

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

ITEM No.201
C.P.(IB)/135(AHM)2021

Orders under Section 10 IBC, 2016

IN THE MATTER OF:

Eternal Motors Pvt Ltd

.....Applicant

Order delivered on ..10/08/2022

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 the order. The order is pronounced in open Court vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

MADAN B GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
Court No. I**

C.P. (I.B.) No.135/NCLT/AHM/2021

(An Application under section 10 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

M/s. Eternal Motors Pvt. Ltd.
CIN: U34021GJ1998PTC034222
Having registered office at:
Plot No.6/8 & 9, GIDC, Chitra
Bhavnagar, Gujarat – 364 004

....Applicant/Corporate Person

Order delivered on. 10.08.2022

Coram: Madan B. Gosavi, Member (Judicial)
Kaushalendra Kumar Singh Member (Technical)

Appearance:

For the Corporate Person : Mr. Parth Shah, Ld. Adv. for Mr. Kurven
Desai, Ld. Adv.
For the PNB : Mr. Jaimin R Dave, Ld. Adv.

[ORDER]

1. This application is filed under Section 10 of the Insolvency and Bankruptcy Code, 2016 (“**IB Code, 2016**”) by the Corporate Person i.e. **M/s. Eternal Motors Private Limited** for initiation of its own Corporate

Insolvency Resolution Process (**"CIRP"**) on a ground that it is unable to pay the debt of various Banks amounting to Rs.40,11,80,000/-. The date of default is stated to be 15.05.2021.

2. Since the Corporate Person itself come before us with the prayer to admit it in CIRP holding that it is Insolvent Company, we have only to see whether the Applicant has submitted along with the application (i) the information relating to the books of accounts and such other documents, (ii) information relating to Resolution Professional to be appointed and (iii) special resolution passed by the shareholders of the Corporate Debtor at least by $\frac{3}{4}$ of the total numbers.

3. Such application can be rejected only on a ground that if the application is incomplete or any disciplinary proceeding is pending against the proposed IRP. In this case no disciplinary proceeding is pending against the proposed IRP i.e. Mr. Manish Santosh Buchasia. Now this Adjudicating Authority need to check whether the application is a defect free or not.

4. In order to see whether the application is complete as per provisions of Section 10 (3) (a) (b) and (c) of the Insolvency and Bankruptcy Code, 2016, we checked the Provisional Balance Sheet Annexed at Page No. 14, Annexure-E. The Corporate Person has produced provisional balance sheet dated as on 30.06.2021. It is seen that net worth of the Corporate Person is (-)9,74,99,002/- as on 30.06.2021. It shows that the Corporate Person is unable to pay the debt. We have also noted that this application is filed as per Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 in Form-6. Required information is also furnished therein. It is noted that the Corporate Person suggested the name of **Mr. Manish Santosh Bushasia** having Registration **No.IBBI/IPA-002/IP-N00487/2017-2018/11449** for appointment as the IRP against whom

no disciplinary proceeding is pending. A special resolution by the Board of Director of the Corporate Person is produced as Annexure-D wherein all shareholders attended that meeting. We see that application is defect free.

5. Three Financial Creditors of the Corporate Person objected admission of this application. (1) HDFC Bank (2) IDFC Bank and (3) PNB Bank. Out of them HDFC Bank and IDFC Bank filed affidavit in reply and learned counsel for the PNB Bank, Mr. Jaimin R Dave made submissions opposing the admission.

6. It is submitted by both the Banks that it is fraudulent initiation of CIRP to get benefit of moratorium in order to halt their recovery proceeding filed in DRT. We hold that this cannot be a ground to reject the application. The Insolvency and Bankruptcy Code, 2016 is a beneficial legislation enacted for resolution of Insolvency of the Corporate Person and, hence, only because any recovery proceedings is pending against the Corporate Person is not a ground to reject this application. Moreover, it is seen from the material available on record that this application was filed on 30.07.2021 whereas the HDFC Bank has given a notice under Section 13(2) of the SARFAESI Act, 2002 on 18.12.2021 i.e. after filing of this application. SBI has served the notice of default on 28.05.2021 i.e. 3 months prior to filing of this application. In short there is no material before us to show that the Corporate Person has filed this application with some ulterior motive. There is no dispute to the fact that the debt is more than One Crore payable by the Corporate Person to the various Banks and the Corporate Person committed default in paying the same. We hold that it is a fit case where the Corporate Person can be admitted in CIRP. Hence, we pass the following orders:

ORDER

- i) The Corporate Person, viz., M/s. Eternal Motors Private Limited, is admitted in Corporate Insolvency Resolution Process under Section 10 of the Insolvency and Bankruptcy Code, 2016.
- ii) The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 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 the 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. Manish Santosh Buchasia**, having **Registration No.IBBI/IPA-002/IP-N00487/2017-18/11449**, **(E-mail ID : manishbuchasiacs@gmail.com)** to act as an IRP under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Regulation made thereunder:
- v) The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is

at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- vi) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
- vii) It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs.1,00,000/-** (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.
- viii) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within

seven working days and upload the same on website immediately after pronouncement of the order.

7. Accordingly, CP (IB) No. 135/10/NCLT/AHM/2021 is allowed and disposed of.

-SD-
(Kaushalendra Kumar Singh)
Member (Technical)

-SD-
(Madan B. Gosavi)
Member (Judicial)

Swetambary