

IN THE NATIONAL COMPANY LAW TRIBUNAL**ALLAHABAD BENCH****Company Petition (IB)No.162/ALD/2017**

(Under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016)

IN THE MATTER OF:**Daimler Financial Services Pvt. Ltd**

(Having its Head Office at:

*D-601, Unit-202, 2nd Floor,
Campus 3B, RMZ Millenia Business Park, No 143
Dr M.G.R Road, Perungudi,
Chennai-600096*

.....Financial Creditor/ Applicant

VERSUS**M/s Eram Infra Projects Pvt. Ltd.**

*(Having its Registered Office at:
House No.299/43, Chawal Wali Gali
Akbari Gate, Chowk,
Lucknow 226003 (U.P)*

.....Corporate Debtor

JUDGMENT/ORDER DELIVERED ON 14.06.2018**CORAM :**

**Sh. V.P. Singh, Hon'ble Member (Judicial)
Ms Saroj Rajware, Hon'ble Member (Technical)**

**For the Applicant/ Financial Creditor: Shrankhla Yadav, Adv.
For the Respondent/ Corporate Debtor:**

**AS PER: M/S Saroj Rajware, Member Technical
Order/Judgment**

1. The present petition is under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the Applicant/Financial Creditor i.e.**Daimler Financial Service**

Pvt Ltd for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate debtor company “**M/s Eram Infra Projects Pvt, Ltd.**”.

2. The Applicant “**Daimler Financial Services India Ltd**” is a Non-Banking Finance Company(NBFC) registered under Reserve Bank of India Act, 1934 having CIN U67190TN2010FTC077890, it is involved in Activities auxiliary to financial intermediation, except insurance and pension funding. Mr.Navin Ajwani, Manager Legal, has been authorised to file this application on behalf of Financial Creditor.
3. The Respondent/Corporate Debtor “**M/s Eram Infra Projects Pvt.Ltd.**” is and Incorporated under Companies Act on 26.04.2013, bearing Identification Number U45400UP2013PTC056526 and the Authorized Share Capital of Corporate Debtor Company is Rs 1,00,000/-(One Lakh Only), and Paid-up Share Capital is 1,00,000/-(One Lakhs Only). It is involved in Building completion, includes activities that contribute to the completion or finishing of a construction.
4. Brief facts related to petition are as follows:
 - (i) The Corporate Debtor through its director, Mr. Shazdey Rehman, approached the Financial Creditor seeking financial assistance/ Loan to purchase New Mercedes Benz Car and Mr Shayzadey Rehman in capacity of borrower and Corporate debtor in capacity of co-borrower entered into contract bearing no.10119676 dated 11.04.2016 for purchase of Mercedes Benz CLA 200 CDI Sports bearing registration no UP 32 GZ 0655.

- (ii) That for purchase of the above mentioned vehicle, the corporate debtor availed loan facility amounting to Rs.27,00,000/-.The said loan was to be repaid with 8.83% interest per annum. Hence corporate debtor was liable to pay a sum of Rs.33,49,920/- towards contract value, and the said amount was repayable in 60 EMI wherein, corporate debtor had agreed to pay Rs.55,832/- per month commencing from 13.05.2016 to 13.04.2021, subject to term and condition agreed under the loan agreement. (***A copy of loan agreement bearing no. 10119676 and repayment schedule for the said loan facility are annexed as Annexure-3.***
- (iii) Further submitted that corporate debtor was bound to remit and return the assured amount as stipulated in terms of contract, but the corporate debtor had paid only 12 EMI which is reflected in the “ statement of accounts” bu constantly defaulted in payment of other remaining EMI, and despite repeated request, reminder and providing sufficient opportunities to regularize its account corporate debtor failed to regularize its account, and when corporate debtor defaulted, the financial creditor was constrained to issue letter for termination of loan agreement and recall the said credit facility.
- (i) Hence, the amount claimed by the Financial Creditor as default against Corporate Debtor is **Rs.24,63,813/-** **(Rupee Twenty Four Lakh Sixty Three Thousand eight hundred thirteen Only) as on 31.06.2017.**

5. It is also matter of record that as per settled practise by the order of Hon'ble NCLAT in matter of **M/s Innovative Industries Ltd v/s ICICI Bank &Anr** in the present matter Adjudicating Authority by its order dated 26.03.2018 directed the Registry of this Tribunal to hand over court notice to the applicant for doing effective service to the corporate debtor company for filing reply/objection to the present matter and file affidavit of service. A perusal of record shows, applicant has send notice to the corporate debtor through email and post but the Corporate Debtor Company was not able to file reply/objection in spite of sufficient time granted, opportunity to corporate debtor company to file reply/objection was closed. ***(Applicant has annexed compliance affidavit in respect to effective service to corporate debtor and copy of notice for next date of hearing, copies of tracking report, copy of the email sent to corporate debtor along with delivery is annexed as Annexure-1,2,3,4 of Compliance Affidavit)***
6. Heard the Ld. Counsel for the Applicant at length and perused the record available.
7. Ld. Counsel for the Financial Creditor submitted that to prove the Existence of the Financial Debt, they have annexed the following documents.
 - (i) Loan Agreement bearing No.10119676 entered between Applicant and Corporate Debtor for purchase of vehicle, the vehicle purchased by the corporate debtor is hypothecated to the financial creditor (Vehicle itself is security to the loan vailed by the corporate

debtor) ***(Copy of loan agreement dated 11.04.2016 is enclosed as annexure 3 with the application)***

(ii) Financial creditor has annexed a copy of statement of accounts to show the default in payment of EMI ***(A copy of statement of accounts is attached and annexed as Annexure-6 of the application)***

(iii) Copy of Termination of Loan Agreement dated 07.08.2017 and copy of early termination quotation for the period of 13.06.2017 to 15.09.2017 is annexed as ***Annexure 4*** of the application.

8. In the aforesaid background, application on behalf of financial creditor/ Applicant is complete, and no disciplinary proceeding are pending against proposed IRP. There has been default in payment of the financial debt. A perusal of record, statement of account filed by the applicant shows that Corporate Debtor has to pay 60 EMI of Rs. 55,832 /- but corporate debtor only paid 12 EMI, and remaining amount is due to corporate debtor and applicant has annexed sufficient record to show the default. Therefore, as per section 7(5)(a) of the code, the present application is admitted.

9. A moratorium under the provision of section 14 of the Code is declared prohibiting the following:

(i) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

- (ii) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (iii) *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 (54 of 2002);*
- (iv) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

10. It is further directed that:

- (i) *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*
- (ii) *The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.*

11. Financial creditor/Applicant has proposed the name of Mr. Vineet Aggarwal, Registration Number IBBI/IPA-001/IP-P00475/2017-18/10818 for appointment as Interim Resolution Professional (IRP) and Mr Vineet Aggarwal has given consent for appointment as IRP in the present matter, affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. Given fact

above Mr Vineet Aggarwal is appointed as Interim Resolution Professional(IRP).

12. The IRP shall comply with the Provision of Section 13(2), 15,17 &18 of the Code. Further, the Directors, Promoters or any person associated with the Management of the Corporate Debtor are directed to co-operate to the IRP as prescribed under Section 19 and for discharging his function under provision of section 20 of the Code.
13. The Registry is further directed to communicate this order to Financial Creditor and Corporate Debtor and IRP through speed post and E-mail.
14. List on **DT. 04.07.2018** for the filing of the progress report

(Ms. Saroj Rajware)
Member (Technical)
Date-14.06.2018

(Shri V.P Singh)
Member(Judicial)