

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT-I
KOLKATA**

CP (IB) No. 211/KB/2023

A petition 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:

Gemus Engineering Limited [CIN: U27109WB1996PLC081038] having its registered office at E/3/4 Gillander House, 8, N. S Road, Kolkata- 700001, West Bengal.

... Corporate Applicant

Date of pronouncement: 30.04.2024

Coram:

Rohit Kapoor	:	Member (Judicial)
Balraj Joshi	:	Member (Technical)

Appearances (through video conferencing):

For the Corporate Applicant:	Ms.Kiran Sharma, Adv.
	Mr. Soorjua Ganguli, Adv.
	Ms. Akshita Bohra, Adv.

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. The present petition has been filed by **Gemus Engineering Limited**, CIN: U27109WB1996PLC081038, the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“**Adjudicating Authority Rules**”) for initiation of Corporate Insolvency Resolution Process (“**the CIRP**”) against itself. The application has been filed through its Director Mr. Om Prakash Choudhary DIN: 09120744, duly authorised vide Board Resolution dated July

24, 2023, which is annexed as **Annexure “B” at page 70-71** of the petition. The petition is supported by an affidavit duly affirmed by Mr. Om Prakash Choudhary, Director of the Corporate Applicant, which is placed at pages 11 and 13 of the petitions.

3. The Corporate Applicant was incorporated on 23/08/1996 vide Certificate of Incorporation issued by the Registrar of Companies, which is placed at **page 16 of the petition (Annexure “A”)**. It was mainly engaged in the activities of manufacturing and export of Ductile Iron Casting. The Corporate Applicant has duly annexed copy of Master Data and Memorandum and Articles of Association as **Annexure “A” at pages 14 to 69 of the petition.**
4. The reasons for applying for initiation of the CIRP by the Corporate Applicant are as follows: -
 - a. In adverse situations, apart from the technical and managerial support, the Promoter(s) of the Corporate Applicant have also extended substantial financial support to the Corporate Applicant. The Corporate Applicant invested these resources to improve asset reliability and infrastructure, reduce cost, improve quality, strengthen human resources, repay debts and improve working capital.
 - b. Despite the relentless efforts, with continued support from all stakeholders, especially the Promoter(s), the Corporate Applicant could not perform and achieve its planned turnover, due to changes in external and internal environment, and continued sub optimal performance.
 - c. In financial year 2020-2021, the net worth of the Corporate Applicant had eroded. The turnover for the Corporate Applicant has been NIL for the financial years 2021-2022 and 2022-2023.
 - d. The total debt owed to the Financial Creditors as on August 31, 2023 is Rs. 13,56,85,641.70/- (Rupees Thirteen Crores Fifty Six Lakhs Eighty-Five Thousand Six Hundred Forty-One and Seventy Paise). A list of the names and

addresses for correspondences of the Financial Creditors along with the respective dues of each Financial Creditor is annexed as **Annexure E at pages 85 to 86 of the application.**

- e. The total debt owed to the Operational Creditors as on August 31, 2023 is Rs. 9,82,20,953.56/- (Rupees Nine Crores Eighty- Two Lakhs Twenty Thousand Nine Hundred Fifty-Three and Fifty-Six paise). A list of the names and addresses for correspondences of the Operational Creditors along with the respective dues of each Operational Creditor is annexed as **Annexure F at pages 87 to 91 of the application.**
5. The Corporate Applicant owes an amount of **Rs. 23,39,06,595.26** /- (Rupees Twenty-Three Crores Thirty-Nine Lakhs Six Thousand Five Hundred Ninety-Five and Twenty-Six Paise) [an amount of Rs. 13,56,85,641. 70 /-(Rupees Thirteen Crores Fifty Six Lakhs Eighty-Five Thousand Six Hundred Forty-One and Seventy Paise) as on August 31' 2023 to its Financial Creditors as listed out in **Annexure E** + an amount of Rs. 9,82,20,953.56/- (Rupees Nine Crores Eighty Two Lakhs Twenty Thousand Nine Hundred Fifty-Three and Fifty-Six paise) as on August 31, 2023 to its Operational Creditors as listed out in **Annexure F**.
6. The members of the Corporate Applicant have given their consent by way of a special resolution passed in the Extra Ordinary General Meeting held on 21/08/2023 (**Annexure "C" at pages 72 to 79 of the petition**) to file an application under section 10 of the Code, which is as follows:-

“RESOLVED FURTHER THAT *the consent of the members of the Company be and is hereby accorded to the Board of Directors to make an application before the Hon 'ble National Company Law Tribunal, Kolkata Bench under the provisions of Section 10 of the Insolvency and Bankruptcy Code, 2016 for initiating corporate insolvency resolution process against the Company, and be and is hereby authorized to do all such matters, deeds and things as may be required under the*

provisions of the Insolvency and Bankruptcy Code, 2016 and the rules made there under.”

7. The Corporate Applicant has proposed the name of **Mr. Arun Kumar Gupta** (Registration No. IBBI/IPA-001/IP-P00013/2016-2017/10037) to function as the Interim Resolution Professional and has also annexed his consent dated September 25, 2023 in Form 2 along with the Certificate of Registration by the Insolvency and Bankruptcy Board of India, which are annexed as **Annexure D at page 84** of the application.
8. In support of its application, the Corporate Applicant has submitted, inter alia, the following additional documents with the application:-

Document	Annexure	Page No.
Financial Debts incurred by the Corporate Applicant	Annexure I	99-100
Operational Debts incurred by the Corporate Applicant	Annexure J	101-113
Trial Balance of the Corporate Applicant for the period starting from April 1, 2020 to March 31, 2021, April 1, 2021 to March 31, 2022, and April 1, 2022 to March 31, 2023 evidencing the amounts due and payable by the Corporate Applicant	Annexure K	114-125
Bank statement of the Corporate Applicant for specific periods (period starting from April 1, 2021 to March 31, 2022 and April 1, 2022 to March 31, 2023)	Annexure L	126-150
Statement of Affairs of the Corporate Applicant as on September 25, 2023 in accordance with Rule 7(1) of the Adjudicating Authority Rules as on September 25, 2023 along with list of pending litigation and list of shareholders	Annexure M	151-157
Audited financial statements for the financial years April 2021 to March 2022 and April 2022 to March 2023 along with a copy of the provisions financial statement for the current financial year made up	Annexure N	158-211

to a date not earlier than 14 days from the date of filing of the application, i.e., from April 1, 2023 to September 25, 2023		
Copies of demand notices served by Financial Creditors	Annexure O	212-254
Copies of invoices outstanding/demand notices served by Operational Creditors	Annexure P	255-283

9. In compliance of the order dated November 29, 2023 passed by this Adjudicating Authority, the Corporate Applicant has placed on record publications made on December 15, 2023 in "***Business Standard***" (English) and "***Aajkal***" (Bengali) by way of an affidavit affirmed on December 27, 2023 (**Annexure B of Affidavit of Compliance at pages 5 and 6**). In terms of this publication, the next date of hearing before this Adjudicating Authority was notified and the Corporate Applicant has not received any objection.
10. We have heard the Learned Counsel appearing for the Corporate Applicant and have perused the documents on record.
11. There is no dispute from any quarter that the debt is due and payable by the Corporate Applicant to various creditors and the Corporate Applicant is unable to pay the same. The default is certain from the Copies of Outstanding/Demand Notices from the Financial Creditors (**Annexure O of Application at page 212-254**) and Operational Creditors (**Annexure P of Application at page 255-283**). The Corporate Applicant has furnished the books of accounts for the relevant period under section 10(3)(a); the Corporate Applicant has proposed the name of the Interim Resolution Professional (IRP), who has submitted his written consent (section 10(3)(b)); the Corporate Applicant has also filed the Special Resolution passed by shareholders in Extra Ordinary General Meeting dated 21/08/2023 under section 10(3)(c).
12. The Petition is free from defects and complete in all aspects as required under the law. The Petition shows that the Corporate Applicant is in default of a debt that is due and

payable, and the default is more than the threshold amount as stipulated under section 4(1) of the Code at the relevant time. The default stands established and there is no reason to deny the admission of the present Petition.

13. Therefore, in the light of the facts stated in the application and the evidence placed on record, this Adjudicating Authority admits this Application and orders initiation of CIRP against the Corporate Applicant under the following terms: -

- a. The Application bearing CP (IB) No. 211/KB/2023 filed by the Corporate Applicant under section 10 of the Insolvency & Bankruptcy Code, 2016, is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of Gemus Engineering Limited.
- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Applicant under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. As per the proposal given by the Corporate Applicant, **Mr. Arun Kumar Gupta** (Registration No. IBBI/IPA-001/IP-P00013/2016-2017/10037) having email id: guptaarunkumar2001@yahoo.com, of P-15, Bentinck Street, 3rd Floor, Kolkata 700001 is appointed as the Interim Resolution Professional (“**IRP**”) subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of Regulation 7A of the Insolvency and Bankruptcy Board of

India (Insolvency Professionals) Regulations, 2019, for ascertaining the particulars of Creditors and convening meetings of Committee of Creditors (“CoC”) for evolving a Resolution Plan

- f. During the CIRP period, the management of the Corporate Applicant shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the Code. The officers and managers of the Corporate Person shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports on quarterly basis with regard to the progress of the CIRP in respect of the Corporate Applicant.
- h. The Corporate Applicant to pay to IRP a sum of Rs **300,000.- (Rupees Three Lakh only)** to meet the initial costs, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- i. The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and its subsequent amendments if any.
- j. The Court Officer of this Court is hereby directed to communicate this Order to the Corporate Person and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

- k. Additionally, the Corporate Applicant shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Applicant. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
14. **CP (IB) No. 211/KB/2023** to come up on **17.05.2024** for filing the first progress report.
15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on the 30th day of April, 2024.

A.J.S