

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT-I)
CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON **30.09.2021 at 2.30 P.M**
THROUGH VIDEO CONFERENCING

**PRESENT: SMT. R.SUCHARITHA, MEMBER (JUDICIAL)
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)**

IA/MA/IBA/TCP/TCA/CP/CA No : IBA/1433/2019
NAME OF PETITIONER : Tanuja A Jain
NAME OF RESPONDENT : Rekha S Jain
SECTION : 7 Rule 4 of IBC, 2016

ORDER

Mr. Rangasayee, Advocate appears for the Petitioner through video conferencing platform.

IBA/1433/2019 is filed on 3rd October 2019 on behalf of the two Applicants viz., Tanuja A Jain, who is the 1st Applicant and Rekha S Jain, who is the 2nd Applicant herein under Section 7 of the IBC, 2016 against the Corporate Debtor viz., DSC Motors Private Limited.

The Corporate Debtor herein viz., DSC Motors Private Limited was incorporated on 21.11.1997. The Registered Office of the Corporate Debtor is situated at No.399, Anna Salai, Nandanam, Chennai 600 035. Hence, this Company falls within the jurisdiction of this Adjudicating Authority.

Since this Application is filed on 3rd October, 2019, prior to the amendment made in the IBC, 2016 by raising the pecuniary jurisdiction of this Tribunal, this Application is maintainable before this Adjudicating Authority.

Learned Counsel for the Applicants states that as on the date of filing of this Application due and payable by the Corporate Debtor is for a sum of Rs.6,92,400/- including interest. In support of this, the Applicants have enclosed at Page No.9 of the Application the Demand Promissory Note dated 17.11.2017 demanding the Corporate Debtor to pay a sum of Rs.2,00,000/- to the 1st Applicant herein and at Page No.10 of the Application the Demand Promissory Note dated 17.11.2017 is



enclosed demanding the Corporate Debtor to pay a sum of Rs.8,00,000/- to the 2nd Applicant herein.

The Petitioner has also enclosed the Bank Statement to satisfy this Tribunal that the amount was paid towards the account of the Corporate Debtor. Learned Counsel for the Applicants, however, states that the total due payable by way of principal amount by the Corporate Debtor to the 1st and the 2nd Applicants herein is Rs.10 lakh.

Learned Counsel for the Applicants states that the Corporate Debtor had made a part payment by way of four cheques dated 15.01.2018; 01.03.2018; 17.04.2018 and 01.05.2018 and each cheque was given for the value of Rs.20,000/- to the 1st Applicant. Hence, the total payment of Rs.80,000/- has been received by the 1st Applicant herein.

Subsequently, by various dated cheques the total amount of Rs.3,20,000/- were paid by the Corporate Debtor to the 2nd Applicant herein.

As on date, the total amount due and payable together with the interest by the Corporate Debtor to the Applicants herein is for a sum of Rs.6,92,400/-

There is no representation for the Respondent. In spite of several opportunities having been given to the Respondent to appear before this Bench, there is no representation on behalf of the Respondent.

In compliance to the order issued by this Tribunal summon was issued by way of paper publication effected in the 'Times of India' dated 30.07.2021 and in

vernacular newspaper 'Makkal Kural' dated 29.07.2021. In spite of the above, there is no representation on behalf of the Respondent.

Hence, this Application is taken up for hearing in the absence of the Corporate Debtor.

From the oral pleadings submitted by the Learned Counsel for the Applicant herein, Demand Promissory Notes and the Statement of Account, clearly show that the Applicants / Financial Creditors have granted loan to the Respondent and hence there is a financial debt and default of the loan occurred. Learned Counsel for the Applicant states that the default on account of the non-payment of loan occurred during the period from May 2018 to August 2019.

Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (4) of the IBC, 2016

The Financial Creditor has proposed the name of Ms. **E. SANTHANALAKSHMI**, Old. No.123 New No.255, Hussaina Mazil, 3rd Floor, Angappa Naicken Street, George Town, Chennai 600 001

whose Registration No.IBBI/IPA-002/IP-N00831/2019-20/12661 (**emailid:-**



advocate.santhanalakshmi@gmail.com) to be appointed as an *Interim Resolution Professional* (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.





- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate



Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

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(R. SUCHARITHA)
MEMBER (JUDICIAL)