



**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH BENGALURU**
*(Exercising powers of Adjudicating Authority under
The Insolvency & Bankruptcy Code, 2016)
(Through web-based video conferencing platform)*

C.P (IB) No. 195/BB/2022
u/s 7 of the IBC Code r/w Rule 4 of
Insolvency and Bankruptcy (AAA) Rules, 2016

In the matter of

Tata Capital Financial Services Private Limited,

Registered office at
11th Floor, Tower A
Peninsula Buisness Park,
G.K.Marg, Lower Parel
Mumbai – 400013

Financial Creditor/Petitioner

Versus

Aryaa Krishna Automotives Private Limited,

Sy. No. 792B/30, Beside FCI
Godown Kolagallu Village,
Bellary - 583103

Corporate Debtor/ Respondent

Order delivered on: 31st October, 2023

Coram:

1. Hon'ble Justice (Retd.) T Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Anupama Bordoloi
For the Respondent : None

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 07.10.2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC/ Code**'), r/w Rule 4 of the I & B (Application to Adjudicating Authority) Rules, 2016, by **Tata Capital Financial Services Private Limited** (for brevity 'Financial Creditor/Petitioner') interalia seeking Corporate Insolvency



Resolution Process against **Aryaa Krishna Automotives Private Limited** (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs.3,12,19,678.32/- (Rupees Three Crores Twelve Lakhs Nineteen Thousand Six Hundred Seventy Eight and Paise thirty Two only) as of 1st February 2022. The date of default is mentioned in the petition is 17.01.2020.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner as follows:

- I.** The Financial Creditor is a non-banking financial institution registered with Reserve Bank of India, incorporated under the Companies Act 1956 on 19.11.2010 with CIN No.U67100MH2010PLC21021 having registered office at 11th Floor, Tower A, Peninsula Business Park, G.K Marg, Lower Parel, Mumbai - 400013.
- II.** The Corporate Debtor is a Private incorporated on 20.06.2014 and classified as Non-govt. Company with CIN No. U50404KA2014PTC074963. Its Authorised Share capital Rs.20000000 and paid-up Share capital Rs.20000000.
- III.** The Corporate Debtor approached the Financial Creditor for sanction of credit facility in the nature of Channel Finance Facility for its business purpose and accordingly the Financial Creditor sanctioned Rs.2.5 crores vide Sanction letter dated 09.08.2018. Pursuant to that, the Corporate Debtor and Financial Creditor executed a Channel Finance Facility on 16.08.2018 which is produced as Annexure-C and D in the petition.
- IV.** The Guarantors Jayaprakash Naidu and G.Manojaa extended personal guarantee to the aforesaid loan. Subsequently, executed a letter of Guarantee dated 16.08.2018. The Corporate Debtor and Financial Creditor executed the letter of Undertaking cum Indemnity dated 16.08.2018 and Irrevocable Power of Attorney executed by the Corporate Debtor in favour of the Financial

Creditor dated 16.08.2018 and the same is produced as Annexure F & G respectively.

V. Despite opportunities granted, Corporate Debtor have continued to remain in default of payment obligations and neglected the debt due to the Financial Creditor under the said facility. To that effect, the Financial Creditor exercised remedies available to them under the Clauses XV of Channel Finance Facility dated 16.08.2018 and recalled the entire amount of Channel Finance facility vide Recall notice dated 11.12.2019 to immediately repay the full amount for a sum of Rs. 2,28,35,952.82/- which was due on 01.12.2019.

VI. Further it is stated that the Financial Creditor have filed Arbitration Application No.476 of 2020 under Section 9 (2) (b) & (c) of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court of Judicature at Chennai for recovery of loan amount under Channel Finance Facility claiming a total sum of Rs.2,38,49,046.58 which is pending adjudication. However, the Corporate Debtor did not respond to said loan recall notice and Form-B notices.

VII. In support of its case, the Petitioner has filed the following:

- a. *Sanction letter dated 09.08.2018 issued by the Financial Creditor to the Corporate Debtor at Page 20 to 25 of the petition;*
- b. *Details of the disbursement of loan enclosed at Page 151 onwards;*
- c. *Loan Recall notice dated 11.12.2019 duly served on the Corporate Debtor in which immediate repayment of entire outstanding dues amount to Rs.2,28,35,952.82/- as on 01.12.2019 along with further interest was called for (Page: 80-84 of C.P). Since there was no response from the Corporate Debtor in respect of the notice, hence the date of default is mentioned as 17.01.2020.*

3. Heard the Learned Counsel for the Petitioner and perused the records available.
4. On 22.11.2022, notice was issued to the Corporate Debtor and the Financial Creditor was directed to file the affidavit of service along with



tracking report within two weeks. Pursuant to the same, the Financial Creditor filed an affidavit vide Dy. No.600 dated 01.02.2023 stating that the notice sent to the Company/Corporate Debtor by way of RPAD was returned un-served with remark “party left” and “incomplete address”. Therefore, on 04.01.2023 an opportunity was granted to the Petitioner to make substituted service through paper publication. The Ld. Counsel for the Petitioner has filed the affidavit vide Dy. No.1062 dated 23.02.2023 along with copy of the paper publication. However, despite issuing paper publication, none appeared on behalf of the Corporate Debtor nor any objection was filed. Therefore, the matter was decided to be proceeded against the Corporate Debtor on Ex-parte basis.

5. The present petition is filed by Tata Capital Financial Services Private Limited for total outstanding amount of Rs.3,12,19,678.32/-. The Corporate Debtor has availed credit facility in nature of Channel Finance Facility for its business purpose from the Financial Creditor and after despite of several reminders the Corporate Debtor failed to adhere to the repayment obligations.
6. It is observed that the amount in default as per Part IV of Form-1 is Rs.3,12,19,678.32/- (Rupees Three Crores Twelve Lakhs Nineteen Thousand and Six Hundred and Seventy Eight and Thirty Two paise only) which is well within the threshold limit. The date of default is mentioned in Part-IV of Form-1 is 17.01.2020 and the Company Petition is filed on 07.10.2022 hence the petition is filed within the limitation.
7. In view of the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/- (Rupees One Crore only), the petition is **admitted** in respect of the Respondent **Aryaa Krishna Automotives Private Limited** under section 7 of the I & B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As necessary consequences of the moratorium



in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- 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 Financial Assets and Enforcement of Security Interest Act, 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.*
- 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;*
- f. *The provisions of Sub- Section (1) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;*
- g. *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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;*

8. The Financial Creditor has proposed the name of Ms.Renuka Devi Rangswamy, a qualified Insolvency Professional having Registration No.



IBBI/IPA-001/IP-P-01863/2019-2020/12871 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written consent given by the IRP in Form-2 dated 15.09.2022 has been filed along with C.P at Page – 202-203 wherein it is declared that she is eligible to be appointed as IRP in respect of the Corporate Debtor and no disciplinary proceedings are pending against him with the Board or The Indian Institute of Insolvency Professional of ICAI.

9. The Law Research Associate of this Adjudicating Authority has checked the credentials of Ms.Renuka Devi Rangswamy, there is nothing adverse against her. In view of the above, the Bench appoints **Ms.Renuka Devi Rangswamy**, having Registration No. IBBI/IPA-001/IP-P-01863/2019-2020/12871 with address at #9, Jothi Nagar, 3rd Street, Uppili Palayam (Post), Coimbatore, Tamil Nadu-641015 Email id: Jrassociatescbe@gmail.com, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Section 15, 17, 18, 20 and 21 of the IBC 2016.
10. The Financial Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
11. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial 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 for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.



12. A copy of the order shall be communicated to both the 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 the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

-Sd-

**T.KRISHNAVALLI
MEMBER (JUDICIAL)**