NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.3
C.P.(IB)/36(MP)2021

Proceedings under Section 10 IBC

IN THE MATTER OF:

Shirani Motors Pvt Ltd **........Applicant**

Order delivered on 02/05/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

P. MOHAN RAJ
MEMBER (JUDICIAL)

A. Bhadauria

THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

CP(IB)/36/MP/2021

(Application under section 10 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Shirani Motors Private Limited
CIN No.: U03410MP2005PTC017898
Having its registered address at:
29, Shiranipura, Ratlam,
Madhya Pradesh- 457001

......Petitioner/Corporate Applicant

Order pronounced on: 02.05.2024

Coram: P. Mohan Raj, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:
For the Petitioner: Ld. PCS Mr. Pratik Tripathi

ORDER

1. The present petition has been filed on 09.07.2021, by the corporate applicant through its director, Mr. Yahaya Khan under section 10 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of the applicant i.e. M/s Shirani Motors Private Limited.

2. The averments made by the corporate applicant in its petition and presented/argued by the learned PCS for the corporate applicant are summarized hereunder:

(i) The corporate applicant was incorporated on 25.08.2005 under the provisions of the Companies Act, 1956, having CIN No. U03410MP2005PTC017898, its registered address is at 29, Shiranipura, Ratlam, Madhya Pradesh- 457001. The authorized share capital of the corporate applicant is of Rs 1,00,00,000/- and paid-up share capital of Rs 50,00,000/-.

(ii) The corporate applicant has been engaged in the business of selling of vehicles and was authorized dealer of Bajaj Two Wheelers. Due to financial difficulties, business of the corporate debtor was stopped in the year 2016.

(iii) Corporate Applicant had taken a loan from Axis Bank Limited of Rs 450 Lacs on 27.08.2014 and M/s Sagar Automobiles Private Limited has given the guarantee for the loan taken by the corporate applicant and also mortgaged its assets to secure the aforesaid loan facility.

(iv) As the corporate applicant defaulted in repayment of the aforesaid loan, Axis Bank recalled the loan and issued a demand notice. Axis Bank recovered the amount of loan given to the corporate applicant by invoking the bank guarantee given by M/s Sagar Automobiles Private Limited and selling the mortgaged immovable asset 5580 Sq. Mt. land property at land survey no. 86/2 and 87/1, Paki Patwari Halka No. 24 (old no. 10), Hukmakhedi, Tehlsil and District Indore. Therefore, the amount of loan due to Axis Bank has been replaced by M/s Sagar Automobiles Private Limited in the books of the corporate applicant.

(v) Thereafter, the corporate applicant executed a term sheet dated 18.02.2019 with M/s Sagar Automobiles Private Limited for the purpose of repayment of aforesaid debt in one year, but the corporate applicant failed to pay the entire amount in one year i.e. 18.02.2020 and again defaulted in payment of debt.

(vi) Apart from above, the corporate applicant also failed to pay statutory due payable to Income Tax Department and Commercial Tax Department in time since year 2017 and ownwards.

(vii) Details of the financial creditors and operational creditor of the corporate applicant with amount due to them as on 21.06.2021 are as under:

S.No.	**Name**	**Category**	**Amount Due**
1	Income Tax Officer Ward/Circle Income Tax Department Ratlam	Operational Creditor	18,91,006/-
2	Commercial Tax Officer (VAT Payable)	Operational Creditor	1,31,25,856/-
3	Sagar Automobiles Pvt Ltd	Financial Creditor	4,88,87,551/-
4	T.H. Khamosi & Co.	Operational Creditor	2,38,304/-
Total			6,41,42,717/-

(viii) The special resolution passed in the Extraordinary General meeting dated 21.06.2021, and the Board Resolution dated 18.05.2021, resolved and authorized the director, Mr. Yahaya Khan to file an application under section 10 of the Code, to initiate the CIRP against the corporate applicant.

(ix) The corporate applicant defaulted in repayment of the debts which amounts to more than Rs 1 Crore. Further, the default made during the period does not fall under section 10A of the Code.

3. Commercial Tax Department, Circle-1, Ratlam has submitted its objection by way of an affidavit and submitted as under:

(i) The outstanding amount of Rs 25,28,24,124/- is due and payable by the corporate applicant to the Commercial Tax Department and such aforesaid amount has not been paid by the corporate applicant till date.

(ii) Various RRCs have been issued by the Cimmercial Tax Department to the corporate applicant for recovery of aforesaid outstanding dues but the corporate applicant failed to make the payment.

4. This Adjudicating Authority vide order dated 17.02.2023 sought clarification from the corporate applicant regarding discrepancy in the

amount due and payable towards the Income Tax department and the Commercial Tax Department. The corporate applicant by way of a clarificatory affidavit clarified and submitted that the amount of default with the Commercial Tax Department as on 21.06.2021 was Rs 1,31,25,856/- as per the books of accounts maintained by the corporate applicant, while the Commercial Tax Department claimed the entire amount of Rs 25,28,24,124/- after imposing interest and penalties, out of which penalties amounting to Rs 22,55,04,901/- was imposed and claimed by the Department after the cut off date of 21.06.2021 and penalties amounting to Rs 1,41,93,367/- were ex-parte which is not acknowledged by the corporate applicant. Therefore, there is a difference in the amount. The corporate applicant further submitted that the amount of default with the Income Tax department is Rs 18,91,006/- as per the books of account dated 21.06.2021, but according to the Income Tax Department report dated 15.05.2022 stating that there is no outstanding dues. The corporate applicant submits that the amount payable is as per the books of accounts of the corporate applicant and it has not made any payment to the Income Tax Department.

5. The Directors of the corporate applicant in compliance to the order dated 21.12.2023 by this Adjudicating Authority have filed an affidavit and undertaken that they will pay any deficiency in CIRP cost as well as liquidation cost, as the case may be, in case the CoC fails to contribute the fund for the aforesaid purpose.

6. We have heard the learned PCS appearing for the petitioner on the issue of admission of petition filed under section 10 of the Code and have perused the relevant records and documents. It is noted that the corporate applicant had taken a loan facility from the Axis Bank and was unable to pay the same, resulting to which the Axis Bank invoked the bank guarantee given by the guarantor i.e. M/s Sagar Automobiles Private Limited (name of the direcotrs are common as in the present matter). The corporate applicant executed a term sheet with the guarantor M/s Sagar Automobiles Private Limited (under liquidation) for repayment of loan within one year, however the corporate applicant failed to repay the same. The corpaorte applicant has also defaulted

in paying the statutory dues towards the Income Tax Department and the Commercial Tax Department. We further note that as per the list of creditors provided by the corporate applicant, major part of the debt is payable to the group concern company, which was already admitted to CIRP under the provisions of section 10 of the Code and is presently under liquidation. One other operational debt is of Rs 2,38,304/-, and rest of the debt is payable towards the Government Departments.

7. We have also perused the provisional balance sheet and profit and loss account as on 21.06.2021 of the corporate applicant, which shows that except short-term loans and advances there are no assets available with the corporate applicant and the corporate applicant is not doing any business, the provisional balance sheet as available on record is reproduced here as under:

	Particulars	**As at 21.06.2021**	**As at 21.03.2021**
A	**EQUITY AND LIABILITIES**		
	1. Shareholders fund		
	(a) Share Capital	50,00,000/-	50,00,000/-
	(b) Reserves and surplus	(5,98,87,324)	(5,98,87,324)
		(5,48,87,324)	**(5,48,87,324)**
	2. Non-current liabilities		
	(a) Long-term borrowings	0	0
	(b) Deferred tax liabilities (net)	41,45,216/-	41,45,216/-
		41,45,216/-	**41,45,216/-**
	3. Current liabilities		
	(a) Short-term borrowings	4,88,87,551/-	4,88,87,551/-
	(b) Trade payables	0	0
	(c) Other current liabilities	1,33,64,160/-	1,33,64,160/-
	(d) Short-term provisions	18,91,006/-	18,91,006/-
		6,41,42,717/-	**6,41,42,717/-**
	TOTAL	**1,34,00,610/-**	**1,34,00,610/-**
B	**ASSETS**		
	1. Non-current assets		
	(a) Fixed assets		
	(i) Tangible assets	0	0
	(b) Long-term loans and advances	0	0
		0	**0**
	2. Current assets		
	(a) Inventories	0	0
	(b) Trade receivables	0	0
	(c) Cash and cash equivalents	8,52,084/-	8,52,084/-
	(d) Short-term loans and advances	1,25,48,525/-	1,25,48,525/-
		1,34,00,609/-	**1,34,00,609/-**
	TOTAL	**1,34,00,609/-**	**1,34,00,609/-**

8. After considering the above facts and circumstances, we are of the considered view that the primary purpose of this petition filed by the corporate applicant is to avoid liability for government dues and evade recovery proceedings rather than for the purpose of arriving at corporate insolvency resolution. Accordingly, we hold that the application is not at all filed for a corporate insolvency resolution and thereby we reject this application.

9. Accordingly, application i.e. CP(IB)/36/MP/2021 is rejected and disposed off.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

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P. MOHAN RAJ
MEMBER (JUDICIAL)

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