

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 155/Chd/Pb/2021

**Under Section 10 of the
Insolvency & Bankruptcy Code**

In the matter of:

Sheel Auto Industries Private Limited
having its registered office at
E 472-473, Phase VII
Focal Point, Ludhiana, Punjab- 141010

....Petitioner-Corporate Debtor

Judgment delivered on: 25.08.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the petitioner	:	Mr. Yashpal Gupta, Advocate
For the Respondent		Mr. Pukit Goyal, Advocate Mr. Amit Rishi, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

This petition has been filed by **Sheel Auto Industries Private Limited**, the Corporate Debtor itself in Form No.6 as prescribed under sub-rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 (for brevity, the '**Rules**') for initiating Corporate Insolvency Resolution Process under Section 10 of Insolvency & Bankruptcy Code, 2016 (for short to be referred hereinafter as the '**Code**'). The Corporate Debtor also falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code.

2. The Corporate Debtor (hereinafter referred to as the 'corporate applicant') was incorporated on 31.03.1998 having CIN U35921PB1998PTC019424. Its registered office is at Ludhiana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The copy of the Master Data of the Corporate Debtor is marked and annexed as Annexure A-2 and the copy of the Memorandum and Articles of Association is annexed as Annexure A-3.

3. The authorized share capital of the corporate debtor is ₹1,00,00,000/- (Rupees One Crore Only) and paid up share capital is ₹75,52,100/- (Rupees Seventy-Five Lakhs, Fifty-Two Thousand, One Hundred only).

4. The petition has been filed by the corporate- applicant through Mr. Harraj Sarda, Director, who has been authorized to file this petition under Section 10 of the 'Code' vide Extra Ordinary General Meeting dated 17.07.2021 (Annexure-A1 of the petition). The petition has been filed in pursuance of a resolution passed in the meeting of members of the corporate applicant held on 17.07.2021 (Annexure A-1 of the petition). The contents of the application are supported by the affidavit of Mr. Harraj Sharda, Director-cum-Shareholder, which is on Page No. 74 to 76 of the paper book.

5. As per the Master Data of the corporate applicant (Annexure A-2) along with the memorandum and Articles of Association, the main objects of the

corporate applicant is to carrying on the business of manufacturers, dealers in, buyers and sellers, exporters and importers of all kinds of auto parts, cycle parts, nuts, bolts, nails, tools, etc.

6. It is stated by the Corporate applicant that due to the pandemic, the sale of auto parts, cycle parts, nuts, bolts, etc. has been drastically decreased and the corporate debtor is not left with sufficient capital or assets in order to pay of the debt occurred and to run the regular business activities. The Board of Directors sent the notice of the EOGM on 14.06.2021 and in the EOGM dated 17.07.2021, it is resolved to file a petition under Section 10 of the Code. The copy of the minutes of EOGM dated 17.07.2021 is attached as Annexure A-1 of the petition. The corporate debtor has taken secured loans from Bank of India, IDFC Bank, HDFC Bank, Kotak Mahindra Bank, IndusInd Bank, RBL Bank, Yes Bank, Magma Fincorp Limited, and Tata Capital Finance Services Limited. It is stated in Part-III of Form-6 that the total amount of debt raised is Rs. 12,04,97,033/- and the total amount stated to be in default is Rs. 10,23,24,504/- and the List of liabilities of Corporate Debtors as on 17.07.2021 is attached with the petition as Annexure-A38. The copy of sanction letters from different Banks, NBFCs, and lenders are filed as Annexure-A6 to Annexure-A15. In addition to issuing notices demanding the overdue amount by the IndusInd Bank, Yes Bank, Tata Capital Finance Service Limited, and RBL Bank, Bank of India has also invoked Section 13(2) of the SARFAESI Act, 2002 by issuing notices to the corporate debtor, demanding to fulfill their financial obligations. M/s Aman International has also issued notices dated 23.03.2021 and 26.05.2021 (Annexure-A-20 & Annexure-A-23) for recovery of

the amount from the Corporate Debtor. Magma Fincorp Limited and M/s Paviter Metals Private Limited have demanded payment through Legal Notices issued under Section 138 of the Negotiable Instruments, Act, 1881 (Annexure-A-24 & Annexure-A-25). The balance sheets of the corporate debtor as on 31.03.2018, 31.03.2019, 31.03.2020 & 31.03.2021 along with the provisional balance sheet as on 17.07.2021 are attached as Annexure-A-31 to Annexure-A-37 of the petition.

7. In Part III of Form No. 6, the complete particulars including addresses of the financial and operational creditors are also given. The petitioner has also mentioned the particulars of security held by the creditors. The certificates of registration of charge issued by ROC are attached as Annexure-A-5.

8. Notice of this petition was issued to all the creditors by order dated 04.10.2021. The petitioner has filed the affidavit of service vide Diary No. 00907/01 dated 10.12.2021, Diary No. 00907/4 dated 21.07.2022, Diary No. 00907/5 dated 28.09.2022 and Diary No. 00907/6 dated 24.11.2022 respectively. The respondents i.e. D.K. Steels and R.S. Traders have filed their reply by Diary No. 993 dated 17.12.2021 wherein it is stated that respondents are yet to receive the outstanding amount.

9. Reply has been filed by Hero Steels Limited i.e. Operational creditor by Diary No. 00907/3 dated 04.03.2022 stating that, the Corporate Debtor through its Directors has issued cheques dated 27.05.2021 and the same was dishonored and afterward on the issuance of legal notice, a complaint u/s 138 NI Act has been filed by the Operational Creditor before the Competent Authority. Non-bailable warrants for the appearance of the accused in the case filed by the Hero Steels Limited/complainant. It is stated that the petitioner has

neither attached complete financial data, balance sheets, or details, nor valuation of movable and immovable assets. The proceedings under Section 138 of the Negotiable Instruments Act, 1881 cannot be stayed or covered under Section 14 of IBC as the proceedings are against the Directors/Natural Persons who are impleaded as accused in the complaint.

10. The Financial Creditor i.e. Bank of India has also filed a reply by Diary No. 907/2 dated 23.12.2021 stating that the application is not complete as per the provisions of Section 10(4)(b) of IBC and it has been filed with malicious intent to defraud its creditors. The corporate debtor has failed to maintain financial discipline. Hence the bank account was declared as NPA. The petition has been filed with the intention to avoid payment to the financial creditor as the bank has initiated SARFAESI Proceedings against the corporate debtor and the Financial Creditor may not be able to sell off the mortgage properties in auction. Reliance is placed on the decision of Hon'ble National Company Law Appellate Tribunal (NCLAT) in the case of ***Hystone Merchants Private Limited v. Satabadi Investments Consultants Private Limited*** Company Appeal (AT) (Insolvency) No. 258 of 2021 dated 30.06.2021, wherein it has been held that the Adjudicating Authority ("AA") can refuse to admit an application under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) which is otherwise complete in all respects if there are visible signs of fraud, collusion or malicious intent under Section 65 of the IBC.

11. This tribunal vide order dated 01.06.2023 relisted the same on 02.06.2023 and furthermore, in compliance with the said order the petitioner has filed its compliance affidavit with respect to Section 11 of the Code vide

diary No.00907/8 dated 07.06.2023.

12. We have gone through the aforesaid contentions of the parties. After perusal of the application filed, we find the same to be complete in all respects. It is mentioned that the proceeding under Section 138 of the Negotiable Instruments Act, 1881 is pending. In this context, a reference is made to the decision of the Hon'ble Apex Court in the case of ***Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd***, wherein it is held that for the proceedings with respect to the signatories/directors, there is no bar contained in any of the provision of IBC against approaching the Criminal Court seeking penal action under Section 138 of the Negotiable Instrument Act subject to the provisions of section 32 (A) of the said Act.

13. After perusal of the application filed, we find the same to be complete in all respects

14. We have heard the learned counsel for the corporate applicant and learned counsel for the financial creditors and gone through the records.

15. Sub-section (4) of Section 10 of the Code says that the Adjudicating Authority by an order:-

“(a) admit the application if it is complete (and no disciplinary proceeding is pending against the proposed resolution professional); or

(b) reject the application if it is incomplete (or any disciplinary proceeding is pending against the proposed resolution professional).

Provided that the Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.”

16. In order to comply with the requirement of clause (a) of Section 10 (3) of the Code the petitioner has placed on record all the necessary documents to prove the existence of financial/operational debt and the amount as required in column 3 of Part-III of the Application Form. The details of the operational debt in default have also been provided. The petitioner has also filed its balance sheets for the years 2018-19, 2019-20 & 2020-21 at Annexure A-33 to Annexure A-36 and the provisional financial statements up to 17.07.2021 at Annexure A-37.

17. Sub-Section (3) of Section 10 of the Code reads as under:-

“The corporate applicant shall, along with the application, furnish-

(a) The information relating to its books of account and such other documents for such period as may be specified;

(b) The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

(c) The special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving the filing of the application.”

18. Under Clause (b) of Section 10 (3), the corporate applicant is bound to propose the name of a Registered Resolution Professional to be appointed as an Interim Resolution Professional. In Part II of Form-6, the name of Mr. Deepankur Sharma has been proposed. We have perused the written communication in Form No.2 (Annexure A-4 of the application) furnished by the Proposed Resolution Professional, a Registered Resolution Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that currently he is not serving as an

Interim Resolution Professional/Resolution Professional/Liquidation in any proceedings under IBC, 2016 and there are no disciplinary proceedings pending against him with the IBBI. His Registration number is IBBI/IPA-001/IP-P-02236/2020-2021/13419. We find that the written consent furnished by the proposed Interim Resolution Professional is in order.

19. We have perused the records and balance sheets dated 01.04.2021 of the corporate debtor and it is seen that there is no particular instance of fraud as alleged by the Financial Creditor-Bank of India and there is a lack of working capital in the case of the Corporate Debtor. Furthermore, no other creditor has raised this issue. It is submitted by the FC that they have taken actions under the SARFAESI Act, 2002. The arguments furnished by the FC that after the admission order, the Financial Creditor may not be able to sell the property in view of the moratorium imposed under Section 14 of the IB Code is not tenable as the objective of the Insolvency and Bankruptcy Code is the maximization of the value of the Corporate Debtor. This Adjudicating Authority cannot refuse to initiate the insolvency of the Corporate Debtor, even if the SARFAESI Proceedings are filed by the Financial Creditors. In the present case, the application filed by the Corporate Debtor is found to be complete.

20. In view of the above facts, the petition is admitted. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

- (d) the institution of suits or continuation of pending suits or proceedings against the corporate applicant including the execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority;

(e) transferring, encumbering, alienating, or disposing of by the corporate applicant any of its assets or any legal right or beneficial interest therein;

(f) any action to foreclose, recover, or enforce any security interest created by the corporate applicant in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(g) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate applicant.

21. It is further directed that the supply of essential goods or services to the corporate applicant as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate applicant.

22. 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 Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate applicant under Section 33 as the case may be.

23. The Law Research Associate of this Tribunal has checked the credentials of the proposed Interim Resolution Professional and nothing has been found adverse against Mr. Deepankur Sharma. In view of the above, we appoint Mr. Deepankur Sharma, Insolvency Professional, bearing Registration No. IBBI/IPA-001/IP-P-02236/ 2020-2021/13419, e-mail ID:

deepankursharma@yahoo.com, Mobile No. 9988115806, address: B-11, 3rd Floor, Geetanjali Enclave, New Delhi-110017 as an Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Deepankur Sharma shall be in accordance with the provisions of Section 16(5) of the Code.
- ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct

governing his profession and as an Insolvency Professional with high standards of ethics and morals;

- iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi) The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors is to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of

the Service Provider and its location, and also the address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than 8 financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

“As per Rule 7 (f) of Companies (Registered Valuers and Valuation) Rules, 2017, Registered Valuer shall maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;”

As per the Standard of Auditor (SA-230)

“The retention period for audit engagements is ordinarily no shorter than seven years from the date of auditor's report, or if later, the date of the group auditor's report.”

- vii) In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the

corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.

- viii) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.
- ix) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies, and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor that would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies, and other entities are directed to render the necessary information and cooperation to the

Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- x) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
- xi) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

24. In the given facts and circumstances, the present petition being complete petition is admitted in terms of Section 10 (4) (a) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended, or interrupted during the moratorium period. The provisions of Section 14 (3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

25. The petitioner-corporate applicant is directed to deposit an amount of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by the Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner-corporate applicant to be recovered as the CIRP cost.

26. Accordingly, the present petition is allowed and admitted.

27. A copy of this order be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

August 25, 2023
JGS/PRF