

**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)**

**CP (IB) No.43/BB/2021**  
**U/s. 10 of the IBC, 2016**  
**R/w Rule 7 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**M/s Seven H Logistics Private Limited,**  
Registered Office at:  
No. 150, I Floor,  
Malleshwaram Arcade,  
7<sup>th</sup> Cross, Margosa Road,  
Malleshwaram,  
Bangalore – 560 003

... Petitioner/Corporate Applicant

**Order delivered on: 17<sup>th</sup> October, 2022**

**Coram:** Hon'ble Shri. Kishore Vemulapalli, Member (Judicial)  
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri Akshay J. Simha, Adv

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition, CP (IB) 43/BB/2021, is filed by M/s Seven H Logistics Private Limited ('Petitioner/Corporate Applicant') under section 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 itself, M/s Seven H Logistics Private Limited. The total amount of default committed as per the Corporate Applicant is Rs.15,56,40,912/- (Rupees Fifteen Crore, Fifty Six Lakhs, Forty Thousand, Nine Hundred and Twelve Only).

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2. Brief facts of the case, as mentioned in the Company Petition/Synopsis filed by the Corporate Applicant, which are relevant to the issue in question, are as follows:

- (i) M/s Seven H Logistics Private Limited (herein after referred to as Petitioner/Corporate Applicant) is a Private Limited Company and was incorporated on 29.02.2008, having CIN: U63010KA2008PTC045462. The registered office of the company is situated at No. 150, I Floor, Maleshwaram Arcade, 7<sup>th</sup> Cross, Margosa Road, Malleswaram Bangalore- 560 003. The Authorized Capital of the Corporate Applicant is Rs. 1,00,00,000/- consisting of 10,00,000/- equity shares of Rs 10/- each. The Paid-up Capital is Rs 51,00,000/- consisting of 5,10,000 equity shares of Rs. 10/- each. The main business of the Corporate Applicant is Cargo Handling.
- (ii) It is submitted that logistics services in relation to the mining operations for SICAL (a Coffee Day Company) was forcefully abandoned due to catastrophic massive landslides in Bharatpur coalmines, resulting in loss of several lives and heavy damages to machinery. The insurance cover could not be availed due to technical objections by the agency and the Corporate Debtor's efforts in seeking compensation from SICAL also failed due to various unfortunate development at SICAL. Further, the Corporate Debtor's operations handled by the Company at the Karaikal Port, Tamil Nadu was also abruptly withdrawn due to the closure of the manual operations in the port to meet the Pollution Control Board's directions
- (iii) It is submitted that the net worth of the corporate applicant continues to be eroding due to huge financial losses being incurred by the Petitioner on account of collapse of the substratum of the Company consequent to closure of its main operations caused by factors beyond the control of the management. The Petitioner had defaulted in making

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payments to its creditors, and recovery proceedings where initiated by the creditors against the Petitioner.

- (iv) It is submitted that alternative plans for revival of the company proposed by the Board of Directors were found to be unviable despite the best efforts of the Board and the management of the company. It is stated that these events has resulted in accumulation of amounts due to vendors, non-servicing of loans availed from Banks and NBFC's towards purchase of capital equipment, workmen and statutory dues. It is contended that the company has a total debt of Rs 27,84,31,366/- out of which accepted default dues are Rs 15,54,40,912/-, comprising of Financial debt Secured and unsecured in default amounting to Rs 7,38,11,208/- and Rs 5,67,48,205/- respectively, as mentioned in Annexure 12 and 13 of the Petition, as follows:

**Annexure 12: Financial Creditors- Secured**

Sl. No	Financial Creditor- Secured	Sanctioned Amount	Amount in default	Date of default
1	Axis Bank Ltd	9,55,000/-	3,57,867	19.03.2019
2	Axis Bank	60,00,000	48,31,259	10.12.2019
3	Axis Bank	1,25,00,000	48,50,224	02.08.2019
4	Axis Bank	3,10,00,000	3,12,40,691	28.02.2020
5	HDFC Bank Ltd	1,22,00,000	79,12,258	
6	ICICI Bank Ltd	6,98,000	2,50,022	13.03.2020
7	ICICI Bank Ltd	93,56,800	59,05,866	22.10.2019
8	ICICI Bank Ltd	93,56,800	58,85,284	22.10.2019
9	Kotak Mahindra Prime	18,20,000	5,14,003	
10	Kotak Mahindra Prime	8,98,000	3,46,030	
11	Magma Fincorp Ltd	28,00,000	18,01,130	22.10.2019
12	Magma Fincorp Ltd	28,00,000	17,97,722	22.10.2019
13	Magma Fincorp Ltd	28,00,000	17,96,013	22.10.2019
14	Reliance Commercial Finance Ltd	46,35,000	20,30,008	01.09.2019
15	Reliance Commercial Finance Ltd	46,35,000	20,28,054	01.09.2019

16	Reliance Commercial Finance Ltd	46,35,000	22,64,777	01.09.2019
	<b>Total</b>		<b>7,38,11,208</b>	

**Annexure 13: Financial Creditors: Unsecured**

Sl. No	Financial Creditor - Unsecured	Sanctioned Amount	Amount in default	Date of default
1	HDB Financial Services Ltd	1,06,20,000	17,52,246	30.06.2019
2	HDB Financial Services Ltd	63,72,000	26,21,822	30.06.2019
3	ICICI Bank Ltd	58,20,800	35,31,788	02.11.2019
4	Indus Ind Bank Ltd	75,00,000	33,95,433	
5	Indus Ind Bank Ltd	75,00,000	47,17,158	04.12.2019
6	Magma Fincorp Ltd	28,00,000	20,96,331	22.10.2019
7	VDB Infra and Realty Pvt Ltd	1,00,00,000	20,00,000	
8	Volvo Financial Services(I) Pvt	79,12,000	1,02,947	30.09.2019
9	Volvo Financial Services(I) Pvt	79,12,000	1,02,947	30.09.2019
10	Volvo Financial Services(I) Pvt	79,12,000	1,02,947	30.09.2019
11	Volvo Financial Services(I) Pvt	79,12,000	1,02,947	30.09.2019
12	Volvo Financial Services(I) Pvt	79,12,000	1,08,087	30.09.2019
13	Volvo Financial Services(I) Pvt	51,00,000	31,78,843	31.08.2019
14	Volvo Financial Services- Lender	4,78,33,600	1,85,12,815	
15	Volvo Financial Pvt Ltd., Unsecure FC	4,78,33,600	1,44,21,844	
	<b>Total</b>		<b>5,67,48,205</b>	

The details of Operational debts including Trade Payables and Statutory Payables, amounting to Rs 1,73,76,345/- and Rs 77,05,154/- respectively are attached as Annexure 14 and 15 to the Petition.


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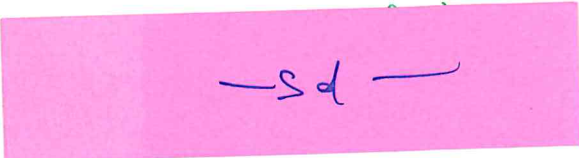
(v) In the above circumstances, the Corporate Applicant has applied before this Tribunal to initiate proceedings under Section 10 of the IBC, 2016 for commencing Corporate Insolvency Resolution Process.

3. In response to the notice issued to Secured and unsecured Financial Creditors and operational creditors as directed vide order dated 30.11.2021; M/s Advanced Construction Technologies (P) Ltd., one of the Operational Creditor filed its objections, inter alia, stating as follows:

- (i) The Operational Creditor No.2 submits that that the Petition is filed with malafide intention and oblique motive in order to defraud the Operational Creditor No.2 and to make unlawful gain by the Petitioner Company and its Directors. It is further submitted that this Respondent ought to have been arraigned as a Secured Creditor since they have carried out maintenance and repair work which is a perennial service as far as the Petitioner Company is concerned. Arraigning the respondent as an operational creditor was done with malafide intention and oblique motive in order to defraud and defeat the rights of the Creditor, to have preferential right over the proceedings of the Company on being liquidated.
- (ii) The Respondent submits that there is principal amount of a sum of Rs. 14,96,860/- payable by the Petitioner towards the invoices raised on maintenance services, repairs and spare parts supplied and the Creditor is entitled to 18% interest p.a and the total amount payable with interest as on 21.01.2021 works out to Rs 22,87,592/- and further the creditor is entitled to current and further interest @ 18% p.a. A legal notice dated 21.01.2021 was caused by the creditor company wherein the entire liability payable by the Petitioner Corporate Debtor has been mentioned and the demand was also made. Despite receipt of the notice, the petitioner has not replied and has resorted to file the above petition with malafide intention to avoid recovery proceedings.

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- (iii) Respondent submits that it is reliably learnt that the Petitioner through its Directors has committed mismanagement and a major share of the assets of the Company has been clandestinely diverted and converted into private assets so as to cause the insolvency of the Debtor company and in these circumstances the above petition filed by the Petitioner is fraudulent and is liable to be dismissed.
4. The learned Counsel for the Petitioner has filed rejoinder to the objection filed by the Operational Creditor, M/s Advanced Construction Technologies (P) Ltd, inter alia stating as follows:
- (i) Petitioner submits that it is denied that the Operational Creditor ought to have been arraigned as a secured creditor. There is no basis for claiming as such. The Operational Creditor having admittedly provided a service to the Corporate Debtor is legally classified as operational creditor as per Section 5(2) read with Section 5(21) of the IBC, 2016. Moreover, there is no further classification of "secured" or "unsecured" for Operational Creditors as per the IBC, 2016. It is further denied that the Objector has been arraigned as an Operational Creditor to defraud and defeat the rights of the Objector, to have a preferential right over the proceedings of the Corporate Debtor on being liquidated.
- (ii) It is submitted that the operational creditor has issued demand notice dated 22.01.2020 under section 8 of the IBC in furtherance of initiating CIRP against the Corporate Debtor. The respondent having attempted to initiate CIRP against the Corporate Debtor in 2020 is not only hypocritical but has also contradicted its own actions by opposing the instant petition. It is further submitted that the respondent ought to be estopped from taking such contrary stances.
- (iii) Moreover, the Petitioner has categorically denied the allegation regarding diverting the assets of the Company clandestinely by the Directors and intention to defraud the creditors; and





requested for strict proof of these allegation made by the Operational Creditor.

5. This Tribunal on 29.08.2022 has directed the Petitioner to file bullet points stating what all annexures are filed along with page numbers as per section 10 of the Code. The Counsel for the petitioner has filed the above compliance vide diary No 3678 dated 02.09.2022 stating the details if all the annexures along with the page numbers and the said compliance is taken on record.
6. After a careful examination of the facts of the case it clearly shows that, there was a debt due and there was a default of the same. The operational creditor 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 applicant.
7. The operational creditor 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, 2106. No other Creditor has filed any objection.
8. Heard Shri Akshay J. Simha Learned Counsel for the Petitioner Company and we have carefully perused the pleadings of the party and the extant provisions of the Code and the law.
9. As per Section 10 of Insolvency and Bankruptcy Code, 2016 a Corporate Applicant can file an application before the Adjudicating Authority, seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor that has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudicating Authority, in a prescribed form by enclosing the following:
  - 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 professional 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.

As per 10(4) the Adjudicating Authority can admit an application if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.

10. 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) *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 "The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority".*

21. *In an application under Section 10, the 'financial creditor' or 'operational creditor', may dispute that there is no default or that debt is not due and is not payable in law or in fact. They may also oppose admission on the ground that the Corporate Applicant is not eligible to make application in view of ineligibility under Section 11 of the I&B Code. The Adjudicating Authority on hearing the parties and on perusal of record, if satisfied that there is a debt and default has occurred and the Corporate Applicant is not ineligible under Section 11, the Adjudicating Authority has no option but to admit the application, unless it is incomplete, in which case the Corporate Applicant is to be granted time to rectify the defects.*

22. *Section 10 does not empower the Adjudicating Authority to go beyond the records as prescribed under Section 10 and the information as required to be submitted in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 subject to ineligibility prescribed under Section 11. If all 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.*

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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.

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

11. It is seen from the Profit and Loss Accounts of the Petitioner Company for the year ending 30.09.2020 that the company has reported loss. The audited financials for the year ending 31.03.2019 is also attached along with the petition. It is not the case of the operational creditor that the Company was having sufficient profit.
12. 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. The shareholders of the Corporate Debtor unanimously passed a Special Resolution in the Extraordinary General meeting held on 27.07.2020 for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.

13. The Applicant has suggested a qualified Resolution Professional namely Mr. Kondaru Prashanth Raju, with Registration No. IBBI/IPA-002/IP-NO0708/2018-2019/12200, who has also filed his written Consent in Form-2 dated 09.11.2020, by inter alia declaring that he is eligible to be appointed as resolution professional in respect of the corporate applicant and there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
14. In view of the above facts and circumstances of the case, and the settled position of law on the issue; and by exercising powers conferred on this Adjudicating Authority, U/s 10 (4)(a) of the Code, we do hereby admit CP(IB) 43/BB/2021 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s Seven H Logistics Private Limited. We declare 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 Reccnstruction 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.

15. 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.
16. 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 IV furnished by Shri Konduru Prasanth Raju, 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-002/IP-N00708/2018-2019/12200. We find that written consent furnished by the proposed Interim Resolution Professional is in order.
17. In view of the above, we appoint Shri Konduru Prasanth Raju, Insolvency Professional, bearing Registration No. IBBI/IPA-002/IP-N00708/2018-2019/12200, email Id [kprasanthraju@gmail.com](mailto:kprasanthraju@gmail.com) , Mobile No. 9980591019, address: No. B-804, Shriram Suhana Apartments, Horahalli, Nagenahalli Gate, Yelahanka; Bangalore-560064 as Interim Resolution Professional, with the following directions:-
- The term of appointment of Shri Konduru Prasanth Raju shall be in accordance with the provisions of Section 16(5) of the Code;
  - 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 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;

- c. 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
- d. 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;
- e. 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;
- f. 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

g. The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight

18. 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 -

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

- Sd -

**(KISHOR VEMULAPALLI)**  
**MEMBER (JUDICIAL)**