



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-I, CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **18.10.2024** THROUGH VIDEO CONFERENCING

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**PRESENT:** HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**APPLICATION NUMBER** :  
**PETITION NUMBER** : CP(IB)/263/CHE/2022  
**NAME OF THE PETITIONER(S)** : Orion Water Treatment Pvt. Ltd.  
**NAME OF THE RESPONDENT(S)** :  
**UNDER SECTION** : Sec 10 Rule 7 of IBC, 2016

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**ORDER**

Present: None for the Petitioner

Vide separate order pronounced in the Open Court, the petition is **admitted** in terms of Section 10 of IBC, 2016. Shri. Sandeep Kothari has been appointed as IRP.

Sd/-  
**VENKATARAMAN SUBRAMANIAM**  
**MEMBER (TECHNICAL)**

Sd/-  
**SANJIV JAIN**  
**MEMBER (JUDICIAL)**

VS



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**CP/IB/263/(CHE)/2022**

*(Filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of the  
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

*In the matter of **Orion Water Treatment Private Limited***

**Orion Water Treatment Private Limited**

Survey no. 1436, Plot 852, VGP Ramanujar Town - Part II,  
Sriperumbudur Village, Kanchipuram Taluk,  
Kanchipuram District, TN - 602 105

*... Corporate Applicant*

*Order Pronounced on 18<sup>th</sup> October 2024*

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**SANJIV JAIN, MEMBER (JUDICIAL)**  
**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Corporate Applicant : A S Sathish Kumar, PCS*  
*For Punjab National Bank : M L Ganesh, Advocate*

**ORDER**

*(Hearing through hybrid mode)*

Under Consideration is an Insolvency & Bankruptcy Petition filed u/s 10 of the Insolvency & Bankruptcy Code, 2016 (“**the Code**”) by one **Orion Water Treatment Private Limited** (in short, “**the Corporate Applicant**”) for initiation of Corporate Insolvency Resolution Process (CIRP) under Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, “**I&B Rules 2016**”), following a default



in meeting the financial obligations to its Financial Creditors (Secured/Unsecured Creditors) and Operational Creditors and other Creditors as shown in the Company Petition filed in Form-VI.

2. In Part-I of the Petition, it is stated that the Corporate Applicant is a Private Limited company incorporated on 03.07.2009 bearing CIN: U29222TN2009PTC072155 and the Registered Office of the Corporate Applicant as per the petition is situated at Survey no. 1436, Plot 852, VGP Ramanujar Town - Part II, Sriperumbudur Village, Kanchipuram Taluk, Kanchipuram District TN 602 105.

3. In Part-II of the petition, it is stated that the Corporate Applicant has proposed one Mr. B Ramana Kumar as the IRP. He has filed his written consent in Form-2 and the AFA is valid till 05.11.2024.

4. Part-III of the Petition, discloses the details of the total amount of default with respect to Financial Creditors as Rs. 25,27,16,347/- (Rupees Twenty-Five Crores Twenty Sevent Lakhs Sixteen Thousand Three Hundred and Forty Seven Only) and the total amount of default with respect to Operational Creditors as Rs.2,88,56,637/- (Rupees Two Crores



Eighty Eight Lakhs Fifty Six Thousand Six Hundred and Thirty Seven only). The date of default as per Part III of the Petition is 18.12.2018 which is the date of issue of notice under Section 13(2) of SARFAESI Act, 2002. The notice is placed as Annexure I(2)(i) at page 12 to 18 of the petition typeset. The list of documents to prove the existence of debt is as follows:

- a) Notice dated 18.12.2018 u/s 13(2) of SARFAESI Act issued by Punjab National Bank to the Corporate Applicant.
- b) Copies of audited financial statements of the Corporate Debtor for the last two financial years 2020-21, 2021-22 and provisional unaudited financial statement for the period from 01.04.2022 up to 25.11.2022. Annex V;
- c) Copies of audited financial statements of the Corporate Debtor for the financial year 2022-23 and provisional unaudited financial statement for the financial year 2023-24. SR No. 2747 dated 27.04.2024.
- d) Copies of audited financial statements for the financial year ending 31.03.2024 on vide SR No. 2747 dated 03.07.2024.
- e) List of the Corporate Debtor's Assets and Liabilities as on 25.11.2022. Annex VI(a).
- f) List of properties on which claims against the Corporate Debtor is wholly or partly secured, particulars of the claim, its amount and details as to how and when the security was created. Annex VI(b).
- g) List of Financial Creditors with respective debts as on 25.11.2022 are attached as Annex VI(c)(1).
- h) List of Operational Creditors with respective debts as on 25.11.2022 are attached as Annex VI(c)(2).
- i) Particulars of debts owed to the Corporate Debtor as on 25.11.2022 are attached as Annex VI(d).
- j) Details of guarantees given to the Financial Creditor to secure the debts of the Corporate Debtor are attached as Annex VI(e).
- k) Details of assets owned by the Guarantors and mortgaged as Collateral Security to Punjab National Bank to secure the borrowings of the Corporate Debtor as on 25.11.2022 are attached as Annex VI(f).
- l) List of the shareholders of the Corporate Debtor along with the number of shares held by each one of them as on 25.11.2022 are attached as Annex VI(g).



5. The Applicant has filed audited financial statements for the year ended 31.03.2021 & 31.03.2022 and auditors' provisional financial statement for the period from 01.04.2022 to 25.11.2023 reflecting the default of payment to the Financial Creditor. Thereafter, the Applicant filed Audited Financial Statements for the financial year ended 31.03.2023 and 31.03.2024.

6. The Applicant Company has placed on record the Board resolution dated 21.11.2022 authorising the director of the Company to submit an application before this Tribunal for initiation of Corporate Insolvency Resolution process under Section 10 of the Code against the Corporate Applicant. Apart from this, the Corporate Applicant has filed a Special Resolution dated 19.11.2022 for approval of members / shareholders to initiate the CIRP against the Corporate Applicant.

7. On this Petition, this Tribunal vide order dated 16.12.2022 directed the Applicant to serve notice to the creditors of the Corporate Applicant who are having more than one lakh due to them and file proof of service along with tracking report. The Applicant has filed an Affidavit of Service



vide S.R.No.1954 on 08.05.2023 in compliance with the order of this Tribunal dated 16.12.2022.

8. This Tribunal, on the hearing dated 21.09.2023 observed that as per the Affidavit of Service filed by the Applicant, only 30 out of the 46 creditors, received the notice and the remaining 16 notices were either not delivered or returned undelivered. Further, it was observed that SARFAESI proceedings were also initiated by Punjab National Bank, Financial Creditor against the Applicant/Corporate Debtor and symbolic possession of property has also been taken by Punjab National Bank. The Tribunal directed that notice may be issued to Punjab National Bank and other Financial Creditors.

9. This Tribunal, on the hearing dated 18.03.2024, directed the Applicant and the Respondent to file the written synopsis with the relevant dates, events and case laws. The Written Synopsis of the Applicant was filed on 29.04.2024 vide S.R. No. 2098 and that of the Financial Credit/Punjab National Bank was filed on 28.03.2024 vide S.R. No. 1563.



10. The Applicant, in its written submissions, has placed reliance on the decision of the Hon'ble National Company Law Appellate Tribunal (hereinafter, Hon'ble NCLAT), New Delhi in *Leo Duct Engineers & Consultants Limited Vs Canara Bank & Standard Chartered Bank (Company Appeal (AT) (Insolvency) No. 100 of 2017)*, wherein Hon'ble NCLAT laid down 3 pre-requisites for admission of an application of a Corporate Applicant u/s 10 of the Code viz., (i) existence of debt (ii) occurrence of default and (iii) the Corporate Applicant not suffering from any disqualifications laid down u/s 11 of the Code. The Corporate Applicant thus pleads that if there is a debt, a default has occurred and the Corporate Applicant is not ineligible u/s 11 of the Code, then this Tribunal 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.

11. The Financial Creditor has submitted that the Corporate Applicant is conscious of the fact that the loan accounts slipped into NPA on 10.12.2018. If the cause of action had arisen on 10.12.2018 itself, the Corporate Applicant could not have filed the instant application at the end of the year 2022 after a period of four years. It is stated that the said exercise is nothing but to thwart the Financial Creditor from enforcing the



SARFAESI action to realize the staggering outstanding loan amount of Rs.9,75,93,545.93/- as on 10.12.2018 by taking physical possession of the secured assets. It is prayed that the instant petition may be rejected on the grounds that the applicant has filed the same in a whimsical and capricious manner.

12. The Applicant was directed to file the audited financial statements of the FY ending 31.03.2023 and 31.04.2024. In compliance of the same, audited financial statements for the financial year ending 31.03.2023 were filed on 29.04.2024 vide SR No. 2099 and for the financial year ending 31.03.2024 was filed on 04.07.2024 vide SR No. 3382.

13. On the hearing dated 31.05.2024, the Financial Creditor submitted that this petition has been moved solely to stall the SARFAESI proceedings against the Applicant. The Applicant, on the contrary, submitted that because of financial constraints, the instant petition has been filed and the law permits the Applicant to file such petition.

14. This Tribunal has taken into consideration the documents submitted and the submissions made by the parties. On the issue whether the instant petition is barred by limitation, the Hon'ble Supreme Court of India in **B.K.**





*Educational Services Pvt Ltd vs Parag Gupta and Associates (Civil Appeal No. 23988 of 2017)*, has held that the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code and Article 137 of the Limitation Act gets attracted in such cases. It is seen that the Hon'ble Supreme Court, while deciding this case did not delve into the applicability of the provisions of the Limitation Act, 1963 to applications filed under section 10 of IBC. Nonetheless, the Apex Court has quoted the findings of the Hon'ble NCLAT in Civil Appeal 2398 of 2018 where it was held that the principle of limitation cannot be made applicable to applications filed under Section 10 of IBC. The relevant portion of the judgement is reproduced below:

*"72. However, the aforesaid principle for triggering an application under Section 10 of the 'I&B Code' cannot be made applicable as the 'Corporate Applicant' does not claim money but prays for initiation of 'Corporate Insolvency Resolution Process' against itself, having defaulted to pay the dues of creditors. In so far it relates to filing of claim before the 'Insolvency Resolution Professional', in case of stale claim, long delay and in absence of any continuous cause of action, it is open to resolution applicant to decide whether such claim is to be accepted or not, and on submission of resolution*



*plan, the Committee of Creditors may decide such question. If any adverse decision is taken in regard to any creditor disputing the claim on ground of delay and laches, it will be open to the aggrieved creditor to file objection before the Adjudicating Authority against resolution plan and for its necessary correction who may decide the same in accordance with the observations as made above.”*

15. On considering the above, this Tribunal is of the view that in so far as the issue of applicability of Limitation Act, 1963 to applications filed under section 10 of IBC is concerned, the decision of the Hon’ble NCLAT remains unchanged. Therefore, the Petition filed by the Corporate Applicant herein is not barred by limitation.

16. This Tribunal considered the submissions made by the Financial Creditor that the Petition may be rejected on the grounds of mala fide intention of the Applicant to stall SARFAESI proceedings. The Hon’ble NCLAT in *Leo Duct Engineers & Consultants Limited (stated supra)* held that if the application under Section 10 is complete and in absence of any ineligibility of appellant, it was incumbent on the part of the Adjudicating Authority to admit the appeal, having no jurisdiction to notice unrelated facts beyond the requirement under the I & B Code and the Forms



prescribed under the Adjudicating Authority Rules.. Further, the Tribunal also takes note of the findings of the Hon'ble NCLAT in *M/s. Unigreen Global Private Limited vs. Punjab National Bank and others (Company Appeal (AT) (Insolvency) 81/2017)*, wherein it was held that any proceedings initiated under SARFAESI Act, 2002 cannot be a ground for rejection of application filed under Section 10 of IBC. The relevant portion of the judgement is reproduced 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. 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....*

*25. Similarly, if any action has been taken by a ‘Financial Creditor’ under Section 13(4) of the 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.*

*26. Any proceeding under Section 13(4) of the SARFAESI Act, 2002 or suit under Section 19 of the DRT Act, 1993 pending before Debt Recovery Tribunal or appeal pending before Debt Recovery Appellate Tribunal cannot proceed in view of the order of moratorium as may be passed."*

17. This Tribunal is bound by the decision of the Hon'ble NCLAT that institution of SARFAESI proceedings cannot be a ground for rejection of an application for initiation of CIRP filed by Corporate Debtor/Corporate Applicant under Section 10 of IBC, 2016.

18. From the documents filed along with the type set of documents, more particularly the balance sheet records, it is seen the Corporate Debtor has committed 'default in repayment of amount to certain Financial Institutions.

19. We are of the view that this application is required to be admitted u/s 10 of the Code. We order accordingly.



20. The Corporate Applicant has proposed the name of **Mr. B. Ramana Kumar** as the Interim Resolution Professional (IRP). However, we appoint **Mr. Sandeep Kothari having Registration No. IBBI/IPA-001/IP-P-02301/2020-2021/13494** (E-mail ID: *ipsandeepkothari@gmail.com*), forming part of the Panel of IPs recommended by IBBI in accordance with, “Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2024” for the period of July 1, 2024 to December 31, 2024, as the IRP in the present application. The IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

21. As a consequence of the Application being admitted in terms of Section 10 of the Code, moratorium as envisaged under provisions of



Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- 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.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that 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 or a similar grant or right during moratorium period;

22. However, during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;



- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to
  - (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
  - (b) a surety in a contract of guarantee to a corporate debtor.

23. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.



24. The Corporate Applicant is directed to pay a sum of **Rs. 2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional to meet out the expenses and to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. Based on the above terms, the Petition stands **admitted** in terms of Section 10 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*Hresha. S*