

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**COURT - IV**

**ITEM No.508**  
**IB/18/ND/2023**

**IN THE MATTER OF:**

Intarvo Technologies Private Limited

...

Applicant

**Order under Section 10 of IBC, 2016.**

**Order pronounced on 16.10.2023**

**Coram:**

**Mr. P.S.N. PRASAD,**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,**  
**HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

**C.P. (IB)/18/ND/2023 stands admitted.**

**Sd/-**

**DR. BINOD KUMAR SINHA,**  
**MEMBER (TECHNICAL)**

**Sd/-**

**P.S.N. PRASAD,**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-IV**

**Company Petition No. (IB)-18(ND)/2023**

**Under Section 10 of the Insolvency and Bankruptcy Code, 2016 read  
with Rule 7 of the Insolvency and Bankruptcy (Application to  
Adjudicating Authority), Rules, 2016**

**IN THE MATTER OF:**

M/s. Intarvo Technologies Private Limited  
.... **Corporate Applicant / Applicant**

**CORAM:**

**SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on: 16.10.2023**

**ORDER**

**PER: SH. P.S.N. PRASAD, MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)**

The instant application is filed by M/s Intarvo Technologies Private Limited ('Corporate Applicant') under Section 10 of the Insolvency and Bankruptcy Code, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process as the Corporate Debtor being the Corporate Applicant itself, has committed the default in paying the aggregated debt of Rs.2,29,10,842/- which includes Financial Debt amounting Rs.67,65,488/- and Operational Debt amounting Rs.1,61,45,354/ as on 30.11.2022.

2. The Corporate Applicant namely M/s. Intarvo Technologies Private Limited is a private limited company incorporated on 28.01.2001 under the provisions of the erstwhile Companies Act, 1956 having CIN:U72100DL2001PTC10984155 and registered office situated at 55, 2<sup>nd</sup>

Floor, Lane-2, Westend Marg Saidullajab, Near Saket Metro Station, New Delhi - 110030. The Corporate Applicant is engaged in the business of outsourcing manpower and operations relating to IT, electronics.

3. The averments made by the Corporate Applicant in the application, which are necessary for adjudicating the matter are summarized as under:-

- i. The Corporate Applicant is suffering losses and set-backs due to various economic and business reasons and since the last several years, the accumulated losses of the Corporate Applicant had increased manifold. Further, as some of the major customers of the Corporate Debtor are themselves, undergoing CIRP, the said event had created shortage of funds. Resultantly, the Corporate Applicant is unable to discharge its statutory and contractual obligations.
- ii. The Audited Financial Statement of the Corporate Applicant as on 31.03.2021 discloses an accumulated loss of Rs.31,49,59,118/- which increased to Rs.31,63,23,536/- as at 31.03.2022. The Corporate Applicant in view of lack of working capital and erosion of its net worth is facing difficulty in carrying on the business of the Corporate Debtor on going concern basis.
- iii. The details of the Financial Debt amounting Rs.67,65,488/- in default are as follow:-

<b>Details of Financial Creditor(s)</b>		
<b>Unsecured Loans</b>		
<b>Sr. No.</b>	<b>Name</b>	<b>Amount In Rs.</b>
1.	Kailash Vahan Udyog Limited	1,10,000
2.	SONOMA Management Partners Private Limited	63,80,488
3.	Pravin Jain	2,74,725
	<b>Total</b>	<b>67,65,488</b>

iv. The details of the Operational Debt amounting Rs.1,61,45,354/- in default are as follows:-

<b>Operational Creditors</b>		
<b>Sr. No.</b>	<b>Name</b>	<b>Amount (In Rs.)</b>
1.	ESIC unpaid	12,21,055
2.	GST unpaid	35,53,157
3.	Penalty and Interest on delayed payment of PF	33,86,898
4.	Service Tax Interest on delayed payment	71,99,005
5.	Interest on delayed payment of GST	7,45,239
	<b>Total</b>	<b>1,61,45,354</b>

- v. The shareholders of the Corporate Applicant had passed a Special Resolution in its Extra-Ordinary General Meeting dated 05.12.2022 wherein it was resolved to initiate Corporate Insolvency Resolution Process proceedings against the Corporate Applicant under Section 10 of the Code, 2016 to revive the Corporate Debtor.
- vi. The Corporate Applicant submits the below mentioned documents to prove the existence of default of the debt:-
- Copy of the Special Resolution dated 05.12.022 passed by the shareholders of the Corporate Applicant.
  - Copy of the Audited Financial Statements for the year ended 31.03.2021 and 31.03.2022.
  - Copy of the Provisional Financial Statement for the period 01.04.2022 till 30.11.2022.
  - Copy of CA certificate certifying the negative net worth of the Corporate Applicant
  - Copy of CA Certificate certifying the Operational Debt of the Corporate Applicant as on 30.11.2022.

3. This Adjudicating Authority vide order dated 04.01.2023 directed the Ld. Counsel for the Corporate Applicant to serve notice on all the relevant parties such as creditors, both secured and unsecured. The Corporate Applicant in compliance of the aforesaid direction had served notice to all the creditors including Financial Creditors as well as Operational Creditors. The Corporate Applicant also filed an affidavit dated 29.03.2023 in compliance to the order dated 04.01.2023 wherein Service Proof along with Delivery Report is placed on record.
4. We have heard Ld. Counsel for the Corporate Applicant and perused the averments made in the application as well as in affidavits filed by the Corporate Applicant. The relevant documents annexed with the respective submissions have been examined.
5. The notice of the present application was issued to the Financial Creditors as well as Operational Creditors of the Corporate Applicant. However, no objector had come forward and neither any document is available on record to show any objection raised by any creditor or statutory authorities.
6. It is relevant to note down legal principles decided by the Hon'ble NCLAT, New Delhi with regard to the Petitions filed u/S.10 in the matter of **Unigreen Global Pvt. Ltd. VS. Punjab National Bank & Ors. CA (AT) (Ins. 81/2017)** wherein it was held 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. Subsection (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 information 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. Nondisclosure 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 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.”

7. After a careful examination of the facts of the case, it is evident that there was a debt due which is above the pecuniary threshold limit as envisaged under Section 4 of the Code, 2016 and there was a default of the same. It is also observed that the Corporate Applicant was not earning sufficient profit to repay its debts and its net worth is eroded. The present Company Application was supported with the special resolution passed by the shareholders of the corporate applicant.
8. Further, on perusal of the Corporate Applicant’s Audited Balances Sheet for the Financial year 2021-22, we observe that the Audited Balance Sheet of the Corporate Applicant is prepared other than on Going Concern Assumption. The relevant Note 25 is reproduced herein below:-

**“25. Going Concern Assumption**

The Company has incurred cash losses in current and previous financial year Net worth of the Company has been fully eroded. The Covid breakout previous year has badly impact Co operations Operational activities to the extent of minimum are undertaken during the period. Management of the Company also do not foresee to revive the operations of the Company Resultingly, in absence of any scope for business operations, management has decided to prepare the financial statements other than on Going Concern Assumption. All the assets and abilities have been”

9. We are of the view that the existence of debt and default is established and no winding up proceedings are pending against the Corporate Applicant and Corporate Applicant is not covered by the ineligibilities

provided under Section 11 of the Code, 2016. The shareholders of the Corporate Debtor unanimously passed a Special Resolution in the Extraordinary General meeting held on 05.12.2022 for initiation of Corporate Insolvency Resolution Process against the Corporate Applicant.

10. As a sequel of the above discussion and in terms of Section 10(4) of the Code, 2016, we hereby admit the instant Company Application (C.P.(IB)/18/(ND)/2023) in terms of Section 10 of the Code and CIRP is initiated against **M/s. Intravo Technologies Private Limited.**
11. The Corporate Applicant in Part-II of Form-6 of the Company Application has proposed the name of Mr. Vinay Kumar Singhal having IBBI registration no. IBBI/IPA-002/IP-N00624/2018-19/11880 as the Interim Resolution Professional in this application, the registration certificate and written consent of the proposed IRP in Form-2 is annexed with the application. This Adjudicating Authority hereby appoints Mr.Vinay Kumar Singhal, having registration number IBBI/IPA-002/IP-N00624/2018-19/11880 and email – id- [vinaysinghal.ip@gmail.com](mailto:vinaysinghal.ip@gmail.com) the Interim Resolution Professional for Corporate Debtor. The appointed IRP is directed to place on record valid Authorisation for Assignment (AFA) within 3 days of the pronouncement of this order.
12. We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 10 of the Insolvency & Bankruptcy Code, 2016.

13. Keeping the spirit of Regulation 6 of IBBI (IRP for CP) Regulations, 2016 we hereby direct the Corporate Applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Vinay Kumar Singhal to meet out the expenses to perform the functions assigned to him for a period of 6 months i.e. 12 lakhs rupees. The needful shall be done within five days from the date of receipt of this order by the Corporate Applicant. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.
14. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(a)The institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 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.”*
- (e) Notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.*

15. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
  
16. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. The office is directed to communicate a copy of the order to the Corporate Debtor/ Corporate Applicant, Financial Creditors, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from the pronouncement of this order.
18. Copies of this order may also be sent to Registrar of Companies as well as the IBBI for information and update.
19. The present Company Application i.e., **C.P.(IB)/18/ND/2023 stands admitted** on the presumption that the applicant has not received any SARFAESI notice and that this application is not to defeat the purposes of law.

**Sd/-**  
**(DR.BINOD KUMAR SINHA)**  
**MEMBER (T)**

**Sd/-**  
**(SH. P.S.N. PRASAD)**  
**MEMBER (J)**