

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.160

IA/115(AHM)2022 in C.P.(IB)/261(AHM)2021

Order under Section Rule 11 of NCLT,2016

IN THE MATTER OF:

BBM Impex Pvt Ltd

V/s

Innovative Tyres and Tubes Ltd

.....Applicant

.....Respondent

Order delivered on ..28/03/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

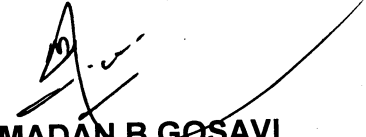
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)


MADAN B GOSAVI
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

**IA/115(AHM)/2022 with
C.P. (IB)/261(AHM)/2021**

[Application by the Operational Creditor to initiate the Corporate Insolvency Resolution Process Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the matter of:

M/s. BBM Impex Pvt. Ltd.

Having registered office at:
54, Regal Building, 2nd Floor,
Parliament Street, Connaught Place,
New Delhi-110001

....Operational Creditor

Versus

M/s. Innovative Tyres and Tubes Limited

Having registered office at:
Plot No. 1201, 1202, 1203, GIDC Halol
Dist Panchmahal Gujarat
Pin-389350

....Corporate Debtor

Order reserved on : 15.03.2022
Order pronounced on : 28.03.2022

Coram: MADAN B. GOSAVI, MEMBER (J)

KAUSHALENDRA KUMAR SINGH, MEMBER (T)

Appearance:

For the Operational Creditor : Ld. Sr. Adv. Mr. Navin Pahwa
For Corporate Debtor : Ld. Adv. Mr. Pratik Thakkar



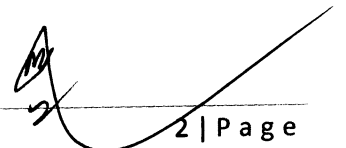


ORDER

[Per: MADAN B. GOSAVI, MEMBER (J)]

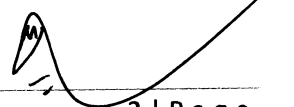
1. This application under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**the IBC, 2016**”) has been filed by M/s. BBM Impex Pvt. Ltd. – the Operational Creditor to start the Corporate Insolvency Resolution Process (hereinafter referred to as the “**the CIRP**”) against the M/s. Innovative Tyres and Tubes Limited - the Corporate Debtor on the ground that the Corporate Debtor committed default in paying the operational debt of Rs. 3,06,37,015/- (Rupees Three Crore Six Lakh Thirty-Seven Thousand Fifteen Only). The date of default is stated to be 09.11.2021.
2. The registered office of the Corporate Debtor is situated at Panchmahal- Gujarat. Hence, this application is within the jurisdiction of this Adjudicating Authority.
3. It is submitted that the Corporate Debtor approached the Operational Creditor and placed order for supply of natural rubber, fabric, carbon, zinc etc. In pursuance of the




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purchase orders, the Operational Creditor supplied the goods to the Corporate Debtor and raised invoices. The Corporate Debtor made payments of a few invoices as per the agreed terms and conditions of the payment. When the Operational Creditor requested the Corporate Debtor to discharge its liability, the Corporate Debtor informed that Corporate Debtor is suffering from financial crunch and assured that payments will be made as soon as possible and also requested to continue the supply of goods.


4. It is also submitted that on the basis of assurance given by the Corporate Debtor, the Operational Creditor continued to supply the goods. However, the Corporate Debtor failed to honour its assurance and discharge its liability. The Operational Creditor on 05.10.2021 issued a notice to the Corporate Debtor for the repayment of outstanding dues. The Corporate Debtor replied to the said notice on 31.10.2021 acknowledging the amount of Rs. 3,99,01,384.17/- to be paid to the Operational Creditor and the Corporate Debtor further agreed to pay the said outstanding amount in a phased manner viz. Rs.



1,00,00,000/- on 09.11.2021, Rs. 1,00,00,000/- on 16.11.2021, Rs. 1,00,00,000/- on 23.11.2021 and Rs. 99,01,384.17/- on 30.11.2021 (at page 87 of this application). But, on 05.11.2021, the Corporate Debtor made a payment of Rs. 3,00,000/- to the Operational Creditor. However, as per the aforesaid schedule, the first payment was to be paid on 09.11.2021 but the Corporate Debtor failed to honour its first commitment which was to be paid on 09.11.2021.

5. It is further submitted by the Operational Creditor that in compelling circumstances, the notice of demand under Section 8 of the IBC, 2016 for the payment of Rs. 3,06,37,015/- was issued to the Corporate Debtor on 17.11.2021 and the same was delivered to the Corporate Debtor on 22.11.2021 (at page 91 to 97 of this application). The Corporate Debtor neither paid the outstanding amount nor replied to the demand notice. Hence, this application is filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.




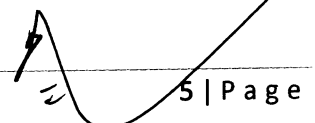


6. Learned Counsel for the Corporate Debtor appeared and filed its reply on 09.02.2022 wherein he admitted the debt and further submitted that due to severe financial crunch, the Corporate Debtor was unable to pay the outstanding amount.
7. We heard the learned Counsel for both sides and perused the material available on record. It is noted that the Operational Creditor supplied the goods to the Corporate Debtor and raised the various invoices during the period from 11.02.2020 to 03.03.2020 for the amount of Rs. 2,43,95,183.17/- and from 24.05.2021 to 07.11.2021 for the amount of Rs. 62,41,832/-. The aforesaid invoices do not fall within the amended provision of Section 10A of the IBC, 2016 as all the invoices were raised by the Operational Creditor prior to and after the effect of the aforesaid section. For ready reference, we reproduce the Section 10A of the IBC, 2016 as under:

10A Suspension of initiation of corporate insolvency resolution process:

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of




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a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.

8. It is also noted that the Corporate Debtor has acknowledged the debt on 31.10.2021 and also proposed to pay the outstanding amount in a phased manner wherein the first installment of the commitment was to be paid by the Corporate Debtor on 09.11.2021 which was not paid by the Corporate Debtor. The Demand Notice was issued to the Corporate Debtor on 17.11.2021 which was delivered on 22.11.2021 but the Corporate Debtor neither paid the outstanding amount nor raised any dispute/replied to the said demand notice. The Corporate Debtor also admitted the default amount in its reply to the instant application dated 09.02.2022.
9. It is also noted that the present application is well within the limitation and also meets the threshold limit as given



in Section 4 of the IBC, 2016. The present application is otherwise complete and defect-free. Hence, we allow the present application with the following directions:

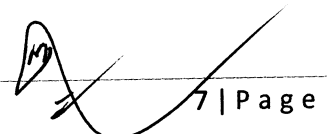
ORDER

1. The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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 Securitisation 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.*

2. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code,



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2016, as the case may be.

3. This Adjudicating Authority hereby appoints proposed name of IRP, **CA Mr. Abhishek Nagori, Chartered Accountant, having Registration No. IBBI/IPA-001/IP-P-00020/2016-17/10044 and having e-mail id: nagori@jlnus.com** to act as an IRP under Section 13(1) (c) of the IBC, 2016.
4. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate. IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
5. This Adjudicating Authority directs the IRP to make the public announcement of the initiation of the Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the IBC, 2016.



6. It is further directed that the supply of goods/services to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
7. The IRP shall be under the duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs.1,00,000/- (Rupees One Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.
10. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the



same on the website immediately after pronouncement of the order.

11. Accordingly, CP (IB) No. 261 of 2021 is allowed.

12. Since, the main CP (IB) No. 261 of 2021 is allowed, IA No.115 of 2022 which has been filed for urgent listing of main CP(IB) i.e. CP (IB) No. 261 of 2021 also stands disposed of.



**(KAUSHALEDRA KUMAR SINGH)
MEMBER (TECHNICAL)**



**(MADAN B. GOSAVI)
MEMBER (JUDICIAL)**

Signed on this, the 28th day of March, 2022.

Rajeev Sen, Stenographer