

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

C.P. (IB) 331/MB/2023

Under Section 10 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Muktar Automobiles Private Limited

Having its address at House No. Plot No.
92/93/94, Pilerne Industrial Estate, Bardez
North Goa, Goa-403511

..... Petitioner/ Corporate Applicant

Order Delivered on :- 13/03/2024

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Petitioner : Adv. Aniruth Purusothaman
For the Financial Creditor : Adv. Akshita Jain a/w
Adv. Nidhi Mistry (Tata Capital Limited)
Adv. Subhash Gupta (Central Bank of India)
For Operational Creditor : Adv. Sneha (Gomatesh Enterprises)

ORDER

Per: - Anil Raj Chellan, Member (Technical)

1. The present Petition is filed by Muktar Automobiles Private Limited ('the Corporate Applicant') under Section 10 of the Insolvency and Bankruptcy Code, 2016 ('the Code') for initiation of Corporate Insolvency and Resolution Process ('CIRP') against itself. The Petition has been filed through its authorised representative Mr. Custodio Sebastiao Fernandes.

2. Brief facts of the case, as mentioned in the Company Petition filed by the Corporate Applicant, which are relevant to the issue in question are as follows: -
 - 2.1. The Corporate Applicant was incorporated under the Companies Act, 1956 on 19.05.2011. The authorised share capital and the paid-up share capital of the Corporate Applicant is Rs. 3 crores.

 - 2.2. The Corporate Applicant is the authorised dealer of Mahindra & Mahindra in Goa and operates four sales and service centres covering the complete range of personal and commercial vehicles. During the financial year 2019-20, the automobile industry was severely affected due to various factors, namely, transition to GST, increased cost of vehicles, withdrawal of credit limits by banks, etc. On account of the above and high overheads, the Corporate Applicant had to bear substantial drop in sales to the extent of 35%-40% and incurred losses in FY 2019-20.

- 2.3. It is submitted that the Corporate Applicant borrowed from banks/financial creditors aggregating Rs. 26,72,70,156/- and the amount in default is Rs.14,70,60,996. The Corporate Applicant also owes an amount of Rs 26,13,576/- to operational creditors. The details of financial and operational debts are attached as Exhibit -H to the Petition. In addition, statutory liabilities amounting to Rs 33,43,470/- are also outstanding as mentioned in Exhibit -J to the Petition. On account of the defaults in payment/repayment of the debts, the Corporate Applicant passed a Special Resolution at its extraordinary general meeting held on 20.12.2022 to file the application under Section 10 of the Code in respect of the Applicant. A copy of the audited financial statements as at 31.03.2018 and 31.03.2022, and provisional balance sheet as at 31.01.2023 are annexed to the Petition.
3. Court Notice in the Petition was issued to the Financial Creditors. In response, the Tata Capital Ltd, the financial creditor filed its reply stating that an amount of Rs.1,81,81,167.33 (inclusive of interest and penal charges) was outstanding as on 30.09.2021 and on account of the default the financial creditor has already initiated action under SARFAESI Act, against the assets of the Corporate Applicant for recovering Rs.3,78,63,445.85 as on 30.11.2023. It is also stated that the Special Resolution attached to the Petition cannot be acted upon as the same is signed by one of the directors of the Corporate Applicant and not by the shareholders of the Corporate Applicant and also disputed the Special Resolution. The financial creditor further contended that based on the provisional balance sheet and other documents annexed with the Petition, it cannot be concluded that the Corporate Applicant is in losses and not a profit-making company. It is further stated that in case the Corporate Applicant is admitted to Corporate Insolvency Resolution Process (CIRP), the interests of the financial creditors

are to be protected. Union Bank, another financial creditor also filed its reply stating that it initiated action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for recovery of dues and the same is pending. The Corporate Applicant served notices to the operational creditors and filed Affidavit of Service but none appeared.

4. This Tribunal vide its order dated 30.01.2024 directed the Corporate Applicant to furnish the latest financial statements of the Corporate Applicant and the Applicant by way of an additional affidavit filed Audited Financial Statements as of 31.03.2023, Provisional Financial Statement upto 31.12.2023 and list of all pending litigations/proceedings against the Company.
5. We have heard the Counsel for the Corporate Applicant and financial creditor and perused the records.
6. After careful examination of the records, it is clear that Corporate Applicant availed financial assistance from financial creditors and on account of the defaults committed by the Corporate Applicant., the financial creditors have initiated action under SARFAESI Act and the recovery actions are at different stages. Substantial amounts are owed by the Corporate Applicant to the Operational Creditors and Statutory Authorities.
7. Section 10 of the Code stipulates that a corporate debtor on occurrence of default in payment of a debt may file an application in the form and manner prescribed for initiating corporate insolvency resolution and such an application may be rejected on two grounds-*firstly*, if the application is incomplete i.e. it does not contain - the special resolution passed by the shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate applicant approving filing of the application; the information relating to its books of account and

such other documents required to be filed in terms of the Code and the relevant rules and regulations; details relating to proposed Interim Resolution Professional etc., *Secondly*, if any disciplinary proceeding is pending against the proposed Resolution Professional. It is noticed that a special resolution has been passed by the shareholders of the Corporate Applicant in their extraordinary general meeting held on 20.12.2022 according consent to file an application u/s 10 of the Code. The contention raised by one of the financial creditors-Tata Capital Limited stating that the special resolution annexed to the Petition cannot be acted upon as it is certified only by one director of the Corporate Applicant is not a lawful ground to challenge the validity of the resolution passed by the Corporate Applicant. We also notice that the proposed interim Resolution Professional – Ms.Garima Diggiwal has given her consent to act as interim resolution professional and declared her eligibility and non-pendency of any disciplinary proceedings against her. Thus, it is noted that the Petition is free from defects and complete in all respects, as required under the Code.

8. The Petition shows that the Corporate Applicant is in default of debt as evidenced by the books of account and also by the confirmations made by the financial creditors. The records also show that the default is more than the threshold amount as stipulated under section 4(1) of the Code. The objection raised by the financial creditors is that recovery proceedings initiated under SARFAESI Act is at different stages. The Hon'ble NCLAT in the case of Unigreen Global Private Limited vs. Punjab National Bank and Ors has held that the existence of proceedings under Section 13(4) of the SARFAESI Act against the corporate debtor or a suit against the corporate debtor under Section 19 of DRT Act, 1993 before a Debt Recovery Tribunal or an appeal pending before the Debt Recovery Appellate Tribunal cannot be a ground to reject an application under Section 10 if the application is complete.

9. In the light of the facts stated in the Petition, the evidence placed on record and the discussions in the foregoing paragraphs, this Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Applicant on the following terms: -

ORDER

- a. **The above Company Petition No. (IB) 331 (MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Muktar Automobiles Private Limited.**
- b. This Bench hereby **appoints Ms.Garima Diggiwal, Registration No: IBBI/IPA-001/IP-P-02018/2020-2021/13158 as the Interim Resolution Professional having her address at 91, Moji Colony, Malviya Nagar, Jaipur, Rajasthan 302017** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Corporate Applicant shall deposit an amount of **Rs. 3,00,000/- (Rupees Three Lakhs Only)** towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. 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 debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization 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.

- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management the Corporate Applicant will vest in the IRP/RP. The suspended directors and employees of the Corporate Applicant shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Applicant.

10. **Accordingly, this Petition is admitted.**

11. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)