

IN THE NATIONAL COMPANY LAW TRIBUNAL,
INDORE BENCH AT AHMEDABAD
Division Bench
Court - 1

ITEM No.138
CP(IB)/22(MP)2021

Order under Section 10 IBC

IN THE MATTER OF:

Shirani Automotive Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..23/12/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

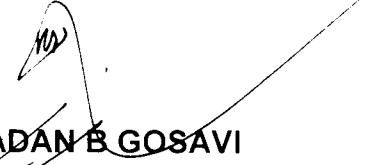
ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT-1**

CP (IB)No.22 (MP) 2021

[Under Section 10 of Insolvency & Bankruptcy Code, 2016 r.w. Rule 7 of IBBI (Application to Adjudicating Authority) Rules, 2016]

In the matter of:

M/s. Shirani Automotive Pvt Ltd.

(CIN: U34100MP2009PTC021929)

(Through its Director Mr. Yahaya Khan)

Having its Registered Office at:

K. 20/2, Lasudia Mori,

A.B. Road, Dewas Naka,

Indore MP

452010 IN

Email ID: newsagarauto1@gmail.com

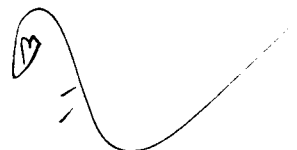
**Applicant/Corporate
Debtor**

**Order reserved on 10.12.2021
Order pronounced on 23.12.2021**

**Coram: Hon'ble Mr. Madan B.Gosavi (Member Judicial)
Hon'ble Mr. Ajai Das Mehrotra (Member Technical)**

Appearance:

For Applicant: Learned PCS Mr. Pratik Tripathi.



ORDER
[Per: Bench]

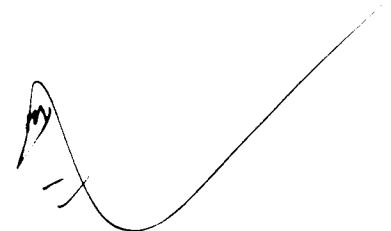
1. The present application has been filed by the Applicant/Corporate Debtor through its director Mr. Yahaya Khan, under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IB Code**”) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Process in respect to the applicant i.e. M/s. Shirani Automotive Pvt Ltd.
2. The Corporate Applicant was incorporated on 18th May 2009 under the Companies Act, 1956 with the Registrar of Companies, Gwalior, having its registered office situated at K.20/2, Lasudia Mori, A.B. Road Dewas Naka, Indore, M.P. 452010, CIN No. U34100MP2009PTC021929, hence this Authority has jurisdiction to adjudicate the present application.
3. The Corporate Applicant submitted by this application that the Authorised Share Capital of the company is Rs. 1,25,00,000/- (12,50,000 Equity Shares of Rs. 10 each)



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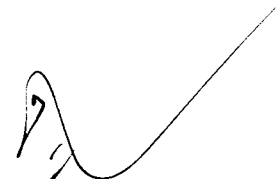
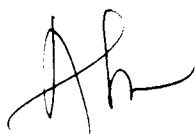
and the Issued, Subscribed, Paid-Up Share Capital of the Applicant is Rs. 67,21,000/- (6,72,100 Equity Shares of Rs. 10 each).

4. It is further submitted by the Corporate Applicant that the Board Resolution dated 1st July 2021, as well as Special Resolution in the Extraordinary General Meeting, dated 12th July 2021, resolved and authorized Mr. Yahaya Khan, Director having DIN: 01168761, to file an application under section 10 of the IB Code, 2016, r.w. Rule 7 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate CIRP against the Corporate Applicant before this Adjudicating Authority.
5. It is further submitted by the Corporate Applicant that there are 3 (three) financial creditors of Rs. 11,72,35,186/- in the company and 4 (Four) Operational Creditors of Rs. 3,32,91,899/-. Details of Financial Creditors, Operational Creditors and Debt amount are as follows:



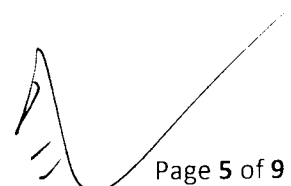
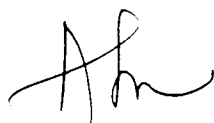
1. Volkswagen Finance Pvt. Ltd. (Financial Creditor)-
Rs. 2,21,32,080/-.
2. Axis Bank (Financial Creditor)- Rs. 5,32,98,289/-.
3. Sagar Automobile Pvt. Ltd. (Financial Creditor)- Rs.
4,18,04,817/-.
4. ESIC Payable (Operational Creditor)- Rs. 68,592/-.
5. Professional Tax Payable (Operational Creditor)- Rs.
48,638/-.
6. Service Tax Payable (Operational Creditor)- Rs.
20,38,775/-.
7. Vat Tax Payable (Operational Creditor)- Rs.
3,11,35,894/-.

- 6.** It is submitted by the Corporate Applicant that proceedings under SARFAESI Act, 2002 have already been initiated by the Financial Creditor of the Corporate Applicant. The notice under section 13(2) of SARFAESI Act, 2002 has been issued by Volkswagen Finance Pvt. Ltd. on 17.03.2017 for the repayment of Rs. 3,83,10,804/-. The said Financial Creditor took possession of the land mortgaged in favor of the said due



to non-payment of amount as demanded under aforesaid notice. The Corporate Applicant further submitted the default has been committed to pay the loan amount of Rs. 4,69,97,196/-, of Sagar Automobile Private Limited as per the term sheet dated 18.02.2019 executed between the Corporate Applicant and Sagar Automobiles Private Limited, the said amount was to be paid within 01 year from the date of execution of sale letter dated 08.02.2019 by Axis Bank for the mortgaged assets of Sagar Automobiles Private Limited with interest. Unsecured Loan is considered as given from the date of the sale letter i.e. 08.02.2019, which has not been paid by the Corporate Applicant.


7. It is also submitted by the Corporate Applicant in its explanatory statement that the Company had no business activity for the last 3-4 years, and the Company landed into financial crisis. The debts of the Company have been repaid to the extent possible but there were continued defaults in payments of outstanding debt. The present scenario, state of affairs, and financial position of



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the Company is also considered by the Board of Directors and they opined that Company is not able to pay its financial debt including routine expenses, and also defaulted in repayment of debts due to the bank, NBFC and others. The Corporate Applicant has filed the audited financial statement for the financial year i.e. 2015-16 and 2016-17 and provisional financial statements as of 12.07.2021 and has annexed it to the application.

8. It is submitted by the Corporate Applicant that it is unable to pay off its debts, and has prayed for initiation of CIRP in respect of itself.
9. In the present application, the Applicant has proposed the name of Mr. Ashutosh Gokhale, as an Interim Resolution Professional having Reg. No. IBBI/IPA-001/IP-P00613/2017-18/11072. It has further annexed a copy of the written communication received from the proposed Interim Resolution Professional in Form-2, showing his willingness to accept such assignment to act as IRP.



10. We have heard the learned Counsel for the applicant and perused the material on record, it appears that the Corporate Applicant has made defaults in paying the debts borrowed from the Financial Creditors. The DRT proceedings has already been initiated against the Corporate Applicant by the Volkswagen Finance Pvt. Ltd. and Axis Bank, and as per the term sheet dated 18.02.2019 executed between the Corporate Applicant and Sagar Automobile Pvt. Ltd., the amount of default meets the threshold limit prescribed under the IB Code. It is well within the limitation period to initiate the CIRP proceedings, and it is defect-free, hence we admit the present application and order as under:

Order

- I. 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.*

II. 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, 2016, as the case may be.

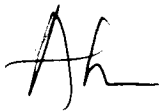
III. The applicant has proposed the name of IRP. Therefore, this Adjudicating Authority hereby appoints Mr. Ashutosh Gokhale having Registration No. IBBI/IPA-001/IP-P00613/2017-18/11072, as Interim Resolution Professional, who shall take necessary steps as envisaged under Sections 15, 17, and 18 of IBC, 2016. The IRP is further directed to convene the first meeting of COC within 30 days



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from the date of his appointment and to submit his report within the said period. In terms of section 17 of IBC, 2016, the Board of the Corporate Debtor shall stand suspended.

- IV.** Registry is directed to communicate a copy of this order to the Applicant at its registered address as well as to the Interim Resolution Professional and the Registrar of Companies, Gwalior, after the completion of necessary formalities.
- 11.** No order as to costs.
- 12.** Accordingly, the present CP (IB) No.22 (MP)2021 is admitted.



Ajai Das Mehrotra
(Member Technical)



Madan B. Gosavi
(Member Judicial)

Keshav