

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. 5

CP No. 939/IBC/NCLT/MB/MAH/2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Abhyudaya Co-operative Bank Ltd.

Building No. 96/2512, Abhyudaya Nagar, G D Ambekar Marg, Mumbai - 400 033

.....Petitioner/Financial Creditor

V/s

Mithila Cars Pvt. Ltd.

at A3/A4, 1<sup>st</sup> Floor, Hatkesh Industrial Area, Mira Bhayander Road, Mira Road East, Thane, Maharashtra - 401 107.

..... Respondent/Corporate Debtor

Order pronounced on: 30.04.2021

Coram :

Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Shri. Chandra Bhan Singh, Member (T)

For the Petitioner : Mr. Madhur Rai, Advocate a/w Mr. Naresh Trivedi, PCS.

For the Respondent : Mr. Pranil Sonawane, Sunny Udasi, Advocates.

*Per: Suchitra Kanuparthi, Member (J)*

ORDER

1. The Petitioner/Financial Creditor viz. 'Abhyudaya Co-operative Bank Limited' (hereinafter as 'Petitioner') has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as 'Rules') in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as 'Code') against 'Mithila Cars Private Limited' (hereinafter as 'Corporate Debtor').

**BRIEF FACTS:**

2. The Petitioner had lent an amount of Rs. 23,25,00,000/- lakhs vide sanction letter dated 03.04.2017. An amount of Rs. 16,50,00,000/- was further sanctioned vide sanction letter 21.08.2018, out of which Rs. 5 crores were disbursed and balance amount of Rs. 11,50,00,000/- was cancelled.
3. Subsequently a cash credit facility was granted to the tune of Rs. 10 crores vide sanction letter dated 21.08.2018, but the said facility was cancelled.
4. The amount claimed by the Petitioner to be in default as on 31.03.2019 which is a date on which account was declared NPA and the balance outstanding amount. The details of balance outstanding amount as on 06.11.2019 is as follows:

August 21, 2018	Sanction letter for granting cash credit facility of Rs.10,00,00.,000/- (Rupees Ten Crore only).
March 31, 2019	Account declared as NPA

November 06, 2019	Total outstanding against the Corporate Debtor inclusive of unapplied interest and charges is Rs. 32,01,33,416.36 (Rupees Thirty-Two Crore One Lakh Thirty-Three Thousand Four Hundred and Sixteen and Paise Thirty-Six only).

5. Therefore, the total outstanding against the Corporate Debtor inclusive of unapplied interest and charges is Rs. 32,01,33,416.36/- and further interest of 17% p.a. The Petitioner has enclosed the bank statement as per Banker's Book Evidence Act.

6. The Petitioner has enclosed the details of hypothecation, registered mortgage over the properties of Corporate Debtor which areas follows:

- a. *Particulars of Hypothecated Plant & Machineries/Goods as per Agreement for Hypothecation of Plant & Machinery/Goods dated 28/08/2017.*
- b. *Particulars of Goods/Book Debts/Other Movable Assets/ Plant & Machineries etc. as per Schedule "B" of Agreement for Hypothecation for WCTL/Business Loan dated 07/09/2018 entered between the applicant and Corporate Debtor.*
- c. *Registered Deed of simple mortgage dated 16/10/2010 under receipt No.8644 dated 06/10/2010 bearing registration No. TNN7/08645/2010, Extension of Mortgage of properties/Security dated 23/08/2017 under receipt No. 5746 under registration No. TNN4/4114/2017, Further Deed of rectification dated 29/05/2018 under receipt No. 9255 bearing receipt No. TNN7-7971-2018 and Mortgage Deed of Extension and Additional of Properties/Security dated 07/09/2018 under receipt*

*No. 14707 bearing registration No. TNN7 /12721/2018 in respect of all that piece and parcel of plot bearing Survey No. 32 (Old Survey No. 111), Hissa No. 9 (part), Hissa No. 12 (Pan), Hissa No. 13, (Patt), Penkarpada, Off. Western Express Highway, Village Mira Road, Taluka and Dist-Thane.*

*d. Copy of a certificate of registration of charge issued by the Registrar of Companies is attached herewith as Annexure 4*

7. The details Contracts executed for providing the term loans as availed by the Corporate Debtor are as follows:

- a. Application for availing Term Loan facility of Rs. 25,00,00,000/- (Rupees Twenty Five Crore only) and consent letter of guarantor for repayment of the aforesaid Term Loan facility. The financial creditor considered the same and sanctioned the Term Loan of Rs.23,50,00,000/-(Rupees Twenty Three Crore Fifty Lakh only). The Financial creditor had issued sanction letter dated 03/04 /2017 bearing reference No. HO/CD/02/2017- 18 for Rs. 23,25,00,000/ - (Rupees Twenty Three Crore Twenty Five Lakh only) to the Corporate Debtor. The Corporate Debtor and its guarantor have accepted the Terms & Conditions of the said sanction and accordingly executed the loan document. A Copy of sanction letter dated 03/04/2017 along-with acceptance letter of corporate Debtor and its guarantors dated 28/08/2017 is attached as Annexure 5 (Colly).*
- b. Corporate Debtor duly executed demand promissory Note dated 28/08/2017 in respect of the Term Loan of Rs. 23,25,00,000/- (Rupees Twenty Three Crore Twenty Five Lakh only), A copy of Demand Promissory Note is attached as Annexure 6.*
- c. Agreement for Loan dated 28/07/2017 entered between the applicant and Corporate Debtor in respect of the Term Loan of Rs.23,25,00,000/- (Rupees Twenty Three Crore Twenty Five Lakh only). A Copy of the Agreement for Loan is attached as Annexure 7.*

- d. *Corporate Debtor executed undertaking dated 28/08/2017 in respect of the Term Loan of Rs. 23,25,00,000/- (Rupees Twenty Three Crore Twenty Five Lakh only). A Copy of Undertaking is attached as Annexure 8.*
- e. *Agreement for Hypothecation of plant & Machinery/Goods dated 28/08/2017. A Copy of the Agreement for Hypothecation of plant & Machinery/Goods is attached as Annexure 9.*
- f. *Corporate Debtor through its directors executed Letter of Guarantee dated 28/08/2017 & 20/08/2018 in respect of the Term Loan of Rs. 23,25,00,000/- (Rupees Twenty Three Crore Twenty Five Lakh only). Copy of the Guarantee letters are attached as Annexure 10 (Colly).*
- g. *Corporate debtor closed earlier Term Loan of Rs. 3,94,00,000/- (Rupees Three Crore Ninety Four Lakh only) (ESCLN/400007) on 22/09/2017. Subsequently, Corporate debtor has made application for additional credit facility from financial creditor in addition to existing facilities, for that corporate debtor has made application for availing Cash Credit & Term Loan facility and consent letter of guarantor for repayment of the aforesaid Credit Facilities. The financial creditor has considered the same and sanctioned the Term Loan vide the sanction letter dated 21/08/2018 bearing reference No. HO/CD/210/2018-19 for Rs. 16,50,00,000/- (Rupees Sixteen Crore Fifty Lakh only) (Out of which only Rs. 5,00,00,000/- (Rupees Five Crore only) was availed & Disbursed) to the Corporate Debtor. The Corporate Debtor and its guarantor have accepted the Terms & Conditions of the said sanction and accordingly executed the loan document. A Copy of sanction letter dated 21/08/2018 along-with acceptance letter of Corporate debtors dated 07/09/2018 is attached as Annexure 11 (Colly).*
- h. *Corporate debtor duly executed demand promissory Note dated 07/09/2018 in respect of term loan of Rs. 16,50,00,000/- (Rupees Sixteen Crore Fifty Lakh only). A copy of Demand Promissory Note is attached as Annexure 12.*

- i. Hypothecation Agreement for WCTL/Business Loan dated 07/09/2018 in respect of term loan of Rs. 16,50,00,000/- (Rupees Sixteen Crore Fifty Lakh only) a Copy of the Hypothecation Agreement dated 07/09/2018 is attached as Annexure 13.*
  - j. Corporate debtor through its directors executed letter of Guarantee dated 07/09/2019 in respect of term loan of Rs. 16,50,00,000/- (Rupees Sixteen Crore Fifty Lakh only). Copy of the Guarantee letter dated 07/09/2019 is attached as Annexure 14.*
  - k. Corporate Debtor executed undertaking dated 07/09/2018 in respect of term loan of Rs. 16,50,00,000/- (Rupees Sixteen Crore Fifty Lakh only). A Copy of Undertaking is attached as Annexure 15.*
  - l. Registered Deed of simple mortgage dated 16/10/2010 bearing registration No. 8645 dated 16/10/2010, Extension of Mortgage of properties/Security dated 23/08/2017 bearing registration No. 4114. Further Deed of Rectification dated 29/05/2018 under receipt No. 9255 bearing registration No. TNN7-7971-2018 and Mortgage Deed of Extension and Additional of Properties/Security dated 07/09/2018 bearing registration No. 12721 in respect of all that piece and parcel of plot bearing Survey No. 111, Hissa No. 9 (part), Hissa No. 12 (Part), Hissa No. 13, (Part), Penkarpada, Off. Western Express Highway, Village Mira Road, Taluka and Dist- Thane A copy of Mortgage deed are attached as Annexure 16 (Colly).*
8. The Corporate Debtor has also created a charge with the ROC which reveals the name of the financial creditor and contains the details of entire loan availed by the Corporate Debtor.
9. The Petitioner has filed an additional affidavit bringing on record the notice under SARFAESI dated 07.12.2019 under Section 13 (2) of SARFAESI ACT *inter alia* calling upon the Corporate Debtor to pay the sum of Rs. 32,42,84,773.97/-. The notice under SARFAESI has classified the account of Corporate Debtor as NPA as on 31.03.2019.

10. The Petition was served upon the Corporate Debtor, however, the Corporate Debtor failed to appear and the Petitioner was directed to take out the substituted service and publish notices in the newspapers. The Petitioner has taken out substituted service and published in newspapers.
11. However, on the date of final hearing the Corporate Debtor has appeared, his right of filing reply was forfeited and he was permitted to file written submissions.

**WRITTEN SUBMISSION OF CORPORATE DEBTOR:**

12. The Corporate Debtor in his written submissions mentioned that for expansion of business the Corporate Debtor requested for additional term loan and the Petitioner Bank considering the track record of Corporate Debtor approved to grant the term loan of Rs. 23,50,00,000/- vide sanction letter 23.04.2017. The Petitioner Bank closed earlier term loan of Rs. 3,94,00,000/- on the repayment of entire amount. Letter in the year 2013, Petitioner granted further sum of Rs. 5 crores.
13. The Corporate Debtor annexed that the notice under Section 13 (2) SARFAESI Act was replied by the Corporate Debtor on 09.02.2019 and the said letter was concealed by the Petitioner. The Corporate Debtor also claimed that the Petitioner inappropriately credited the principal amount towards component. During September 2019, when the fact was noticed by the Corporate Debtor, they immediately approached the Petitioner to rectify the error in the account. However, the Corporate Debtor were shocked and surprised to receive the demand notice under Section 13(2) of SARFAESI Act.

14. The Corporate Debtor denied the liability of alleged outstanding dues vide letter dated 09.02.2019 and demanded the details of overdue amount, the amount repaid by them, the interest calculated whereupon along with the supporting documents. The Corporate Debtor mentioned that they have duly repaid substantial amount of the petitioner.
15. The Corporate Debtor alleged that they were never given details of loan account and details of NPA as per the SARFAESI notice and therefore claimed that present proceeding is merely an abuse of process of law.
16. The Corporate Debtor also claimed that there has to be judicial determination as to whether there has been a default within meaning of Section 3(12) of IBC. In the present case, the amount of Debt would have become due and payable only when the Petitioner carries out reconciliation of Account. Therefore, unless debt and outstanding amount is fixed and crystallized, it is preposterous for the Corporate Debtor to continue payment of loan in the absence of valid justification record and hence sought for dismissal of petition.

**FINDINGS:**

17. Upon perusal of the Petition and documents enclosed therein it is established beyond doubt that there has been sanction of Rs. 23,25,00,000/- to the Corporate Debtor vide sanction letter dated 03.04.2017 and an amount of Rs. 5 crores were disbursed out of the sanction letter dated 12.08.2018 and therefore the outstanding amount of Rs. 32,01,33,416.136/- as per the account as on 06.11.2019 is due and payable by the Corporate Debtor. The loan document and the mortgages and all the documents guaranteed which were executed post sanction of loan demonstrates that there has been a disbursement of monies in terms of loan agreement to the Corporate Debtor. The demand notice under section 13(2) of the SARFAESI Act further



provides an evidence that money has been borrowed and also contains the details of default committed by the Corporate Debtor and how this was classified as NPA. The SARFAESI notice also demanded repayment of Rs. 27,08,33,807.61/- together with interest from 01.12.2019 under term loan A/c no. ESCLN/53066 and also an amount of Rs. 5,34,50,963.36/- vide term loan A/c No. ESCLN/500079. The said amounts were not paid by the Corporate Debtor as on 01.12.2019. The SARFAESI notice is attached a below:



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- A) Deed of Simple Mortgage dated 16.10.2010 which is duly registered with Joint Sub Registrar 7, Thane - 7 under Sr. No.TNN7/08645/2010 dated 16.10.2010 executed by You No. 1 & you No.2 with Mrs.Reena N. Singh in respect of mortgage of :-

1) All that piece and parcel of plot of land bearing S.No.32 (Old S.No.111), Hissa No.9 (Part), Hissa No.12 (Part), Hissa No.13 (Part), Penkarpada, Off Western Express Highway, Village Mahajan Wadi, Taluka and District Thane, adm. 1432.23 sq.mtrs. or thereabouts, together with factory shed/ building (s) constructed or to be constructed thereon, plant and machineries, fixtures and fittings, present and future owned by **Mithila Cars Pvt.Ltd.**

2) Flat No.203, on Second Floor, adm. 560 sq.ft.(built up), in building No.B-33 of the Avdhot Shanti Nagar CHS Ltd., Sector No.5, Shanti Nagar, Mira Road (E), District Thane - 401 107, on land bearing Survey No.734 (PT) situated within the limits of Mira Bhayander Municipal Corporation, Village Bhayander, Taluka and District Thane and Registration Sub-District and District Thane alongwith fixtures, fittings, equipments, present and future owned by **Mr.Nirbhay R. Singh & Mrs. Reena N. Singh.**

- B) Deed of Extension of Mortgage of Properties/Security (without possession) (for fresh term loan of Rs.23,25,00,000/-) dated 23.08.2017 which is duly registered with Joint Sub Registrar 2, Thane - 4 under Sr. No.TNN4/4114/2017 dated 23.08.2017 executed by You No. 1 & you No.2 in respect of mortgage of :-

1) All that piece and parcel of plot of land bearing S.No.32 (Old S.No.111), Hissa No.9 (Part), Hissa No.12 (Part), Hissa No.13 (Part), Penkarpada, Off Western Express Highway, Village Mahajan Wadi, Taluka and District Thane, adm. 1432.23 sq.mtrs. or thereabouts, together with factory shed/ building (s) constructed or to be constructed thereon, plant and machineries, fixtures and fittings, present and future owned by **Mithila Cars Pvt.Ltd.**

2) Flat No.203, on Second Floor, adm. 560 sq.ft.(built up), in building No.B-33 of the Avdhot Shanti Nagar CHS Ltd., Sector No.5, Shanti Nagar, Mira Road (E), District Thane - 401 107, on land bearing Survey No.734 (PT) situated within the limits of Mira Bhayander Municipal Corporation, Village Bhayander, Taluka and District Thane and Registration Sub-District and District Thane alongwith fixtures, fittings, equipments, present and future owned by **Mr.Nirbhay R. Singh.**



Adm. Office : K. K. Tower, Abhyudaya Bank Lane, Oil G. D. Ambekar Marg, Parel Village, Mumbai - 400 012  
Tel : 2418 0961 - 64, Fax : 2410 9782, website : www.abhyudayabank.co.in

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C) Deed of Rectification dated 29.05.2018 which is duly registered with Joint Sub Registrar 2, Thane - 7 under Sr. No.TNN7/7971/2018 dated 29.05.2018 executed by You No. 1 through you No.2 in respect of mortgage of :-

1) All that piece and parcel of plot of land bearing S.No.32 (Old S.No.111), Hissa No.9 (Part), Hissa No.12 (Part), Hissa No.13 (Part), Penkarpada, Off.Western Express Highway, Village Mahajan Wadi, Taluka and District Thane, adm. 1432.23 sq.mtrs. or thereabouts, together with factory shed/ building (s) constructed or to be constructed thereon, plant and machineries, fixtures and fittings, present and future owned by **Mithila Cars Pvt.Ltd.**

2) Flat No.203, on Second Floor, adm. 560 sq.ft.(built up), in building No.B-33 of the Avdhhot Shanti Nagar CHS Ltd., Sector No.5, Shanti Nagar, Mira Road (E), District Thane - 401 107, on land bearing Survey No.734 (PT) situated within the limits of Mira Bhaynader Municipal Corporation, Village Bhayander, Taluka and District Thane and Registration Sub-District and District Thane alongwith fixtures, fittings, equipments, present and future owned by **Mr.Nirbhay R. Singh.**

3) Flat No.201, on Second Floor, adm. 560 sq.ft.(built up), in building No B-33 of the Avdhhot Shanti Nagar CHS Ltd., Sector No.5, Shanti Nagar, Mira Road (E), District Thane - 401 107, on land bearing Survey No.734 (PT) situated within the limits of Mira Bhaynader Municipal Corporation, Village Bhayander, Taluka and District Thane and Registration Sub-District and District Thane alongwith fixtures, fittings, equipments, present and future owned by **Mr.Nirbhay R. Singh.**

D) Mortgage Deed of Extension and Additional of Proerties/Security (without possession) (for various Banking/Credit facilities aggregating to Rs.26,50,00,000/-) dated 07.09.2018 which is duly registered with Joint Sub Registrar 3, Thane - 7 under Sr. No.TNN7/12721/2018 dated 07.09.2018 executed by You No. 1 through you No.2 in respect of mortgage of :-

1) All that piece and parcel of plot of land bearing S.No.32 (Old S.No.111), Hissa No.9 (Part), Hissa No.12 (Part), Hissa No.13 (Part), Penkarpada, Off.Western Express Highway, Village Mahajan Wadi, Taluka and District Thane, adm. 1432.23 sq.mtrs. or thereabouts, together with factory shed/ building (s) constructed or to be constructed thereon, plant and machineries, fixtures and fittings, present and future owned by **Mithila Cars Pvt.Ltd.**





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2) Flat No.203, on Second Floor, adm. 560 sq.ft.(built up), in building No.B-33 of the Avdhot Shanti Nagar CHS Ltd., Sector No.5, Shanti Nagar, Mira Road (E), District Thane - 401 107, on land bearing Survey No.734 (PT) situated within the limits of Mira Bhaynader Municipal Corporation, Village Bhayander, Taluka and District Thane and Registration Sub-District and District Thane alongwith fixtures, fittings, equipments, present and future **owned by Mr.Nirbhay R. Singh.**

3) Flat No.201, on Second Floor, adm. 560 sq.ft (built up), in building No B-33 of the Avdhot Shanti Nagar CHS Ltd., Sector No 5, Shanti Nagar, Mira Road (E), District Thane - 401 107, on land bearing Survey No.734 (PT) situated within the limits of Mira Bhaynader Municipal Corporation, Village Bhayander, Taluka and District Thane and Registration Sub-District and District Thane alongwith fixtures, fittings, equipments, present and future **owned by Mr.Nirbhay R. Singh.**

E) Agreement for Hypothecation of Plant & Machineries/Goods dated 28.08.2017 executed by You No.1 in respect of hypothecation of Paint booth, 2 Post Lift, 4 Post Lift, Pneumatic line, G Scam, Compressor, Wheel allinmed, Engine room machinery, Breakdisk Machine, Wheel balancing Machine, Automatic Car, Washing Machine, Water recycling Machine, Tools & Machinery and all book debts.

F) Hypothecation of Agreement for WCTL/Business Loan dated 07.09.2018 executed by You No.1 in respect of hypothecation of all present & future stock/goods such as various types and models of all Hyundai Cars (New/used), spare parts, accessories etc. and other miscellaneous items and all book debts.

In spite of repeated demands and notices, you Nos.1 to 6 have not paid the amount outstanding in the above account & you Nos.1 to 6 have not discharged your liabilities in full.



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18. The objection of the Corporate Debtor with regard to the reconciliation of the account by the Petitioner is untenable on the ground that the petitioner has a right of appropriation of amount repaid by the towards Principal and Interest qua the money outstanding. The Corporate Debtor having availed the said amounts, has defaulted in payment of the said sum despite issuance of demand notice under Section 13 (2) and therefore this demonstrates a clear default on part of the Corporate Debtor. The details of statement of account as produced by the Petition which certifies the fact that the amounts were disbursed to the Corporate Debtor in several tranches and the amount remains to be outstanding and paid by the Corporate Debtor.
19. Hence, the Petition is admitted.
20. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. This petition is admitted.
21. Further that, we have also perused the Form – 1 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.



22. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Ms. Prajakta Menezes, having registration No. IBBI/IPA/001/IP-P01349/2018-19/12016 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
23. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
24. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
25. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
26. The Petition is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

27. Ordered Accordingly.

Sd/-

Chandra Bhan Singh  
Member (Technical)

sd/-

Suchitra Kanuparthi  
Member (Judicial)