

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.147 /Chd/Pb/2023

**Under Section 7 of the
Insolvency & Bankruptcy Code,
2016**

In the matter of:

**Sapna Cars Private Limited,
(through Director Vikas Bishnoi),
MCB/Z4-03009,
Bibi Wala Road,
Street Hero Honda Rose Garden
Bathinda Punjab 151001**

....Petitioner-Financial Creditor

Vs.

**Padam Motors Private Limited
Mehta Motors Bibi Wala Road,
Bathinda, Punjab 151001
CIN No.U50100PB2004PTC027101**

...Respondent-Corporate Debtor

Judgment delivered on: 18.07.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Petitioner-Financial Creditor : Ms. Pridhi Singla, Advocate

For the Respondent-Corporate Debtor : Mr. Manish Jain, Advocate.
: Ms. Divya Sharma, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **Sapna Cars Private Limited**, (hereinafter referred to as '**Petitioner/Financial Creditor**') through its Director Vikas Bishnoi, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **Padam Motors Private Limited** (hereinafter referred to as '**Respondent/Corporate Debtor**'). The petition is signed by Sh. Gurpreet Singh, with the affidavit verifying the contents of the application which is attached at Page No.11 of the petition.

2. The Corporate Debtor is stated to be incorporated on 07.05.2004 incorporated under the Companies Act. The company is having its Registered Office at: Mehta Motors Bibi Wala Road, Bathinda, Punjab 151001, CIN No.U50100PB2004PTC027101. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. The brief facts of the case as stated in the petition are that sometime during the year 2017 the Corporate Debtor approached the Applicant, seeking financial assistance, as the Corporate was struggling with its finances. The Applicant herein agreed to provide necessary assistance to the Corporate Debtors and in this regard, a Memorandum of Understanding was signed between the Financial Creditor and the Corporate Debtor on November 1, 2017 ("MoU"). In terms of MOU, the Financial Creditor agreed to offer the Corporate Debtor necessary financing (upto Rs. 5 cores) for its business and working capital requirements at the interest of 12% p.a. Accordingly, as per the requirement of the Corporate Debtor, the Financial Creditor extended/disbursed financial debt to the Corporate

Debtor on various dates and therefore, was maintaining a running account of the Corporate Debtor. However, soon thereafter the Corporate Debtor started committing default in payment of the interest and principal amount. The Corporate Debtor on several occasions promised to pay the debt to the Financial Creditor but time again failed to do so, and the Corporate Debtor continued to default and the same is subsisting. Thus, the default is recurring since 2019 and till date. The Financial Creditor had in the past issued notices/reminders to the Corporate Debtor of the outstanding amount. However, Corporate Debtor provided unsatisfactory responses and false verbal assurances for the payments. Pertinently, vide letter dated 25.02.2021, the Corporate Debtor showed its inability to repay the admitted amount, while frivolously relying on the ground of Covid-19.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs.4,64,75,080.01/- (Rupees Four Crores Sixty Four Lakhs Seventy Five Thousand Eighty and Zero One Paisa Only) which includes the principal amount of Rs.27,815,288/- including interest of 12% p.a. and date of default is 01.04.2019. Copy of Board Resolution dated 02.08.2022 (Annexure A-1), working computation (Annexure A-4), Ledger (Annexure A-7), Bank Statement (Annexures A-8), and Legal Notice (Annexure A-9) evidencing the default of debt are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. The respondent has filed its reply vide Diary No.02610/01 dated 27.06.2023, wherein it has been submitted that as per the calculation of the respondent-corporate debtor, it is liable to make the payment of Rs.27,815,288/- to the applicant and not what is being claimed in the petition. It is further submitted that due to COVID-19 pandemic restrictions

placed all across the country, the business all around including the corporate debtor suffered huge losses due to a lack of manpower and funds. It is also submitted that due to financial crunches, they are unable to repay the amount. Moreover, it is stated that he has no objection if the present application filed under Section 7, IBC by Sapna Cars Pvt. Ltd. is admitted and the Corporate Insolvency Resolution Process is initiated qua the respondent-corporate debtor.

6. We have heard the learned counsel for the petitioner and have also perused the record carefully.

7. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

8. The issue for consideration is whether the present application is filed within limitation. The date of default is stated to be 01.04.2019. It can be seen from the records that the present petition is filed vide diary No.02610 dated 01.11.2022. Hence, the present petition is well within the period of limitation of three years.

9. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by the Board Resolution dated 02.08.2022 (Annexure A-1), working computation (Annexure A-4), Ledger (Annexure A-7), Bank Statement (Annexures A-8), and Legal Notice (Annexure A-9) which are attached with the main petition. As per the financial records read with financial statements, it is evident that an amount of Rs.4,64,75,080.01/- (Rupees Four Crores Sixty Four Lakhs Seventy Five Thousand Eighty and Zero One Paisa Only which includes the principal amount of Rs.27,815,288/- including interest of 12% p.a.) is still

pending which amounts to default when corporate debtor avoided the payment of outstanding amount despite repeated requests by the petitioner-financial creditor. Moreso, default is admitted by the corporate debtor in their reply vide Diary No.02610/01 dated 27.06.2023. Moreover, in the reply, it is stated that the corporate debtor suffered huge losses due to a lack of manpower, funds, and financial crunches, the respondent/corporate debtor is unable to repay the amount to the extent of Rs.2,78,15,288/- (Rupees Two Crores Seventy-Eight Lakhs Fifteen Thousand Two Hundred Eighty-Eight Only).

10. In Part-III of Form No. 1, Mr. Akhil Chadha, Interim Resolution Professional (IRP) has been proposed by the petitioner. The form-2 along with certification of registration issued by the Insolvency and Bankruptcy Board of India is submitted with the main petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Akhil Chadha, there is nothing adverse against him. In view of the above, we appoint Mr. Akhil Chadha, Registration No.IBBI/IPA-002/IP-N00917/2020-2021/13068, Email: chadhakhil@gmail.com, Mobile No. 9910018915, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Akhil Chadha shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim

Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and

extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than 8 financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

“As per Rule 7 (f) of Companies (Registered Valuers and Valuation) Rules, 2017, Registered Valuer shall maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;”

As per the Standard of Auditor (SA-230)

“The retention period for audit engagements is ordinarily no shorter than seven years from the date of auditor's report, or, if later, the date of the group auditor's report.”

In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.

- vii.) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- viii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.
- ix.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- x.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

11. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.
- e) 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. 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) 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.

12. We direct the Financial Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense

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.

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

14. The petition is admitted accordingly.

sd/-
(Subrata Kumar Dash)
Member (Technical)

sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 18, 2023

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