

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

Company Petition No. (IB)-622 (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:

**Blue Moon Travels Private Limited
CIN: U63040DL1999PTC101395**

....Corporate Debtor/Corporate Applicant

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 09.08.2024

For the Applicant : Mr. Amar Vivek, Ms. Ridhima Verma
Mr. Shashwat Tripathi, Mr. Aditya Gauri,
Ms. Madhu Ayachit, Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The instant application is filed by **M/s. Blue Moon Travels 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 debt of **Rs. 2,01,78,953.30/- (Two Crore One Lakh Seventy-Eight Thousand Nine Hundred and Fifty-Three and Thirty Paise Only)** comprising of Financial Debt amounting to Rs. 21,95,537.95/- (Rupees Twenty-One Lakhs Ninety-Five Thousand Five Hundred Thirty-Seven and Ninety-Five Paise Only) and Operational Debt amounting to Rs. 1,79,83,414.3/- (Rupees One Crore Seventy-Nine Lakhs Eighty-Three Thousand Four Hundred Fourteen and Three Paise Only).

2. The Corporate Applicant is a private limited company incorporated on 02.09.1999 under the provisions of the erstwhile Companies Act, 1956, and is registered as an MSME. It holds an Udyam Registration certificate bearing number GJ29E0001092 and registered office situated at B-502, Sukh Sagar Apartment, Plot No. 12, Sector-9, Dwarka, New Delhi- 110075. The Corporate Applicant was engaged in the business of travel and tourism.
3. The averments made by the Corporate Applicant in the application, which are necessary for adjudicating the matter are summarized as under:
 - a) The Corporate Debtor was engaged in the business of travel and tourism and has been operating as a travel and event agency. The Corporate Debtor was a well-known name in the industry and had provided travel and event related services successfully to thousands of its clients over a decade across the world. The Corporate Debtor had been flourishing and

aggressively expanding its operations. However, with the outbreak of COVID-19, and consequential pandemic and economic shutdown, it suffered substantial losses, and as a result of which, the business ran into serious liquidity crunch. Subsequently, in the second wave of COVID-19 in 2021, the travel and event industry were completely shut down and resultantly, the business operations as well as the financial stability of the Corporate Debtor suffered a further-blow.

- b) The Corporate Debtor, acting in good faith to service their debts, submitted a base plan under the "Pre-Pack Insolvency" provisions of "The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021" to the majority financial creditor, Yes Bank. This plan aimed at the revival of the Corporate Debtor. However, Yes Bank rejected the proposal without consideration.
- c) The Corporate Debtor made efforts to sustain itself in the market. Between 2022 and the end of the financial year 2023, it made significant payments to many financial and operational creditors, demonstrating a renewed effort to stabilize and recover.
- d) However, despite its best efforts to sustain itself, the Corporate Debtor's financial situation worsened due to deficits from the COVID-19 period. Additionally, unpaid salaries led to employees gradually leaving the company.
- e) The Corporate Debtor further submitted that in furtherance of the default to the creditors, despite best efforts by the Applicant to retain and sustain itself in the industry the Board of directors had approved the resolution on

11.09.2023 for initiation of Corporate Insolvency Resolution Process under Section 10 of the Code, 2016. Furthermore, the Applicant vide Additional Affidavit dated 27.06.2024 filed the Special Resolution passed in the Extra Ordinary General Meeting dated 25.06.2024 passed by the Shareholders of the Applicant Company shareholders wherein it approved the resolution for initiation of Corporate Insolvency Resolution Process under Section 10 of the Code, 2016.

- f) Further, as of 30.09.2023, the Corporate Applicant had an outstanding of Rs. 2,01,78,953.30/- (Two Crore One Lakh Seventy-Eight Thousand Nine Hundred and Fifty-Three and Thirty Paise Only) comprising of Financial Debt amounting to Rs. 21,95,537.95/- and Operational Debt amounting to Rs. 1,79,83,414.3/-(One crore seventy nine lakh eighty three thousand four hundred fourteen Rupees and thirty paise only)

FINANCIAL CREDITORS:

S.No	Name of Financial Creditor	Total debt Raised (in Rs.)	Total amount in default on date of filing (In Rs.)
1.	BAJAJ FINANCE LTD	19,25,299.96/-	12,13,375.96/-
2.	OXYZO FINANCIAL SERVICES PVT. LTD	22,00,000/-	3,74,191/-

3.	AMMEX CORPORATION CARD	3,80,936.24/-	3,80,936.24/-
4.	ICICI VISA CARD	2,27,035.43/-	2,27,035.43/-
	TOTAL	41,25, 299/-	21,95,537.95/-

B. OPERATIONAL DEBT

S.No	Name of Creditor	Amount in Default (In Lacs)
1.	MECURY TRAVELS LIMITED	25.22
2.	TRAVEL BOUTIQUE ONLINE (TECH TRAVEL)	17
3.	INTER AIRWINGS	13.07

4.	PVT. LTD. ARUNA BRANCH - HDFC BANK	9.88
5.	REZLIVE	6.75
6.	MRS. KAMLESH BHARDAWAJ	0.98
7.	FLYAFE TRAVEL SERVICES	0.50
8.	DESTINO TRAVEL SERVICES	0.28
9.	ASEGO TRAVEL LLP	0.08
10.	DELHI GENERATORS	0.15
11.	COOL BLUES PVT. LTD	0.03
12.	LABEL TECH INDIA	0.01
13.	TDS Payable	18.84
14.	TCS Payable	
15.	PF Employees	
16.	Salary	
17.	CGST/SGST/IGST	
18.	ICICI Prudential	60.60
19.	SATISH RAHEJA	15.84
20.	VIAJES TEMATICOS	6.74
21.	HOTEL RESERVATION SERVICES PVT. LTD.	2.84
22.	COLOUR BAR COSMETICS PVT. LTD.	0.41
23.	SRI GIRDHAR SAMARK DHARMARTH NYAS	0.13
24.	LANXIN ENGINEERING PVT. LTD.	0.40
	Total	1.79 Crores

- g) The Corporate Applicant submits the below mentioned documents to prove the existence of default of the debt:-
- i. Copy of the ledger of the creditors and the respective amounts of defaults
 - ii. Copy of the Document depicting the repayment schedule.
 - iii. Copy of the Audited Balance Sheet for the year 2021-2022 and 2022-2023 along with Provisional Balance Sheet for the year 2023 dated 16.09.2023.
4. This Adjudicating Authority vide order dated 16.10.2023 directed the Ld. Counsel for the Corporate Applicant to serve the notice upon the Respondents. The Corporate Applicant has complied with the aforesaid direction and submitted affidavit dated 22.11.2023 proving the service of notice of the application.
5. Further this Adjudicating Authority vide Order dated 15.02.2024 recorded that since no report from the Respondent had been filled, as a final last chance, a week's time was granted to the Respondents to file reply failing which next step follows.
6. Meanwhile, the International Air Transport Association (IATA) sent the Notice of Default dated 21.02.2024 to the Applicant declaring the Applicant's agency is in default due to its failure to remit the outstanding amounts to the Association. Vide the same communication, the Notice of Termination of the Sales Agency Agreement w.e.f. 31.03.2024 was also given to Applicant, thereby calling upon the Applicant to settle all the outstanding amount and/or pay at least 30% of the outstanding amounts.
- The Applicant submitted that it failed to abide by the Notice of Default sent

by IATA despite its best effort, due to its financial constraints, and resultantly, vide letter dated 09.04.2024, IATA terminated the Passenger Sales Agency Agreement with the Applicant with immediate effect, and also directed the Applicant to return the IATA ID Card(s) and other documents and further directed the Applicant to remove the IATA logo from its premises.

7. Subsequently, with no representation from the Respondent Creditor this Adjudicating Authority in the interest of natural justice vide order dated 08.05.2024 again issued notice to the Respondent and directed Applicant to serve notice within three days and file proof of service.
8. Accordingly, Applicant herein preferred an Appeal before Hon'ble NCLAT against this Adjudicating Authority Order dated 08.05.2024. The Hon'ble NCLAT vide Order dated 27.05.2024 dismissed the Appeal on the pretext that the matter was listed for further hearing before the Adjudicating Authority dated 03.06.2024 and it shall be open for the Appellant to press their prayers before Adjudicating Authority. The Hon'ble NCLAT also noted in its order that given the pending application, the Adjudicating Authority should endeavor to dispose of the matter as early as possible.
9. At this juncture, it will be advantageous to consider what are the requirements for admitting an application under section 10 of the Code, 2016. For this purpose, it is useful to refer the judgment of the **Hon'ble NCLAT in 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. Nondisclosure 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.”

10. 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. We are satisfied that the Corporate Applicant is entitled to move an application under Section 10 of the Code in view of the admitted outstanding operational debt and default of the same by the Corporate Applicant. As a sequel of the above discussion and in terms of Section 10(4) of the Code, 2016, we hereby **admit the instant Petition (C.P.(IB)/622/(ND)/2023)** in terms of Section 10 of the Code and CIRP is initiated against M/s. Blue Moon Travels Private Limited.
11. The Corporate Person in Part-II of Form-6 of the Company Application has proposed the name of 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. Anil Kumar Sharma** having registration number IBBI/IPA-003/IPA-ICAI-N-00218/2019-2020/12514, office at A47, First Floor, Kailash Colony, New Delhi -110048 with email-id- mikonict@gmail.com as 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. We direct the Corporate Applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Anil Kumar Sharma to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three 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.

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**