



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
IA No./1290(AHM)2023 in
C.P.(IB)/261(AHM)2021

Order under Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Abhishek Nagori
Chairperson & Member of Monitoring
Committee of Innovative Tyres and Tubes
V/s
Committee of Creditors of Innovative Tyres and Tubes
Limited Through State Bank of India

.....Applicant

.....Respondent

Order delivered on: 11/01/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, AHMEDABAD**

**IA/1290(AHM)2023 in
CP(IB)/261(AHM)2021**

An application under Rule 11 of NCLT Rules, 2016 and other
applicable rules for appropriate orders

In the matter of

MR. ABHISHEK NAGORI

Chairperson of Monitoring Committee of
Innovation Tyres and Tubes Limited

Having office at:

330/348, 3rd Floor, Tower-A,
Atlantis K-10, Opp. Vadodara Central,
Sarabhai Main Road, Vadodara-2610023

... Applicant

Versus

1. COMMITTEE OF CREDITORS

Innovation Tyres and Tubes Limited

Through State Bank of India

Having address at:

Stressed Assets Management Branch – Ahmedabad
2nd Floor, Paramsiddhi Complex, Opp. V. S. Hospital,
Near Ellisbridge, Ahmedabad-380006

E-mail: team2samb.ahm@sbi.co.in

harshad.saholia@sbi.co.in

2. M/s Ten on Ten Rubtech Private Limited

Successful Resolution Applicant

Having address at

Khasa No. 1168, Behrampur Rod, Village Khatola,
Gurgaon, Haryana- 122001

E-mail: tenontenrubtech@gmail.com;

munish.chawla@tottyres.com

... Respondents

Order Pronounced on 11.01.2024



CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances:

For Applicant : Mr. Navin Pahwa, Sr. Adv.
A/w Mr. Ravi Pahwa, Adv.

For Respondents : Mr. Mohit Padhiyar, Deputy Manager for R-1
Mr. Kunal Vaishnav, Adv for R-2

ORDER

Per: Bench.

1. The present application is filed under Rule 11 of the National Company Law Tribunal Rules, 2016, and other applicable rules for appropriate orders seeking to modify an order dated 09.08.2023 approving the resolution plan w.r.t. Corporate Debtor, this application was filed on 2.11.2023.
2. The Application filed the present Application seeking the following relief(s):
 - i. That this Tribunal may be pleased to allow the present application, in the interest of justice;
 - ii. That this Tribunal may be pleased to modify the approved Resolution Plan to the extent of modifying the stipulation of cancellation of equity share capital of promoter



shareholders and reduction of equity share capital of the public shareholders, in the interest of justice.

- iii. That this Tribunal may be pleased to direct the Stock Exchange to condone the delay in listing of the new equity shares of the Corporate Debtor to be issued and allotted to public shareholders upon reduction in their shareholding as well as to the Resolution Applicant in terms of the modified Resolution Plan and not take any action on account of such delay.
- iv. That this Tribunal may be pleased to grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and proper by this Hon'ble Tribunal, in the interest of justice.

3. **Facts of the Case are as follows:**

- I. It is submitted by the applicant that one BBM Impex Private Limited filed an application u/s. 9 of the IB Code vide CP(IB) No.261 of 2021. The said petition was admitted for commencement of CIRP by this Adjudicating Authority vide order dated 28.3.2022. By the said order, the applicant was appointed as Interim Resolution Professional (hereinafter referred to as 'IRP') in the aforesaid matter.



- II. It is submitted by the applicant that subsequent to passing of the order dated 28.3.2022, the applicant assumed the duties of IRP. The applicant submits that apropos to the order dated 28.3.2022, the Committee of Creditors was constituted on 19.04.2022.
- III. It is submitted by the applicant that the first meeting of Committee of Creditors (hereinafter referred to as 'CoC') was held and convened on 26.4.2022, wherein the applicant was confirmed as Resolution Professional of the Corporate Debtor.
- IV. It is submitted by the applicant that in the e-voting of the 12th CoC meeting dated 31.12.2022, the revised resolution plan submitted by opponent no.2 was approved by the CoC. The applicant submits that the CoC in its 12th meeting held on 31.12.2022 approved the Resolution Plan. The applicant thereafter filed IA 260 of 2023 seeking approval of Resolution Plan by this Hon'ble Adjudicating Authority. This Hon'ble Adjudicating Authority vide order dated 9.8.2023 was pleased to approve the Resolution Plan of opponent no.2.
- V. It is submitted by the applicant that the Corporate Debtor is a public listed company and the shares of the



Corporate Debtor are listed on the National Stock Exchange Limited. It is further submitted that as per clause 9 of the approved resolution plan, it was proposed as under: -

"9. Reorganization of the Share Capital of the Corporate Debtor:

i) The Corporate Debtor is a listed Company and its Current Paid-Up Capital of Rs. 17,99,15,610/- is divided into 1,79,91,561 Equity Shares of Rs. 10/-each fully paid up. The same is held as under: Promoters/Associates/Group: 35,06,104 Equity Shares of Rs 10/- each aggregating to 19.49% of the Current Paid Up Capital Public Shareholders: 1,44,85,457 Equity Shares of Rs. 10 each aggregating to 80.51% of the Current Paid Up Capital.

ii) All existing issued and paid-up Equity Shares of the CD held by the Promoters/ Associates/ Group being 35,06,104 Equity Shares of Rs 10/- aggregating to Rs. 3,50,61,040 each shall stand cancelled and extinguished without any further act or deed to be done.

iii) The existing issued and paid-up Equity Shares held by Public Shareholder' being 1,44,85,457 Equity Shares of Rs. 10 aggregating to Rs. 14,48,54,570 shall stand reduced to 5,10,000 equity shares of Rs. 10 each aggregating to Rs. 51,00,000/-. All public shareholders' holding shall stand proportionately reduced and they shall be issued new share



certificates as per their reduced shareholding. Fractional Shareholdings less than 1 Equity Share shall be rounded off and settled in cash."

- VI. The applicant submits that as on the date of NCLT order approving the Resolution Plan, i.e. 09.08.2023, the equity shares held by Promoters/Associates/Group were reduced to only 25,19,104 equity shares and not 35,06,104 equity shares as stipulated in the Approved Resolution Plan. Further, as on the date of NCLT order approving the Resolution Plan, i.e. 09.08.2023, the public shareholding was increased to 1,54,72,457 equity shares from 1,44,85,457 equity shares as stipulated in the approved Resolution Plan.
- VII. It is submitted by the applicant that after the Resolution Plan was approved by this Hon'ble Adjudicating Authority, the opponent no.2 was required to approach the National Stock Exchange Limited (for short 'NSE') for implementing the resolution plan so far it related to the cancellation of Promoter shareholding and reduction of the public shareholding. The Respondent no.2 then realized that the public shareholding and the promoter shareholding were different from what was stated in the



Resolution Plan. The Respondent no.2 therefore is not in a position to approach the NSE and get the new shares listed.

- VIII. It is submitted by the applicant that due to mismatch in the actual shareholding of the promoter and the public in the Resolution Plan and their shareholding as on the date of submission of Resolution Plan, the request of reduction/ cancellation cannot be approved. The Respondent No.2 then requested the applicant being the Chairperson of the Monitoring Committee to convene a meeting of Monitoring Committee and discuss this issue.
- IX. It is submitted by the applicant that the meeting of Monitoring Committee was held on 26.9.2023. It was decided in this meeting that the resolution plan is required to be modified to successfully implement the resolution plan. The Monitoring Committee then in its meeting dated 27.10.2023, authorized the applicant to file an application before this Adjudicating Authority seeking modification of resolution plan for its successful implementation. The applicant begs to annex copy of minutes of meeting of Monitoring Committee dated 27.10.2023 at Annexure-B.



- X. It is submitted by the applicant that the applicant has also taken email consents from erstwhile CoC Members for this modification and the CoC members holding 99.70% voting share, given consent for such modification. The applicant begs to annex copy of emails from CoC Members approving such modification at Annexure-C.
- XI. It is submitted by the applicant that the Respondent No.2 has otherwise implemented the resolution plan. and has made the payment of the committed resolution plan amount on or before 07.09.2023 (as per the timelines on the implementation schedule of the Approved Resolution Plan) and the same has been distributed amongst the members of the CoC. The applicant was therefore constrained to approach this Adjudicating Authority seeking to modify the approved Resolution Plan to the extent modifying the stipulation of cancellation of equity share capital of promoter shareholders and reduction of equity share capital of the public shareholders, in the interest of justice.
4. It is Submitted by the Applicant that this Tribunal vide order dated 08.11.2023 directed the Registry to issue notice to the



Respondents and the Applicant to collect the notice issued by the registry and served it upon the Respondents through Ad Post/Speed-post/Dasti mode as well as on the registered email-ID of the Respondents.

5. It is further submitted that in pursuance to the notice issued by this Tribunal Respondent Nos. 1 and 2 appeared on the next day of the hearing dated 06.12.2023. The counsels appeared on behalf of both the Respondents and submitted that there was no need to file the reply to the present IA and they support the prayer of the present applicant filed by being erstwhile RP presently chairman of the Monitoring Committee.
6. It is submitted that the Applicant had filed a purshish dated 06.12.2023 placing on record the Resolution Plan as approved by this Tribunal vide order dated 09.08.2023 passed in IA 260 of 2023.
7. We have heard both the Counsel and on perusal of the documents submitted we have observed the as under:

- a. The Company's shareholding pre the order approving the Resolution Plan was as under:

Table No. 1- Shareholding pattern Pre-Approval of Resolution Plan

Shareholders	No. of Shares	Amount
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Promoter	35,06,104 Equity shares of Rs. 10/- each	Rs. 3,50,61,040
Public	1,44,85,457 Equity shares of Rs. 10/- each	Rs. 14,48,54,570
Total	1,79,91,561	Rs.17,99,15,610

b. As per the Resolution Plan the entire promoters shareholding of 35,06,104 Equity shares of Rs. 10/- each was to be extinguished. The public shareholders were to be allotted fresh equity aggregating to 5,10,000 Equity shares of Rs. 10/- and remaining public shareholding was also to be extinguished. For better understanding the same is provided in the table below :-

Table No.2 Shareholding pattern post approval of the plan.

Shareholders	No. of Shares	Amount
Promoter	-	-
Public	5,10,000 Equity shares of Rs. 10/- each	Rs. 51,00,000

c. It is submitted that as on 09.08.2023 (the date on which the resolution plan was approved) the equity shares of the promoters/Associates/group were reduced and public shareholdings was increased as mentioned in the table below:



Table No. 3 Shareholding pattern as per the application as on date of present application

Shareholders	No. of Shares	Amount
Promoter	25,19,104 Equity shares of Rs. 10/- each	Rs. 2,51,91,040
Public	1,54,72,457 Equity shares of Rs. 10/- each	Rs. 15,47,24,570
Total	1,79,91,561	Rs.17,99,15,610

It appears that certain equity shares of the promoters were sold/reclassified as public shareholding during the period when the plan was pending on the file of this Tribunal.

8. It is pertinent to note that: -
- i. No Evidence is placed on record with respect to the public and promoters' equity shareholding form the Registrar and Transfer Agents/Certificate from Company Secretary of the Corporate Debtor certifying the shareholding on two different dates.
 - ii. The applicant has not provided any details of regarding shares sold/reclassified and relevant dates.
 - iii. No averment has been made in the application as to the impact on the public shareholding post the present application is allowed.



In view of the above findings, the present application stands **Rejected** with the liberty to file a fresh application along with complete details.

9. Accordingly, the present application is disposed off.

-SD-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

Shubhanshu/LRA