

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

35. Intervention Petition/14/2024 IA 2496/2024
IN C.P.(IB)-139(MB)/2023

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 12.06.2024

NAME OF THE PARTIES: - Vasai Vikas Sahakari Bank Ltd IA 2496/2024
Hari Om Auto Components Private Limited
IN THE MATTER OF
Hari Om Auto Components Private Limited.

Section: Sec 60(5) U/s 10 of Insolvency and Bankruptcy Code,2016.

ORDER

IA No. 2496/2024:- CS, Prashant Thakre appeared for the Applicant. The present application has been filed for urgent hearing of the C.P.(IB)-139(MB)/2023. Since the matter has already been listed on board for hearing, this IA No. 2496/2024 is disposed of as rendered infructuous.

Intervention Petition No. 14/2024 & C.P.(IB)-139(MB)/2023:- CS, Nithish Bangera appeared for the Applicant in Intervention Petition No. 14/2024. CS, Prashant Thakre appeared for the Corporate Applicant in C.P. (IB)-139(MB)/2023. Heard, Counsel for the parties for a considerable time. Detailed order will follow vide separate order sheet.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)
SUSHIL

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 20/06/2024

[Signature]
Deputy Registrar

National Company Law Tribunal Mumbai Bench
12.06.2024

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT II

Intervention Petition No. 14 of 2024

In

CP (IB) 139/MB/C-II/2023

Under Section 10 of the Insolvency &
Bankruptcy Code, 2016 r/w Rule 7 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of

Intervention Petition No. 14 of 2024

Vasai Vikas Sahakari Bank Ltd.

... Secured Financial Creditor

In the matter of

M/s. Hari Om Auto Components

Private Limited

[CIN: U35990MH2007PTC169517]

Registered office RL 184/7 MIDC
WALUJ, Aurangabad-431136,
Maharashtra

...Corporate Applicant/Petitioner

And

CP (IB) 139/MB/C-II/2023

M/s. Hari Om Auto Components

Private Limited

[CIN: U35990MH2007PTC169517]





IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT II

CP NO. 139 OF 2023

Registered office RL 184/7 MIDC
WALUJ, Aurangabad-431136,
Maharashtra

...Corporate Applicant/Petitioner

Order Pronounced: 12.06.2024

Coram:

Anil Raj Chellan

Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

Appearances:

For the Corporate Applicant : CS, Prashant Thakre

For the Applicant in Intervention

Petition No. 14/2024 : CS, Nithish Bangera

ORDER

Per: Coram

1. This Application is filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("**the Code**") read with Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, I&B Rules 2016), by Hari Om Auto Components Ltd (in short, "**the Corporate Applicant**") for initiation of Corporate Insolvency Resolution Process (**CIRP**) following defaults in meeting the financial obligations to its Creditors as shown in the Company Petition filed in Form-6.
2. Part –I of the Petition mentioned that the Corporate Applicant is a Private Limited Company incorporated on 02.04.2007 bearing CIN:



IN THE NATIONAL COMPANY LAW TRIBUNAL
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U35990MH2007PTC169517 and having its Registered office at C/o Santosh Nimbalkar, RL-76, Near Shahid Bhagat Singh School, Bajaj Nagar Resi. Area, Wadgaon Kolhati, Waluj, Aurangabad-431136.

3. Part – II of the Petition mentioned that the Corporate Applicant has proposed – Mr. Madan Bajrang Lal Vaishnawa having Registration No. IBBI/IPA-001/IP-P02011/2020-2021/13052., as the Interim Resolution Professional (IRP) and has also filed his written consent in Form -2.
4. Part – III of the Petition discloses the details of the total amount of default of Rs 5,70,34,804/- as of 30.11.2022.
5. List of all Creditors are as under:

Name of Financial/Operational Creditor	Amount
Vasai Vikas Sahakari Bank Ltd.	Rs. 48950287
Unsecured Financial Creditors	
Dayamoy J. Ghosh	Rs. 300000
Rekha Khemraj Hingankar	Rs. 4932821
Sanjay Damodar Dafalapurkar	Rs. 300000



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Santosh Wamanrao Nimbulkar	Rs. 487445
Vishwa Tooling Systems P Ltd	Rs. 196638
Total	Rs. 6216904
<u>Operational Creditors</u>	
a) For Salary & Wages:	
Chaitanya Pinalwar	Rs. 166798
Dilip Lokhande	Rs. 61758
Gajanan More	Rs. 51010
Santosh Wamanrao Nimbulkar	Rs. 838200
Sandeep Palaspagar	Rs. 86035
Sanjay Dafalapurkar	Rs. 31696
Vikas Bikkad	Rs. 37805
Factory Rent	
Hariprasad Mantri*	Rs. 38000



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MUMBAI BENCH, COURT II

CP NO. 139 OF 2023

Total	Rs. 1311302
For Goods & Services:	
Hitech Coaters & Converters	Rs. 71273
Royal Electrical & Motor R Works	Rs. 10169
Renuka Gas Services	Rs. 208307
Manu Electricals	Rs. 15826
LSI Engineers Pvt Ltd	Rs. 105086
Maxiwhite Polypack	Rs. 164203
Metalloids Industries	Rs. 45009
Prachi Industries	Rs. 142500
Sai Enterprises	Rs. 200000
Shree Enterprises	Rs. 20988
Vishal Gulabchand	Rs. 250000
Vishwa Tooling Systems P Ltd	Rs. 606800



Vyankatesh Packaging	Rs. 27450
Total:	Rs. 1867611
Total of all Creditors	58,346,104/-

6. The list of documents submitted in support of the Application is as follows:

- a) Copy of the Special Resolution dated 30.11.2022
- b) Copy of the MCA Charge creation certificate for the loan taken from the Bank.
- c) Copy of the List of secured, unsecured, and operational creditors with complete details of the amounts due and address.
- d) Copy of its Memorandum of Association and Article of Association.
- e) Copy of Loan Sanction Letter, hypothecation of plant and machinery agreement.
- f) Copy of notice sent by Vasai Vikas Sahakari Bank to the Corporate Applicant for repayment of the loan amounts.
- g) Copy of Loan Account Statement.
- h) Audited Financials for FY 31.03.2021-31.03.2022 and provisional financials as on 30.11.2022.
- i) Audited Financials for FY 31,03.2022-31.03.2023 and provisional financials as on 31.01.2024.
- j) Copy of registration of the Corporate Applicant as a registered MSME entity (Udyan Registration Certificate).



7. A Special Resolution was passed on 30.11.2022 by the Shareholders of the Corporate Applicant to initiate the CIRP given the bad market conditions affecting the business in the COVID PERIOD in 2020-2022 it is totally impossible to run the business of the Corporate Applicant and Mrs. Punam Santosh Nimbulkar, Director and P S Thakre & Company, Company Secretaries of the Corporate Applicant appointed as the authorized persons to initiate the CIRP proceedings in respect of the Corporate Applicant.
8. The Corporate Applicant submits that the secured financial debt was incurred on March 12, 20218 corresponding to the date of sanction and disbursal of the loan made by Vasai Vikas Sahakari Bank.
9. The unsecured financial debts were incurred on various dates through the receipt of unsecured loans. Similarly, the operational debts were incurred on different dates.
10. The Corporate Applicant was sanctioned a loan amount of Rs. 3,40,00,000/- (Rupees Three Crore Forty Lakh only) by Vasai Vikas Sahakari Bank Limited (hereinafter "the Bank") which was availed by the Corporate Applicant and a charge was created on its assets in favour of the Bank. A copy of the charge certificate is annexed with the Petition.
11. The Corporate Applicant committed default in payment/repayment on August 12, 2019, the due date for payment of the first installment which led to the issue of notice by the Bank. The Corporate Applicant stated that the estimated value of the hypothecated plant and machinery in favour of the Bank is INR 2,69,67,400/- (Two Crores Sixty-Nine Lakhs Sixty-Seven thousand and Four hundred only).



12. The Corporate Applicant submits that there are no litigations pending against the Corporate Applicant or by the Corporate Applicant before any court of law or tribunal, except a case filed by Vasai Vikas Sahakari Bank Ltd., the only secured financial creditor of the Company, before the Hon'ble Deputy Registrar, Co-operative Societies, Vasai (West). The Bank is seeking issuance of a recovery certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960, for the recovery of loan granted by the Bank to the Corporate Applicant, and it has been pending for adjudication since 8.07.2021.
13. The Corporate Applicant issued notices to the only secured Financial Creditor and the Operational Creditors. The Financial Creditor (Vikas Sahakari Bank Ltd) entered its appearance and filed its reply by way of Intervention Petition No. 14 of 2024.

Intervention Petition No. 14 of 2024

14. The Bank, as intervenor, stated that it granted a term loan of Rs.340 lakhs to the Corporate Applicant against the hypothecation of all the machinery of the Corporate Applicant and guarantee of the promoters. In view of the default committed by the Corporate Applicant, the Bank filed recovery proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 before the Dy. Registrar of Co-operatives, Vasai. An amount of R.5,96,36,697/- as on 31.10.2023 along with further interest is due from the Corporate Applicant. The said matter was heard by Dy. Registrar of Co-operative Societies on many occasions and finally closed for orders. The Bank stated that the present application is filed to cause obstructions to the recovery proceedings initiated by the Bank being a secured creditor. The Bank, therefore, prayed for dismissal of the Company Petition.



15. The Corporate Applicant, however, contended that the Corporate Applicant is an MSME entity and the Company Petition is filed with the intent and motive of a holistic and comprehensive resolution of the Corporate Debtor as per the provisions of the Code which provides special provisions for resolution of MSME entities. The Corporate Applicant has not concealed any facts and the Petition is not intended to defraud anyone.
16. The Bank in the rejoinder further contended that the outstanding dues of the Corporate Applicant is Rs.55425260 towards the Bank and Rs.6216904 to other creditors. In case the Corporate Applicant wanted to revive the Company, it could have settled the debts directly with the creditors, and filing of Company Petition u/s.10 of the Code is not justified as it never approached the Bank for clearing the outstanding dues. The Corporate Applicant has filed the Company Petition with malafide intention to get rid of all liabilities of the Bank and cause obstructions to the recovery proceedings initiated by the Bank as a secured creditor. The Bank, therefore, sought dismissal of the Company Petition.

Analysis and decision:-

17. We have heard the Counsel for the Corporate Applicant and the Bank and perused the records. The Intervention Petition No. 14 of 2024, being in the nature of objections filed by the Bank to the Company Petition, both applications are being dealt together in this order.
18. It is noticed that the Corporate Applicant filed the Company Petition under Section 10 of the Code to initiate CIRP against the Corporate Applicant for resolution of its corporate debt. The outstanding liabilities of the Corporate Applicant are regularly acknowledged in the balance sheets, the latest being of 31.03.2023 of the Corporate Applicant. The entry in the balance sheet



amounts to an acknowledgment of liability under section 18 of the Limitation Act, 1961 in view of the judgement of the Hon'ble Supreme Court in the Matter of *Assets Reconstruction (India) Limited versus Bishal Jaiswal and others*, MANU/ SC/ 0279/2021. The default of the Corporate Applicant is admittedly above the threshold limit prescribed under section 4 of the Code, and the defaults are well within the period of limitation.

19. The contentions raised by the Bank are that the present application is filed to cause obstructions to the recovery proceedings initiated by the Bank as a secured creditor which is in the final stage of passing an order against the Corporate Applicant and that the Corporate Applicant could have resolved the stress by separately approaching the Bank and other creditors and filing of the Company Petition is with the malafide intention of getting rid of the liabilities under the Code.
20. It is a trite position of law that the pendency of proceedings initiated by creditors or adversely impacting the recovery action of the creditor is not a ground for rejecting the Petition filed under Section 10 of the Code. The Corporate Applicant can very well invoke the objective of finding a resolution of corporate stress as per the provisions of the Code and just because of certain special provisions apply to the Corporate Debtor, which is an MSME, cannot be termed as malafide. On account of the above, we have no hesitation in holding that the objections raised by the Bank are not tenable.
21. The Corporate Applicant has also proposed the name of the Interim Resolution Professional in the application, the consent letter of the IRP is annexed with the application.
22. The Corporate Applicant has established debt and default beyond the threshold limit prescribed under Section 4 of the Code which is not barred by



limitation, and the Company Petition is complete and no disciplinary proceeding is pending against the proposed resolution professional. Thus, we hold that this is a fit case for admission and accordingly, admit the Company Petition C.P. No. 139 of 2023 and reject the Intervention Petition No. 14 of 2024 in the following terms:

ORDER

- a. **The above Company Petition No. (IB) 139/(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Hari Om Auto Components Private Limited.**
- b. This Bench hereby **appoints Mr. Vallabh Narayandas Sawana, Registration No: IBBI/IPA-001/IP-P-02652/2022-2023/14114 as the Interim Resolution Professional having his address at Building No. 11, Flat No. 505, Regency Sarvam, GANESH MANDIR ROAD, TITWALA (EAST), Kalyan, District-Thane- 421605 Maharashtra, Email :- vallabhsawana@gmail.com;** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Corporate Applicant shall deposit an amount of **Rs. 2,00,000/- (Rupees Three Lakhs Only)** towards the **initial CIRP cost** by way of a



Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.





IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT II

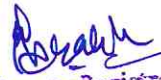
CP NO. 139 OF 2023

23. Accordingly, Company Petition No. 139 of 2023 is admitted and Intervention Petition No. 14 of 2024 is rejected.
24. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
Anil Raj Chellan
Member (Technical)

Sd/-
Kuldip Kumar Kareer
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 25/06/2024

Deputy Registrar
National Company Law Tribunal Mumbai Bench
(D.6425) 24/6/2024