

IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

COURT NO. 1

ITEM No.302

C.P.(IB)/37(MP)2021

Proceedings under Section 10 IBC

IN THE MATTER OF:

Sagar Automobiles Pvt Ltd

.....Applicant

Order delivered on 25/08/2022

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)/37/MP/2021

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

IN THE MATTER OF:

Sagar Automobiles Pvt Ltd

Having its registered office at:

8/13, Babji Nagar,

A.B. Road, Niranjanpur,

Dewas Naka, Indore,

Madhya Pradesh- 452010

..... Applicant/Corporate Applicant

Order Reserved on: 12.08.2022

Order Pronounced on: 25.08.2022

Coram: Madan B. Gosavi, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For the Applicant: Learned PCS Mr. Pratik Tripathi

For the Financial Creditor: None

ORDER

1. The present application has been filed by the corporate applicant through its director Mr. Yahaya 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 Sagar Automobiles Pvt Ltd.

2. The corporate applicant was incorporated on 06.07.1995 under the provisions of the Companies Act, 1956, having CIN No. U50103MP1995PTC009670, its registered address is at 8/13, Babji Nagar, A.B. Road, Niranjapur, Dewas Naka, Indore, Madhya Pradesh- 45010. The nominal share capital of the corporate applicant is Rs 3,15,00,000/- and the paid-up share capital of Rs 2,37,00,000/-. The corporate applicant has been engaged in the business of selling vehicles.

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

i. The corporate applicant has taken a loan from Mahindra and Mahindra Financial Services Ltd and the loan is secured by way of a mortgage on immovable property belonging to the director and their relatives.

ii. The corporate applicant has taken a loan from Punjab National Bank of Rs 9.5 Crore and hypothecation was created on entire stocks of raw material, stock-in-process, finished goods, consumable stores and spares, and all other current assets of the corporate applicant and also mortgaged immovable property.

iii. The corporate applicant was carrying out the business of selling vehicles and was an authorized dealer of all Mahindra vehicles. Due to financial difficulties, the business of the corporate applicant was stopped in the year 2017.

iv. Due to non-payment of the loan, Mahindra and Mahindra Finance Ltd, and Punjab National Bank issued notices.

v. The corporate applicant has defaulted in repayment of the secured loan of Punjab National Bank, Mahindra and Mahindra Financial Services Ltd, and the unsecured loan taken from promoters and various parties.

vi. As on 18.01.2020, the corporate applicant has a total of 10 financial creditors amounting to Rs 22,17,96,762/-. Further, the

corporate applicant has one operational creditor amounting to Rs 9,85,665/-

vii. The amount in default is as follows:

- a. Financial debt (Punjab National Bank)- Rs 8,12,41,460/-
- b. Financial Debt (Mahindra & Mahindra Finance)- Rs 5,75,31,811/-
- c. Financial Debt (Mr. Abdul Raof Khan Shirani)- Rs 23,23,217/-
- d. Financial Debt (Mr. Gulam Gaus Khan Shirani)- Rs 81,43,000/-
- e. Financial Debt (M/s Naresh Chand Maheshwari HUF)- Rs 5,00,000/-
- f. Financial Debt (M/s Rajendra Kumar Bapulal HUF)- Rs 5,00,000/-
- g. Financial Debt (M/s Saba Khan Shirani)- Rs 49,13,958/-
- h. Financial Debt (Mr. Sameer Khan Shirani)- Rs 22,45,000/-
- i. Financial Debt (M/s Sita Homes Pvt Ltd)- Rs 14,78,303/-
- j. Financial Debt (Mr Yahaya Khan Shirani)- Rs 77,86,114/-
- k. Operational Debt (M/s Mahesh Associates)- Rs 4,38,045/-

viii. The Board Resolution dated 26.06.2021, resolved and authorized director Mr. Yahaya 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. The Special Resolution to this effect was passed in Extraordinary General Meeting dated 20.07.2021.

4. In the present application, the corporate applicant has proposed the name of Mr. Ashutosh Gokhale, as an Interim Resolution Professional (IRP) having registration No. IBBI/IPA-001/IP-P00613/2017-2018/11072. 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. However, by an affidavit dated 23.06.2022 the corporate applicant informed this Tribunal regarding the withdrawal of consent given by the proposed Interim Resolution Professional.

5. No objections have been received from any of the creditors of the corporate applicant. However, one objection from the Commercial Tax Department is placed on record, it was submitted in the objection affidavit that the outstanding amount of Rs 72,94,68,780/- is due and payable by the corporate applicant to the Commercial Tax Department, Ratlam (MP), and such aforesaid amount has not been paid by the corporate applicant to the Department.

6. We have heard the learned counsel for the applicant 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. Accordingly, in the 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 Sagar Automobiles 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 the 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 the corporate applicant under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

IV. We hereby appoint Mr. Ishwar Lal Kalantri, having Reg. No. IBBI/PA-001/IP-P01448/2018-19/12439, address: FH 183 Scheme No. 54, Vijay Nagar, Indore, Madhya Pradesh- 452010, Email- ipkalantri@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 the 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)/37 /MP/2021 is admitted.

-SD-

Kaushalendra Kumar Singh
Member (Technical)

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-SD-

Madan B. Gosavi
Member (Judicial)