 pm	
Petition	EXOTIC-REVISED-APPLICATION-SECTION-10.pdf	19-04-2023 04:40 pm	
Affidavits	EXOTIC-AFFIDAVIT-FOR-SERVING-NOTICE-TO-CREDITORS.pdf	05-05-2023 02:47 pm	
Proof-of-Service	document-affidavits-served-to-exotic.pdf	16-10-2023 03:20 pm	
Affidavits	Affidavits-as-per-order.pdf	18-10-2023 04:56 pm	
Proof-of-Service	Gmail-PETITION-UNDER-SECTION-10-OF-EXOTIC-BUILDCON-PVT-LTD.pdf	23-01-2024 03:46 pm	
Affidavits	EXOTIC-AFFIDAVIT-FOR-SERVING-PETITION-TO-ITO.pdf	08-02-2024 05:15 pm	
Affidavits	AFFIDAVIT-FOR-GIVING-GIST-OF-MATTER-OF-EXOTIC-UNDER-SECTION-10.pdf	30-11-2024 06:10 pm	

The only document/affidavit could be seen after 23.09.2024 is Affidavit filed on 30.11.2024 which contains the gist of the matter under section 10. In the proceedings dated 22.10.2024,

the same fact of not uploading of affidavit in compliance of order dated 23.09.2024 has been recorded by this Adjudicating Authority. Relevant part is extracted below:

ORDER

In compliance of our last order dated 23.09.2024, affidavit is stated to have been filed by the Petitioner. However, the same is not available on DMS/CIS portal. Ld. Counsel for the Petitioner is directed to ensure that the same is uploaded on the DMS/CIS Portal within three days from today. List the matter on **25.11.2024**.

Further, on perusal of the gist of the matter filed by Applicant on 30.11.2024 on DMS, it is found that there is an Affidavit given on **18.12.2023** for status and decree of Medore Biotech Private Limited, an Affidavit dated **19.07.2024**, an Affidavit filed on **8th October 2024** for filing execution proceedings from Medores Biotech Private Limited. Relevant part of the Gist of the matter filed by Applicant is extracted below:

	notice from sarfaesi, regarding fees of IRP /RP for 6 months and showing order for warrants for attaching assets of the company from Rohini court	given on 18/10/2024
8/11/2024 22/11/2024	Order of CIRP was pronounced but on 22/11/2023 order was reversed and notice to income tax were issued instead	Order pronounced but reversed on 22/11/2023
18/12/2023	Affidavits for status and decree of Medore Biotech Pvt Ltd, also for Income tax notices and affidavit for petition is not being filed to defeat the purpose of laws and other provisions have been filed with the Adjudicating Authority from time to time.	Affidavit given on 18/12/2023
19/07/2024	Details of notices given to creditors , Income tax, Medore Biotech Pvt Ltd decree matter, no intention to fraud, new AFA of IRP	Affidavit given on 19/07/2024
23/09/2024	Affidavit for filing execution proceedings from Medores Biotech Pvt Ltd	Affidavit filed on 8 th October, 2024
22/11/2024	proposed Interim resolution professional Prabhjit Singh Soni has valid AFA upto 31st December,2025	Affidavit dated 23/11/2024
26/11/2024	In hearing it was heard that corporate applicant satisfy the conditions for initiating an application u/s 10 of IBC,2016 viz., there is an existence of debt, there is a default and the corporate applicant is not disqualified u/s 11 of the code and not to defeat the purpose of laws.	Order reserved and Gist was called

However, DMS does not reflect any of these (for reference, see the above attached screenshot of DMS Portal).

4. In view of the same, Applicant is directed to comply with all the undertakings it has given in earlier orders **within 2 days from today** and get all the documents uploaded on the DMS Portal. We find it pertinent to caution the parties with regard to compliance of orders delivered by this Adjudicating Authority. Orders are not passed just

for the sake of formality. Passing of orders consumes a lot of judicial time and these are meant to be complied with. There is no scope of getting done with these without complying them.

5. Ld. Counsel for the Applicant is directed to file clarification on or before 06.01.2025.

6. **Accordingly, CP(IB)/247/2023 stands de-reserved.**

List on 06.01.2025 for compliance.

**Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT**

**Sd/-
AVINASH KUMAR SRIVASTAVA
MEMBER (TECHNICAL)**