



IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

(MP) CP(IB) 42 of 2020

[Application for initiation of Corporate Insolvency Resolution Process under Section 10 of the Insolvency & Bankruptcy Code, 2016]

IN THE MATTER OF:

Sagar Autotech Private Limited

189, Maida Mill Road, Jinsi Square
Bhopal, Madhya Pradesh 462008

Applicant

Order reserved on: 06.05.2022
Order pronounced on:23.06.2022

Coram: Madan B. Gosavi, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:

For the Applicant: Learned Counsel Ms.Noopur K. Dalal

For the Financial Creditor: Learned Counsel Mr.Harshil Patel

ORDER

1. The present application has been filed by the Applicant/ Corporate Debtor through its director Mr.Tehseen Khan, under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IB Code**") read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Process in respect to the applicant i.e. M/s. Sagar Autotech Private Limited.

2. The Applicant was incorporated on 25th August, 2009 under the Companies Act, 1956 with the Registrar of



Companies, Gwalior, having its registered office situated at 189, Maida Mill Road, Jinsi Square, Bhopal, Madhya Pradesh-462008, CIN No. U50500MP2009PTC022313, hence this Authority has jurisdiction to adjudicate the present application. The Applicant submitted that the authorised share capital of the company is Rs.5,25,00,000/- and the paid-up share capital of the Applicant is Rs.4,95,00,000/-.

3. The facts in brief as submitted by the applicant are as under:

(i) The Special Resolution passed in the Extraordinary General Meeting, dated 23rd December, 2019 and the Board Resolution dated 6th January, 2020, resolved and authorized director Mr. Tehseen Khan (DIN: 02718512), to file an application under section 10 of the IB Code, 2016, r.w. Rule 7 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate CIRP against the Applicant before this Adjudicating Authority.

(ii) There are financial and operational debt amounting to Rs.27,58,27,658/- and Rs. 66,01,726/- respectively in the company and the amount and date of default is Rs.6,42,02,054/- and 15.10.2019 respectively.

(iii) One of the financial creditor Volkswagen Finance Private Limited sent a notice dated 17.06.2020 under section 13(2) of SARFAESI Act, however the present application was filed by the applicant on 20.01.2020,



which was filed much prior to the date of the said notice sent by that financial creditor and that the financial creditor vide its letter dated 31.01.2020 to the Adjudicating Authority requested the Adjudicating Authority to pass necessary orders for early recovery of the outstanding and therefore, the notice sent under SARFAESI Act by the said financial creditor is an afterthought to create pressure on the applicant.

(iv) The company had no significant business operations for the last many years as per the explanatory statement and the company is unable to pay off the liabilities from the proceeds of the assets and the company has also defaulted in payment of its bank borrowings and interest levied thereon, therefore the members of the company filed the present application under Section 10 of the IB Code, 2016. The audited financial statements for the financial years 2016-17, 2017-18, 2018-19 and 2019-20 are annexed to the application and placed on record.

(v) The company is unable to pay off its debts and has prayed for initiation of CIRP in respect of itself.

4. In the present application, the Applicant has proposed the name of Mr. Keyur Jagdishbhai Shah, as an Interim Resolution Professional (IRP) having Reg. No. IBBI/IPA-002/IP-N00244/2017-18/10729. A copy of the written communication received from the proposed Interim Resolution Professional in Form-2, showing his willingness



to accept such assignment to act as IRP is annexed to the present application.

5. The facts in brief as submitted by one of the Financial Creditor Volkswagen Finance Private Limited opposing the present application of the corporate debtor are as under:

(i) The applicant filed the present application with malicious intention so as to delay the recovery proceedings initiated by the bank and financial institutions against the applicant.

(ii) On account of default, the account of the applicant turned into non-performing asset (NPA) on 23.12.2019 and the financial creditor initiated measures for enforcement of security interest and took possession of the secured assets and issued demand notice and possession notice dated 17.06.2020 against the applicant under Section 13(2) of the SARFAESI Act for recovery of the due amount of Rs.12,81,77,972/-.

(iii) The applicant has not disclosed the details regarding the security interest created and the last financial statement filed with the ROC was for the year ending 2018 and the last annual general meeting was conducted in the year 2018.

6. We have heard the learned counsel for the applicant and for the financial creditor opposing the present application and perused the material on record. It appears that the applicant has defaulted in paying the debts borrowed from the financial creditors. The principal object



of the Insolvency and Bankruptcy Code is revival of the corporate debtor and to make it a going concern and every attempt should be made to revive it with liquidation being the last resort.

7. The amount of default meets the threshold limit prescribed under the IB Code and is well within the limitation period to initiate the CIRP proceedings. The application is defect free and hence we admit the present application and order as under:

(i) The Corporate Debtor Sagar Autotech Private Limited is admitted in Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code:

- (a) 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*;
- (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.

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iv) We hereby appoint Mr. Keyur Jagdishbhai Shah, having Reg. No. IBBI/IPA-002/IP-N00244/2017-18/10729, address: 408, Chitrarath Complex, Opp. Municipal Market, Off C.G. Road, Behind Hotel President, Navrangpura-380009, cs.keyurshah@gmail.com to act as Interim Resolution Professional, who shall take necessary steps as envisaged under Sections 15, 17 and 18 of IBC, 2016. The IRP is further directed to convene the first meeting of COC within 30 days from the date of his appointment and to submit his report within the said period. The Board of the Corporate Debtor shall stand suspended in terms of section 17 of



IBC, 2016.

(v) Registry is directed to communicate a copy of this order to the Applicant at its registered address as well as to the Interim Resolution Professional and the Registrar of Companies, Gwalior, after the completion of necessary formalities.

(vi) No order as to costs.

8. Accordingly, the present (MP) CP(IB) 42 of 2020 is admitted.

-Sd-

Kaushalendra Kumar Singh
Member (Technical)

-Sd-

Madan B. Gosavi
Member (Judicial)

Swati