

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

ITEM No. 303

IA/462(AHM)2024 in
C.P.(IB)/261(AHM)2021

Order under Section 60(5) IBC, 2016

In The Matter Of:

Abhishek Nagori Chairperson and Member of
Monitoring Committee of Innovative Tyres and Tubes
Limited

.....Applicant

Vs

.....Respondent

Coc of Innovative Tyres and Tubes Limited Through
State Bank of India & Ors.

Order delivered on: 04/06/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced
in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

**IA No. 462/AHM/2024 in
CP (IB) No.261/AHM/2021**

(An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 National Company Law Tribunal Rules, 2016 and Other Applicable Rules).

In the Matter of: ***Innovative Tyres and Tubes Ltd.***

Shri Abhishek Nagori,
Chairperson and Member of
Monitoring Committee /
Interim Management
Committee (MC/IMC) of
Innovative Tyres and Tubes
Limited (CIN:
L25112GJ1995PLC086579)
Having office at 330/348, 3rd
Floor, Tower-A, Atlantis K-10,
Opp. Vadodara Central,
Sarabhai Main Road,
Vadodara-390023

.... Applicant

VERSUS

**1. Committee of Creditors of
Innovative Tyres and Tubes
Limited Through its Lead Bank
State Bank of India Having
address at Stressed Assets
Management Branch-**

Ahmedabad 2nd Floor,
Paramsiddhi Complex, Opp. V.
S. Hospital, Near Ellisbridge,
Ahmedabad-380006 E-mail:
team2samb.ahm@sbi.co.in;
harshad.saholia@sbi.co.in

**2. M/s Ten on Ten Rubtech
Private Limited** (CIN:
U25190HR2016PTC058080)
Having address at Khasra No.
1168, Behrampur Road, Village
Khatola, Gurgaon, Haryana-
122001 E-mail:
tenontenrubtech@gmail.com;
munish.chawla@tottyres.com

... Opponents

Order pronounced on 04.06.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For Applicant	: Mr. Navin Pahwa, Sr. Advocate a.w Mr. Ravi Pahwa, Advocate
For Respondent No.2	: Mr. Kunal Vaishnav, Advocate

ORDER

Per: Bench

1. This is an application filed under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016 read with Rule 11

National Company Law Tribunal Rules, 2016 and other

Applicable Rules seeking following prayers: -

- (A) *That this Hon'ble Tribunal may be pleased to allow the present application, in the interest of justice;*
- (B) *That this Hon'ble Tribunal may be pleased to modify the approved Resolution Plan as submitted in Paragraph 11 of this Application to the extent of modifying the stipulation of cancellation of equity share capital of promoter shareholders and reduction of equity share capital of the public shareholders, in the interest of justice;*
- (C) *That this Hon'ble Tribunal may be pleased to direct the Stock Exchange and Securities Exchange Board of India (SEBI) to condone the delay in listing of the new equity shares of the Corporate Debtor to be issued and allotted to public shareholders upon reduction in their shareholding as well as to the Resolution Applicant in terms of the modified Resolution Plan and not take any action on account of such delay;*
- (D) *That this Hon'ble Tribunal may be pleased to grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and proper by this Hon'ble Tribunal, in the interest of justice.*

2. The Fact of the case are as Follows:

- I. It is stated that the applicant submits that the present application is being filed in pursuance to the liberty granted by this Tribunal vide order dated 11.1.2024

passed in IA 1290 of 2023 in CP (IB) 261 of 2021. By this order, this Tribunal was pleased to reject the IA filed by the applicant and granted liberty to applicant to file fresh application with more details. A copy of order dated 11.1.2024 passed by this Tribunal in IA 1290 of 2023 is placed at Annexure-B of the Application.

II. It is stated that the applicant submits that one BBM Impex Private Limited filed an application u/s. 9 of the IB Code vide CP(IB) No.261 of 2021. The said petition was admitted for commencement of CIRP by this Adjudicating Authority vide order dated 28.3.2022. By the said order, the applicant was appointed as Interim Resolution Professional (hereinafter referred to as IRP) in the aforesaid matter.

III. It is stated that the applicant submits that subsequent to passing of the order dated 28.3.2022, the applicant assumed the duties of IRP. The applicant submits that apropos to the order dated 28.3.2022, the Committee of Creditors was constituted on 19.04.2022.

- IV. It is stated that the applicant submits that the first meeting of Committee of Creditors (hereinafter referred to as (CoC) was held and convened on 26.4.2022, wherein the applicant was confirmed as Resolution Professional (RP) of the Corporate Debtor.
- V. The applicant submits that in the e-voting of the 12th CoC meeting dated 31.12.2022, the revised resolution plan submitted by opponent no.2 was approved by the CoC. The applicant submits that the CoC in its 12th meeting held on 31.12.2022 approved the Resolution Plan. The applicant thereafter filed IA 260 of 2023 seeking approval of Resolution Plan by this Adjudicating Authority. This Hon'ble Adjudicating Authority vide order dated 9.8.2023 was pleased to approve the Resolution Plan of opponent no.2.
- VI. It is stated that the applicant submits that the Corporate Debtor is a public listed company and the shares of the Corporate Debtor are listed on the National Stock Exchange Limited (Stock Exchange). The applicant

submits that as per Section 9(A)(n) of the approved Resolution Plan, it was proposed as under: -

"Reorganization of the Share Capital of the Corporate Debtor:

- i) The Corporate Debtor is a listed Company and its Current Paid-Up Capital of Rs. 17,99,15,610/- is divided into 1,79,91,561 Equity Shares of Rs.10/- each fully paid up. The same is held as under:

*Promoters/Associates/Group: 35,06,104 Equity Shares of Rs10/- each aggregating to 19.49% of the Current Paid Up Capital. Public Shareholders:1,44,85,457 Equity Shares of Rs 10 each aggregating to 80.51% of the Current Paid Up Capital.

- ii) All existing issued and paid-up Equity Shares of the CD held by the Promoters/ Associates/Group being 35,06,104 Equity Shares of Rs 10/- aggregating to Rs.3,50,61,040 each shall stand Cancelled and extinguished without any further act or deed to be done.

iii) The existing issued and paid-up Equity Shares held by Public Shareholder' being 1,44,85,457 Equity Shares of Rs. 10 aggregating to Rs. 14,48,54,570 shall stand reduced to 5, 10,000 equity shares of Rs.10 each aggregating to Rs.51,00,000/- All public shareholders' holding shall stand proportionately reduced and they shall be issued new share certificates as per their reduced shareholding. Fractional Shareholdings less than 1 Equity Share shall be rounded off and settled in cash."

VII. It is stated that the applicant submits that the Resolution Applicant had taken the figures of the number of shares held by the promoters and public based on the information regarding the shareholding pattern of the Corporate Debtor as on 31.03.2022 which was available with the Resolution Applicant at the time of submitting his Resolution Plan to the Resolution Professional. A copy of the Shareholding Pattern of the Corporate

Debtor as on 31.03.2022 received by the Resolution Applicant and which is available on the NSE Website is annexed and marked as Annexure-C. A copy of the Shareholding Pattern of the Corporate Debtor as on 31.03.2022 made available by Link in Time India Private Limited, the Registrars and Share Transfer Agents of the Corporate Debtor is annexed and marked as Annexure-D. A copy of the Shareholding Pattern of the Corporate Debtor as of 31.03.2022 certified by the Company Secretary of the Corporate Debtor is placed at Annexure-E of the Application.

VIII. It is stated that the applicant submits that subsequent to the date of submission of Resolution Plan i.e. 29.12.2022, the equity shares held by Promoters/Associates/Group were reduced to only 25,19,104 equity shares and not 35,06,104 equity shares as disclosed in the approved Resolution Plan. Further, subsequent to

the date of submission of resolution plan, the public shareholding was increased to 1,54,72,457 equity shares from 1,44,85,457 equity shares as disclosed in the approved Resolution Plan. The Applicant submits that the said shareholding of the promoters and public shareholders of the Corporate Debtor has not changed on the date of filing this Application. A copy of the latest Shareholding Pattern of the Corporate Debtor as of 01.03.2024 made available by Link in time India Private Limited, the Registrars and Share Transfer Agents of the Corporate Debtor is annexed and marked as Annexure-F. A copy of the Shareholding Pattern of the Corporate Debtor as on 01.03.2024 certified by the Company Secretary of the Corporate Debtor is placed at Annexure-G of the Application.

IX. It is submitted by the Applicant that after the Resolution Plan was approved by this Adjudicating Authority, the Respondent No.2 was

required to approach the National Stock Exchange Limited (for short NSE) for implementing the resolution plan so far it related to the cancellation of Promoter shareholding and reduction of the public shareholding. The Respondent No.2 then realized that the public shareholding and the promoter shareholding are different from what was stated in the Resolution Plan. The Respondent no.2 therefore was not in a position to approach the NSE and get the new shares listed.

- X. It is further submitted that the shares of the Corporate Debtor are continued to be freely traded on the Stock Exchange even now and the shareholding pattern of the Corporate Debtor may change on the Record Date to be fixed for the purpose of reduction of public shareholding in the Corporate Debtor. A copy of the trading pattern during last one month derived from the official portal of the National Stock Exchange is

annexed and marked as Annexure-H. The Applicant therefore submits that it is not possible to submit the exact number of the shares which would be held by the promoters and public shareholders of the Corporate Debtor on a Record Date to be fixed for determining the eligibility of the public shareholders of the Corporate Debtor for allotment of new reduced shares.

XI. The applicant submits that due to mismatch in the actual shareholding of the promoter and the public in the Resolution Plan and their shareholding as on the date of submission of Resolution Plan, the request of reduction/cancellation cannot be approved. The Respondent No. 2 accordingly requested the Monitoring Committee / Interim Management Committee (MC/IMC) to take steps to amend the Resolution Plan as under:

[A] The entire Section 9(A)(n) of the approved Resolution Plan be deleted and the following new

Section 9(A)(n) be substituted in place of the same:

"(n) Compliance of Companies Act, 2013

The Approval of this plan by the NCLT shall be deemed to have waived all the procedural requirements in terms of Section 66, Section 42 and Section 62(1) (C) of the 2013 Act and the NCLT (Procedure for Reduction of Share Capital) Rules, 2016 for reorganization of Share Capital of the Corporate Debtor which includes reduction of capital and issuance of new equity shares to Resolution Applicant as contemplated herein under and the Registrar of Companies, Ahmedabad shall also take on record and implement the Plan upon approval of the plan by NCLT, without any further compliances;

Reorganization of the Share Capital of the Corporate Debtor:

- (i) The Corporate Debtor is a listed Company and
Current Paid-Up Capital of Rs. 17,99,15,610/-*

divided into 1,79,91,561 Equity Shares of Rs. 10/- each fully paid up, and the same is held by the promoters of the Corporate Debtor as well as the public shareholders.

(ii) All issued and paid-up Equity Shares of the Corporate Debtor held by the Promoters and promoter Group on the Record Date shall stand cancelled and extinguished without any further act or deed to be done.

(iii) The balance issued and paid-up Equity Shares held by Public Shareholders of the Corporate Debtor on the Record Date shall stand reduced to 5,45,000 equity shares of Rs. 10 each aggregating to Rs. 54,50,000/- All public shareholders holding 100 Equity Shares of the Corporate Debtor on the Record Date shall be issued 3.52 new Equity Shares of the Corporate Debtor upon such reduction of share capital of the Corporate Debtor. Fractional Shareholdings of less than 1 Equity Share shall be rounded off to the

nearest higher or lower integer, and the Registrar & Share Transfer Agents of the Corporate Debtor shall have absolute discretion in deciding such rounding off to ensure that the aggregate allotment of new Equity Shares to the public shareholders of the Corporate Debtor becomes exactly 5,45,000. The Record date mentioned herein shall be the date to be fixed by the Board of Directors of the Corporate Debtor to determine the eligibility of the public shareholders who would be issued new shares consequent upon reduction of their shares in terms of this Plan.

(iv) The Resolution Applicant and/or its nominees shall be issued 94,55,000 Equity Shares of Rs. 10 each fully paid at par, aggregating to Rs. 9,45,50,000/- as Equity Capital infusion at par after the remittance of Resolution amount Rs.9,45,50,000/- to the Resolution Professional/ Corporate Debtor after approval of the Resolution Plan and as per schedule of payment thereof.

- (v) This reorganization of the Equity Share Capital involving, the extinguishment of the Equity Shareholdings of the Promoter and, reduction of equity shareholding of the public shareholders and the Issue of fresh equity shares to the Resolution Applicant shall be deemed to be in compliance with all applicable Laws.*
- (vi) The Para-Up Equity Share Capital of the Corporate Debtor after the aforesaid changes shall be Rs. 10,00,00,000 / - made up of 1,00,00,000 Equity Shares of Rs. 10/ - each.*
- (vii) The aggregate 1,00,00,000 Equity Shares as above comprising of 5,45,000 new Equity Shares to be issued to the public shareholders of the Corporate Debtor upon reduction of their share capital and 94,55,000 new Equity Shares to be issued to the Resolution Applicant and its nominees shall be listed by the Stock Exchange where the existing Equity Shares of the Corporate Debtor are presently listed. "*

[B] The entire Section 5(a) of the approved Resolution Plan be deleted and the following Section 5(a) be substituted for the same

"(a) Out of the existing Paid-up Equity Capital, the entire Shareholding held by the Promoters and the Promoter Group on the Record Date shall stand fully extinguished and cancelled.

The remaining Paid Up Equity Capital held by the public shareholders on the Record Date shall be reduced to Rs. 54,50,000/- divided in to 5,45,000 Equity Shares of Rs. 10/- each.

The Resolution Applicant shall be issued 94,55,000 Equity Shares of Rs. 10/- each at par aggregating to Rs. 9,45,50,000/- as fresh equity capital infusion after remittance of the Resolution Plan Amount in terms of the approved Resolution Plan. Consequently, the aggregate paid up capital of the Corporate Debtor post implementation of the Resolution Plan shall be Rs. 10,00,00,000/- divided in to 1,00,00,000 equity shares of Rs. 10/-

each, wherein the public Shareholding in the Corporate Debtor shall be 5.45% and the Promoters' shareholding shall be 94.55% of the total paid up capital."

[C] The entire Section 6(B)(xic) of the approved Resolution Plan be deleted and the following new Section 6 (B)(xi)(c) be substituted for the same.

"Out of the existing Paid-up Equity Capital, the entire Shareholding held by the Promoters and the Promoter Group on the Record Date shall stand fully extinguished and cancelled. The remaining Paid Up Equity Capital held by the public shareholders on the Record Date shall be reduced to Rs.54,50,000/- divided in to 5,45,000 Equity Shares of Rs. 10/ - each. The Resolution Applicant shall be issued 94,55,000 Equity Shares of Rs. 10/- each at par aggregating to Rs. 9,45,50,000/- as fresh equity capital infusion after remittance of the Resolution Plan Amount in terms of the approved Resolution Plan. Consequently, the aggregate paid

up capital of the Corporate Debtor post implementation of the Resolution Plan shall be Rs. 10,00,00,000/- divided in to 1,00,00,000 equity shares of Rs. 10/- each wherein the public Shareholding in the Corporate Debtor shall be 5.45% and the Promoters' shareholding shall be 94.55% of the total paid-up capital."

XII. It is stated that Respondent No.2 requested the applicant being the chairperson of the Monitoring Committee to convene a meeting of the Monitoring Committee and discuss this issue.

XIII. The applicant submits that the meeting of Monitoring Committee was held on 5.3.2024. It was decided in this meeting that the resolution plan is required to be modified to successfully implement the resolution plan. The Monitoring Committee then in its meeting dated 5.3.2024 authorized the applicant to file an application before this Hon'ble Adjudicating Authority seeking modification of resolution plan for its successful implementation. The applicant begs to annex copy of

minutes of meeting of Monitoring Committee dated 5.3.2024 at Annexure-I.

- XIV. The applicant submits that the applicant has also taken email consents from other erstwhile CoC Members regarding the second application proposed to be filed for modification and the CoC Members holding 100.00% Voting share gave consent for such modification. A copy of emails from CoC Members approving such modification is placed at **Annexure-J** of the Application.
- XV. The applicant submits that Respondent No. 2 has otherwise implemented the resolution plan. Respondent No.2 has made the payments of the committed resolution plan amount as per the timelines of the implementation schedule of the approved resolution plan and the same has been distributed amongst the creditor as per the approved Resolution Plan. The applicant is therefore constrained to approach this Hon'ble Adjudicating Authority seeking appropriate modification of resolution plan for its successful implementation.

XVI. The Applicant submits that amendment of the resolution Plan regarding reduction of public shareholding in the Corporate debtor would not have any adverse impact on the public shareholders as computed hereunder:

Date	No. of Shares held by public Shareholders	No. of new Shares to be issued	Reduced Shares per existing 100 Shares
31.03.2022	1,44,85,457	5,10,000	3.521
01.03.2024	1,54,72,457	5,45,000	3.522

The Applicant submits that the increase in public shareholding of the Corporate Debtor from 1,44,85,457 to 1,54,72,457 was due to the fact that the shares of the Corporate Debtors were continuously allowed for trading by the Stock Exchange and there was sale of some shares by the promoters to public. The Applicant submits that such situation was beyond the control of the Applicant or the Committee of Creditors or the Resolution Applicant. However, the Successful Resolution Applicant has volunteered to increase the issue and allotment of 5,45,000 new Equity Shares of

the Corporate Debtor in place of 5,10,000 Equity Shares earlier proposed in the approved Resolution Plan to ensure that the interests of the public shareholders of the Corporate Debtor are not jeopardized. The Applicant submits that the shares of the Corporate Debtor are continued to be traded even now. In spite of the fact that necessary disclosures are made to the Stock Exchange and the fact that the existing shareholding is proposed to be reduced to around 3.52%, the shares are being traded at a price of around Rs. 7.40 per share. The Applicant therefore submits that the approval of this revision regarding allotment of new Equity Shares to the public shareholders of the Corporate Debtor is extremely urgent in the interest of investors. It is to state that as the shares of the Corporate Debtor are traded even as of now the price mentioned in this paragraph may vary.

3. It is stated that Respondent No. 1 and Respondent No.2 filed their reply on 12.04.2024 under Inward Diary No. D3149 and 19.04.2024 under Inward Diary No. D3393

stated that they have no objection if the present application is allowed.

4. We have heard the learned counsels for both sides in IA and perused the documents placed before us.

5. The observations of the Tribunal are as follows:-

a) The Applicant filed the present application to modify the Resolution Plan passed by this Tribunal on 09.08.2023 to modify the stipulation of cancellation of equity share capital of promoter shareholders and reduction of equity share capital of public shareholdings.

b) Another relief which is sought by the applicant is that to direct SEBI to condone the delay of listing of new equity shares of the corporate debtor.

c) It is seen that the Applicant miscalculated Shareholding Pattern of promoters and Public in the approved Resolution plan to the actual Shareholding pattern due to which the necessary steps could not be taken place and the shares of

the Corporate Debtor are still trading freely on the Stock Exchange.

d) It is seen that the erstwhile CoC and Monitoring Committee has approved the filing of the present Application.

e) Respondent No.1 and Respondent No.2 have given their no objection to the present Application through their reply dated 12.04.2024 and 19.04.2024 respectively.

6. In view of the above observations and averments, we hereby allow Prayer B and C of the Application. Hence, IA No. 462 of 2024 in CP(IB)261 of 2021 is Allowed and **Disposed of.**

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

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