

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P (IB) No.1685/KB/2019

In the matter of

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

And

In the matter of:

Paragon Finance Limited, a company registered under the provisions of Companies Act, 1956, Identification Number: L65921WB1986PLC040980, having its registered office at Sikkim House, 4th Floor, 4/1, Middleton Street, Kolkata-700071.

... Financial Creditor

Versus

In the matter of:

Mohan Motor Dealers Private Limited, a company registered under the Provisions of Companies Act, 1956, Identification Number : U50103WB2006PTC109383 having its Registered Office at 55,Chowringhee Road, Kolkata-700071.

...Corporate Debtor

Date of hearing : 28/07/2021

Order Pronounced on : 03/08/2021

Coram:

Mr. Rajasekhar V.K., Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Arani Guha. Advocate } For the Financial Creditor

1. Mr. Ritoban Sarkar, Advocate } For the Corporate Deb tor

2. Mr. Sayantan Bose, Advocate

3. Ms. Madhurima Das, Advocate

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. **Paragon Finance Limited**, a corporate entity, (Identification Number : L65921WB1986PLC040980 having its registered office at 55, Chowringhee Road, Kolkata-700071 (hereinafter referred as the Financial Creditor), has filed the present 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, through one of its Directors, namely, Mr. Sanjay Kumar Gupta, duly authorized by its Board Resolution, dated 13th September, 2019, seeking Corporate Insolvency Resolution Process against **Mohan Motor Dealers Pvt. Ltd.** (Identification Number U50103WB2006PTC 109383) another corporate entity, having its Registered Office at 55, Chowringhee Road, Kolkata-700071 (hereinafter referred as the Corporate Debtor).
3. The Financial Creditor herein has submitted that in May, 2018, the Corporate Debtor had approached the Financial Creditor to avail an Inter-Corporate Loan to fulfill its financial difficulties. The Financial Creditor being a Non-Banking Financial Company (NBFC) in its Board Meeting dated 25th May, 2018 (Annexure-F) decided to give loan to the Corporate Debtor considering the reputation of the Corporate Debtor being the Four Wheeler Car Dealer of reputed automotive brands.
4. The Corporate Debtor took an Inter-Corporate Loan amounting to Rs. 25,00,000/- (Rupees Twenty Five lakhs only) from the Financial Creditor on 15th June, 2018 initially disbursed @ 15% for a period of 120 days. The said loan was duly acknowledged by the Corporate Debtor vide its letter dated 10th July, 2018, and enclosing therewith a repayment

cheque of Rs.25,00,000/- dated 6th November, 2018 bearing no. 273022 drawn on Axis Bank. It is further submitted by the Financial Creditor that the said loan was further renewed on 6th November, 2018 for a further period of 120 days and interest to be payable @ 15% wherein another repayment cheque of Rs. 25,00,000/- dated 5th February, 2019, bearing number 286992 drawn on Axis Bank Ltd. was issued to the Financial Creditor. A money receipt dated 6th November, 2018 was also issued to the Financial Creditor. In this connection the copies of the letter and money receipt dated 6th November, 2018 are annexed as (Annexure-H).

5. It is further submitted that thereafter the said loan was renewed from time to time and on 2nd August, 2019, the Financial Creditor issued letter to the Corporate Debtor demanding the refund of the said amount of Rs.25,00,000/- which fell due on 15th July, 2019. A copy of the said letter dated August, 2019 is annexed as (Annexure-I) but instead of making refund of the said loan, the Corporate Debtor by letter dated 5th August, 2019 denied that the loan was due on 15th July, 2019, although the Corporate Debtor admitted the existence of the said loan. Copy of the letter written by Corporate Debtor dated 5th August, 2019 is annexed (Annexure-J). However, the Financial Creditor ultimately on 8th August, 2019 deposited the said cheque dated 15th July, 2019 bearing no. 000926 with its remark "Funds Insufficient". Copy of the cheque and return memo is annexed as (Annexure-K).
6. The Financial Creditor, thereafter, issued a notice dated 3rd September, 2019 under section 138 of Negotiable Instrument Act, but no payment has ever been made by the Corporate Debtor. A copy of the said notice dated 3rd September, 2019 is also annexed as (Annexure-L).
7. The Financial Creditor has submitted in the application that the Corporate Debtor has committed default in re-payment of the

outstanding debt of Rs.25,00,000/- due to the Financial Creditor from the Corporate Debtor and the default has been committed by the Corporate Debtor on 14th August, 2019. The Financial Creditor has submitted that a sum of Rs. 26,95,206/- (inclusive of interest, inclusive of Principal amount and interest amount litigation /legal/professional fees). Copy of the computation of amount is annexed as (Annexure-M to the application). The Financial Creditor has also enclosed a Bank Statement evidencing the loan given to the Corporate Debtor and cheque pertaining to the principal amount returned as(Annexure-N).

8. The Financial Creditor has also proposed the name of **Mr. Arun Kumar Khandelia**, as IRP having Registration No. IBBI/IPA-002/IP-N00514/2017-2018/11592, who has consented vide his affidavit and Form-2 submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that he is currently serving as a Liquidator in Ajudhia Distributors Private Limited and that no disciplinary proceedings are pending against him with the Board or ICSI Institute of Insolvency Professionals.
9. The Corporate Debtor in its reply affidavit filed through one of its Directors Mr. Pradip Kumar Bajaj has submitted that the application filed by the Financial Creditor under section 7 of the Code is misconceived, not maintainable in law or facts and is liable to be dismissed. It is stated that the deponent in the said application has not been duly authorized by the Financial Creditor to present the said application before this Adjudicating Authority and that no debt can be said to be due or payable by the Corporate Debtor to the Financial Creditor and that the application has no merit and deserves to be dismissed.
10. The Corporate Debtor further submitted that there exists serious dispute

between the Corporate Debtor and the Financial Creditor pertaining to the transaction in question and the adjudication on the claim of the Financial Creditor would only be possible where evidence can be taken. It is submitted that in view of the pre-existing disputes, the application can not be entertained and is liable to be dismissed. The Corporate Debtor has further mentioned in the reply affidavit that the allegations contained in para-IV of the application are denied. It is denied that a sum of Rs. 25,00,000/-or any part thereof has become due or payable by the Corporate Debtor to the Financial Creditor. It is stated that the Corporate Debtor is not aware of the resolutions that may or may not have been adopted at any meeting of the Board of Directors of the Financial Creditor.

11. The Corporate Debtor, however, has admitted that a sum of Rs.25,00,000/- advanced by the Financial Creditor to the Corporate Debtor was initially for a period of 120 days. Subsequently, the same was renewed for a further period of 90 days. It is stated that subsequent to the expiry of the period of 90 days post the renewal on 6th November, 2018, the tenure of the said Inter-Corporate Deposit was extended without any period being fixed within which the principal amount had to be repaid. The Corporate Debtor vide its letter dated 5th August, 2019 is stated to have denied that the loan has fallen due on 15th July, 2019. It is stated that the Corporate Debtor in its said letter dated 5th August, 2019 had also categorically indicated that Cheque No. 000926 was handed over to the Financial Creditor in blank form for the purpose of security only. It was also denied by the Corporate Debtor in the said letter that the said Cheque was dated 15th July,2019 for the purpose of repaying of the said loan on the said date. It is further denied by the Corporate Debtor that vide letter dated 2nd August, 2019, the Financial Creditor demanded refund of the loan as alleged. It is stated that the Financial Creditor for the first time on 2nd August, 2019 informed that the said loan had matured for repayment on 15th July,2019. There is no

document to show that the loan had become due for repayment on that date. It is stated that the Financial Creditor is well aware of the fact that the said cheque had been offered as a security and any contention to the contrary is false to the knowledge of the Financial Creditor. The Corporate Debtor denied that the sum of Rs.25,00,000/- or any part thereof was in default from 14th August, 2019 or otherwise. The interest segment is also denied by the Corporate Debtor. The total amount of Rs. 26,95,206/- which is inclusive of litigation or legal or professional fees etc. is also denied.

12. From the facts and the documents placed by the Financial Creditor on record, we do not find any infirmity in the application and the documents, which clearly prove the disbursal of loan through bank, by way of 'Cheque'. The money receipt is also placed on record, the letter dated 2nd August, 2019 recalling the loan from the Corporate Debtor by the Financial Creditor is also not denied. The dishonouring of the cheque is also placed on record followed by 'Notice' under section 138(B) of the N.I.Act default in repayment is, therefore, proved on record. Simply by denying all the facts illegally, illogically and irrationally by the Corporate Debtor would not help it in any manner. The application is complete in all respects, and deserves consideration.
13. Having considered all the prerequisites for initiating Corporate Insolvency Resolution Process against the Corporate person, we find that the Financial Creditor has proved its case on the basis of all the documents annexed with the application. We, therefore, find that there is a default on the part of the Corporate Debtor in repayment of the outstanding debt which amount had been taken by the Corporate Debtor from the Financial Creditor. We have our considered opinion in admitting the petition and ordering initiation of CIRP against **Mohan Motor Dealers Pvt.Ltd.**
14. In view of the observations and directions, we hereby admit the petition

and pass the following Orders:-

O R D E R S

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor **Mohan Motor Dealers Private Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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 Securitisation 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.
- v) The supply essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Arun Kumar Khandelia**, registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-002/IP-N00514/2017-2018/11592**, **Email arun@cskarun.com** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to

production of written consent within one week from the date of receipt of this order.

- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs. 1,00,000/- (Rupees One Lakh only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on **24.10.2021** for the filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

Order signed on, this 3rd day of August, 2021

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