

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT NO. V**

**CP (IB) 4433/MB/2019**

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

**PPG Asian Paints Private Limited**

6, Ashanti Nagar, Santacruz (East),  
Mumbai – 400 055

... Petitioner

v/s

**Global Gallerie Wheels Private  
Limited**

Flat No. 702, Seventh Floor, Lake  
Superior Lake Homes, Off. Adi  
Shankaracharya Marg, Powai, Mumbai  
– 400 076

...Corporate Debtor

Order Delivered on: 24.09.2021

**Coram:**

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Petitioner: Mr. Ashish Pyasi a/w Mr. Dinesh Jadhvani,  
Advocates i/b Dhir and Dhir Associates.

For the Corporate Debtor: None Present.

*Per: Suchitra Kanuparthi, Member (Judicial)*

### **ORDER**

1. The Petitioner/Applicant viz. '**PPG Asian Paints Private Limited**' (hereinafter as **Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Petitioner" on 09.12.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against '**Global Gallerie Wheels Private Limited**' (hereinafter as '**Corporate Debtor**').

### **SUBMISSIONS BY THE PETITIONER**

2. The Petitioner has claimed an amount of Rs. 33,00,000/- including interest from the Corporate Debtor as on 13.02.2013. The date of default is stated as 11.06.2019.

3. A brief history of the transaction between the Petitioner and the Corporate Debtor is as follows. The Petitioner is a private limited company, registered and incorporated under the provisions of the Companies Act, 1956 and subsisting under the Companies Act, 2013. The Petitioner is carrying on its business of manufacturing, selling, distribution of automotive, industrial, marine paints and other related products in India.

4. The Corporate Debtor is a private limited company, registered and incorporated under the provisions of the Companies Act, 2013. The Corporate Debtor is engaged in the business of automotive sales, servicing and repair work etc. and in the course of its business utilise substantial quantities of automotive paints and refinish coating products.

5. On 09.01.2013 "PPG Asian Body Shop Agreement" referred to "Agreement" was executed between the Petitioner and the Corporate Debtor.

6. The Corporate Debtor approached the Petitioner for financial contribution for the purpose of sales promotions and procurement of specialized painting equipment for development and upgradation of automotive painting facilities.

7. The Agreement entered into between the parties, clearly captures the disbursal to be made by the Petitioner in schedule in the nature of financial contribution to the tune of Rs. 33,00,000/-.

8. The relevant clauses of the agreement dated 23.01.2013 which demonstrate that the disbursal in the present case is a financial debt having commercial effect of borrowing are reproduced herein below:

"4. The Body Shop intends to expand its business, which would cause a substantial increase in its requirement of automotive paints and a corresponding increase in the business/sales of the products of PPG Asian Paints.

5. the Body Shop has approached PPG Asian Paints for financial assistance in sales promotions and procurement of specialized painting equipments for development and upgradation of automotive painting facilities.

6. Being desirous of expansion and being satisfied with PPGAP products, the Body Shop has agreed to purchase substantial amounts of PPGAP products in a systematic and regular manner in exchange of financial assistance from PPG Asian paints.

6. Both PPGAP and the Body Shop have discussed and finally agreed upon a business relationship which would benefit both the parties.

2. Obligations of PPGAP

(a) It is agreed that, PPGAP shall contribute a total of Rs. 33,00,000/-, subject to deduction of tax at source or any other tax or levy or deduction as may be applicable from time to time over a period of three and half years for sales promotions and towards procuring painting equipment.

(b) The contribution will be disbursed in the manner set out at Schedule I to this Agreement. It is specifically understood between the parties that PPGAP has agreed to provide the said sum to the Body Shop only on the basis of the assurances and undertakings given by the Body Shop which have been recorded elsewhere in the Agreement.

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(e) Upon the request of the Body Shop, PPG Asian Paints shall provide the Body Shop with necessary assistance for procuring the specialized painting equipment to enable the Body Shop to effectively utilize PPG Asian Paints products. PPG Asian Paints will also provide the paint mixing equipment along with the ancillaries as is set out at Schedule – V to this Agreement.

3. Obligations of the Body Shop

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(c) The Body Shop accepts, acknowledges and agrees that its adherence to and strict compliance with the product purchase requirement as set out in the above clause 3(a) and Schedule II, exclusive of taxes, is a pre-requisite for ensuring economic and commercial feasibility of the business transaction entered

into by PPG Asian Paints with the Body Shop. It is specifically understood and agreed by the Body Shop that any failure or non-compliance in respect thereof at any point of time would be an event of default as set out on the Termination clause 8.

#### 4. Representations and Warranties

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(d) The Body Shop represents and warrants that upon expansion, its need for refinish paints will increase and therefore it is able and willing to procure the amount of paints as set out in this Agreement.

(e) It is specifically understood between the parties that PPG Asian paints has agreed to provide said sum to the Body Shop only on the basis of the representations and warranties set out above.

#### 5. Security

(a) The Body Shop agrees to execute and deliver to PPGAP a Demand Promissory Note for the aggregate value of Rs. 33,00,000/- along with the interest @12% p.a. as a collateral security. The said demand promissory note is annexed to this Agreement as Schedule – III.

(c) The said demand promissory note shall operate as a continuing security throughout the Terms for the amount contributed by PPG Asian paints, notwithstanding part performance by the Body Shop as set out under this Agreement. The demand promissory note shall become payable only when the Body Shop fails to perform its obligations in terms of this Agreement.”

9. In terms of Clause 3 sub Clause (b) of the said Agreement, it was agreed between the parties that the Corporate Debtor will purchase/procure minimum quantity of PPG Asian Paints products as prescribed under Schedule II of the Agreement. The relevant extract of the same is reproduced herein below as follows:

<b>Year</b>	<b>Purchase Value Committed in Rupees</b>
Year - 1	28 lacs
Year - 2	32 lacs
Year - 3	40 lacs
<b>Total</b>	<b>100 lacs</b>

10. From a reading of the above provisions of the Agreement, it is evident that in the instant case there were two separate components in the Agreement i.e. financial contribution for an amount of Rs. 33,00,000/- and annual procurement schedule to be honoured by the Corporate Debtor.

11. Further, in terms Clause 5 of the Agreement, the facility rendered by the Petitioner therein to the Corporate Debtor was secured by the Corporate Debtor in terms of a Demand Promissory Note for the aggregate value of Rs. 33,00,000/- along with interest @12% p.a. as a collateral security.

12. It is noteworthy that issuance of Demand Promissory Note for an amount of Rs. 33,00,000/- clearly demonstrates that the amount of Rs. 33,00,000/- was a financial debt in terms of Section 5(8) of Code.

13. It is also submitted that the Corporate Debtor defaulted in complying with its obligation as well as fulfilling the terms and

conditions of the said Agreement dated 09.01.2013 along with addendum.

14. It is submitted that till date, no products have been procured by the Corporate Debtor from the Petitioner.

15. It is submitted that on account of failure on the part of the Corporate Debtor to perform its obligation in terms of Agreement dated 09.01.2013, the Petitioner issued notice dated 15.02.2019 to the Corporate Debtor seeking payment of amount of Rs. 25,45,405/-.

16. The Corporate Debtor has till date failed to make payments to the Petitioner towards satisfaction of the unpaid financial debt. The amount as disbursed by the Petitioner to the Corporate Debtor to the tune of Rs. 33,00,000/- falls within the ambit of the definition of 'financial debt' as defined under Section 5(8) of Code, particularly Section 5(8)(f) since the amount disbursed therein had the commercial effect of borrowing. Accordingly, the Petitioner has no other option but to approach this bench under Section 7 of the Code against the Corporate Debtor.

17. The petition was served on the Corporate Debtor and proof of service was filed to that effect. Subsequently, the counsel for the Petitioner intimated the date of hearing to the Corporate Debtor and the matter was listed on 11.12.2019, 02.01.2020, 30.01.2020, 11.02.2020, 12.03.2020, 11.03.2021, 12.08.2021 and on 01.09.2021, despite service of notice there was no representation from the Corporate Debtor's side.

18. The demand promissory note clearly demonstrates that the amount of Rs. 33,00,000/- was a financial debt in terms of Section 5(8) of Code, particularly Section 5(8)(f) since the amount disbursed

therein had the commercial effect of borrowing. The Corporate Debtor has committed default in making the payment.

19. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner.

20. Considering the above facts, the Bench concludes that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential requirements, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case.

21. Further, the Bench also perused the Form - 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Petitioner and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, Mr. Sapan Mohan Garg, having office at M/s Sapan Garg & Co. Chartered Accountants, C-585 Basement, # Z-94, Defence Colony, New Delhi, National Capital Territory of Delhi, 110 024, having registration No. IBBI/IPA-002/IP-N00315/2017-2018/10903, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

22. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc.



However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

23. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

24. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

25. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

26. Ordered Accordingly.

**SD/-**  
**Chandra Bhan Singh**  
**Member (Technical)**

**SD/-**  
**Suchitra Kanuparthi**  
**Member (Judicial)**