

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**CP (IB) No.264/Chd/Pb/2019**

**Under Section 7, of the IBC 2016**

**In the matter of:**

**Romesh Kumar**

Karta, Romesh Kumar HUF  
having its address at  
2094, Dugri Road, Urban Estate,  
Phase-I, Ludhiana-141013

....Petitioner-Financial Creditor

Vs.

**M/s Swani Motors Services Private Limited**

having its Regd. Office at  
698-Gurdev Nagar Pakhowal Road,  
Ludhiana PB 141001  
CIN: U34103PB2008PTC031761

....Respondent-Corporate Debtor

**Judgment delivered on: 28.10.2022**

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

**Present through Video Conferencing:**

For the Petitioner/Financial Creditor : Dr. Rajansh Thukral, Advocate

For the Respondent/Corporate Debtor : Mr. Rakesh Bhatia, Advocate

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

## **JUDGMENT**

The present petition has been filed 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 by Romesh Kumar, Karta, Romesh Kumar HUF (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s Swani Motors Services Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Romesh Kumar-petitioner, the Financial Creditor and the affidavit verifying the contents of the application is on pages 24A to 26 of the petition.

2. The master data of the corporate debtor is stated to be filed as Annexure-7 of the petition. The Corporate Debtor is stated to be incorporated on 13.03.2008. The company has its registered address at 698, Gurdev Nagar Pakhowal Road, Ludhiana PB 141001 IN. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are necessary for the disposal of the same are narrated hereunder:

3.1 The Corporate Debtor approached the petitioner for giving a friendly loan of Rs.15,00,000/- for three months at an interest rate of 12% p.a. with interest payable in advance. The petitioner agreed to grant the friendly loan with the understanding that if he does not repay the loan after three months, he may seek renewal for another three months at the option of the petitioner. Accordingly, the amount of Rs.15.00 Lakhs was paid by the

petitioner to the corporate debtor on 07.09.2018 through NEFT bearing no. SAA3870811933344011 from the bank account of the petitioner with Union Bank of India on a short-term basis for a period of three months with an option for renewal at the instance of the petitioner upon payment of advance interest. The interest was paid after the deduction of TDS and the amount is duly reflected in the Income Tax Form AS 26 on the website of the Income Tax department. The loan was renewed on a quarterly basis. up to 08.03.2019 and interest in respect of the same was paid on 07.09.2018 and 08.12.2018 in advance and thereafter the amount became due for payment on 08.03.2019. Despite the loan has become due for payment, the corporate debtor did not pay the principal loan amount and interest.

3.2 However, on 20.04.2019 the Corporate Debtor, issued cheque no. 540193 dated 20.04.2019 drawn on State Bank of India for an amount of Rs.15 Lakhs for the due repayment of the loan amount. Upon presentation to the bank, the cheque has been returned unpaid with the remarks "funds insufficient".

3.3 Thereafter the petitioner served a demand notice upon the corporate debtor for payment of the debt amount along with interest in terms of notice dated 29.04.2019, but despite the service of the notice, the amount of demand has not been paid. However, the corporate debtor in its reply dated 13.05.2019 to the demand notice, requested the petitioner to negotiate and settle the matter.

4. In Part-III of Form No.1, Mr. Akshay Mehra, Registration No.IBBI/IPA-001/IP-P01457/2018-2019/12242 has been proposed as Interim

Resolution Professional (IRP). Form No.2 dated 16.05.2019 is attached at Annexure-8 of the petition.

5. It is stated in Part-IV of Form No.1 that the petitioner has provided a loan amount of Rs.15,00,000/-. The total amount claimed to be in default is Rs.15,45,000/- (including interest amount of Rs.45,000/- up to 08.05.2019). Copy of statement of Bank Account of the financial creditor (Annexure A-1). Copies of AS-26 (Annexure A-2). Copy of default notice (Annexure A-1A). Copy of cheque (Annexure A-4).

6. The notice of this petition was issued to the respondent-corporate debtor on 07.06.2019 as to why this petition be not admitted. A reply on behalf of the respondent-corporate debtor is submitted vide Diary No.5958 Dated 30.10.2019 by Mr. Gagandeep Singh Swani, Director of the respondent-corporate debtor, affidavit authorizing him on behalf of the respondent is attached at Page No.10-11 of the reply.

7. The corporate debtor through its reply has denied the averments made by the petitioner while admitting the fact that TDS certificate interest has been paid twice, further it is stated that there is no document relied on by the petitioner to say that the interest is quarterly and there is no provision of advance interest to be paid. The corporate debtor has further admitted the fact to an extent that the sum of Rs. 15,00,000/- was transferred through NEFT by the petitioner.

8. The petitioner has filed a rejoinder vide Diary No. 7141 dated 16.12.2019 whereby, rebutting the contention of the corporate debtor i.e. there is no agreement with regard to the said loan amount, the petitioner relied on the reply to legal notice under Section 138 of N.I. Act dated 06.05.2019, served by the petitioner to the respondent-corporate debtor where it has acknowledged that the

loan was taken by Swani Motors which is a separate legal entity. Further, it was agreed between both parties that the abovesaid security cheque shall not be presented and the respondent-corporate debtor will return the principal amount as and when it will have sufficient spare funds.

9. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the written submissions and records available carefully.

10. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 09.03.2019 and the present petition is filed vide Diary No.2616 dated 22.05.2019. Therefore, the present petition is filed within limitation.

11. Another issue for consideration is whether there is a default in payment or not. As per Section 7 of IBC which is reproduced below:-

*“Section 7 Initiation of corporate insolvency resolution process by financial creditor.*

*(3) The financial creditor shall, along with the application furnish—*  
*(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*  
*(b) the name of the resolution professional proposed to act as an interim resolution professional; and*  
*(c) any other information as may be specified by the Board.*

*(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; or*

12. It is observed from the record that in the present case, the occurrence of default is evidenced by the copies of Income Tax Form AS-26, which clearly shows interest was paid after the deduction of TDS. The same has been admitted

by the respondent-corporate debtor in its reply. The fact that Rs. 15,00,000/- has been transferred to the account of the corporate debtor via NEFT was not disputed as the same has been admitted by the respondent in its reply at para 2 (page 6). The above-said amount is also reflected in the statement of the bank account of the petitioner at page 33 of the petition. The respondent in its written submission emphasized that electronic evidence in the absence of a certificate under Section 65 B of the Indian Evidence Act cannot be relied upon. To buttress his contention, the respondent-corporate debtor put reliance on the judgment of the Hon'ble Supreme Court in **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal 2020 (7) SCC 1**. It may be noted that the above decision of the Hon'ble Supreme Court at para 33 held that

*“33. In fact, in Vikram Singh and Anr. V. State of Punjab and Anr. (2017) 8 SCC 518: 2017(3) RCR (Criminal) 648, a three-judge Bench of this court followed the law in Anvar P.V. (supra), clearly stating that where primary evidence in electronic form has been produced, no certificate under Section 65B would be necessary.... xxxxx*

In the instant matter, the amount in default is admitted and the same is reflected in the reply and written submissions filed by the respondent-corporate debtor, therefore, the aforesaid contention of the respondent-corporate debtor with regard to Section 65B of the Indian Evidence Act is misplaced.

13. The Hon'ble NCLAT in Comp. App (AT) (INS) No.549 of 2020 in the matter of **Narender Kumar Agarwal and ors Versus. Monotrone Leasing Private Limited and ors** held that

*“Thus, the contention of Financial Creditor is fully authenticated from the Money Receipt and bank transaction statement. The Appellant contends that the transaction may be treated as the 'Inter-Corporate Deposit', but it can not be treated as the Financial Debt. In case the Inter-Corporate Deposit is made for a certain period, which was to be paid back with interest then such transaction will also fall in the definition of 'Financial Debt'. The interest is the product of instant transaction, which is*

*undoubtedly the time value of money. Thus, such transaction of the inter-corporate deposit is fully covered by the definition of Financial debt as provided under Section 5(8) of the I & B Code. The written contract can not be treated as an essential element to prove the Financial Debt if the transaction's nature is proved otherwise".*

14. Keeping in view the above decision of Hon'ble NCLAT, the contention of the petitioner is fully authenticated from the bank transaction statement and Income Tax Form AS-26, and the amount advanced by the petitioner clearly falls under the definition of financial debt under Section 5(8) of the I&B Code. The same has been extracted hereinbelow:

*5. In this Part, unless the context otherwise requires,—*

*5(8) "**financial debt**" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—*

*(a) money borrowed against the payment of interest;*

15. 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.

16. The Law Research Associate of this Tribunal has checked the credentials of Mr. Akshay Mehra, and there is nothing adverse against him. In view of the above, we appoint Mr. Akshay Mehra, Registration No.IBBI/IPA-001/IP-P-01457/2018-2019/12242, Email:[akschd57@gmail.com](mailto:akschd57@gmail.com), Mobile No.7042021666, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Akshay Mehra 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 morals;
- 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.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to IRP after the initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the Resolution Process in a time-bound manner. 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 and move an application seeking appropriate remedy, if required.

- vii.) 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 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 the constitution of the Committee; and
- viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. We direct the Financial Creditor to deposit a sum of ₹70,000/- (Rupees Seventy Thousand 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.

18. The petition is admitted accordingly.

19. 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 e-mail address forthwith.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

October 28, 2022

PB/ASH