

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

CP (IB) No. 483/MB/2020

Under section 10 of IBC, 2016

In the matter of

**SM Energy Teknik and Electronics Limited,
(CIN L51900MH1982PLC026292)**

SM Centre Andheri, Kurla Road, Marol Naka,
Andheri (East), Mumbai, Mumbai City-400059,
Maharashtra India

.... Corporate Applicant

Order delivered on: 17.11.2022

Coram:

Mr. Manoj Kumar Dubey

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicants

:

Mr. Shashwat Rai, Advocate

ORDER

Per: Mr. Kishore Vemulapalli, Member (Judicial)

1. This Company Petition is filed by SM Energy Teknik and Electronics Limited (hereinafter called Corporate Applicant), under Section 10 of Insolvency and Bankruptcy Code 2016 ("the Code") read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, for initiation of Corporate Insolvency Resolution process.

2. The Corporate Applicant says that its registered office is at SM Centre Andheri, Kurla Road, Marol Naka, Andheri (East), Mumbai, Mumbai City- 400059, Maharashtra India, incorporated on 09/02/1982 vide CIN L51900MH1982PLC026292 on the file of Registrar of Companies, Mumbai, having paid up share capital of Rs. 12,31,68,660.
3. The Corporate Applicant submits that they are engaged in the business of textile manufacturing. The Corporate Applicant/ Debtor is a Company listed with Bombay Stock Exchange i.e. manufacturing, assembling, erecting, dealing different kind of machineries including textiles machineries, equipment's, accessories thereof.
4. The Petitioner submits that the alternative plants for revival of the Company have not been found viable despite efforts of the Board of Directors and there have been no operations in the Company for the past 7-8 years, the Company's net-worth is continuously eroding and has become negative. The Promoters of the Company also introduced capital of around Rs.5,73,20,000/- (Rupees Five Crores Seventy-Three Lacs and Twenty Thousand only) in 2008 on Preferential basis allotment after obtaining the Consent from Securities and Exchange Board of India vide Order No. WTM/TCN/29/CFD/AUG/2008 dated 11th August, 2008 and allotted shares thereof. However, despite the Capital infusion and continuous efforts, the Promoters have failed to make any turnaround for the revival of the Company. The company is unable to raise any funds for paying its creditors or meeting its obligations. The Corporate Debtor has defaulted in the

payment of its debt to all its creditors and is even unable to pay Bombay stock Exchange Listing Fees and is facing suspension.

5. The Petitioner has submitted a copy of Special Resolution passed by the Members in their Annual General Meeting held on 27.09.2019 for initiating Corporate Insolvency Resolution Process u/s 10 of Insolvency & Bankruptcy Code. The Board of Directors of the Corporate Applicant in their meeting held on 25.10.2018 authorised Mr. Domnic M. Gonsalves, Director of the Company, to file necessary application under the Code.
6. The Corporate Applicant has disclosed that a sum of Rs. 6,54,65,798.61/- is due to Financial Creditors (secured/unsecured creditors) which is in default and listed some of the major defaults in the petition that included the following-
 - a. A debt due of Rs.9,45,849/- (Rupees Nine Lacs Forty Five Thousand Eight Hundred Forty Nine Only) to M/s. Transpek Finance Limited. In 1995, M/s. Transpek Finance Limited entered into a Hire Purchase Agreement with Corporate Debtor for providing finance Rs.21,00,000/- (Rupees Twenty One Lacs Only) on Hire Purchase terms. The Company defaulted in repaying the Loan. In 2001, Transpek Finance Limited filed a Civil Suit against the Applicant for recovery of the Loan.
 - b. The Corporate Debtor failed to pay the Listing fees to BSE. BSE then suspended the trading of the Company with effect from 17th October, 2018 and enforced freezing of the entire Promoter shareholding of the company with effect from 25th September, 2018 till further notice. The Suspension Order no. 20180925-27 dated 25th

September, 2018 from BSE stating the Suspension of Trading due to non-compliance of SEBI (Depositories and Participants) Regulations, 1996 with effect from 17th October, 2018 being 21 days from the date of the Notice and freezing of entire Promoter shareholding.

c. Corporate Debtor defaulted in paying Listing Fees to Bombay Stock Exchange for F.Y. 2019-2020 of Rs. 3,54,000/ (Rupees Three Lacs Fifty Four Thousand Only) and the interest due of Rs.8,850/- (Rupees Eight Thousand Eight Hundred and Fifty Only) and arrears of Annual Listing Fees of Previous Years of Rs. 2,95,000/ (Rupees Two Lacs Ninety Five Thousand). Letter no. DCS / ALF / PS / RL2-Promoter Freezing /93 44 /2 019-20 dated 20/11/2019 from BSE regarding the Default of the Company in non-payment of Annual filing fees annexed to the petition.

d. The Company has also defaulted in the Payment of Statutory Dues to the National Securities Depository Limited (NSDL) which led to termination of their services to the Corporate Debtor. Copy of Letter no. NSDL/ACF/2019 681 dated 20/02/2019 from NSDL annexed to the Company Petition.

e. The Company defaulted in the debt payment of Rs. 16,02,804/- (Rupees Sixteen Lacs Two Thousand Eight Hundred and Four Only) to M/s. Pavan Industries. In 2014, M/s. Pavan Industries through its Partner Mr. Dineshbhai Hargovindbhai Patel filed a Summary Suit (Copy of Suit annexed as Annexure "J") against the Corporate Debtor for default of Rs. 16,02,804/- (Rupees Sixteen Lacs Two Thousand Eight Hundred and Four Only) along with interest for which Summons were issued to the Corporate Debtor on 07th August, 2019. (Copy of Summons annexed as Annexure "K").

f. The Company failed to pay its dues to M/s. Chandan Industries through its Partner Mr. Purshottambhai Patel who filed a Summary Suit against the Corporate Debtor for Rs. 25,45,797/ (Rupees Twenty Five Lacs Forty Five Thousand Seven Hundred and Ninety Seven only) and interest thereon. (Copy of Summary Suit annexed as Annexure "L"). The Court issued a Summons to the Corporate Debtor on 16th March, 2015. (Copy of Summons in the case of M/s. Chandan Industries is annexed as Annexure "M").

g. In 2012, the Company completely closed down its operations. The Applicant liquidated all that possible to dispose and realized funds thereof and assets cleared the dues payable to all the Employees and the Financial Creditors. The Company has cleared the debt of all Financial Creditors and has filed Charge satisfaction forms with ROC to report the closure of the Loans and there by Satisfaction of Charge. However, in one case although the Company has duly repaid the financial debt due to Gujarat Industrial Investment Corporation Limited (GIIC) and received No Due Letter and No Outstanding Certificate (No Due Letter and No Outstanding Certificate of GIIC is hereby annexed as Annexure "N"). the Company inadvertently failed to file form for satisfaction of the charge with ROC. So, although the loans are repaid, the Index of Charges on the Ministry of Corporate Affairs website show that there is an Open Charge against the loan of GLIC.

h. Further, to above specific defaults, the Company has defaulted in payment to all of its other Creditors too. The Company has stated the list of creditors whose Debt is outstanding and unpaid as on date in Annexure "C". The Corporate Debtor is unable to pay the creditors

the amounts due to them and thus has defaulted on debt payment to all the 137 Operational Creditors and 8 Financial Creditors of the Company. The total amount of default of debt stands at Rs. 6,54,65,798.61/- (Rupees Six Crores Fifty Four Lacs Sixty Five Thousand Seven Hundred Ninety Eight and Paise Sixty One only).

7. The Default in payment and the inability of the Company to pay any of its debt has led to the application by the Corporate Debtor for initiating Corporate Insolvency Resolution Process in the matter of self and it has sought approval of its members for filing section 10 petition under the code vide Special Resolution passed in the Annual General Meeting (AGM) of the Company convened 27/09/2019. (Copy of on Special Resolution attached as Annexure "A"). The Company has stated the details of Creditors in the list of Creditors whose debt is outstanding and unpaid as on date.
8. Further, the Corporate Applicant has also enclosed the audited financial statements for the years, 2016-17, 2017-18 and 2018-2019 and the provisional financial statements for the period from 1.4.2019 to 15.01.2020. The Company is unable to pay the Creditors the amounts due to them and thus has defaulted on the Debt payment to the 137 Operational Creditors and 8 Financial Creditors of the Company. The Debt was incurred on different dates from 2002 to 2019 for each of the 137 Operational Creditors and 8 Financial Creditors and details of the Debt is given in the list of Creditors.

9. On reading the Petition and the supporting documents annexed with the Petition, this Bench is of the view that the Corporate Applicant has committed default and the Petition contains the particulars as required u/s 10 of the Code and that the Corporate Debtor is not disqualified U/s 11 of the Code. Hence, this Bench hereby **admits** this petition, declaring moratorium with consequential directions as mentioned below:

- (i) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Applicant including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Applicant any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Applicant in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Applicant.
- (ii) That the supply of essential goods or services to the Corporate Applicant, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (iii) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- (iv) That 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 Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Applicant under Section 33, as the case may be.
- (v) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
- (vi) That this Bench hereby appoints the proposed Resolution Professional after perusing the written communication in Form 2 by the RP, Mr. Ashish Kanodia, having address at 5, Hetal Apartment, 1st Floor, Above Arti Scan Centre, N.S. Road, Mulund West, Mumbai-400080, having IBBI Registration No. IBBI/IPA-001/IP-P00634/2017-18/11106, and Mobile No. 9920299049, as Interim Resolution Professional to carry the functions as mentioned under the Code.
10. The Registry is hereby directed to communicate this order to the Applicant. The Learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith within 10 days of the order being uploaded on the website.

Sd/-
Manoj Kumar Dubey
Hon'ble Member (Technical)
17.11.2022

Sd/-
Kishore Vemulapalli
Hon'ble Member (Judicial)