

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

C.P.(IB)No.159/BB/2020
U/s 10 of IBC, 2016
R/w Rule 7 of I&B (AAA) Rules, 2016

In the matter of:

**M/s.Blue Whale Machinery
Technologies Pvt. Ltd.**

*(Represented by
Mr. Deepak Dhirajlal Mehta, Director)*
#Pride Pavilion Flat, B-103,
1st Floor, 2-1-13, 1st Stage,
6th Phase, West of Chord Road,
Rajajinagar,
Bangalore – 560 010.

- Petitioner/Corporate Applicant

Order Pronounced on: 10th July, 2020

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

Parties/Counsels present (Through Video Conference):

For the Petitioner : Mr. Venkatesh Kumar,

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P.(IB)No.159/BB/2020 is filed by Mr. Deepak Dhirajlal Mehta, Director of M/s.Blue Whale Machinery Technologies Pvt. Ltd. ('Petitioner/Corporate Applicant') under Section 10 of the IBC, 2016, R/w Rule 7 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Blue Whale Machinery Technologies Pvt. Ltd., on the ground that it has committed default for a total amount of Rs.18,01,59,144/- (Rupees Eighteen Crore One Lakh Fifty Nine Thousand One Hundred and Forty Four Only) which includes Financial Creditors (Rs.11,23,40,812/-) and Operational Creditors (Rs.6,78,18,332/-).



2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

(1) M/s. Blue Whale Machinery Technologies Pvt. Ltd. (herein after referred to as 'Company') was incorporated on 19.11.2007 as a Private Company Limited by shares with the ROC, Karnataka vide CIN: U29128KA2007PTC044409. Its Authorised Share Capital is Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh Only) divided into 150000 (One Lakh Fifty Thousand) number of Equity Shares of Rs.100/- (Rupees Hundred Only) each and the Issued, Subscribed & Paid-up Share Capital of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh Only) divided into 150000 (One Lakh Fifty Thousand) number of equity shares of Rs.100/-(Rupees Hundred) each. The main objects of the Company in brief are to carry on the business in India or elsewhere, the business of manufacturing, buying, selling reselling hiring, altering, importing, exporting developing, modifying, renovating, job working and to deal in all descriptions, sizes, dimensions capacities applications etc.

(2) It is stated that the Company was running with good condition till financial year ending 31.03.2017. However, due to variation in market and other unavoidable reasons the Company was not running good and Directors started searching for the finance. The Company's books are also loss in the year/financial year ending 31.03.2019 and unable to repay debt/loan instalments, despite that the Directors tried their level best to continue the business and try to increase the sales/revenue due to market situation it was not happened and loss was continuing. Subsequent to that Company received Demand Notice under SARFAESI Act (i.e. Default) from the Karur Vysya Bank Limited dated 31.12.2019 demanding total amount of Rs.6.49 Crore.

(3) Details of Financial Creditors and Operational Creditors to whom the Company owes money, the details of the Creditors and the amount sanctioned as well as the amount in default are as follows:



Sl. No.	Name, Address of Creditors	Date of Occurrence of debt	Amount of Debt or Service Provided	Amount in Default	Security against loan
Financial Creditors					
1.	Karur Vysya Bank Ltd.(Cash Credit) 230/2, 15 th Cross, Sampige Road, Malleshwaram, Bangalore-560003	12/10/2018 on 12/10/2018 cash credits limits were enhanced	50,000,000	65,801,708	Refer Statement of affairs
2.	UCO Bank Corporate Home Loan (Villa No.13) 47, West Park Road, 15 th Cross, Malleshwaram-560003	18.10.2016	10,700,000	8,902,436	Refer Statement of affairs
3.	UCO Bank Corporate Home Loan (Villa No.10) 47, West Park Road, 15 th Cross, Malleshwaram-560003	18.10.2016	10,900,000	9,091,284	Refer Statement of affairs
4.	Unsecured Loan from NBFC's & other Banks	-	45,388,264	28,545,384	Refer Statement of affairs
Total			11,69,88,264	11,23,40,812	
Operational Creditors					
1.	Total Operational Creditors	Debt has incurred throughout the year	Credit Purchase and advance from Customer care	67,818,332	Refer Statement of affairs

Abstract

1.	Financial Creditors	11,23,40,812
2.	Operational Creditors	6,78,18,332
Total		18,01,59,144

(4) List of Assets and Liabilities as on 10.02.2020 (Book Value)

List of Assets as on 10 th February 2020		
Sl. No.	Particulars	Amount (Rs.)



1.	Non-current Assets	27,649,939
2.	Long Term Loans and Advances	-
3.	Inventories	46,145,532
4.	Trade Receivables	52,412,223
5.	Cash and Cash Equivalents	198,914
6.	Other Current Assets	2,314,999
7.	Short Terms Loans and Advances	81,103,471
	Total Assets	21,28,25,081
List of Liabilities as on 10 th February 2020		
1.	Share Capital	15,000,000
2.	Reserves & Surplus	16,467,134
3.	Long Term Borrowings	5,31,83,595
4.	Other Current Liabilities	12,81,74,350
	Total Liabilities	21,28,25,081

(5) The case of M/s.Unigreen Global Private Limited Vs. Punjab National Bank and Ors.,¹ decided by the Hon'ble NCLAT in its order dated 01.12.2017 has been cited in support of its Petition.

3. Heard Mr. Venkatesh Kumar, learned Counsel for the Petitioner through video conference. We have carefully perused the pleadings of the party and the extant provisions of the Code and the Rules made thereunder.
4. As per Section 10 of Insolvency and Bankruptcy Code, 2016, a Corporate Applicant can file an application before the Adjudicating Authority, seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor that has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudicating Authority, in a prescribed form by enclosing the following:
 - a. *The information relating to its books of account and such other documents for such period as may be specified:*

¹ Comp. App. (AT) (Insolvency) No.81/2017



- 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 filing of the application.*

As per Section 10(4) the Adjudicating Authority can admit an application if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.

5. It is a settled position of law that once debt and default is proved to the satisfaction of the Adjudicating Authority, the case has to be admitted to initiate CIRP, and appoint IRP etc. We are satisfied with the reasons cited by the Petitioner to initiate CIRP. The instant Company Petition is filed in accordance with law.
6. In *M/s.Unigreen Global Private Limited Vs. Punjab National Bank and Ors.*,² decided by the Hon'ble NCLAT in its order dated 01.12.2017, it was held that the law laid down in *Innoventive Industries Ltd.* equally applicable to Section 10 of the Code as it was to section 7, and the Petition should be admitted once the Adjudicating Authority is satisfied that a debt and default have occurred.
7. The instant Petition was filed by the Shareholders of the Petitioner Company, as per the Resolution passed at the EGM held on 18th January 2020, where it was:

"Resolved that approval of the members be and is hereby granted for initiating a Corporate Insolvency Resolution Process u/s 10 of the Insolvency and Bankruptcy Code, 2016, and that application filed by the Company in Form 6 of The Insolvency and bankruptcy (Application to the Adjudicating Authority) Rules 2016 by Mr Deepak Dhirajlal Mehta Director before National Company

² Comp. App. (AT) (Insolvency) No.81/2017

Law Tribunal, Pursuant Resolution passed by the Board of Directors Meeting held on 6th January 2020.....”

Copies of the Resolutions mentioned above have been filed.

8. Financial Statements and Statement of Affairs have been filed with the Petition and subsequently again through a Memo and Form C on NeSL. As seen from the details filed it is evident that the Company is saddled with huge debts, and has been in default. The debts in default viz. a viz. the Financial Creditors amount to Rs.11,23,40,812/-; and viz. a viz. Operational Creditors amount to Rs.6,78,18,332/-, both totalling to Rs.18,01,59,144/-. The Petitioner has filed with the Petition, copies of Audited Balance Sheet and Profit and Loss Account, prepared by J Sudarshan & Co., Chartered Accountants. The Balance Sheet for the YE 31.03.2018 reflects at Note 3 Long Term Borrowings against hypothecated assets amounting to Rs.7,29,39,446.18/- and Current Liabilities of Rs.4,06,74,381.94/-. For this period it had a profit of Rs.69,27,898.90/-. However, the Provisional Balance Sheet filed for the period 01.04.2019 to 10.02.2020 shows that the Long Term and Current Liabilities stood at Rs.5,31,83,595.58/- and Rs.12,81,74,350.64/- respectively, and the Profit & Loss A/c for this period shows a loss of Rs.1,31,73,013.16/-. As per the Statement of Affairs as on 10.02.2020 filed by the Petitioner shows that while its Total Liabilities were Rs.14,44,21,277/-, the Estimated Realisable value of its Assets came to only Rs.6,40,13,721/. Thus its liabilities far exceed its Assets. It appears therefore that the Company has clearly lost its substratum and its ability to repay its debts or run its business.
9. The Applicant has suggested a qualified Resolution Professional namely Mr. Srinivas Thatikonda, with Registration No. IBBI/IPA-002/IP-N00631/2018-19/11886, who has also filed his written Consent in Form-2 dated 17.02.2020, by inter alia declaring that he is eligible to be appointed as resolution professional in respect of the Corporate Applicant and there are no disciplinary proceedings pending against him with the Board or ICSI Institute of Insolvency Professionals.

10. In view of the above facts and circumstances of the case, and the requirements of the Code having being met, by exercising powers conferred on this Adjudicating Authority u/s 10(4)(a) of the Code, we hereby admit C.P.(IB)No.159/BB/2020 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Petitioner/Corporate Applicant with the following consequential directions:

- 1) **Mr. Srinivas Thatikonda**, bearing **Registration No. IBBI/IPA-002/IP-N00631/2018-19/11886**, who is a qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Petitioner/Corporate Applicant namely 'M/s.Blue Whale Machinery Technologies Private Limited' to carry out the Corporate Insolvency Resolution Process strictly as per the provisions contained in the Insolvency and Bankruptcy Code, 2016, and the Rules framed in this regard by the IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Petitioner/Corporate Applicant 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;



- e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
- f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- 3) The order of moratorium shall have effect from the date of this order till the completion of the Corporate insolvency resolution process;
- 4) However, this moratorium would not apply to cases pending against the applicant Company before the Hon'ble High Court and Hon'ble Supreme Court.
- 5) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant Rules, including fees rules, as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Tribunal from time to time.
- 6) The Board of Directors and all the staff of Petitioner/Corporate Applicant are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code, the Rules thereunder and the Rules framed by the IBBI in this regard.
- 7) Post the case for report of IRP on **19th August, 2020.**

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL