NATIONAL COMPANY LAW TRIBUNAL INDORE BENCH COURT NO. 1

ITEM No.1

C.P.(IB)/36(MP)2021

Proceedings under Section 10 IBC

IN THE MATTER OF:

Shirani Motors Pvt LtdApplicant

Order delivered on 14/10/2024

Coram:

Chitra Ram Hankare, Hon'ble Member(J) Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant : For the Respondent :

ORDER

This case is fixed for pronouncement of the order.

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

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KAUSHALENDRA KUMAR SINGH MEMBER (TECHNICAL) CHITRA RAM HANKARE MEMBER (JUDICIAL)

A. Bhadauria

THE ADJUDICATING AUTHORITY NATIONAL COMPANY LAW TRIBUNAL INDORE BENCH

CP(IB)/36/MP/2021

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

In the matter of:

Shirani Motors Private Limited

CIN No.: U03410MP2005PTC017898 Having its registered address at: 29, Shiranipura, Ratlam, Madhya Pradesh- 457001

.....Petitioner/Corporate Applicant

Order pronounced on: 14.10.2024

Coram: Chitra Ram Hankare, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For the Petitioner: Ld. PCS Mr. Pratik Tripathi

JUDGMENT

- 1. The present petition has been filed on 09.07.2021, by the corporate applicant through its director, Mr. Yahaya Khan under section 10 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of the applicant i.e. M/s Shirani Motors Private Limited.
- 2. This Adjudicating Authority vide order dated 02.05.2024 had rejected the present petition on the ground that the petition was filed by the corporate applicant to avoid liablity of government dues and to evade recovery proceedings rather than for the purpose of arriving at corporate insolvency resolution. However, the petitioner had preferred an appeal i.e., Comp. App. (AT) (Ins) No. 1196 of 2024 before Hon'ble NCLAT against the order dated

02.05.2024, and the Hon'ble NCLAT, Principal Bench, New Delhi had allowed the said appeal and has given following directions:

- (i) Considering the submissions, the impugned order dated 02.05.2024 passed in CP(IB)/36/MP/2021 is set aside. The case is remitted back to the Adjudicating Authority, Indore Bench to admit the application petition under section 10 of the Code after notice to the parties if there is no defect. In case, there is any defect the appellant may allow time to remove defect.
- (ii) The appeal is accordingly is allowed. No order as to cost.
- 3. In view of the order passed and the directions given by the Hon'ble NCLAT vide order dated 30.07.2024, the petitioner has filed an application i.e., Misc. Appl/02/MP/2024, under Rule 11 of the NCLT Rules, 2016, seeking restoration of the present petition and to pass order for commencement of CIRP of the corporate person. Said application was heard and was allowed and disposed of vide order dated 21.08.2024.
- 4. We have heard the learned counsel for the corporate person and perused the record.
- 5. Hon'ble NCLAT vide order dated 30.07.2024 in Comp. App. (AT) (Ins) No. 1196 of 2024, while setting aside the order dated 02.05.2024, observed that:
 - "6. Thus, in the circumstances stated above, since the default has occurred as it is evident from the impugned order itself and since the provision of section 10 of the Code is complied with and also information as required under provision 6 is complete and that there exists no ineligibility under section 11 (supra), it was incumbent upon the Ld. NCLT to allow the petition.
 - 7. Considering the submissions, the impugned order dated 02.05.2024 passed in CP(IB)/36/MP/2021 is set aside. The case is remitted back to the Adjudicating Authority, Indore Bench to admit the application petition under section 10 of the Code after notice to the parties if there is no defect. In case, there is any defect the appellant may allow time to remove defect.

- 8. The appeal is allowed. No order as to cost."
- 6. We find no defects in the present application, hence, following the directions given by the Hon'ble NCLAT, we pass the following order:

ORDER

- (i) The application CP(IB)/36/MP/2021 is allowed.
- (ii) Corporate person M/s Shirani Motors Private Limited is admitted in the Corpaorete Insolvency Resolution Process under section 10 of the Code.
- (iii) The moratorium under section 14 of the 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 person 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 person 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 person 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 person.
- (iv) The order of moratorium shall have effect from the date of this order till the completition of the Corproate Insolvency Resolution Process until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of

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

- (v) As proposed by the corporate person, we appoint Mr. Mohd. Raees Sheikh having registration No. IBBI/IPA-002/IP-N00957/2020-2021/13094, having address at: 213, Azad Nagar Goli-Karkhana, Indore, Madhya Pradesh- 452001, Email: csmrsheikh.ip@gmail.com, to act as an Interim Resolution Professional (IRP) under section 13(1)(c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of the Code r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a 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) The supply of essential goods or services to the corporate person, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate person to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate person.
- (viii) The IRP shall perform all his functuions as contemplated, *interalia*, by sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with corporate person, its promoter or any other person associated with management of the corporate person are under legal onligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the corporate person, its promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (ix) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Person' and manage the operations of the

corporate person as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

- (x) The Registry is directed to communicate a copy of this order to the petitioner, IRP and the concerned Registrar of Companies, within seven working days and upload the same on website immediately after pronouncement of the order.
- (xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and provident Fund etc. who are likely to have their claim against corporate person as well as to the trade unions/employee's associations so that they are informed of the initiation of CIRP against the corporate person timely.
- (xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

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KAUSHALENDRA KUMAR SINGH MEMBER (TECHNICAL)

CHITRA RAM HANKARE MEMBER (JUDICIAL)

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