

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI VELAMUR G. VENKATA CHALAPATHY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 35/7/JPR/2024

(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:

KOTAK MAHINDRA BANK LIMITED

...Financial Creditor/Applicant

VERSUS

M/s MORANI MOTORS PVT. LTD.

...Corporate Debtor/Respondent

MEMO OF PARTIES

KOTAK MAHINDRA BANK LIMITED

CIN: - L65110MH1985PLC038137

R/o-27BKC, C 27, G Block, Bandra

Kurla Complex, Bandra (E), Mumbai-

400051.

...Applicant

VERSUS

M/s MORANI MOTORS PVT. LTD.

CIN: - U50401RJ2002PTC017738

R/o-Plot No.-5, Opposite Sitabari, Tonk

Road, Jaipur- 302011.

...Respondent

For the Applicant

: Anubha Singh, Adv.

Simran Gupta, Adv.

For the Respondent

: Bhrigu Sharma, Adv.

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CP No. (IB)- 35/7/JPR/2024

Order Pronounced On: 04.02.2025

ORDER


Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application has been filed by *Kotak Mahindra Bank Limited*, ('Applicant' / 'Financial Creditor') to initiate Corporate Insolvency Resolution Process ('CIRP') against *M/s Morani Motors Private Limited* ('Respondent' / 'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Corporate Debtor, *M/s Morani Motors Private Limited*, is registered as a private limited company incorporated on 23.07.2002, having CIN U50401RJ2002PTC017738, and has its registered office at Plot No.-5, Opposite Sitabari, Tonk Road, Jaipur- 302011. The Corporate Debtor has an Authorised Share Capital of Rs. 4,00,00,000/- (Rupees Four Crore Only) and Paid-Up Share Capital of Rs. 3,05,70,710/- (Rupees Three Crore Five Lakh Seventy Thousand Seven Hundred Ten Only). The same has been verified from the database maintained by the Ministry of Corporate Affairs.
3. The Applicant has alleged a default by the Corporate Debtor concerning non-payment of loan amounting to Rs. 8,18,82,076.9/- (Rupees Eight Crore Eighteen Lakh Eighty-Two Thousand Seventy-Six and Ninety Paise Only).
4. The details of the transactions leading to the filing of this Application as averred by the Applicant are as follows:

CP No. (IB)- 35/7/JPR/2024

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- 4.1. The Financial Creditor in the present case is *Kotak Mahindra Bank Limited* which was earlier known as *ING Vysya Bank Limited*. In the year 2011, the Corporate Debtor had approached the Applicant to avail 'Loan Against Property' facility. The same was sanctioned by the Applicant *vide* sanction letter dated 19.11.2022 for a sum of Rs. 3,00,00,000/- (Rupees Three Crore Only).
- 4.2. The aforementioned facility was enhanced to Rs. 6,00,00,000/- (Rupees Six Crore Only) which was sanctioned *vide* sanctioned letter dated 29.06.2012 and 29.08.2013. However, in order to secure the repayment of the credit facilities the Corporate Debtor agreed to mortgage immovable property i.e. "*Plot No.4, Opposite Sitabari, Tonk Road, Jaipur, Rajasthan*".
- 4.3. Further, the Corporate Debtor had again approached the Applicant for further availing credit facility for a sum of Rs. 1,00,00,000/- (Rupees One Crore Only) and the same was sanctioned by the Applicant *vide* sanction letter dated 27.06.2014. Accordingly, the Applicant has in total sanctioned a sum of Rs. 7,00,00,000/- (Rupees Seven Crore Only) *via* loan accounts bearing no. *ILAP-18676, ILAP-54228* and *ILAP-21122*.
- 4.4. As per the specific undertaking and as per the clear terms of the loan agreement, the Corporate Debtor was bound to repay the outstanding loan amount *vide* regular Equal Monthly Installment. However, the Corporate Debtor committed default on 08.06.2019 for loan accounts bearing no. *ILAP-18676* and *ILAP-54228*. The loan account bearing

No. *ILAP-21122* was defaulted on 08.02.2020, when the EMI was due but not paid. The default in all the three account is continuing till today.

4.5. Further, the Applicant submits the present Petition is well within the limitation as the Corporate Debtor committed default on 08.06.2019 and 08.02.2020. It was contended that the Hon'ble Supreme Court has excluded the period of limitation from 15.03.2020 till 14.03.2021. Further, *vide* order dated 10.01.2022 in the light of 3rd wave of COVID 19 the same was continued till 28.02.2022 and *vide* order dated 09.05.2022 it was clarified that all persons shall have a limitation from 01.03.2022.

4.6. The relevant details as reflected in Part IV of the Application are reproduced hereunder:

Part IV

PARTICULARS OF FINANCIAL DEBT

1.	Total Amount of Debt Granted Date(s) of Disbursement	Total Amount of Debt: - Rs. 7,00,00,000/- (Rupees Seven Crore Only)		
		Loan Account No.	Date of Sanction	Sanctioned Limit
		ILAP-18676	29.06.2012	Rs. 4,50,00,000/-
		ILAP-54228	29.08.2013	Rs. 1,50,00,000/-
		ILAP-21122	27.06.2014	Rs. 1,00,00,000/-
2.	Amount claimed to be in default and the date on which the default occurred	Presently, default amount of Rs. 8,18,82,076.9/- (Rupees Eight Crore Eighteen Lakh Eighty-Two Thousand Seventy-Six and Ninety Paise Only) remains unpaid by the Corporate Debtor including outstanding principal arrears and interest charges till 27.02.2024 due and payable by the Corporate Debtor.		



		<p>Tabular computation of amount and dates of default and Computer-Generated Statement of Account maintained by the Financial Creditor dated 27.02.2024 along with certificate under Banker Books of Evidence Act is annexed as Annexure- 10(Colly.)</p> <p>Therefore, default in the matter has occurred on 08.06.2019.</p>
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5. The Corporate Debtor filed its Reply *vide* Diary No. 2132/2024 dated 02.09.2024 and contended the following:

5.1. The Respondent contends that the Application has been filed by a person who does not have the authority as mandated by law. According to Annexure-3 of the Application, the authority letter dated 01.04.2023 has been annexed wherein it is stated that *Mr. Brijesh Singh* who is working as Senior Vice President of the Applicant Bank, is authorized to issue the letter of authority to represent the Applicant Bank. It is further stated therein that by virtue of the above authority, he has authorized *Mr. Himanshu Sharma*. However, the Respondent contends that *Mr. Himanshu Sharma*, though claimed to be a duly constituted attorney, has not been properly admitted as such, as no valid and proper document has been produced in this regard.

5.2. Further, it is submitted that in relation to the subject loan facilities a Securitization Application no. 15 of 2022 (*M/s Morani Motors Private Ltd. v/s HDFC Bank Limited*) was filed before the Ld. DRT, Jaipur,

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Rajasthan under Section 17 of the SARFAESI Act, 2002. After hearing both parties, the Ld. DRT, Jaipur, *vide* Order dated 06.11.2023, allowed the Securitization Application and set aside the Demand Notice and Possession Notice issued by the Bank. However, the Original Application bearing no. 331/2021 (*Kotak Mahindra Bank Limited v/s Morani Cars Pvt. Ltd.*) filed by the Applicant before the Ld. DRT, Jaipur, Rajasthan is still pending for adjudication.

5.3. The Respondent submits that *Kotak Mahindra Bank Limited* has no charge and security over the subject property. Rather, *HDFC Bank Limited* holds a valid mortgage and title over the property of the Corporate Debtor. This is evident from the Securitization Application bearing No. 11/2022 (*HDFC Bank Limited v/s Kotak Mahindra Bank Limited*). However, in this Securitization Application the Ld. DRT, Jaipur, impleaded the Jaipur Development Authority ('JDA'), Jaipur, which submitted a report and stated that for the subject property, there is only one Patta issued by the JDA in favor of *M/s Morani Motors Pvt. Ltd.*, and the same is mortgaged with *HDFC Bank Limited*. Thus, the Applicant by filing this instant Petition seeks to overreach the court's process and seeks an order that would contradict the order passed by the Ld. DRT, Jaipur.

5.4. The Respondent contented that as per the Financial Creditor in Part IV it is firstly stated that the date of default is 08.02.2020 and secondly it is also stated as 08.06.2019. The above mentioned two dates of default



are contrary to the record of the Bank itself as the Demand notice dated 16.12.2023 issued under Section 13(2) of the Act of 2002 the Bank has stated the date of default /NPA as 07.12.2020. However, the above-mentioned Demand Notice is prior to the filing of the present Petition. Thus, the Applicant has changed the date of default without providing any reasons or justifying the same.

5.5. Further, the Respondent submitted that the Financial Creditor has failed to file the record of default as per information utility (NESL) and the same is not a part of the Application. The Respondent contended that the alleged amount stated to be granted by the Applicant neither bear the date on which disbursement was made nor the nature of transaction has been stated in Part IV of the Application.


5.6. It was contended that, the Loan Agreement annexed as Annexure-7 has not even been executed on Rs. 500/- Non-Judicial Stamp paper and so it is neither registered nor the due stamp duty has been paid on the same. Further, the Respondent submitted that the Petition is not maintainable on the ground of insufficiency of stamp duty paid on the Loan document in view of the decision of the Constitution bench of Hon'ble Supreme court in the case of *N.N. Global Mercantile Private Limited v/s Indo Unique Flame Ltd. And Others (2023 SCC Online SC 495)*.

6. The Applicant has filed its Rejoinder *vide* Diary No. 2536/2024 dated 14.10.2024 and submitted the following:

CP No. (IB)- 35/7/JPR/2024

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6.1. The Applicant submitted that the Respondent had already mortgaged its properties to the Financial Creditor. Therefore, in view of the above the Financial Creditor already has the rights on the property of the Corporate Debtor.

6.2. Further, it is submitted that the Financial Creditor has authorised *Mr. Himanshu Sharma* to file the present petition under Section 7 Insolvency and Bankruptcy Code, 2016 and has not authorised any person named *Ajay Kumar Singh* to present this petition. The authorisation has been given by *Mr. Brijesh Singh* who is the senior vice-president of *Kotak Mahindra Bank Limited*, who is duly authorized to issue a letter of authority. Therefore, *Mr. Brijesh Singh* does not hold a power of attorney but rather a letter of authority, as he is empowered to file the instant petition in accordance with the Board Resolution dated 11.06.2022. Additionally, the letter of authority issued to *Mr. Himanshu Sharma* was not issued by *Mr. Brijesh Singh* in his personal capacity, but in his capacity as Senior Vice-President of *Kotak Mahindra Bank Limited*. Therefore, *Mr. Himanshu Sharma* is duly authorized to file the present Petition on behalf of the Financial Creditor.

6.3. It is further submitted that the averments made regarding the board resolution do not warrant a reply from the Financial Creditor, as the board resolution is an internal matter of the Financial Creditor. It is also

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pertinent to mention that all steps taken by the Financial Creditor are in accordance with the law.

- 6.4. The Applicant further submits that the Securitization Application No. *15 of 2022* filed by the Corporate Debtor bears no significance in the present Company Petition as the Demand Notice under Section 13(2) of SARFEASI Act, 2002 and possession notice under Section 13(4) of SARFEASI Act, 2002 issued by the Financial Creditor are for realising the security interest created in favour of the Financial Creditor.
- 6.5. The Financial Creditor has taken the date of default as 08.06.2019, as on this date the EMI in Loan Account Nos. *ILAP18676* and *ILAP54228* of the Corporate Debtor became due and payable. Therefore, the non-payment of the EMI on the due date triggered the default by the Corporate Debtor. Hence, the order of the Debt Recovery Tribunal dated 06.11.2023 is of no significance in the matter at hand.
- 6.6. The corporate debtor has three loan accounts with the Financial Creditor out of which the EMI for two loan accounts became due and payable on 08.06.2019, and the payment for the third account became due and payable on 08.02.2020. In the present petition, the Financial Creditor has not considered the date of declaration of the account as a Non-Performing Asset as the date of default. However, the date on which the EMI payment became due and payable and remained unpaid has been taken as the date of default as per the terms of the loan agreement.

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7. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Corporate Debtor is situated in the state of Rajasthan; therefore, this Adjudicating Authority has the jurisdiction to entertain this Application.
8. Before, we delve into the merits of the case, it is incumbent to adjudicate upon whether the instant Application is within the purview of the Laws of Limitation and to deal with the contention of qua mentioning of two dates of default i.e. 08.06.2019 and 08.02.2020 in the Application.
9. A perusal of the Application and the documents enclosed therewith reveals that the Corporate Debtor had three loan accounts i.e. *ILAP-18676*, *ILAP-54228* and *ILAP-21122* with the Applicant. The Corporate Debtor defaulted in meeting its debt obligations qua the loan accounts bearing no. *ILAP-18676 and ILAP-54228* on 08.06.2019 when it failed to deposit the EMI. Similarly, in so far as the loan account bearing no. *ILAP-21122* is concerned the default occurred on 08.02.2020. Further, it is a settled position of law that the date of default is to be ascertained on the basis of occurrence of default. Thus, we don't find any force in the argument of the Corporate Debtor that the date of default mentioned in Part IV of the Application is different from the Date of NPA.
10. At this juncture it is pertinent to refer to the Hon'ble Supreme Court's decision in *Suo Moto Writ Petition No. 03 of 2022* wherein it was directed that the period from 15.03.2020 to 28.02.2022 shall be excluded for the purposes of limitation. Taking into account the exclusion period provided by




the Hon'ble Apex Court and the date of filing of this Petition i.e., 26.03.2024, we find that the present Petition has been filed within the prescribed limitation period.

11. Further, we refer to Section 7 of the Code which clarifies that the Adjudicating Authority upon being satisfied that the default of financial debt has occurred, may order for initiation of CIRP of the Corporate Debtor. The key ingredients of an Application filed under Section 7 of the Code are: (i) there has to be a financial debt and; (ii) there must be a default in repayment of the financial debt. Hence, the Applicant must establish that there is a financial debt and that a default has been committed in respect of that financial debt by the Corporate Debtor. While dealing with an application under section 7, the Adjudicating Authority is not required to consider the question of the dispute between the parties as long as the 'debt' and 'default' is proved.
12. In the instant case, there is no dispute that the Financial Creditor, and the Corporate Debtor entered into three loan facility Agreements dated 29.06.2012, 31.08.2013 (Loan Account No. *ILAP-18676*) & (Loan Account No. *ILAP-54228*) respectively and on 29.06.2014 Loan Account No. *ILAP-21122*. The same is also corroborated by the Sanction Letters dated 29.06.2012, 29.08.2013 and 27.06.2014. Thus, the existence of the first ingredient i.e. financial debt is nowhere in dispute among the parties.
13. In so far as the existence of default is concerned, as per the aforementioned Loan Against Property Facility Agreements, the parties agreed upon an *CP No. (IB)- 35/7/JPR/2024*
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Equated Monthly Instalment 'EMI', with the Corporate Debtor required to make each loan EMI payable every month. The loan facility is structured to be repaid over 180 EMIs. However, the Corporate Debtor failed to adhere to the repayment scheduled and violated the terms of the Loan Agreements. Additionally, the same is also corroborated from the Statement of Account maintained by the Financial Creditor dated 27.02.2024.

14. At, this juncture, it is important to refer to landmark judgment of the Hon'ble Supreme Court in *Innoventive Industries Limited v. ICICI Bank and Another* 2017 SCC OnLine SC 1025 wherein it was held that once Adjudicating Authority is satisfied that the default has occurred, there is hardly a discretion left with Adjudicating Authority to refuse admission of the Application under Section 7 Code, 2016.
15. It is trite law that under the IBC once a debt which becomes due or payable, in law and in fact, and if there is incidence of non-payment of the said debt in full or even part thereof, CIRP may be triggered by the financial creditor as long as the amount in default is above the threshold limit. Once the Adjudicating Authority is subjectively satisfied that there is a debt and a default has been committed by the Corporate Debtor and the Section 7 application is complete in all respects, the Adjudicating Authority in the exercise of summary jurisdiction has to admit the Section 7 Application.
16. In the instant case, the Corporate Debtor had availed three loan facilities from the Financial Creditor to the tune of Rs. 7,00,00,000/- (Rupees Seven Crore Only). The said loan agreements form part of the record. Further, a




perusal of the statements of the loan accounts reveals that the Corporate Debtor failed to pay the debt that was due and payable.

17. After examining the aforementioned facts and judgments, the present application made by the Financial Creditor is complete in all respects as required by law. Upon reviewing the submissions and documents submitted, this Adjudicating Authority is convinced that a debt exists and there has been a default.
18. Under such circumstances, the Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor, as it has committed a default. Therefore, the Adjudicating Authority has come to the view that the Corporate Insolvency Resolution Process of the Corporate Debtor should be initiated. We are inclined to admit this Application and accordingly, same is being admitted and the Corporate Insolvency Resolution Process against the Corporate Debtor is hereby initiated. Since the Applicant has proposed the name of the IRP, therefore, we appoint *Mr. Satyendra Prasad Khorania* having Registration Number *IBBI/IPA-002/IP-N00002/2016-17/10002*, duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the above-named IRP.
19. Consequences of initiation of CIRP shall be inter-alia as follows:

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i) The Resolution Professional proposed by the Applicant is *Mr. Satyendra Prasad Khorania*, who is an IP registered with ICSI Insolvency Professional Agency having Registration No *IBBI/IPA-002/IP-N00002/2016-17/10002*, He is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.

ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray his expenses to be incurred and fees on the account. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant shall deposit the fees of Rs. 1,00,000/- (Rupees One Lakh Only) initially to the account of IRP within three days from the date of this order. The IRP shall duly



file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- iv) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.
20. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.
21. In the circumstances, CP No. (IB) 35/7/JPR/2024 is admitted.


DEEP CHANDRA JOSHI,
JUDICIAL MEMBER


VELAMUR G. VENKATA CHALAPATHY,
TECHNICAL MEMBER