

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP(IB) 161/7/NCLT/AHM/2017

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 04.06.2020**

Name of the Company: BMW India Financial Services Pvt Ltd
V/s
Parsoli Motor Works Pvt Ltd

Section 7 of IBC, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

The case is taken up through video conferencing.

The Parties are represented through their respective counsel(s).

The case is fixed for pronouncement of order today.

The order is pronounced in open Court as order in detail is recorded vide separate sheet.


**(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)**


**(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)**

Dated this the 4th June of 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

I.A. No. 300 of 2018

In/with

C.P. (I.B.) No. 161/7/NCLT/AHM/2017

CP(IB) No. 161 of 2017

In the matter of:

BMW India Financial Services Private Limited,
A company incorporated under the
Companies Act, 1956

Having its registered office at:

Tower C, 14th Floor,
Building No. 10, DLF cyber City,
Phase II,
Gurugram,
Haryana – 122 002

.....Petitioner Financial Creditor

Versus

Parsoli Motor Works Private Limited,
Ground Floor & First Floor,
Signatue – 1 Building,
Makarba,
S.G. Highway,
Ahmedabad 380 051

.....Respondent Corporate Debtor

AND



I.A. NO. 300 OF 2018

In the matter of:

Parsoli Motor Works Pvt. Ltd.,
Having office at:
Shalimar complex,
4th Floor, B Wing,
Mahalaxmi 5 Roads Junction,
Paldi,
Ahmedabad 380 007

..... Petitioner

Versus

1. BMW India Financial Services Private Limited,
A company incorporated under the
Companies Act, 1956
Having its registered office at:
Tower C, 14th Floor,
Building No. 10, DLF cyber City,
Phase II,
Gurugram,
Haryana - 122 002

2. BMW India Private Limited
Tower B, 7th Floor,
Building No. 8, DLF Cyber City,
Phase II,
Gurgaon HR 122002

.... Respondents

Order delivered on 4th June, 2020

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)

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Appearance:

CP(IB) No. 161 of 2017

Mr. Anand R. Patel Led by Mr. Unmesh Shokla Advocates, Mr. Anmol Mehta, Advocate, Mr. Apurva S. Vakil Advocate and Mr. Amaan Patel, Advocate for the Petitioner.

Mr. Navin Pahwa with Mr. Arjun Sheth, Ms. Krina R. Parekh and Ms. Vidhi Thakkar, Kashish Pathak. Advocates for the Respondent

IA No. 300 of 2018:

Mr. Navin Pahwa with Mr. Arjun Sheth, Ms. Krina R. Parekh and Ms. Vidhi Thakkar, Kashish Pathak. Advocates for the Petitioner.

Mr. Anmol Mehta, Advocate, Mr. Apurva S. Vakil Advocate and Mr. Amaan Patel, Advocate for the Original Petitioner, Respondent No. 1

Mr. Anand R. Patel Led by Mr. Unmesh Shokla Advocates for the Respondent No. 2.

COMMON ORDER

[Per: Mr. Prasanta Kumar Mohanty, Member (Technical)]

1. The present I.B. Petition is filed by the Financial Creditor **BMW India Financial Services Private Limited** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), **seeking initiation of Corporate Insolvency Resolution-Process** ("CIRP" in Short) against the Corporate Debtor Company namely,

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I.A. No. 300 of 2018
In/with
C.P. (I.B.) No. 161/7/NCLT/AHM/2017

Parsoli Motor Works Private Limited for the default committed by the Corporate Debtor in making repayment of the various Financial Facilities/Debt of Rs. 58,10,00,000/- (Fifty Eight Crores Ten Lakhs only) granted by the Financial Creditor to the Corporate Debtor as on 31 October, 2017. The application is filed by the duly authorised officer Shri Vikas Arora, Head-Compliance Legal and Company Secretary.

2. The Respondent- Corporate Debtor Company, namely Parsoli Motor Works Private Limited was incorporated on 21.08.2007 with CIN: U29199GJ2007PTC051546.
3. The share capital of the Respondent Corporate Debtor Company is Rs.18,00,00,000/- (Rupees Eighteen Crores only) and the paid-up share capital of the company is Rs.9,10,40,420/- (Rupees Nine Crores Ten Lakhs Forty Thousand Four Hundred Twenty Only). The Registered Office of the Corporate Debtor Company is situated at: Ground Floor & First Floor, Signature - 1 Building, Makarba, S.G. Highwat, Ahmedabad - 380051.
4. It is stated that the Financial Creditor, carries on business of financing or assist in financing the sale of automobiles

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and all kinds of goods, articles, , vehicles, machineries or equipment by way of hire purchase, instalments sale, leasing, loans deferred payments and to enter into arrangements for promoting the sale and maintenance of automobiles and all other kinds of goods, articles, vehicles, machineries or equipment either by buying, selling, letting on hire, hire purchase or credit sale systems or by financing or subsidizing or by assisting in subsidizing or financing the sale and maintenance of such automobiles, goods, articles, vehicles, machinery or equipment.

4.1 Floorplan Financing Agreement:

The Corporate Debtor, being one of the non-exclusive dealers of BMW India Private Limited (“BMW”) engaged in the sale, distribution and maintenance of BMW vehicles and BMW parts, operating in the territory of Gujarat, **approached the Financial Creditor to obtain various financial facilities for the smooth functioning and operation of its dealership.** The Financial Creditor issued a sanction letter to the Corporate Debtor sanctioning financial facility as per the terms and conditions indicated in the said sanction letter. Initially, **an amount of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs only)** was sanctioned towards financial

facility for stock /show room cars) @ 9.25 per annum which was, gradually, with the passage of time extended to **Rs. 33,00,00,000/- (Rupees Thirty-Three Crores).**

4.2 The terms and conditions of the Floorplan Financing provided inter alia that the Financial Creditor **reserved its right to revise the rate of interest with prospective effect**, that the **Corporate Debtor would be liable to provide personal guarantees** of all **shareholders/promoters, the Corporate Debtor shall provide collateral/guarantee to secure the repayment** of the financing facility as may be required by the Financial Creditor from time to time, that the Corporate Debtor shall be required to execute such documents that may be necessary to secure the interest of the Financial Creditor, that the Corporate Debtor was required to execute financing facility agreement, demand promissory note, deed of hypothecation, etc. prior to disbursement. **The sanction letter was signed by the Corporate Debtor in acknowledgement and acceptance of the terms and conditions contained therein. A copy of the sanction letter annexed with the petition as Annexure-IV/1.**

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4.3 It is stated that pursuant to the aforesaid sanction letter, various agreements, amendments, etc. came to be executed towards providing the financial facility by the Financial Creditor to the Corporate Debtor.

4.4 Spare Part Financing Agreement:

The Financial Creditor issued a sanction letter dated 11 April, 2014 to the Corporate Debtor **sanctioning Spare Part Financing Facility of INR 5,10,00,000/- (Rupees Five Crores Ten Lakhs only)** as per the terms and conditions stated in the said sanction letter **dated 11 April, 2014**. The regular rate of interest was 12.25% per annum and additional interest was 8% per annum. The said sanction letter dated 11 April, 2014 stated that the **Corporate Debtor would be liable to provide personal guarantees of the persons/individuals mentioned therein**, that the Corporate Debtor shall be required to execute such documents that may be necessary to secure the interest of the Financial Creditor. The sanction letter dated 11 April, 2014 was signed by the **Corporate Debtor in acknowledgment and acceptance of the terms and conditions contained therein**. A copy of the sanction

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letter dated 11 April, 2014 is annexed with the petition as **Annexure-IV/14.**

4.5 Working Capital Demand Credit Facility Agreement:

The Financial Creditor issued a sanction letter dated 27 June, 2014 to the Corporate Debtor sanctioning **Working Capital Facility of INR 20,00,00,000/- (Rupees Twenty Crores only) as per the terms and conditions indicated in the said sanction letter dated 27 June 2014.** The rate of interest was 12.25% per annum. The sanction letter provided that the Corporate Debtor would be liable to provide personal guarantees of the persons/individuals mentioned therein, that the Corporate Debtor shall be required to execute such documents that may be necessary to secure the interest of the Financial Creditor. The sanction letter was signed by the Corporate Debtor in acknowledgement and acceptance of the terms and conditions contained therein. A copy of the sanction letter dated 27th June 2014 is annexed with the petition as Annexure-IV/19.

5. It is stated that financial facility granted by the Financial Creditor to the Corporate Debtor is **INR 58,10.00,000/-**

(Rupees Fifty-Eight Crores Ten Lakhs only). The amount of utilisation as on 31 October 2017 stands at **INR 51,03,86,650.35 (Rupees Fifty-One Crores Three Lakhs Eighty-Six Thousand Six Hundred Fifty and Paisa Thirty-Five only)** with the following break up:

- 5.1 **INR 33,00,00,000/- (Rupees Thirty-Three Crores only)** granted under the Floorplan agreement, out of which, **INR 30,37,04,771.98 (Rupees Thirty Crores Thirty-Seven Lakhs Four Thousand Seven Hundred Seventy-One and Paisa Ninety-Eight only)** is utilised.
- 5.2 **INR 5,10,00,000/- (Rupees Five Crores Ten Lakhs only)** granted under the spare part Agreement, out of which **INR 3,16,82,078.36 (Rupees Three Crores Sixteen Lakhs Eighty-Two Thousand Seventy-Eight and paisa Thirty-Six only)** is utilized and
- 5.3 **INR 20,00,00,000/- (Rupees Twenty Crores)** granted under the Working Capital Agreement, out of which, **INR 17,49,99,800.01 (Rupees Seventeen Crores Forty-Nine Lakhs Ninety Nine Thousand Eight hundred and paisa one only)** is utilised.

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6. It is stated that aforesaid financial facilities have been disbursed by the Financial Creditor to **the Corporate Debtor from time to time**. A copy of the statement of account in respect of each of the aforesaid financial facilities granted by the Financial Creditor to the Corporate Debtor, reflecting the dates of disbursement, repayment and the principal balance **outstanding upto 31 October, 2017 is annexed with the petition as Annexure-IV/26 Colly**.
7. It is stated that in addition to the above, the Financial Creditor has also extended financial facility jointly to the Corporate Debtor and Mr. Talha Sareshwala of INR 61,00,000/- (Rupees Sixty-One Lakhs only). Out of the same, the principal amount outstanding as on 31 October 2017 stands at INR 56,30,236.83 (Rupees Fifty-Six Lakhs Thirty Thousand Two Hundred Thirty-Six and Paisa Eighty-Three only). It is stated that Financial Creditor reserves its right to initiate appropriate proceedings against the Corporate Debtor and Mr. Talha Sareshwala in the event of any default under the aforesaid facility as and when it occurs.

8. It is stated that aggregate amount in default under the **financing agreements as on 31 October 2017 stood at INR 54,48,54,249.97 (Rupees Fifty Four Crores forty Eight lakhs Fifty Four Thousand Two Hundred forty nine and Paisa Ninety Seven only)** which comprises of **INR 46,84,37,427.55 (Rupees Forty Six Crores Eighty Four Lakhs Thirty Seven Thousand Four Hundred Twenty Seven and Paisa Fifty Five only)** and an interest amount of **INR 7,64,16,822.42 (Rupees Seven Crores Sixty Four Lakhs Sixteen Thousand Eight Hundred Twenty Two and Paisa Forty Two only).**
9. It is stated that default by the Corporate Debtor occurred on different dates when the disbursed amounts became due under the respective financing agreements. A table showing the date on which the default occurred under the different financing agreements is annexed with the petition as Annexure-IV/27 Colly. The defaults have occurred on **various dates during the period commencing from 10.04.2016 onwards.**
10. It is stated that vehicles were sold on **'Sale Out of Trust'** basis to the end customers by the Corporate Debtor, **without making the repayment to the Financial**

Creditor. The Financial Creditor issued show cause notice dated 12 August 2016 to the Corporate Debtor and called upon the Corporate Debtor to make payment of INR 19,80,23,111/- (Rupees Nineteen Crores Eighty Lakhs Twenty-Three Thousand One Hundred and Eleven only).

10.1 It is submitted that Corporate Debtor by its reply dated 30 August, 2016 took full moral responsibility and asked for a **chance to strengthen its financials. However, the Corporate Debtor failed to make payment.**

10.2 It is stated that thereafter a meeting took place on 7 December, 2016 at the office of the Financial Creditor wherein the Managing Director of the Corporate Debtor was also present. The Financial Creditor sent its letter dated 15th December, 2016 which inter alia included the matters discussed at the meeting held on 7 December, 2016. Thereafter, the **Financial Creditor again issued a Show Cause Notice dated 1 February, 2017.**

10.3 The Corporate Debtor vide its letter dated **1 February 2017 to the Financial Creditor stated that it was looking for an investor who could invest in the**

Corporate Debtor to enable the Corporate Debtor's current management to clear the outstanding amount and thereby sought support for the same from BMW.

The Corporate Debtor vide its **letter dated 16 March, 2017 acknowledged the support received from the BMW and for appointing KPMG for conducting the valuation for finding an investor and stated** that the Board of Directors and shareholders of the Corporate Debtor have in their meeting held on 6th February 2017 respectively resolved and approved the proposal to initiate necessary process to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the Corporate Debtor on a going concern basis or otherwise and for which purpose Mr. Talha Yunus Sareshwala, the CEO and Managing director was being appointed. A copy of **Resolution dated 6th February, 2017 was also enclosed.**

11. It is stated that Financial Creditor by its letter dated 17 August 2017 referred the meeting dated 20 June 2017, letters dated 29 June 2017 and 18th July 2017. It was stated in the said letter dated 17 August 2017 that as on date 17 August 2017 a total sum of **INR 54,11,43,429.56 (Rupees Fifty-Four Crores Eleven Lakhs Forty-Three**

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Thousand Four Hundred Twenty-Nine and Paisa Fifty-Six only) was overdue. It was stated that there was serious breach of trust and gross violations of the terms of the various agreements entered into between the Financial Creditor and the Corporate Debtor and called upon the **Corporate Debtor to make immediate payment of INR 25,22,99,678.64 (Rupees Twenty-Five Crores, Twenty-Two Lakhs Ninety-Nine Thousand Six Hundred Seventy-Eight and Sixty-Four Paisa only)** overdue against Sale Out of Trust and the balance payment by 25 August, 2017. It is submitted that Corporate Debtor vide its letter 23 August 2017 reaffirmed its commitment to repay the dues of the Financial Creditor and **requested for 2 to 3 more weeks for making the overdue payments.**

12. The Financial Creditor by its **email dated 30 August 2017** gave details to the Corporate Debtor of the monthly **interest, 360 (days)** plus overdue and working capital overdue and called upon the Corporate Debtor to make the payments, failing which, the account would be classified as Non-Performing Asset (NPA) and **would be reported to CIBIL** and granted time till September 11, 2017 to the Corporate Debtor to complete the outstanding payment which was admitted by the Corporate Debtor.

13. It is stated that Corporate Debtor by its email dated 11 September 2017 forwarded to the Financial Creditor (i) scanned copy of the Banker Draft bearing No. 118828 dated **21 August 2017 issued** by the Royal Bank Pacific, Germany in favour of Corporate Debtor for an amount of **USD 20,00,000 (USD Two Million) (2)** Bank Covering Letter dated 21 August 2017 and (3) Swift Code message dated 6 September 2017 **promising to pay the amount reflected therein towards dues** to the Financial Creditor upon clearance of the said Banker's draft. Further, the Corporate Debtor by its email dated 13 September 2017 stated that on behalf of Sareshwala family, the promoters of Parsoli Motors requested the management of the BMW and the Financial Creditor to give **further time till 20 September 2017** for clearing the entire Sale out of Trust failing which they would quit gracefully. The Corporate Debtor vide its email dated 26 October 2017 **also confirmed that the amount due by the Corporate Debtor to the Financial Creditor as on 31 March 2017 is INR 52,74,44,701/- (Rupees Fifty-Two Crores Seventy-Four Lakhs Forty-Four Thousand Seven Hundred One only).**

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It is also stated that Petitioner Bank has served the copy of Application filed before this Tribunal to the Corporate Debtor as per the rule 4(3) of the Insolvency and Bankruptcy Rules, 2016.

14. The matter was taken up and heard both sides at this Bench on number of occasions commencing from 14.11.2017 till 07.01.2020 when the order was reserved for pronouncement. The counsels of the Petitioner and the Respondent were present and put forth their submissions before the Bench.

IA 300 of 2018

15. In the meantime, on 17.08.2018, the Corporate Debtor filed Interlocutory Application No. 300 of 2018 alleging that CP (Insolvency and Bankruptcy) No. 161 of 2017 filed by the Financial Creditor **is a fraudulent and malicious** initiation of the proceedings initiated by the Financial Creditor. The Corporate Debtor further alleged in the IA that Financial Creditor i.e. BMW India Financial Services Private Limited and BMW India Private Limited, the Respondent No. 2 in the IA in collusion with each other, has perpetrated a systematic fraud against the Corporate

Debtor. The Corporate Debtor, in the IA has based his submissions purely on ground that Respondent No. 2 of IA **300 allowed the dealers from outside Gujarat to sell to customers based in Gujarat**, mainly because of an indirect tax advantage that could be gained from sales that took place outside Gujarat committing territory infringement.

16. The Petitioner has submitted the documents and guarantees duly executed by the Corporate Debtors as per details given below:

TABULAR CHART OF COLLATERALS AND SECURITIES ISSUED BY CORPORATE DEBTOR IN FAVOUR OF THE FINANCIAL CREDITOR:

- i) **List of Deeds Hypothecation executed in favour of Financial Creditor:**

Sr. No.	Date of the Hypothecation Deed	Name of the Financial Facility Secured	Details of Hypothecation
1.	15 November 2010	Floorplan Agreement	Modification of charge to create first charge on a <i>pari passu</i> basis in favour of Financial Creditor with BMW India Private Limited on all the stocks, book debts and machinery of Corporate Debtor

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				to the tune of INR 2.5 Crores, which was modified to INR 16 Crores on 26 June 2013. As on 19 April 2017, the said charge is modified to INR 35 Crores.
2.	13	April 2014	Spare Parts Agreement	Modification of charge to create first charge on a <i>pari passu</i> basis in favour of Financial Creditor with Axis Bank on all the spare parts and book debts of Corporate Debtor to the tune of INR 5.1 Crores. As on 20 July 2017, the said charge is modified to create first and exclusive charge in favour of Financial Creditor on all the stocks, book debt and machinery of Corporate Debtor to the tune of INR 5.1 Crores.
3.	30	June 2014	Working Capital Agreement	Creation of first and exclusive charge on all the stocks, book debts and machinery of Corporate Debtor to the tune of INR 20 Crores. As on 11 May 2017, the said charge has been modified to create first and exclusive charge on all the stocks,



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			book debts and machinery of Corporate Debtor to the tune of INR 20 Crores, after release of charge by Axis Bank on all current assets of Corporate Debtor, vide letter dated 19 April 2017.
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A copy of the Deeds of Hypothecation dated 15 November 2010, 13 April 2014, 30 June 2014, 11 May 2017 and 20 July 2017 are hereto annexed and marked **Annexure-V/1 Colly**. A copy of Index of the aforesaid charges created in favour of the Financial Creditor in favour of the Financial Creditor, obtained from the website of the Ministry of Corporate Affairs is enclosed herewith and marked **Annexure-V/2**.

ii) **Table of Bank Guarantees pertaining to Floorplan Agreement furnished by the Corporate Debtor:**

Sr. No.	Bank Guarantee No. and Date of Creation (issued jointly in favour of BMW and Financial Creditor)	Date of Expiration	Amount
1.	BG No. 00030100002585 dated 25 March 2011	12 February 2018	INR 2 Crores
2.	BG No. 00030100002594 dated 2 April 2011	1 April 2018	INR 2.5 Crores
3.	BG No. 15300100000194 dated 25 October 2011	24 October 2018	INR 2.25 Crores
4.	BG No. 15300100000881 dated 7 November 2012	6 November 2018	INR 1.14 Crores

5.	BG No. 15300100000906 dated 26 November 2012	25 November 2018	INR 1.66 Crores
6.	BG No. 15300100000978 dated 7 January 2013	6 January 2018	INR 82.5 Lakhs

A copy of the aforesaid six bank guarantees are enclosed herewith and marked **Annexure-V/3 Colly**.

iii) **Table of Promissory Notes furnished by Corporate Debtor.**

Sr. No.	Name of the Beneficiary	Date of Issuance	Amount
1.	Financial Creditor (for Floorplan Agreement)	15 November 2010	INR 2.5 Crore
2	Financial Creditor (for Floorplan Agreement)	30 January 2012	INR 12 Crores
3.	Financial Creditor (for Floorplan Agreement)	1 February 2013	INR 16 Crores
4.	Financial Creditor (for Spare Parts Agreement)	11 April 2014	INR 5.1 Crores
5.	Financial Creditor (for Working Capital Agreement)	26 June 2014	INR 20 Crores

A copy of the aforesaid five Promissory Notes are enclosed herewith and marked as **Annexure-V/4 Colly**.

iv) **Table of Personal Guarantees:**

various shareholders, promoter and directors of the Corporate Debtor have furnished personal guarantees to secure the borrowings by the Corporate Debtor under the abovementioned Financial Facilities granted by the Financial Creditor. In relation to such below enlisted personal guarantees, the Financial Creditor reserves its rights to file appropriate proceedings.



Sr. No.	Date	Name of the Guarantor	Beneficiary	Amount
In relation to the Floorplan Agreement				
1.	18 October 2010	Talha Yunus Sareshwala	Financial Creditor	INR 2.5 Crores
2.	2010	Uves Yunus Sareshwala	Financial Creditor	INR 2.5 Crores
3.	13 December 2012	Umer Uves Sareshwala	Financial Creditor	INR 13.7 Crores
4.	13 December 2012	Qudsiya Talha Sareshwala	Financial Creditor	INR 13.7 Crores
5.	13 December 2012	Khadija Zafar Sareshwala	Financial Creditor	INR 13.7 Crores
6.	13 December 2012	Mohammed Habib Sareshwala	Financial Creditor	INR 13.7 Crores
7.	13 December 2012	Fatema Uves Sareshwala	Financial Creditor	INR 13.7 Crores
8.	6 March 2015	Zafar Yunus Sareshwala	Financial Creditor	INR 14.9 Crores
9.	6 March 2015	Uves Yunus Sareshwala	Financial Creditor	INR 14.9 Crores
10	6 March 2015	Talha Yunus Sareshwala	Financial Creditor	INR 14.9 Crores
11.	18 May 2016	Qudsiya Talha Sareshwala	Financial Creditor	Total sum due under the three Financial Facilities Agreements executed between the Financial Creditor and the

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In/with
C.P. (I.B.) No. 161/7/NCLT/AHM/2017

					Corporate Debtor.
12.	18 2016	May	Khadija Zafar Sareshwala	Financial Creditor	Total sum due under the three Financial Facilities Agreements executed between the Financial Creditor and the Corporate Debtor.
13.	18 2016	May	Zafar Yunus Sareshwala	Financial Creditor	Total sum due under the three Financial Facilities Agreements executed between the Financial Creditor and the Corporate Debtor.
14.	18 2016	May	Umar Uves Sareshwala	Financial Creditor	Total sum due under the three Financial Facilities Agreements executed between the Financial Creditor and the Corporate Debtor.
15.	19 2016	May	Fatema Uves Sareshwala	Financial Creditor	Total sum due under the three

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					Financial Facilities Agreements executed between the Financial Creditor and the Corporate Debtor.
16.	19 2016	May	Talha Yunus Sareshwala	Financial Creditor	Total sum due under the three Financial Facilities Agreements executed between the Financial Creditor and the Corporate Debtor.
17.	19 2016	May	Uves Yunus Sareshwala	Financial Creditor	Total sum due under the three Financial Facilities Agreements executed between the Financial Creditor and the Corporate Debtor.
18.	19 2016	May	Mohammed Habib Sareshwala	Financial Creditor	Total sum due under the three Financial Facilities Agreements executed between

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					the Financial Creditor and the Corporate Debtor.
In relation to Working Capital Agreement					
19.	28 2014	June	Uves Yunus Sareshwala	Financial Creditor	INR 20 Crores
20.	28 2014	June	Umar Uves Sareshwala	Financial Creditor	INR 20 Crores
21.	28 2014	June	Fatema Uves Sareshwala	Financial Creditor	INR 20 Crores
22.	28 2014	June	Talha Yunus Sareshwala	Financial Creditor	INR 20 Crores
23.	28 2014	June	Qudsiya Talha Sareshwala	Financial Creditor	INR 20 Crores
24.	28 2014	June	Zafar Yunus Sareshwala	Financial Creditor	INR 20 Crores
25.	28 2014	June	Mohammed Habib Sareshwala	Financial Creditor	INR 20 Crores
26.	28 2014	June	Khadija Zafar Sareshwala	Financial Creditor	INR 20 Crores
In relation to Spare Parts Agreement					
27.	22 2014	April	Umer Uves Sareshwala	Financial Creditor	INR 5.1 Crores
28.	22 2014	April	Zafar Yunus Sareshwala	Financial Creditor	INR 5.1 Crores
29.	22 2014	April	Talha Yunus Sareshwala	Financial Creditor	INR 5.1 Crores
30.	22 2014	April	Uves Yunus Sareshwala	Financial Creditor	INR 5.1 Crores
31.	23 2014	April	Fatema Uves Sareshwala	Financial Creditor	INR 5.1 Crores

32.	23 April 2014	Qudsiya Talha Sareshwala	Financial Creditor	INR 5.1 Crores
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17. The Applicant has suggested the name of Insolvency Professional **Mr. Anish Niranjan Nanavaty**, to be appointed as Interim Resolution Professional, if this petition is allowed and the proposed Interim Resolution Professional has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.
18. Before pronouncement the judgement in the matter of CP (Insolvency and Bankruptcy) No. 161 of 2017 this Adjudicating Authority would like to deliberate on the IA No. 300 of 2018 filed by the Corporate Debtor.
- 18.1 The IA No. 300 of 2018 has been filed by the Corporate Debtor on the ground that Petition No. 161 of 2017 is a fraud committed by BMW India Private Limited, the Respondent No. 2 in the IA in collusion with the Financial Creditor and filed the IA under Section 65 of the Code. Section 65 of the Code reads as under:
- “.....if, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the

resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon a such person, a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees....”.

18.2 This Adjudicating Authority, on perusal of the records, documents and the arguments put forth by the Counsels of both the parties, has observed that BMW India Private Limited, the Respondent No. 2 in the IA 300 of 2018 is not a party in the main petition No. 161 of 2017 and has no locus and cannot be impleaded in the main petition No. 161 of 2017.

18.3 Further, the Petitioner of IA No. 300 of 2018/Respondent of Company Petition No. 161 of 2017 has vide numerous communications exchanged with the Financial Creditor in Company Petition No. 161 of 2017 and has owned full responsibility for the default committed by the Corporate Debtor and promised on number of occasions to make payment of the defaulted amount. Moreover, no one either BMW or BMW dealer can force any customer of Gujarat to buy from the Petitioner only. Customer is at liberty and he can purchase BMW car from any part of the country. The concept that a customer to purchase from a particular



dealer is not tenable and it may be considered as an attempt to infringe on the right of a customer. Hence **we do not find any merit in the IA.** Hence the prayer made in IA No. 300 of 2018 **is hereby rejected.**

Main Petition No. 161 of 2017

19. The Corporate Debtor has defaulted in making repayment of financial facilities/debt to the Petitioner and **the date of default is from 10.04.2016 and onwards as per Annexure-IV/27 Colly.** The Statement of accounts and the **CIBIL Reports** submitted by the applicant confirm the default committed by the Corporate Debtor.

Judgment

20. Considering the material, papers filed **by the Petitioner,** facts mentioned hereinabove and the arguments of both sides, this Adjudicating Authority is satisfied that,
- (a) The Corporate Debtor availed **Financial Facilities from the Petitioner.**

- (b) **Existence of debt** is above Rs. One Lac;
- (c) **Debt is due** and defaulted.
- (d) Default has occurred on various dates starting from 10.04.2016 onwards as per **Annexure IV/27 Colly**.
- (e) Petition has been filed on 13.11.2017 i.e. within the limitation period.
- (f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Petitioner under Section 7 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate-Debtor-Company.

Hence, **the present IB Petition CP(IB) No. 161 of 2017 is admitted** with the following Directions/observations.
The date of admission of this petition is 04.06.2020.

21. This Adjudicating Authority hereby appoints, as proposed, **Mr. Anish Niranjana Nanavaty**, having Insolvency Professional Registration No. **IBBI/IPA-002/IP-N00272/2017-18/10830**, **Email ID: anish.nanavaty.irp@gmail.com**, **Mobile No. 98201 54620**, **Address: 2A/208, Raheja Classique, New Link Road, Andheri (W), Mumbai 400 053 Maharashtra**,

India as an Interim-Resolution-Professional. The Interim Resolution-Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code.

22. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** for prohibiting all of the following, namely: -

- I. (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.*
- II. 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.*
- III. The provisions of sub-section (1) shall not apply to*
(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

23. **The IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 18, 20, 21 of I.B Code. Further the personnel of the Corporate Debtor are advised to extend co-operation to Interim Resolution Professional as required Under Section 19 of IB Code.

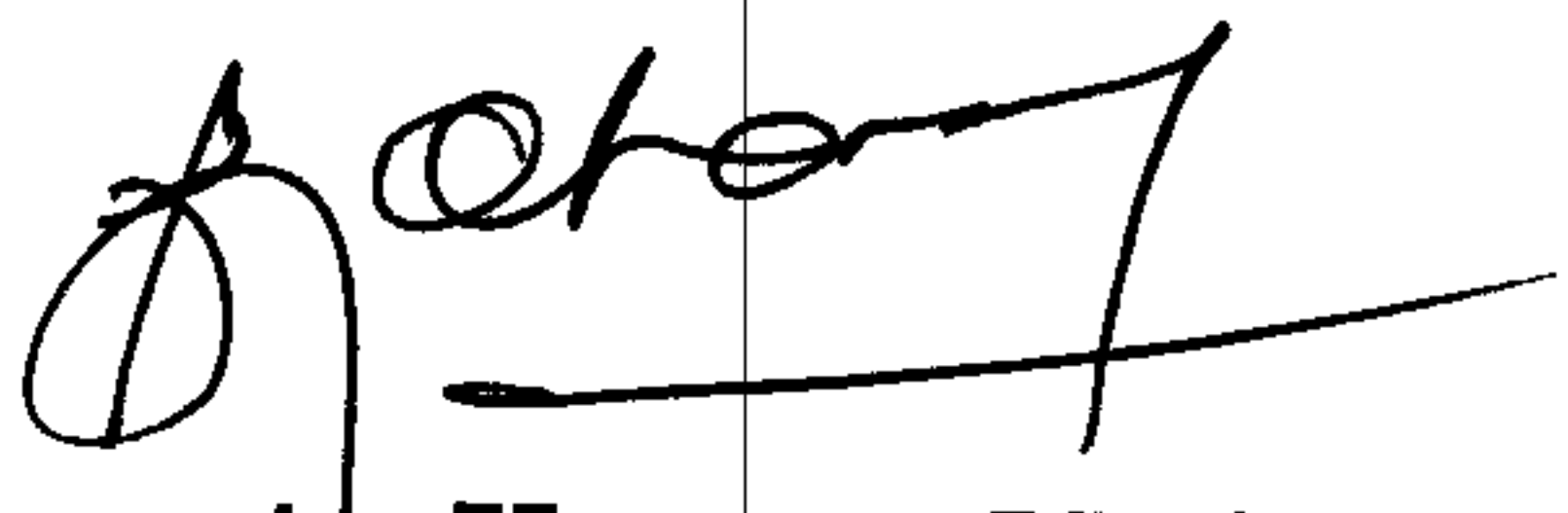
In order to have a Resolution Plan Viable, Feasible and implementation Successful, in the era of Minimum Cost of funds-based Lending Rate ("MCLR" in short)/ Repo Linked Interest Rate and Competitive market condition, the Resolution Applicant/ Committee Of


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Creditors (COC) may explore, while finalizing the Resolution Plan for the Corporate-Debtor, the possibility of loading maximum interest at the Applicant Bank's Base Rate (BR) or BR+1% from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan interest at the rate of Applicant Bank's One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.

24. The Registry is hereby directed to communicate a copy of this order to the Applicant Corporate Debtor, the I.R.P and also to the Registrar of Companies immediately through speed post / registered post.

25. Thus, the present I.B Petition **CP(IB) No. 161 of 2017** filed under Section 7 of IBC stands admitted.


(Prasanta Kumar Mohanty)
Adjudicating Authority
Member (Technical)


(Harihar Prakash Chaturvedi)
Adjudicating Authority
Member (Judicial)

LCT