

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”**

**CP (IB) No.130/CHD/HP/2018  
Amended Petition**

**Under Section 10 of the  
Insolvency and Bankruptcy  
Code, 2016.**

**In the matter of:**

**Bhagat Ram Motor Ways Private Limited**

Rakkar Road, Una  
District Una,  
Himachal Pradesh - 174303

....Applicant/Corporate Debtor

**Judgement delivered on: 10.12.2018**

**Coram: Hon'ble Mr. Justice R.P.Nagrath, Member(Judicial)  
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the Applicant/  
Corporate Debtor:

1. Mr. Ashok Malik, Advocate
2. Mr. Nitin Kant Setia, Advocate
3. Ms. Saloni, Advocate

For State Bank of India,  
Financial Creditor

1. Mr. Rakesh Gupta, Advocate
2. Mr. Puneet Jain, Advocate
3. Mr. Yogesh Kumar, Advocate

For Daimler Financial Services  
India Pvt. Ltd. & HDB Financial  
Services Ltd.

: Mr. Rahul Katoch, Advocate

For Vinayak Construction Co.

: Mr. Deepankur Sharma, Advocate

**Per: R.P. Nagrath, Member(Judicial)**

**JUDGEMENT (Oral)**

This petition has been filed by M/s Bhagat Ram Motor Ways Private Limited (“BRMWPL”) i.e. the Corporate Debtor in Form No.6 as prescribed under sub rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (for brevity the ‘Rules’) for initiating Corporate Insolvency

Resolution Process under section 10 of Insolvency & Bankruptcy Code 2016 (for short to be referred hereinafter as the 'Code'). The Corporate Debtor falls within the definition of the term 'Corporate Applicant' as defined in sub-section (5) of Section 5 of the Code.

2. The Corporate Debtor was incorporated on 10.06.2011 having been allotted CIN U50100HP2011PTC031682 and its registered office is at Una, in the State of Himachal Pradesh and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The Memorandum and Articles of Association are at Annexure VII and copy of master data is at page 171 of the petition.

3. The authorised share capital of the Corporate Debtor is ₹3,00,00,000 (Rupees Three Crore only) and issued subscribed and paidup capital is also ₹3,00,00,000 (Rupees Three Crore only).

4. The Petition has been filed by the corporate debtor through Mr. Tushar Sharma, its Director who has been authorised to file a petition under the Code vide board resolution dated 14.04.2018 as at page No.173 of the paper book. The contents of the application are supported by the affidavit of Mr. Tushar Sharma which is Annexure VIII (page No.159A-169) of the paper book and at page 15F of the Amended Form No.6.

5. As per Memorandum of Association of the Corporate Applicant (Annexure VII) the main objects of the Corporate Debtor are to carry on in India or elsewhere the business of buying, selling, reselling, importing, exporting, transporting, storing, developing, promoting, marketing or supplying, and to act as broker, trader, agent, C & F agent, distributor, representative, franchiser, collaborator, stockiest, job worker, export house in all types of motor cars & vehicles and related spare parts or otherwise to deal in all shapes, sizes,

varieties, specifications, descriptions, applications, modalities, fashions and uses of motor cars & vehicles and related spare parts etc.

6. It is stated that the Corporate Applicant was advanced various financial facilities by State Bank of India, Central Bank of India, HDB Financial Services, Daimler Financial Services India Pvt. Ltd., Kangra Central Cooperative Bank Ltd. and Vinayak Construction Co.. In Amended Form No.6 filed by Diary No.3096 dated 21.08.2018, the complete particulars, including addresses of the financial and operational creditors have been given. It is further stated that due to closure of operations of General Motors Pvt. Ltd. in India and due to general business slowdown and increasing operational cost the applicant Corporate Debtor started incurring business loss and the products held in inventory became un-saleable.

7. The financial status of Corporate Debtor in respect of the financial creditor is narrated as below:

SBI SME Branch Mehatpur Main Bazar Mehatpur Distt. Una HP

| Sr. No. | Nature and Description of Credit Facility | Sanctioned Amount | Outstanding as on 26.02.2018 as per demand notice u/s 13(2) |
|---------|---|-------------------|---|
| 1       | Term Loan                                 | 3,00,00,000       | 1,25,20,111   |
| 2       | Cash Credit Limit                         | 7,00,00,000       | 6,22,66,741   |
| Total   |   |                   | 74,786,852  |

SBI Una Distt. Una HP

| Sr. No. | Nature and Description of Credit Facility | Sanctioned Amount | Outstanding as on 31.03.2018 |
|---------|---|-------------------|------------------------------|
| 1       | Term Loan (vehicle)                       | 8,50,000          | 4,37,823                     |

## Daimler Financial Services India Private Limited

| Sr. No. | Nature and Description of Credit Facility | Sanctioned Amount | Outstanding as on 31.03.2018 |
|---------|---|-------------------|------------------------------|
| 1       | Term Loan (Vehicle)                       | 60,27,233         | 30,50,901                    |

## Central Bank of India

| Sr. No. | Nature and Description of Credit Facility | Sanctioned Amount | Outstanding as on 31.03.2018 |
|---------|---|-------------------|------------------------------|
| 1       | Term Loan                                 | 7,40,000          | 8,03,450                     |

## HDB Financial Services

| Sr. No. | Nature and Description of Credit Facility | Sanctioned Amount | Outstanding as on 31.03.2018 |
|---------|---|-------------------|------------------------------|
| 1       | Term Loan (Vehicle)                       | 30,11,993         | 13,46,404                    |

## Kangra Central Cooperative Bank Ltd, Una

| Sr. No. | Nature and Description of Credit Facility | Sanctioned Amount | Outstanding as on 31.03.2018 |
|---------|---|-------------------|------------------------------|
| 1       | Term Loan (Vehicle)                       | 1600000           | 425972                       |

## Kangra Central Cooperative Bank Ltd Govt College, Una

| Sr. No. | Nature and Description of Credit Facility | Sanctioned Amount | Outstanding as on 31.03.2018 |
|---------|---|-------------------|------------------------------|
| 1       | Term Loan                                 | 6,00,000          | 367144                       |

## Vinayak Construction Co.

| Sr. No. | Nature and Description of Credit Facility | Sanctioned Amount | Outstanding as on 31.03.2018 |
|---------|---|-------------------|------------------------------|
| 1       | Term Loan                                 | 1,52,00,000       | 1,52,00,000                  |

8. When the matter was listed on 23.05.2018, it was contended on behalf of the petitioner-corporate debtor that as per the statement of affairs of the Company till 10.05.2018 Annexure VI-A, the total of equity and liabilities was tallying with the total of the assets. The petitioner was directed to furnish the total thereof within a week. The petitioner-corporate applicant filed an affidavit of Mr. Tushar Sharma, Director by diary No.1834 dated 28.05.2018 by attaching statement of affairs containing the clubbing as per directions of this Tribunal with separate totals of assets and liability/equity as at Annexure-XI with this affidavit.

9. Notice of this petition was directed to be issued to all the financial creditors. Mr. Rakesh Gupta, Advocate filed Power of Attorney on behalf of SBI; Mr. Anil Sharma, Advocate on behalf of the Kangra Central Co-operative Bank Pvt. Ltd.; Mr. Vipul Dharmani, Advocate on behalf of HDB Financial Services Ltd. and Daimler Financial Services India Pvt. Ltd.

10. When the matter was listed on 13.07.2018, certain more defects were noticed and the following order was passed:

*“Having heard the learned counsel for the petitioner, we find that the petitioner has not filed copies of the invoices in respect of the operational creditors as per Annexure II of Instructions in Form 6 as prescribed under the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. There is also no indication as to whether there are any statutory/Government dues or employees dues as they also fall within the definition of term ‘Operational Creditors’. Notice of this defect to the petitioner and learned counsel for the petitioner accepts notice. Let the defect be removed and documents be also filed along with supporting affidavit including complete details of Government/statutory dues or employees dues at least 7 days before the date fixed.*

*List the matter for arguments on 03.08.2018.”*

11. In compliance with the above order, the petitioner filed affidavit dated 24.07.2018 of Mr. Tushar Sharma, Director stating therein that the

corporate debtor has no employees and statutory dues. The invoices of all five(5) operational creditors along with their invoices were also attached as Annexure A/1 with this affidavit. However, some more defects were found from time to time notices of which were being accepted by learned counsel for the petitioner. Ultimately on removal of defects the complete Form 6 was finally filed with CA No.511 of 2018.

12. We have heard the learned counsel for the corporate debtor, learned counsel for the financial creditors and perused the records.

13. Sub-section (4) of Section 10 of the Code says that the Adjudicating Authority by an order –

*“(a) admit the application if it is complete (and no disciplinary proceeding is pending against the proposed resolution professional); or*

*(b) reject the application, if it is incomplete (or any disciplinary proceeding is pending against the proposed resolution professional).*

*Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.”*

14. The defects in applications as pointed out on various dates stand removed as already discussed. So we hold the application to be complete in all respects.

15. Sub-Section (3) of Section 10 of the Code reads as under:-

*“The corporate applicant shall, along with the application furnish —*

*(a) the information relating to its books of account and such other documents for such period as may be specified;*

- (b) *the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and*
- (c) *the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.”*

16. In order to comply with the requirement of clause (a) of Section 10(3) of the Code the petitioner has placed on record all the necessary documents to prove the existence of financial/operational debt and the amount as required in column 3 of Part-III of the Application Form. Copy of demand notice issued by the Financial Creditor i.e. SBI u/s 13(2) and 13(4) of the SARFAESI Act, 2002 are at Annexure I(C) and I(D) respectively. The details of the operational debt in default have also been provided. The petitioner has also filed its audited financial statements for the years 2016-17 and 2017-18 as at Annexure V (colly) and the provisional financial statements upto 10.05.2018 which is part of Annexure V (colly). As per instruction, Annexure V of prescribed Form No.6, the provisional financial statements upto a date not later than 14 days from the date of the application are required to be filed. The instant petition was filed on 18.05.2018 and the provisional statements upto 10.05.2018 fulfils the requirements of the rule.

17. Under Clause (b) of Section 10(3) the corporate applicant is bound to propose the name of Registered Resolution Professional proposed to be appointed as Interim Resolution Professional. We have perused the written communication in Form No.2 Annexure-III furnished by Mr. Arvind Kumar a registered Resolution Professional with IBBI. This Form contains all the particulars provided in the Form. He has furnished his written consent and stated that presently he is not serving as such in any proceedings under the Code so far. He

has also certified that no disciplinary proceedings are pending against him with the IBBI or the Indian Institute of Insolvency Professionals of ICAI of which he is a member. His Registration number is IBBI/IPA-001/IP-P00178/2017-18/10357. We find that written consent furnished by the proposed Interim Resolution Professional is in order.

18. It is now to be seen whether the petitioner has also complied with Section 10(3)(c) of the Code. It was also held by Hon'ble National Company Law Appellate Tribunal, New Delhi in **Horseshoe Entertainment & Hospitality Private Limited, Company Appeal (AT (Insolvency) No.214 of 2017)** decided on 19.07.2018 by relying upon "*Gaja Trustee Company Pvt. Ltd. & Ors. Vs. Haldia Coke and Chemicals Pvt. Ltd. & ors. – Company Appeal (AT) (Insolvency) No.137 of 2017*" that the Board of Directors is required to place the matter before the shareholders and creditors and to take its approval for filing application under Section 10 of the I&B Code, 2016.

19. When the matter was listed on 29.08.2018 the following order was passed:-

*"Having heard the learned counsel for the petitioner, we find that the petitioner has not attached copy of the resolution of Extraordinary General Meeting (EOGM) deciding to initiate the proceedings under Section 10 of the Insolvency and Bankruptcy Code, 2016. The learned counsel submits that the resolution was passed in April, 2018 but the same was not made part of the record, though the notice of the EOGM along with the requisite documents were placed on record.*

*List the matter on 13.09.2018. The resolution of the EOGM along with supporting affidavit be filed at least seven days before the date fixed with copy advance to the counsel opposite...."*

20. The petitioner has filed copy of the special resolution dated 07.04.2018 passed in the Extra Ordinary General Meeting of shareholders of the



Corporate Debtor resolving to initiate the Corporate Insolvency Resolution Process under Section 10 of the Code. This resolution was filed by way of Company application CA No.382 filed by diary no.3348 dated 06.09.2018. It is noted in the resolution that there has arisen the financial crisis in the Company as Restructuring proposal of the company has been declined by the lenders.

21. It is pertinent to mention that in Column No.8 of Part-II of the Application Form, the petitioner had already relied upon the documents relating to holding of Extra Ordinary General Meeting on 07.04.2018 (Annexure VII). However, the document (Annexure VII) on record was notice of EOGM proposed for 07.04.2018 as at Page 157 of the paper book along with the explanatory statement pursuant to the provision of Section 102 of the Companies Act, 2013 as at Page 159 of the paper book, but the resolution of EOGM was not attached. In fact Mr. Tushar Sharma, in his affidavit dated 17.05.2018 (Pages 160-169 of the paper book) made a categorical statement in Para No.3 that he has been authorized by resolution passed in the EOGM held on 07.04.2018. With the filing of Resolution of EOGM held on 07.04.2018, the requirement of Section 10(3) (c) of the Code also stands complied.

22. When the matter was listed on 13.09.2018, it was observed that the petitioner had not given particulars of the security held in Column No.5 of Part III of Form 6. It was noticed that in the amended application in Form 6 reference was made to details of the properties against which the claim of the corporate debtor were secured. However, this page was blank except that it referred to Annexure I (A) and Annexure I (C). Annexure I (A) pertains to details of the vehicles for which the charge was created and Annexure I (C) is the demand notice under Section 13(2) of the SARFAESI Act, 2002, served by the bank. Therefore, the application

was found to be incomplete. The petitioner was afforded an opportunity to give all the details, required in the application in Form 6.

23. In compliance of the above order, the learned counsel for the corporate debtor filed amended Form 6 with complete particulars but the same was not supported by the affidavit of the authorized representative of the petitioner.

24. Coming to the financial condition of the corporate debtor it was represented by the learned counsel for the corporate debtor that as per the financial statements filed on record, following is the status of the corporate debtor under different heads:-

I. Revenue from Operations:

| <b>Period</b> | <b>Revenue from Operations</b> |
|---------------|--------------------------------|
| 10.05.2018    | 876,919                        |
| 31.03.2018    | 41,808,722                     |
| 31.03.2017    | 280,449,858                    |
| 31.03.2016    | 250,006,606                    |

II. Accumulated Profit/Loss of the Corporate Debtor:

| <b>Period</b> | <b>Accumulated Profit/(loss) of the Corporate Debtor</b> |
|---------------|--|
| 10.05.2018    | -66,422,240  |
| 31.03.2018    | -65,600,563  |
| 31.03.2017    | 20,729,712   |
| 31.03.2016    | 18,073,257   |

III. Long Term borrowing & other Liabilities:

| <b>Period</b> | <b>Long Term borrowing &amp; other liabilities</b> |
|---------------|--|
| 10.05.2018    | 18,522,770   |
| 31.03.2018    | 18,522,770   |
| 31.03.2017    | 31,502,577   |
| 31.03.2016    | 30,533,286   |

## IV. Current Liabilities:

| Period     | Current Liabilities |
|------------|---------------------|
| 10.05.2018 | 89,245,535          |
| 31.03.2018 | 89,441,068          |
| 31.03.2017 | 81,954,585          |
| 31.03.2016 | 93,481,654          |

25. The figures extracted above indicate complete loss of net worth of the corporate debtor. It is clear from the above that the corporate debtor has failed to pay its debt and has thus committed default. In fact the learned counsel for the financial creditor has not raised any objection to the admission of the petition in view of the default committed by the petitioner-corporate debtor, nor any reply to the petition was filed. It clearly seems that the corporate debtor has fallen into debt trap and thus competent to set in motion the insolvency resolution process under the Code to ensure maximum value of assets which is in the interest of all the stakeholders.

26. In view of the above facts the petition is admitted. While admitting the application the moratorium is declared for prohibiting all the following as provided in 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.”*

27. It is further directed that the supply of essential goods or services to the corporate debtor, if continuing shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub section (1) of section 14 of the code shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to the sureties of the corporate debtor.

28. The moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this bench approves the resolution plan under subsection (1) of section 31 or passes an order for liquidation of corporate debtor under section 33 as the case may be.

29. We also appoint Mr. Arvind Kumar, address; H.No.94, Gillco Valley, Sector 127, Mohali (Kharar) 140301 Punjab, having Registration No.IBBI/IPA-001/IP-N 00178/2017/10357 and email address is [sankhyain@gmail.com](mailto:sankhyain@gmail.com), as an Interim Resolution Profession with the following directions:

- (i) The term of appointment of Mr. Arvind Kumar, shall be in accordance with the provisions of Section 16(5) of the Code.
- (ii) In terms of Section 17 of ‘the Code’, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the ‘Corporate Debtor’ shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional

and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of the 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor';

- (iii) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the 'Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- (iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor'; and
- (v) It is hereby directed that the 'Corporate Debtor', its Directors, personnel and the persons associated with the management

shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor';

(vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment , and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee.

(vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(Justice R.P. Nagrath)  
Member (Judicial)

Dec., 10, 2018  
Anchal