

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**SPECIAL BENCH**  
**COURT - 2**

ITEM No301  
CP(IB)/234(AHM)2021

**Order under Section 10 IBC**

**IN THE MATTER OF:**

Tudor India Private Limited

.....Applicant

.....Respondent

**Order delivered on 07/09/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

**ORDER**

The case is fixed for pronouncement of order

The order is pronounced in open Court vide separate sheet.

-Sd-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD (COURT NO.II)**

**CP(IB) No. 234 / NCLT / AHM / 2021**

*(Application Under Section 10 of IBC, 2016 r.w Rule 7 & 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and Section 33 & 34 of IB Code, 2016)*

**IN THE MATTER BETWEEN**

Tudor India Pvt. Ltd.

.... Corporate Applicant

Order pronounced on :07/09/2023

**Coram:**

**SHAMMI KHAN,  
HON'BLE MEMBER (JUDICIAL)**

**DR. VELAMUR G. VENKATA CHALAPATHY,  
HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

**Tudor India Pvt. Ltd.**

A-704, Synergy,  
Opp: Commerce House-V,  
Nr. Vodafone Tower,  
Corporate Road, Prahlad Nagar,  
Ahmedabad 380015

... Corporate Applicant

**Appearance:**

For the Applicant : Mr. Rashesh Sanjawala Sr. Adv alongwith  
Mr. Yashish Chandra, Adv.

**ORDER**

1. The present application has been filed U/s 10 of IBC, 2016 r.w Rule 7 & 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and Section 33 & 34 of IB Code, 2016 by the Corporate Debtor viz. Tudor India Pvt. Ltd. a private limited company having its registered office at A-704, Synergy, Opp: Commerce House-V, Nr. Vodafone Tower, Corporate Road, Prahlad Nagar, Ahmedabad-380015 through its Director Mr. Gunjan Johri on 10.11.2021 who is in-charge of managing the operation and resources of the Corporate Debtor duly authorized by its board resolution dated 09.06.2021.
2. The corporate debtor was incorporated as a public limited company under the Companies Act, 1956 on 03.01.1986 and converted into private limited company on 24.02.2015. The corporate debtor had authorized share capital is INR 1,06,50,00,000/- (i.e INR 106.50 crores), of which the paid up capital is INR 1,06,22,74,310 (i.e. approx.. INR 106.23 crores). The share capital of the corporate debtor is held in the form of fully paid up equity shares having face value of Rs.10 (Rs. Ten only) each i.e a total of 10,62,27,431/- (i.e 1062 crores) shares. Out of this total number of shares, GNB Industrial Power (UK) Limited holds 6,69,99,899/- shares (i.e 63.07%), Exide Transportation holding

Europe SL holds 3,92,27,526 shares (i.e 36.93%) and Mr. Gunjan Johri holds remaining 6 shares (i.e 0.01%).

3. The corporate debtor was engaged in the business of manufacturing and marketing “Lead acid storage batteries for cars, light commercial vehicles, heavy commercial vehicle, tractors, earth moving equipment, inverters, gensets etc. The corporate debtor’s operations were running successfully until the financial year 2012-13, when on account of significant losses during the financial year ended 31.03.2013 and substantial erosion of net worth as on that date, it made reference to the Board for Industrial and Financial Reconstruction (BIFR) on 26.11.2015 which was numbered as Case No.7 of 2016. On notification of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 w.e.f 01.12.2016, the said pending reference stood abated. The financial question deteriorated further and the losses continue to occur with no parallel entries in revenues, with force the corporate debtor to suspend its protection since January, 2017. As on date of submitting the application u/s 10, the corporate debtors stands a loss making, inoperative enterprise, in default and unable to pay its debt and does not have the resources to pay off its operational or statutory dues and there are no business opportunities left for continuing the business. A copy of financial statement for the years 2018-19, 2019-20 and auditor’s report for Financial Year 2020-21 is submitted along with a provisional statement for the Financial Year 2020-21 as on 09.11.2021 has been submitted.
4. The company which had manufacturing facility at Kamalpur, Tal: Pratinj, Dist: Sabarkantha, Gujarat had to closed down the unit and sale the majority of its assets along with plant and machinery to Exide industry vide an agreement (Asset Purchase Agreement) dated 22.06.2018. The part of the consideration under the agreement was kept in an escrow account with HDFC Bank, Stephen House Branch, Kolkata. It was agreed that the amount would be released appoint joint instruction being issued by the parties at the occurrence of a “release

event” in relation to the tax proceedings involving the corporate debtor that were ongoing across various forums at such time. Broadly, “release event” was termed as the unconditional termination, dismissal or withdrawal of the tax proceedings by way of settlement, discontinuance, passing of a final non-appealable order, decree or ruling by a judicial authority. As on 19.07.2021, an amount of INR 11,76,10,016 (approx. 11.76 crores) is held in the escrow account. The CD also relieved all his employees by 31 March 2017 and was retained only one as on date of application. The Audited Financial statement for 2021 confirms that the production was suspended since Jan 2017 and the company does not have any immovable property and inventory. It also submitted that the undisputed statutory dues like PF, ESI, Sales and Service Tax etc., were deposited and there was no dues further to be paid. A summary of tax litigations as on 9.11.2021 was given in Annex A – 10 of the application.

5. The total debt of the corporate debtor amounts to Rs 14,22,28,862 (approx. Rs14.22 Crores). The detailed list of the creditors has been provided as Annex A-11 along with copy of invoices raised by operational creditor in Annex. A-12.
6. The corporate debtor had availed credit facilities from HDFC Bank Ltd. which were guaranteed by way of a Standby Letter of Credit (SBLC) No.II.IS-633373 dated 05.05.2014 issued by JPMorgan Chase Bank, India for an amount of INR 112 million (INR) 11.2 crores). The SBLC was issued by JPMorgan Chase Bank, India in favour of HDFC Bank on behalf of and at the request of Exide Technologies – DIP (Exide USA). The SBLC was guaranteed under network credit no. TFTS-889312 issued by JPMorgan Chase Bank Chicago – USA which in turn was based on an agreement for irrevocable Standby Letter of Credit dated 24.04.2014 between Exide USA and JPMorgan Chase Bank USA. in terms of this stipulations, in HDFC Bank sanctioned letter 17.05.2014, the SBLC was invoked (due to non-extension) and payment demanded. Exide USA made the payment under SBLC arrangement (JPMorgan

Chase) Bank which was triggered due to invocation (secured for arranging credit facilities for corporate debtor) with HDFC Bank JPMorgan Chase Bank. In terms of letter dated 04.11.2014 keeping in view the Corporate Debtor's stress financial situation Exide USA agreed to continue the same till such time, the corporate debtor is able to make repayment. This was considered as a interest free inter-corporate loan of which an amount of Rs.11.10 crores is due and payable as on date of the application.

7. Subsequently in 2020, the amount was transferred from Exide USA to Exide holding Netherlands B.V. It is stated that Exide Netherlands had made a payment of USD 412,207 i.e approx. Rs. 3,08,60,851/- (Rs. INR 3.08 crores), to Exide USA in respect of the said payables on behalf of the corporate debtor and thus, US dollar 412,207 is payable by the corporate debtor to Exide Netherlands (operational creditor). A notice was received by the corporate debtor on 09.04.2021 from Exide Netherlands B.V. demanding payment of the stated amount.
8. The corporate debtor vide letter dated 03.05.2021 replied to the letter dated 09.04.2021 and acknowledged that the amount of aprox. USD 412.207 is owed by it to Exide Netherlands. It informed that pursuant to the selling of its manufacturing facility in 2018, the proceeds from the sale were utilized mainly towards payment of its liabilities and the remaining consideration from the sale is in the escrow account, which is earmarked towards the settlement of its tax liabilities. It was further informed that the corporate debtor is currently not in a position to pay the outstanding amount of USD 412,207 to Exide Netherlands, as in the absence of business operations, the corporate debtor has no means to raise funds to pay the aforementioned amounts.
9. On 21.05.2021, GNB Industrial Power (UK) Limited (holding 63.07%), the corporate debtor's majority shareholder, sent a letter to the corporate debtor's board of directors, requesting them to consider

taking steps for the initiation of the corporate insolvency resolution process of the corporate debtor under the aegis of the IBC.

10. The board by special resolution passed in the Extra Ordinary General Meeting held on 21.06.2021 approved the proposal for initiation of corporate insolvency resolution process of the company under the IB Code, 2016 and Companies Act, 2013 considering the companies weak financial position. It further authorized Mr. Gunjan Johri to file an application before the Hon'ble Tribunal to initiate the insolvency resolution process u/s 10 of the IB Code, 2016. It is also submitted by the applicant that due to current financial position, there is hardly any possibility of any resolution plan during the stage of CIRP if initiated and thus would be just and proper to put the corporate debtor directly under the Liquidation Process rather than to put it in CIRP in the first instance.
11. It is stated that as per the provisional financial statement as on 09.11.2021, the current assets of the applicant is Rs.6.34 crores as against his current liabilities of Rs.14.90 crores and due to absence of any further business operation, liquidation was a only way to ensure that the financial distress of the applicant is addressed by the Hon'ble Tribunal.
12. In this regard, the applicant further relies on the liquidation order passed by Hon'ble NCLT Bangalore in CP(IB) 167/BB/2019, directly ordering for liquidation instead of CIRP. It is also referred to case no.96/BB/2020 vide its final order dated 16.11.2020 while considering the request for immediate dissolution of the company without undertaking complete liquidation process by the Hon'ble NCLT, Bangalore Bench in terms of Section 60 of the IBC, 2016.
13. The applicant has vide affidavit filed in compliance of clarification sought and to place on record the documents in compliance of order dated 04.08.2023 and 10.08.2023 passed by this Hon'ble Adjudicating

Authority also submitted that it has only one financial creditor i.e Exide International Holding, Netherlands, BV (apart from operational creditor) which is a group company under related party in accordance with Section 5(24)(i) of IBC, 2016. Thus, the applicant states that the only member of prospective committee of creditors shall have no right to representation / participation or voting in the meetings of CoC in terms of proviso to Section 21(2) of the IBC, 2016. Thus, the applicant states that no CoC can be constituted in terms of Section 21 of IBC, 2016.

14. The applicant has also annexed the list of assets owned by the corporate debtor, copy of fixed deposit statement and copies of audited financial statement for the year 2021-22 and 2022-23 along with a provisional statement for the Financial Year 2023-24 of the applicant.
15. The list of fixed assets owned by the corporate debtor as on 31.07.2023 has been annexed to the stated affidavit as is given below valued at Rs.7.92 lakhs.

<b>Assets Name</b>	<b>Date of Capitalisation/Acquisition</b>	<b>Acquisition Cost</b>	<b>Accumulated Depreciations *</b>	<b>Closing Balance as on 31.07.23</b>
Computer	18-Feb-05	27,700	27,422	278
Laptop	16-Feb-11	43,500	41,325	2,175
Laptop	23-Feb-11	46,753	44,415	2,338
Laptop	26-Feb-11	46,753	44,415	2,338
Laptop	24-Feb-11	46,753	44,415	2,338
Laptop	04-Feb-11	46,753	44,415	2,338
Laptop	04-Feb-11	46,753	44,415	2,338
Laptop	04-Feb-11	46,753	44,415	2,338
Laptop	31-Mar-11	46,753	44,415	2,338
Laptop Dell Vostro 3400	23-Feb-11	1,87,011	1,77,660	9,351

PRINTER	24-Sep-13	21,845	20,753	1,092
Laptop Dell Latitue E630	03-Jun-13	68,210	64,800	3,411
Netvault Backup Server	3-Sep-15	1,78,330	1,39,648	38,682
Laptop	22-Jun-16	87,567	42,730	44,837
Audi Q3	21-Jun-14	29,54,081	22,77,955	6,76,126
<b>Total</b>				<b>7,92,315</b>

16. The list of fixed deposit (HDFC Bank Escrow Account) along with bank balance and rental deposit (as verified and annexed in the affidavit dated 26.08.2023) is given below:

Tudor India Private Limited Other Assets (Financials Report Note No. 11 & 13)						
A. FIXED DEPOSIT (HDFC BANK ESCROW ACCOUNT)						
FD No.	FD Creation Date	FD Maturity Date	FD Interest Rate	FD Creation Amount	Accrued Interest till 31.07.23	FD Value till 31.07.23
50300262583700	5-Jul-21	5-Jul-24	4.40	6,49,39,622		
50300676401288	7-Sep-22	8-Sep-23	6.05	4,27,74,877	76,91,031	11,59,24,711
50300392568238	8-May-23	21-Sep-23	4.50	5,19,181		
<b>Total (INR)</b>				<b>10,82,33,680</b>	<b>76,91,031</b>	<b>11,59,24,711</b>
B. Bank Balance as on 31.07.23						
Bank Name	Account No.	Amount				
HDFC	00060120000053	52,659				
Axis	919020046187531	14,767				
SBI	00000010829154207	25,417				
<b>Total</b>		<b>92,843</b>				
Loans & Advances (Financials Report Note No. 10)						
C. Deposit is given for premises taken on Rent (Security Deposit)						
Name	Nature	Amount as on 31.07.23				
M. Chandulal Estate	Goddown Rent	2,17,500				
Ankita Ajmera	Office Rent	53,369				
<b>Total</b>		<b>2,70,869</b>				

17. There are no Interim Application filed against this application, while the Corporate Debtor has moved the application citing continued losses and inability to continue the business. Funds as available could be used to complete the insolvency process on approval.

18. The applicant has for the purpose of merits of the case brought to the attention of Hon'ble Tribunal 2 NCLT cases, reference:

- i) CP (IB) No.167/BB/2019 U/s 10 of the IBC read with Section 33 of the IBC, 2016 R/w Rule 7 of I & B (AAA) Rules, 2016 dated 8<sup>th</sup> November 2019;
- ii) CP (IB) No.96/BB/2020 U/s 10 of IBC 2016 read with Rule 7 of I & B (AAA) Rules, 2016.

19. In view of the above and the various submissions and the documents submitted enumerating the reasons for submission of this application u/s 10 of IBC, 2016, and keeping in view that no purpose would be served to keep the corporate debtor under the regular CIRP process as there is no chance of revival of business. Also a Resolution and a Plan of the company u/s 7 of the IBC, 2016 cannot be initiated at this stage due to the only financial creditor being a related party and who also has signed a MOU for realisation of assets by escrowing the funds in to HDFC Account. The entity as stated cannot be member of the CoC that could be constituted to conduct the CIRP process of this entity which has no tangible assets or valuable business which is being undertaken since 2017. This appellate Authority is convinced to order an early liquidation due to sufficient passage of time and absence of tangible assets of the corporate debtor M/s Tudor India Pvt. Ltd. thereby it admits the application in the manner prescribed u/s 10 of IBC, 2016, and accepting the prayer by invoking Section 33 & appointment of liquidator under Section 34 of IBC, 2016 r.w rule 7 & 11 of NCLT Rules by ordering direct liquidation of the applicant / corporate debtor subject to the following terms of the directions:-

- a) The Corporate Debtor **M/s Tudor India Pvt. Ltd.** shall be ordered for liquidation in terms of the provisions of section 33) of the Code r.w. Regulations made thereunder which shall be effective from the date of this order.

- b) As per section 34(4)(b) of the Code, **Mr. Arpan Maheshkumar Shah** having Registration No. IBBI/IPA-001/IP-P-01847/2019-2020/12862 is hereby appointed as a Liquidator of the Corporate Debtor i.e. **M/s Tudor India Pvt. Ltd.** The Liquidator so appointed shall complete the liquidation process as per the provisions of the Code r.w. the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- c) All the powers of the Board of Directors, key managerial persons, and the partner of the Corporate Debtor, as the case may be, hereafter cease to exist. All these powers henceforth vest with the Liquidator.
- d) The personnel of the Corporate Debtor are directed to extend all cooperation to the Liquidator as required by him in managing the liquidation process of the Corporate Debtor.
- e) The Liquidator will charge fees for the conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified by IBBI and same shall be paid to the Liquidator from the proceed of the liquidation estate under section 53 of the Code.
- f) Once the liquidation process is initiated, subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor. The Liquidator has the liberty to institute a suit and other legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority, as provided in sub-section (5) of section 33 of the Code.
- g) This liquidation order shall be deemed to be notice of discharge to the officers, employees, and workmen of the Corporate Debtor except to the extent of the business of the Corporate

Debtor continued during the liquidation process by the Liquidator.

- h) This Adjudicating Authority directs the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation. The Liquidator will also serve a copy of this order to the various Government Departments such as Income Tax, GST, VAT, etc., who are likely to have any claim upon the Corporate Debtor so that the authorities concerned are informed of the liquidation order timely. The Liquidator will also provide a copy of this order to the trade unions/employee associations of the Corporate Debtor so that the workman/employees could also be informed of this liquidation order through their association.
- i) The Liquidator is directed to investigate the financial affairs of the Corporate Debtor in terms of the provisions of Section - 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending Company Applications during the process of liquidation.
- j) The Registry is directed to communicate this order to the concerned Registrar of the Companies, the registered office of the Corporate Debtor, IBBI, and the Liquidator by speed post as well as e-mail within one week from the date of this order, after completion of all the formalities.

20. Accordingly, CP(IB) No. 234 of 2021 is disposed off.

-Sd-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**