



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

C.P. (IB) No. 31/10/GB/2022

Coram:

Hon'ble Shri Deep Chandra Joshi, Member (J): **Hearing through**
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): **Video Conference**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.04.2023.**

In the matter of:

P. L. Vehicals Private Limited - Corporate Debtor

Versus

State Bank of India - Financial Creditor

Section: Under Section 10 of IBC, 2016

<u>S. NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	NONE	-	-	Present in Video Conference

ORDER

The Applicant is represented through respective Learned Counsel (s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, through video conferencing vide separate sheet.

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority**

Sd/-

**(Deep Chandra Joshi)
Member (Judicial)
& Adjudicating Authority**



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In the matter of:

P. L. Vehicals Private Limited - Corporate Debtor

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State Bank of India - Financial Creditor

Order delivered on 13.04.2023

ORDER

[Per: Hon'ble Shri Prasanta Kumar Mohanty, Member (T)]

1. This application has been filed under Section 10 of the Insolvency & Bankruptcy Code, 2016 by the Corporate Debtor/Petitioner, namely P. L. Vehicals Private Limited, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against itself.

2. P. L. Vehicals Private Limited/Corporate Debtor is a private limited company (CIN: U50100ML2014PTC008568) having its registered office at Luckier Road, Garikhana, Shillong, East Khasi Hills, Meghalaya- 793002. The Company was incorporated on 11.01.2017. The Nominal Capital of the Corporate Debtor is Rs. 1,50,00,000.00 and Paid-up Capital of Rs. 1,37,63,000.00. Presently the following are the Directors:

- i. PAYAL GOENKA (Director),
- ii. VISHAL GOENKA (Director), DIN: 0006598321

3. The Petitioner submits that:

3.1 The CD was an authorized dealer of the automobiles company namely "Renault India Pvt. Ltd." and for the purpose of selling their



branded vehicles, in the year 2016 a showroom was set up at Shillong, Meghalaya under rent. At the inception stage, performance of the selling of the said branded vehicles showed good performances and it was hoped that the said business would give considerable profit margin to the Petitioner.

3.2 Due to Covid -19, pandemic situation arose in the year 2019, the Petitioner has sustained huge financial losses and as such, it was in not in a position to maintain the profit level for the said company and as such during that period, the said show room was totally closed down. The company has huge liability to be discharged and as such, the Petitioner is also not being able to run the company smoothly due to the unwarranted situation comes one after another; specifically the market recession fell down the selling level of the vehicles of the said company. Further, when the situation developed to a certain extent in the last part of 2021, the Petitioner on different reasons etc. somehow re-opened the said show room worked for a short time, but ultimately it again booked losses only and the liability unnecessarily grown up afterwards beyond the control of the Petitioner and as such, finally closed down from the period of Sep. 2021 for which the “Renault India Pvt. Ltd.” had also issued Termination Notice dated 16.09.2021 to the Petitioner. The Petitioner’s all efforts to revive the said business turned into vain and it is also found by carrying out all exercise that the scope and potentially for reviving the said Unit has less lights. Therefore, it is quite evident that from the year 2019 till the filing of this instant petition the said dealership business only sustained losses and the dues payable to the different heads could not be meet up due to shortage of funds and non-running of the said showroom and other reasons.

3.3 The period of 2022 specifically totally turned to a worsen condition for the Petitioner and resultantly the capital which was invested by the Petitioner from their own sources and from the bank and the other parties even destroyed in this course. Again, the commercial



activities since getting down for a considerable period of time, therefore the other expenses like – staff, showroom premises rent, electricity cost and other maintenance cost even became regular burden for the Petitioner for all time. Further, there is no scope left as on date, wherein the losses could possible to convert into profits level for different reasons etc. Under such circumstances, it is invariably required that the Petitioner would be declared as “Insolvent” as per law and for these purposes, a proper Resolution dated 30.09.2022 has also been adopted for the same.

3.4 The Petitioner earlier also availed loan facility from the State Bank of India and since the due amount could not be paid, therefore the said bank has already filed recovery proceeding before the Debt Recovery Tribunal, Guwahati for realization of sum of Rs. 4,54,64,380.31 as on 20.04.2022 and the said case has been numbered as O.A. No. 170/2022. The Bank has also issued a Sale Notice dated 07.07.2022 under section 13(4) of the SARFAESI Act, for the sale of mortgaged property and the auction process was initiated for recovery of the due amount from selling out of such mortgaged property handed over to the bank. Further, the NPA for the account was declared on 03.02.2022 for a sum of Rs. 4,52,10,187.00

State Bank of -Vs- M/s PL Vehicles Pvt. Ltd. & Ors.	Debts Recovery Tribunals, Kamrup (M) at Guwahati	Original Application No. 170/2022	Civil	Pending	Rs. 4,54,64,380.31
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3.5 The demand of the said vehicles in the market and other company with better incentives covered up the vehicles market for which the selling numbers came down drastically by efflux of time and consequently the said capital started drainage on the head of:

- (i) Salaries of staff
- (ii) Marketing expenses
- (iii) Self- promotion expenses
- (iv) Interest paid on C.C. account and



(v) The instalment payment made to the Bank against the sanctioned loan amount etc.

3.6 From the books of account, it is evident that the directors at no point of time made any personal withdrawal for their self-purposes in order to save the capital of the business firm at any cost. But whatever profit booked on sale, the expense required in production was already at higher side and as such, the expenditure heads was always getting escalated all time. Again, the Petitioners at no point of time has diverted the fund received from the secured or unsecured creditors at any point of time and the debt which has been occurred concurrently, there is default. Under such circumstances there is no scope left as on date to revive the unit through which the profit margin of the business is possible to improve. Therefore, all the efforts whatever have been carried out has shown a clear picture that the revival of the business of the Petitioner is a dream with empty result.

3.7 The Petitioner has placed the details of the status of the balance Sheet and other documents etc. as indicated below and appended documents, it is quite evident that the Petitioner is continuously facing huge number of losses and the light of recovery from these losses are minimal.

Current & Non-Current Liabilities

Nature of Creditor	Financial Year					
	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Loan from State Bank of India	25,903,073.00	26,267,417.00	33,912,697.00	32,788,032.00	34,625,536.00	40,824,209.00
Unsecured Loan From Directors	3,162,000.00	-	-	-	-	-
Sundry Creditors	8,392,360.00	-	39,997	200,262.00	1,568,515.00	793,179.00

Current & Non-Current Assets

Sl. No	Details of Sundry Receivables	Financial Year					
		2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
1.	Trade		4,884,214.00	796,323.00	5,998,396.00	1,605,476.00	1,203,292.00



	Receivables						
2.	Renault India Pvt. ltd	-		1,981,541.00	999,239.00	2,831,748.00	402,502.00

Profit & Loss amount extracted from Audit Report of Relevant Financial Year

Financial year to which Profit & Loss Belongs to	Amount of Loss (Rs)	Amount of Profit (Rs)
2018-19	-	301,929.00
2019-20	-	258,571.00
2020-21	21,735,204.00	-
2021-22	15,440,856.00	-

3.8 The Corporate Debtor/Petitioner has not incurred any ineligibility as per Section 11 of IBC, 2016.

3.9 The Corporate Debtor incurred heavy losses in the business and the liabilities are far in excess of the assets. Hence, the Petitioner seeks resolution of its insolvency through maximization of value of its assets under provisions of IBC, 2016.

4. The details of the amount of debt due and the date from which such debt due as mentioned in Part- III of this application:

PARTICULARS OF FINANCIAL/OPERATIONAL DEBT/CREDITOR WISE, AS APPLICABLE	
Name of Secured Financial/Operational Creditors	State Bank of India
Total Debt Raised and Amount in Default	Total Financial Debt in default: Rs. (4,52,10,187.00)
Particulars of Security Held,	<p>I) A. Primary Security: Secured against Hypothecation of all stocks in Trade & entire Book Debts of company. Plant and Machinery of the unit, Furniture and fixtures, fixed assets both new and acquired by way of Loan and Margin.</p> <p>B. Collateral Security: All that piece and parcel of a resident flat, being Flat No. D-101 on 1st Floor in Block "D" having as upper build up area of 2514.74 sq. ft. in the residential complex of "SPANISH GARDEN"</p>



List of documents attached to this application in order to prove the existence of financial/operational debt and the amount in default	Copies of the Balance Sheets from the year 2019-2022. Copies of the Auditor's Report Total Financial Debt in default: - Rs. 4,52,10,187.00
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5. On the other hand, the Respondent SBI submits that:
- 5.1 The Financial Creditor/Respondent is a Body Corporate duly constitute under the State Bank of India Act, 1955, having its Corporate Office at Madam Cama Road, Mumbai-400021 and one of its Local Head Office at Dispur, opposite Asom Sachivalaya, Guwahati-6 and carrying on the business of Banking through diverse branches.
- 5.2 The Corporate Debtor/Applicant is a private limited company constituted under the Company Act, 1956, had availed various credit facilities through its director and the same was sanctioned by the respondent Financial Creditor. The said credit facilities were renewed/enhanced/reviewed from time to time by executing the respective loan documents from time to time.
- 5.3 The account of the applicant became extremely irregular for non-payment of instalments. Despite the opportunities given to regularize the loan accounts by repeated reminders and requests, the applicant grossly failed to regularize the loan account and hence the loan accounts were classified as Non-Performing Assets (NPA) on 03.02.2022.
- 5.4 The Applicant had failed to repay the outstanding dues in the loan accounts in spite of repeated reminders, requests and several demands, the Respondent left with no other option but to initiate recovery action under the SARFAESI Act, 2002 for enforcement of security interest to realize the secured debt. The Respondent had duly served demand notice dated 06.04.2022 under Section 13(2) of the SARFAESI Act, 2002 upon the Applicant and one of its director Mr. Vishal Goenka, who had acknowledged the receipt of the notice. Subsequently, the Respondent had taken over physical possession of



the Secured Asset situated at Spanish Garden, Zoo Road, Kamrup (M) on 12.07.2022, in the name of Mrs. Payal Goenka (Guarantor). The Authorized Officer of the Respondent Bank had put the said secured assets on public auction under SARFAESI Act, however, the auction was failed for want of bid. The Respondent had also taken the possession of 2 (two) demo vehicle, for which the respondent is in process to liquidate the said vehicle for recovery of the outstanding dues.

- 5.5 The Respondent had also initiated recovery suit under Recovery of Debt and bankruptcy Act, 1993 (RDB Act) the against the Company and its Director/Guarantor by filing Original Application (OA No. 170/2022) on 18.05.2022 before the Debt Recovery Tribunal, Guwahati for sum of Rs. 4,54,52,784.80 as on 20.04.2022 with future interest and cost. The available security is not sufficient against the total dues of the Applicant.
- 5.6 The instant application is not maintainable as the application is fraught with malafide, and Applicant/CD has not approached this Tribunal with clean hands, and has suppressed several material facts of the issue in question and application has several defects. Therefore, it is liable to be dismissed in-limine without going into other contentions of applicant.
- 5.7 The instant application is filed to scuttle the proceedings initiated under SARFAESI Act, 2002 and the RDB Act, 1993 and also to protract the recovery of legitimate dues of the respondent Financial Creditor.
- 5.8 The following brief apparent defects in application are required to be brought on record for kind consideration of the NCLT:
- A. The Corporate Applicant has no authority to initiate Corporate Insolvency Resolution Process (CIRP) under IBC, 2016. A corporate requires a proper Board Resolution to initiate CIRP. However, in this instant application the Board Resolution submitted by the Corporate Debtor is not signed and as such the



same cannot be construed as a Board resolution as envisaged in Para 8 of Part I of the present application.

B. In Para 5 of Part III of the Application, the Corporate Applicant has given particulars of a Secured Immovable Property although belonging to the Guarantor, namely Payal Goenka which should not be part of this instant application and as such have suppressed the materials facts and not come with clean hands. As such Respondent states that the property owned by the Guarantor i.e., Mrs. Payal Goenka does not fall within the adjudication of this case and as such is out of the ambits of the instant application.

C. Since the IRP is required to hold the trust and confidence of the Committee of Creditors (“CoC”) upon commencement of the CIRP, it often becomes incongruous for a person being considered by the CD to be appointed as an IRP. Moreover, the IRP is responsible for accumulating relevant information from the CD and scrutinizing its affairs to trace avoidable transactions or transactions amounting to wrongful or fraudulent trading.

5.9 In view of the above submissions, the application has been filed by the Corporate Applicant with ill motive and only to frustrate and stall the proceeding pending before the DRT and also to stop the proceedings under SARFAESI Act and as such liable to be dismissed.

ORDER

6. Heard the Counsels for both the sides at length. This Application has been filed under section 10 of IBC by the CD seeking initiation of CIRP against itself. Both, the Applicant - CD here and the Financial Creditors (FC)-SBI have confirmed that the accounts of the Applicant are NPAs and the Applicant has defaulted in making payments of interest and instalments to SBI- the FC/Respondent here. There is no dispute that the debt is not due, not payable in law and not defaulted. The CD has submitted that it has incurred cumulative losses of Rs. 21,735,204.00 and 15,440,856.00 in FY. 2020-2021 and 2021-22 respectively.



7. Reliance is placed on the judicial precedents of Hon'ble Supreme Court in the matter of ***M/s Innovate Industries Ltd. vs. ICICI Bank & Anr.*** as well as Hon'ble NCLAT in the matter of ***Unigreen Global Pvt. Ltd. vs. Punjab National Bank & Ors., Co. Appeal (AT) (Insolvency) No. 81 of 2017***, we find that the contentions/objections of the Financial Creditor have no merits as the legal position in this respect has already been settled by the Hon'ble Supreme Court as well as Hon'ble NCLAT. Therefore, pendency of SARFAESI proceedings or proceedings before the DRT cannot be a valid ground not to initiate Corporate Insolvency Resolution Process under section 10 of the Code in respect of the Corporate Applicant/Corporate Debtor, if such application is found complete in all respects. The provisions of section 238 of the IBC have been given overriding effect to the provisions and proceedings under any other law. Hence, such contentions of the Financial Creditor are not legally tenable.

8. Considering the materials, papers filed and submission made by both the Petitioner and the Respondents, this Adjudicating Authority is satisfied that:

8.1 The Corporate Debtor availed the loan/credit facilities from the Financial Creditor/Respondent;

8.2 The Applicant CD has furnished:

- i. The information relating to its books of account and such other documents;
- ii. The information relating to the resolution professional proposed to be appointed as an interim resolution Professional;
- iii. The special resolution passed by shareholders of the Corporate Debtor approving the filing of the application under Section 10 of IBC; and
- iv. Applicant is not ineligible to make an Application to initiate Corporate Insolvency Resolution Process.

8.3 Existence of debt is above Rupees One Crore;

8.4 Debt is due, payable in law and defaulted;

8.5 Loan Accounts classified as NPA on 03.02.2022.



8.6 Copy of the Application filed before this Bench has been given to the Financial Creditor and the application filed by the Corporate Debtor under Section 10 of the IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process against itself;

Hence, the present IB Petition is admitted with the following directions/observations. The date of admission of this Application is 13.04.2023.

9. As per the provisions of Section 13 and 14 of the IB Code on the date of commencement of insolvency, this Adjudicating Authority declares moratorium with effect from today for prohibiting all of the following, namely:

9.1 (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor 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 Debtor any of its assets or any legal right or beneficial interest therein.

(c) Any action to foreclosure, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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 Debtor.

9.2 Supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

9.3 The provisions of sub-section (I) shall not apply to-

a. Such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

9.4 The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.



10. This Adjudicating Authority hereby appoints, as proposed, Mr. Purshotam Gaggar [Reg No. IBBI/IPA-001/IP-P00117/2017-18/10252], having address at P. Gaggar & Associates, Advika, 3rd Floor, Opp. Sukreswar Ghat Garden, MG Road, Panbazar, Guwahati-781001, Assam, is hereby appointed, as an Interim Resolution Professional. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/directions issued by this Adjudicating Authority and to follow the provisions under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code. The IRP has to submit Assignment Declaration before the Registry within 2 days from today.

11. The Applicant shall deposit Rs. 3,00,000.00 (Rupees Three Lakhs Only) in the account of the IRP within three days for initial expenses of the CIRP including the cost of paper publication, which will be apportioned as per the provisions of the Code and reimbursed to the Applicant upon formation of the Committee of Creditors.

12. The IRP is hereby advised to adhere to the time limit as stipulated for completion of the Corporate Insolvency Resolution Process (CIRP) and perform the duties as specified under Section 17, 18, 20 and 21 of I&B Code. The IRP shall perform all his functions contemplated, inter-alia, in Sections 15,17,18,19,20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the Corporate Debtor. In case there is any violation, the IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to



protect and preserve the value of the property of the Corporate Debtor as a part of its obligations imposed by Section 20 of the Code, Rules and Regulations.

13. The Registry is hereby directed to communicate the authenticated copy of this order to the Financial Creditor, Corporate Debtor, the IRP and also to the Registrar of Companies, Guwahati immediately through speed post/registered post and e-mail, if available.

14. The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.

15. **Thus, the present IB Petition filed under Section 10 of the IBC stands admitted today i.e. 13.04.2023 with the above observations and directions.**

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)
& Adjudicating Authority**

Sd/-

**(Deep Chandra Joshi)
Member (Judicial)
& Adjudicating Authority**

