



IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.302
C.P.(IB)/23(MP)2021

Proceedings under Section 10 IBC

IN THE MATTER OF:

Hindustan Tankers Pvt Ltd

.....Applicant

Order delivered on 05/08/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-Sd-

**MADAN B. GOSAVI
MEMBER (JUDICIAL)**



IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

CP(IB)/23/MP/2021

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

IN THE MATTER OF:

Hindustan Tankers Pvt Ltd

Having its registered office at:
C/o Highway Fuels, Salakhedi,
Mhow-Neemuch Road, Ratlam,
Madhya Pradesh- 457001

..... Applicant/Corporate Applicant

Order Reserved on: 14.07.2022
Order Pronounced on: 05.08.2022

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

Appearance:

For the Applicant: Learned Adv. V. N. Dubey and Adv. Rohit Dubey

For the Financial Creditor: Learned Adv. Harshil Patel

ORDER

1. The present application has been filed by the corporate applicant through its director Mr. Rameez Ahmed Khan, under section 10 of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the applicant i.e., M/s Hindustan Tankers Pvt Ltd.



2. The corporate applicant was incorporated on 16.04.2012 under the provisions of the Companies Act, 1956, having CIN No. U60230MP2012PTC028193, its registered address is at C/o Highway Fuels, Salakhedi, Mhow-Neemuch Road, Ratlam, Madhya Pradesh- 457001. The authorized share capital of the corporate applicant is of Rs 1,00,000/- and paid-up share capital of Rs 1,00,000/-. The corporate applicant has been engaged in the business of road transport of goods.

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

i. In recent years the efforts and infusions made in the business of corporate applicant by the promoters and Banks/Financial Institutions did not prove high yielding and the business of corporate applicant started moving downside. In spite of various efforts being made by the people in management and control of the corporate applicant, the business and operations of the corporate applicant could not be prevented from continuous downfall.

ii. As on 19.07.2021, the corporate applicant has a total of 7 financial creditors amounting to Rs 7,72,30,060/-. Further, the corporate applicant has total 5 operational creditors amounting to Rs 37,36,176/-

iii. Owing to certain defaults in the payment of loans, the financial creditors of the corporate applicant (Tata Motors Finance Limited, ICICI Bank, Tata Motors Finance Solutions Limited, India Infoline Finance Limited, Manoj Finance Limited, and HDFC Bank) have classified its account as a Non-Performing Asset (NPA).

iv. The Special Resolution passed in the Extraordinary General Meeting dated 25.07.2021, and the Board Resolution dated 22.07.2021, resolved and authorized director Mr. Sayeed Ahmed Khan, to file an application under section 10 of the Code, r.w. Rule 7 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the CIRP against the corporate applicant.



v. The corporate applicant defaulted in repayment of financial debts which individually amounts to more than Rs 1 Crore. Further, the default made during the period does not fall under section 10A of the Code.

4. In the present application, the corporate applicant has proposed the name of Mrs. Chhaya Gupta, as an Interim Resolution Professional (IRP) having registration No. IBBI/IPA-002/IP-N00984/2020-21/13133. A copy of the written communication received from the proposed IRP in Form-2, showing her willingness to accept such an assignment to act as IRP is placed on record.

5. The facts in brief as submitted by one of the financial creditors Kotak Mahindra Bank Limited (KMBL), opposing the present application of the corporate applicant 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 corporate applicant.

ii. On account of default, the corporate applicant was served with a legal notice dated 07.01.2020, whereby the loan agreement came to be prematurely terminated and the corporate applicant was called upon to make the payment of the due amount as per the foreclosure statement. However, upon non-payment of the outstanding amount, KMBL was constrained to file an original application No. 35 of 2021, before the Hon'ble Debts Recovery Tribunal, Jabalpur under section 19 of the Recovery of Debts and Bankruptcy Act, 1993. During the pendency of the said application, the present application has been filed by the corporate applicant to unduly avail the benefit of the moratorium under section 14 of the Code.

iii. The corporate applicant has not disclosed the security interest created and has not filed any details in this regard with this application.

iv. The corporate applicant has failed to provide substantial information with respect to the properties mortgaged, securities



charged, and collateral given for borrowings from the Banks and Financial Institutions.

v. KMBL and other Banks and Financial Institutions have already initiated recovery proceedings before various courts/tribunals and judicial authorities and the same are pending.

vi. The corporate applicant has not filed copies of the invoices in respect of the operational creditors. There is also no information as to whether there are any statutory/Government dues or employee dues as they also fall within the definition of the term "operational creditor".

6. The facts in brief as submitted by one another financial creditor Tata Motors Finance Solutions Limited (TMFSL), opposing the present application of the corporate applicant 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 corporate applicant.

ii. On account of default, the corporate applicant was served with a loan recall notice dated 05.01.2019 whereby the loan agreements came to be prematurely terminated and the corporate applicant was called upon to make the payment of the due amount as per the foreclosure statement. The corporate applicant also availed of loan facilities and defaulted from the sister concern of TMFSL i.e., Tata Motors Finance Limited. Therefore, Tata Motors Finance Limited filed a Commercial Arbitration Petition No. 1140 of 2019 under section 9 of the Arbitration and Conciliation Act, 1996 before the High Court of Bombay. During the pendency of the proceedings, a Memorandum of Understanding dated 12.09.2019 came to be executed between the corporate applicant, Tata Motors Finance Limited, and Tata Motors Finance Solutions Limited. However, upon non-compliance with the MOU and default of the corporate applicant, TMFSL once again issued a loan recall notice dated 07.02.2020.



iii. A reference letter dated 29.07.2020 to invoke Arbitration against the corporate applicant was issued, which was duly accepted by the Arbitrator. The corporate applicant remained absent and therefore hearing proceeded ex-parte before the Arbitrator, who has thereafter pleased to pass an Award dated 17.10.2020 in favour of TMFSL.

iv. An application under section 9 of the Arbitration and Conciliation Act, 1996 has also been preferred before the Hon'ble High Court of Bombay, an interim relief was also granted by the Hon'ble High Court in favour of TMFSL vide order dated 09.02.2021.

7. In this context, defences made and argued by the learned advocate appearing on behalf of the corporate applicant are summarized here as under:

i. The objectors have themselves admitted the existence of debt and default of amount more than Rs 1 crore, constant financial distress, a situation of inability to pay debts of the corporate applicant, and multiple litigations actions for recovery hanging over the corporate applicant.

ii. The application for initiating the CIRP of the corporate applicant is not filed with any malicious intent, its sole purpose is revival/resolution of the corporate applicant under section 10 of the Code, it is complete in all respect. Further, it does not suppress any material facts as being alleged by the objectors.

iii. The corporate applicant has furnished the documents related to charge of assets on page No. 948 to 960 of the application, list of properties and liabilities on page No. 943 to 947 of the application, loan cum hypothecation agreement on page No. 23 to 211 (Tata Motor Finance Limited), page No. 291 to 297 (Tata Motor Finance Solutions Limited), page No. 314 to 417 (ICICI Bank), page No. 472 to 668 (Kotak Mahindra Bank), and page No. 729 to 820 (IIFL) of the application. Further, the details of Personal Guarantees given in respect of each of the debts of Objectors are on page No. 975 to 979 of the application.



iv. It is an imperative position of law under the Code, that pending proceedings or actions of recovery by any of the financial or operational creditors does not amounts to disqualification in the initiation of the CIRP of the company.

v. The objectors by objecting to the application on grounds of fear of moratorium, have themselves placed before this Tribunal their intentions of giving primacy to recovery over resolution.

vi. The corporate applicant being in the business of road transportation of goods has certain operational creditors who had supplied goods and services, their respective invoices being not readily available, but the corporate applicant has disclosed the details of their debt in form of ledger/sub-schedules forming the basis of the audited financial statements of the corporate applicant.

i. We have heard the learned counsel for the applicant and for the financial creditors opposing the present application and perused the material on record. It is noted that the corporate applicant has defaulted in paying the debts borrowed from the financial creditors. The principal object of the 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. Some of the financial creditors have objected the application on the ground that several recovery proceedings are pending against the corporate applicant. However, section 238 of the Code provides an overriding effect over the pending proceedings against the corporate applicant under any other law. It is also objected on the ground that documents related to operational debt are not filed by the corporate applicant, but as per the submissions made by the corporate applicant the operational debt is duly disclosed in financial statements. As such objection so raised have no merit. Accordingly, in facts of the case, we are of the considered view that the amount of default meets the threshold limit prescribed under the Code and is well within the limitation period to initiate the CIRP proceedings.



Further, the application is defect free, and hence, we admit the present application and order as under:

ORDER

I. The corporate applicant M/s Hindustan Tankers Pvt Ltd is admitted in CIRP under section 10 of the Code.

II. The moratorium is declared for prohibiting all 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 applicant 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 applicant 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 applicant 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 applicant.

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 applicant under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

IV. We hereby appoint Mrs. Chhaya Gupta, having Reg. No. IBBI/IPA-002/IP-N00984/2020-21/13133, address: 1, Bima Nagar, 202, Almas Dreams Apartment, Near Anand Bazar, Indore, Madhya Pradesh- 452018, guptachayacs@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 applicant shall stand suspended in terms of section 17 of IBC, 2016.

V. The 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.

VII. Accordingly, the present CP(IB)/23/MP/2021 is admitted.

-sd-

Kaushalendra Kumar Singh
Member (Technical)

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Madan B. Gosavi
Member (Judicial)

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