



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.55/ALD/2022

In the matter of

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

In the matter of

HINDUJA LEYLAND FINANCE LIMITED

Having its Registered Office at:
27A, Developed, Industrial Estate,
Guindy, Chennai, PIN-6000032.
Also, at
Plot No.445, 3rd Floor,
AIHP Horizon, Udyog Vihar,
Phase-5, Gurugram.

**...Applicant/Financial Creditor
Versus**

M/S FLY EXPRESS LOGISTIC PVT. LTD.

Having its Registered Office at:
Keshrwani Complex, Gojajali North
Bareilly Road Haldwani
Nainital UK-263139

...Respondent/Corporate Debtor

Order pronounced on 26th September, 2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Gulshan Kr Sachdeva, Adv. : For the Financial Creditor

Ex-parte v.o.d. 23.02.2023 : For the Corporate Debtor



ORDER

1. This Application is filed by M/s Hinduja Leyland Finance Limited ('Applicant'/'Financial Creditor') against the Corporate Debtor namely M/s Fly Express Logistics Limited ('Respondent' /'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') pursuant to the default in repayment of loan amount by the Corporate Debtor to the Applicant.
2. The Applicant is engaged in the business of hire purchase and advancing loans on motor vehicles, equipment and machinery. It is averred in the Application that Corporate Debtor approached the Financial Creditor for availing loan facility. The Financial Creditor executed fifteen loan agreements dated 24.08.2018 with the Corporate Debtor for the purpose of purchasing commercial vehicles.
3. The Financial Creditor advanced a loan to the Respondent Corporate Debtor for period of 60 months repayable with flat interest rate of 5.85% and annualized interest rate 10.07%



as stated in First Schedule of the Loan Agreement, for purchase of various commercial vehicles for which fifteen loan agreements dated 24.08.2018 were executed between both parties. The duration of repayment of the said loan began from 01.12.2018 and to be ended on 01.08.2023 with each instalment to be paid on 1st day of every English Calendar month. A total no. of 57 (fifty-seven) installments were fixed for repayment of the loan amount as per the 1st schedule of the loan agreement. Copy of Loan Agreement bearing no. UDDEHA00297 dated 24.8.2018 is annexed as **Annexure A-3** with the application for one vehicle. There are such fifteen agreements for fifteen vehicles.

4. The Corporate Debtor executed irrevocable power of attorney in favour of the Financial Creditor on 24.8.2018 for the purpose of these fifteen loan agreements. It is stated by the Financial Creditor that the Respondent Corporate Debtor had started making default in payment of monthly instalments from the inception of the said loan agreements.
5. The Applicant Financial Creditor had also issued the demand notice to the respondent company dated 1st March, 2019 and requested the respondent company to clear the outstanding



dues. The Corporate Debtor remitted the last installment on 01.07.2019.

6. On failure of the Corporate Debtor to pay the further instalments in regular manner, the Applicant Financial Creditor as per the terms of the loan agreement took the possession of the vehicles bearing registration no. UK 04 CB 3895, UK 04 CB 3909, UK 04 CB 3876, UK04 3896, UK04 CB 3872, UK04 CB 3917, UK04 CB 3957, UK04, CB 3874, UK04 CB 3894, UK04 CB 3960, UK04 CB 3875, UK04 CB 3873, UK04 CB 3918 on 13.05.2019. On 06.07.2019 and 13.09.2019 respectively, Financial Creditor took the possession of vehicles bearing registration no. UK04 CB 3956 and UK04 CB 3908. The Financial Creditor issued Pre-Sale Notice dated 16.08.2019 to the Corporate Debtor informing him about the outstanding amount of loan and sale of fifteen vehicles for recovering the loan amount. The Financial Creditor again got no response from the Corporate Debtor and sold all the fifteen vehicles on 30.06.2020 for Rs.10,00,000 each.
7. As the remaining amounts of outstanding dues were not paid after sale of vehicles, the Applicant Financial Creditor



initiated Arbitration proceedings against the Corporate Debtor as per the clause 22 of the Agreement which is mentioned below:-

“22.2 (a) All disputes, differences and /or claim arising out of the agreements whether during its subsistence or thereafter shall be settled by arbitration in accordance to the provision of the arbitration and conciliation Act 1996 or any statute amended there of shall be referred to the sole arbitrator nominated by the M.D of the Lender. The award given by such arbitrator shall be final and binding on the borrower of this agreement.

b) The venues of arbitration proceedings shall be at Chennai.

c) The Arbitrator so appointed herein above shall also be entitled to pass an Award on the hypothecated asset and also on any other securities furnished by or on behalf of this borrower.

It is agreed between the parties that subject to arbitration clause mentioned above this agreement for any interim reliefs the court in Chennai or the Court have jurisdiction over the state office of the Company as specified in first schedule there to shall have jurisdiction to entertain and try all matter arising from or out of the agreement.”

8. During the arbitration proceeding also, the Respondent Corporate Debtor did not comply with the direction of the Ld.



Arbitrator and did not join the arbitration proceeding. Therefore, the Ld. Arbitrator on the basis of record produced by the Applicant Financial Creditor, delivered an award on 24.12.2020 in favour of the Applicant Financial Creditor with direction to the Respondent Corporate Debtor to pay the claim amount along with 18% interest p.a. The Respondent was also directed to pay sum of Rs.1,000 towards cost. The total amount of debt accrued to the Corporate Debtor as per this award is of Rs. 33,41,8474. The details of 15 awards as given by the Ld. Arbitrator is mentioned in the table below:-

S. No.	Vehicles Details	Amount of Loan in (Rs.)	Loan Agreement No. and Date	Arbitration Case No.	Outstanding Balance (Rs.)
1	AL 2518 XP-2018- UK04 CB 3909	32,95,875/-	UDDEHA00294-24.8.2018	MG/HLF/079/2020	22,07,212/-
2	AL 2518 XP-2018- UK04 CB 3895	32,95,875/-	UDDEHA00293-24.8.2018	MG/HLF/078/2020	22,03,617/-
3	AL 2518 XP-2018- UK04 CB 3908	32,95,875/-	UDDEHA00305-24.8.2018	MG/HLF/090/2020	22,89,452/-
4	AL 2518 XP-2018- UK04 CB 3917	32,95,875/-	UDDEHA00299-24.8.2018	MG/HLF/084/2020	22,07,718/-
5	AL 2518 XP-2018- UK04 CB 3960	32,95,875/-	UDDEHA00303-24.8.2018	MG/HLF/088/2020	22,08,849/-
6	AL 2518 XP-2018- UK04 CB 3875	32,95,875/-	UDDEHA00304-24.8.2018	MG/HLF/089/2020	22,62,399/-
7	AL 2518 XP-2018- UK04 CB 3957	32,95,875/-	UDDEHA00300-24.8.2018	MG/HLF/085/2020	22,60,885/-
8	AL 2518 XP-2018- UK04 CB 3874	32,95,875/-	UDDEHA00301-24.8.2018	MG/HLF/086/2020	22,07,998/-
9	AL 2518 XP-2018- UK04 CB 3894	32,95,875/-	UDDEHA00302-24.8.2018	MG/HLF/087/2020	22,07,998/-
10	AL 2518 XP-2018- UK04 CB 3876	32,95,875/-	UDDEHA00295-24.8.2018	MG/HLF/080/2020	22,07,212/-



11	AL 2518 XP-2018- UK04 CB 3956	32,95,875/-	UDDEHA00297-24.8.2018	MG/HLF/082/2020	22,15,108/-
12	AL 2518 XP-2018- UK04 CB 3872	32,95,875/-	UDDEHA00298-24.8.2018	MG/HLF/083/2020	22,07,718/-
13	AL 2518 XP-2018- UK04 CB 3896	32,95,875/-	UDDEHA00296-24.8.2018	MG/HLF/081/2020	22,07,542/-
14	AL 2518 XP-2018- UK04 CB 3918	32,95,875/-	UDDEHA00307-24.8.2018	MG/HLF/092/2020	22,62,367/-
15	AL 2518 XP-2018- UK04 CB 3908/	32,95,875/-	UDDEHA00306-24.8.2018	MG/HLF/091/2020	22,62,399/-
TOTAL					3,34,18,474

9. The Financial Creditor filed an application before this Hon'ble Tribunal under Section 7 of the IBC, 2016 on 01st September, 2021. This Hon'ble Tribunal vide order dated 05.04.2022 rejected the Application filed the Financial Creditor on the ground that his application is barred by Section 10A of the IBC, 2016.

10. Aggrieved by the said order, Financial Creditor filed an appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT), New Delhi Company Appeal (AT) (Ins.) No. 553 of 2022 titled as **Hinduja Leyland Finance Ltd. versus Fly Express Logistics Ltd.** The Hon'ble Principal Bench dismissed the said appeal with a liberty to file afresh before the Adjudicating Authority vide an order dated 20.05.2022. The relevant para are mentioned herein below:-

"4. We have perused the Section 7 Application 'date of default' is clearly mentioned in Part-IV as 24.12.2020



hence the Adjudicating Authority is not in error in rejecting the Application, thus we do not find any ground to entertain the Appeal however the Appellant is at liberty to initiate fresh proceeding under Section 7 on appropriate materials in accordance with law.

The Appeal is dismissed accordingly.”

11. After the above order passed by the Hon'ble NCLAT, the Financial Creditor again filed an application under Section 7 of the IBC, 2016 before this Tribunal on 30.05.2022 for reinitiating the proceeding a fresh. Accordingly, vide order dated 06.07.2022 of this Tribunal, notice to the Respondent Corporate Debtor was issued to file its reply on the application filed by the Applicant Financial Creditor.

12. The Respondent Corporate Debtor refused to accept the notice as per postal remark on the envelope in which notice was sent, as informed by the Applicant Financial Creditor in the affidavit of service filed. After giving few opportunities to the Respondent Corporate Debtor, when no appearance is made from its side, this Tribunal vide an order dated 14.12.2023 granted last opportunity to the Respondent to make representation and file reply in the matter. Since no representation was made on behalf of the Respondent/Corporate Debtor, this Tribunal vide order dated



23.02.2023 set the Respondent/ Corporate Debtor as ex-parte. Thereafter, the matter was finally heard on 11.09.2023.

Findings and Order

13. We have heard the Ld. Counsel appearing for the Applicant and perused the averments made in the application. The Applicant has claimed the default on part of the Respondent for an amount of Rs.3,34,18,474 (Rupees Three Crores, Thirty Four lakhs, Eighteen Thousand Four Hundred and Seventy Four) along with interest at the rate of 18% per annum as on 24.12.2020.

14. The present application filed under section 7 involves two issues.

- i. Whether the instant application is filed within the limitation period.
- ii. Whether the application fulfills the criteria specified under section 7 of the IBC, Code 2016.

15. In the present case, we have found that last payment was made on 01.07.2019 as per the Statement of Loan Account annexed as Annexure 4 of this Petition. Therefore, as argued by the Ld. Counsel of the Applicant Financial Creditor that the date on which first default occurred is 1st August, 2019, i.e. the first



date of every month on which instalment is to be paid. Thereafter, the default continued as the Respondent Corporate Debtor did not respond to various demand notices issued by the Applicant-Financial Creditor and it did not even join the arbitration proceeding initiated by the Applicant Financial Creditor. Therefore, the date of default is to be taken as 01.08.2022. Ld. Counsel further argued that though first date of default is 01.08.2019, it is continuing and the final amount to be paid by the Corporate Debtor is determined at Rs. 3,37,18,474/- in the arbitration award pronounced on 24.12.2020 as mentioned in the application under Section 7. He further argued that as the instant application is filed on 30.05.2022, it is within 3 year limitation period from the date of default of 01.07.2019 as per Section 238A of the IBC, 2016 r/w Article 137 of the Schedule of the Limitation Act, 1908. After verification of records, we have found that first default occurred on 01.07.2023 and default is still continuing after arbitration award and therefore, we agree that date of default is 01.07.2023. As this application is filed on 30.05.2022, it is well within the limit of 3 years of limitation and hence, the application is maintainable.

16. With regard to the second issue, it is to be noted that the scope of IBC under Section 7 is limited to see whether there is a



debt due and if any default has occurred in the payment/re-payment. For this purpose, the financial Creditor has submitted the Statement of Loan Account which reveals that Corporate Debtor has paid the installment till loan amount till 01.07.2019. This substantiates the Financial Creditor's claim that the Corporate Debtor has defaulted in the repayment of debt.

17. The present petition filed by the financial creditor fulfills the criteria of debt and default as enumerated in section 3(11) and 3(12) and mentioned below:-

(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

18. The amount of debt of Rs, 3,34,18,474 (Rupees Three Crore Thirty-Four Lakh Eighteen Thousand Four Hundred and Seventy Four) is above the threshold limit of 1 crore which meets the standards of section 4 (1) of the IBC, Code, 2016. Therefore, it meets the qualifying criteria of section 7 of the IBC, 2016. The Hon'ble Supreme Court in case of **M. Suresh Kumar Reddy vs.**



Canara Bank & Ors. Civil Appeal No.7121 of 2022 dated 11th May, 2023 has held that once NCLT is satisfied that the default has occurred, there is hardly any discretion left with NCLT to refuse admission on the Application under Section 7 of I & B Code, 2016. The relevant part of this decision of the Hon'ble NCLAT is reproduced as under:-

“34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute.”

(Emphasis added)

10. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7.”

19. In view of our findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and the default, which is more than the threshold limit of one crore. The application



is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.

20. The Financial Creditor has proposed the name of Mr. Krit Narayan Mishra as the IRP in the present application. The written consent by IRP has been on record by way of affidavit bearing diary no. 2423 dated 06.09.2023. Hence, this adjudicated Authority appoints Mr. Krit Narayan Mishra as the IRP in the present case, having Registration No. IBBI/IPA-001/IP-P00441/2017-2018/10784, R/o C-3 Ashoka Apartments, Plot No. 8, Sector 12, Dwarka, New Delhi-110078, Email- kritmassociates@gmail.com. The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Aditi Kharbanda, and it is found that there is no proceeding pending against the proposed IRP. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 04.06.2024.

21. In the given facts and circumstances of the case as per our above findings ,the present application u/s 7 being complete in all respect and having established the default in payment of the Financial Debt for the default amount being above the threshold



limit and an IRP also having been appointed as per above para 32, the application is admitted in terms of Section 7(5) of the I& B Code,2016 against the Corporate Debtor and accordingly, moratorium is declared in terms of Section 14 of the Code.

22. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.

23. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every month.



24. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:-

(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 foreclose, 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;

(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. It is further directed that the 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.

(f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.”

25. We direct the Financial Creditor to deposit a sum of Rs. 1,00,000 with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.



26. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

27. List the matter on 08.11.2023 for filing of the progress report/further proceeding.

28. Ordered accordingly

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)