

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.167/BB/2019
U/s.10 of the IBC, 2016
R/w Section 33 of the IBC, 2016
R/w Rule 7 of I & B(AAA) Rules, 2016

In the matter of:

M/s. GNB Technologies (India) Private Limited
811, First Floor, 10th Main,
Indiranagar,
Bengaluru – 560 038 - Petitioner/Corporate Applicant

Date of Order: 8th November, 2019

Coram: 1.Hon'ble Shri Rajeswara Rao Vittanala, Member, (Judicial)
2.Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner/ : Ms. Mehak Suri
Corporate Debtor

O R D E R

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.167/BB/2019 is filed by M/s. GNB Technologies (India) Private Limited (Petitioner/Corporate Debtor), U/s 10 of the Code, R/w Section 33 of the Code, by inter-alia seeking to initiate CIRP/Liquidation in respect of M/s. GNB Technologies (India) Private Limited, on the ground that the Company has become insolvent with a debt of Rs.49,97,96,558/- (Rupees Forty Nine Crores Ninety Seven Lakhs Ninety Six Thousand Five Hundred and Fifty Eight only) with mere current assets are to the extent of INR 65,000/

2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:

- (1) M/s. GNB Technologies (India) Private Limited (herein after referred as Petitioner/Corporate Applicant) was incorporated in June 13, 1997 under the (Indian) Companies Act, 1956, bearing CIN: U31109KA 1997PTC022384. GNB Technologies is in the business of manufacturing sealed maintenance free, valve regulated lead acid batteries, etc. Its Authorized Share Capital is INR 10,00,00,000 divided into shares of INR 10/- each and Paid-up Share Capital is INR 8,01,84,180 divided into shares of INR 10 each. And out of which Exide Holding Asia Pte Ltd., Singapore, alone hold 80,18,397 share for total amount of Rs. 801,83,970/-
- (2) The manufacturing facility of GNB Technologies is located at Hosur, Tamil Nadu. However, on account of consistent losses, it has closed down the abovementioned manufacturing facility. GNB Technologies was doing well until the financial year 2010-2011, when the problems started on account of increased competition in market, high labour cost, numerous amount of warranty claims, etc. The financial position of GNB Technologies deteriorated further when the Company's competitors started selling similar batteries at much lower price, when strained the revenue of the Company to its bottom. At the same time, the cost of its operations remained the same and lead to further increase in losses. The losses continued to occur with no parallel increase in revenue, therefore, the management had to close down the manufacturing operations of the Company.
- (3) GNB Technologies has settled claims of all of its financial creditors and only the claim of operational creditors is yet to be settled. The total claim of all operational creditors comes to the tune of INR 49,97,96,558/- which remains to unpaid. Since the Company is not running its business

operations, it could not make payment to its operational creditors from the available funds. The Board of Directors if the Company, at their meeting held by way of circulation on 25th February 2019 has authorized inter-alia Mr. Gunjan Johri to file Application under the provisions of the IBC, 2016, on behalf of GNB and to accept the service of process for and on behalf of the GNB.

- (4) Exide Holding Asia Pte. Ltd., holding 99% shares of the Corporate Debtor had sent a letter to the Board of Directors of the Corporate Debtor on 4th January 2019, requesting them to initiate proceedings for the initiation of Corporate Insolvency Resolution Process of the Corporate Debtor under the Provision of the IBC, 2016. In pursuant to the above letter, an Extra-Ordinary General meeting was held on 11th January, 2019 wherein the shareholders' approval was granted for the initiation of the CIRP of the Corporate Debtor.
- (5) The Board of Directors of the Corporate Debtor resolved to propose the name of Mr. Malav Jitendra Ajmera, as the Interim Resolution Professional, through circular resolution dated 25th February 2019.
- (6) The Corporate Debtor does not have any financial creditors at present. Exide Technologies Industrial Energy, USA (an Operational Creditor of the Petitioner Corporate Debtor), sent a letter to the Corporate Debtor on 7th October 2019, demanding payment of INR 42,89,04,336 (i.e. approx. INR 42.89 Crores) owed by the Petitioner Corporate Debtor. The Corporate Debtor expressed its inability to pay such amounts to Exide Technologies Industrial Energy, USA vide letter dated 15th October 2019. The total amount due from the Petitioner Corporate Debtor on account of Operational debts is INR 49,97,96,558/- (i.e. approx. INR 49.98 Crores), as stated in detail in the list of Operational

Creditors specifying their names, address and amount in default along with details pertaining to date when such debts became payable.

3. Heard Ms. Mehak Suri, learned Counsel for the Petitioner. We have carefully perused the pleadings of the parties and extant provisions of the Code and the Rules made there under.
4. Ms. Mehak Suri, learned Counsel for the Petitioner/Corporate Debtor, while reiterating the various averments made in the Company Petition, has further submitted that it's fell due for an amount of Rs.42.89 Crores payable to its holding Company M/s. Exide Technologies on account of various payables including raw materials supplied by Exide Technologies to GNB India. The Petitioner/Corporate Debtor is facing financial difficulties since from 2011, and could not able to revive its operations sufficiently to generate adequate revenue to stay afloat. Therefore, the Petitioner/Corporate Debtor Company was forced to even sell its plant and machinery and closed down its operations entirely long time back. The learned counsel has also filed a memo dated 08.11.2019, by inter-alia stating that the Adjudicating Authority may initiate liquidation proceedings instead of initiating CIRP ,in the first instance itself, due to the huge volume of debt owed by the Petitioner and extremely limited assets, by exercising its inherent powers under Rule 11 of the NCLT Rules, 2016. Therefore, she urged the Adjudicating Authority to appoint proposed IRP namely Shri Malav Jitendra Ajmera, having Regn. No. IBBI/IPA-001/IP-P-01190/2018-2019/11908 as liquidator to liquidate the Company.
5. As stated supra, the Authorized Share Capital of the Company is Rs.1,00,00,000 (Rupees One Crore) divided into 10,00,000 (Ten Lakhs) equity shares of Rs.10/- (Rupees Ten) each, and

Paid-up Share Capital is Rs. 8,01,84,180 (Rupees Eight Crores One Lakh Eighty Four Thousand One Hundred and Eighty only) divided into shares of Rs.10/- (Rupees Ten) each. And out of which, Exide Holding Asia Pte Ltd., Singapore, alone hold 80,18,397 share for total amount of Rs. 801,83,970/-

6. As per the Independent Auditor's report dated 25.10.2017, namely Shri T. Shrinivasa Rao & Co., Chartered Accountants, has interalia stated that the Company's net worth is eroded (Net worth as at 31st March 2017 is (-) Rs.38,59,81,079.37), which cast significant doubt on the ability of the Company to continue as a going concern. VAT Tax of Rs.1,12,53,958/- has been paid during the year on account of non collection of C forms pertaining to earlier years. The Company has not granted any loans to bodies corporate covered in the register maintained under Section 189 of the Companies Act, 2013. The Company has not accepted any deposit. Therefore, the provisions of Clause (v) of paragraph 3 of the Order are not Applicable to the Company. According to the information and explanations given to them and on the basis of their examination of the records of the Company, amounts deducted/accrued in the books of account in respect of undisputed statutory dues including provident fund, income-tax, sales tax, value added tax, duty of customs, service tax, cess and other material statutory dues have been regularly deposited during the year by the Company with the appropriate authorities. As explained to us, the Company did not have any dues on account of employees' state insurance and duty of excise; according to the information and explanations given to them, there are no dues in respect of sales tax, income tax, custom duty, wealth tax, excise duty and cess have been deposited with the appropriate authorities on account of any dispute.



As per another the Independent Auditor's report dated 30.08.2018, issued by Shri T. Shrinivasa Rao & Co., Chartered Accountants, has inter-alia states that the Company has accumulated losses of Rs.584,043.854 and negative net worth of Rs.503,859,674 on March 31, 2018. During FY 2017-18 the Company has incurred net loss of Rs.111,380,969/-, which cast significant doubt on the ability of the Company to continue as a going concern. The Company has suspended its operations more than 5 years ago and the management has no plan to restart the production in near future.

7. The holding Company M/s. Exide Technologies has issued a demand notice dated 07.10.2019, to the Petitioner/Corporate Debtor, by inter stating that the Exide Technologies was responsible for supplying the raw materials to the GNB Technologies (India) Private Limited, and thus GNB India owes an amount of Rs.42,89,04,336/- (i.e. approx. INR 42.89 Crores) to Exide Technologies on account of various payables including sale of raw materials to GNB Technologies (India) Private Limited. Thus, demanded to pay this amount (Approx. 42.89 Crores) within 5 (five) days. Accordingly, the Corporate Applicant has given reply dated 15.10.2019 by inter alia stating that they could not revive its business operations and the Company was forced to sell its plant and machinery and closed down its operations entirely and thus they are initiating insolvency proceedings before NCLT.
8. As stated supra, the current assets of the Company is only whereas it current liabilities are approximately INR 49.98 and there is no possibility to revive the Company as the Company sold its plant and machinery long time back and closed down its operations for more than 5 years back. Moreover, the Corporate Applicant owes the liability to its holding Company



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which supplies all the raw materials to the Corporate Debtor and the Holding Company was also not interested to revive the Company. Therefore, there is hardly any possibility of any Resolution plan likely to be received during first stage of CIRP, if initiated, and thus it would be just and proper to put the Corporate Applicant Debtor under the liquidation process, in order to liquidate the Company, rather than to put it in CIRP in the first instance. The Petitioner has suggested Shri Malav Jitendra Ajmera, bearing IP registration number IBBI/IPA-001/IP-P01190/2018-2019/ 11908, to appoint as IRP, who has also filed his Written Consent in Form-2 dated 14.03.2019, by inter alia affirming that he is eligible to be appointed as a liquidator in respect of the Corporate Debtor herein and that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professional of ICAI; he is currently serving as an Interim Resolution Professional/ Resolution Professional/ Liquidator in NIL proceedings. He can be appointed as Liquidator instead of IRP, in order to liquidate the Corporate Applicant U/s.33 of the Code.

9. In view of the facts and circumstances of the case, the Adjudicating Authority, by exercising its powers conferred under Section 10 R/w Section 33 of the IBC, 2016 and Rule 11 of NCLT Rules, 2016, the Company petition bearing C.P.(IB)No.167/BB/2019 is hereby admitted with following consequential directions:

- (1) We hereby order that M/s. GNB Technologies India Private Limited, Petitioner/Corporate Applicant to be liquidated in the manner as laid down in Chapter III (Liquidation Process) of Part II of the Code.
- (2) We hereby appointed Shri Malav Jitendra Ajmera, Regs. No. IBBI/IPA-001/IP-P-01190/2018-19/11908 as Liquidator subject to the terms and conditions to be

agreed upon by the parties in the light of the extant provisions of the IBBI.

- (3) We hereby directed the Liquidator to issue immediate public announcement by stating that the Corporate Debtor is in liquidation
- (4) The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action.
- (5) The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made there under framed by IBBI from time to time and also directed to take expeditious steps to complete the liquidation process in the light of various orders.
- (6) Post the case on **06.12.2019** for report of the Liquidator.



(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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