IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I

CP (IB) 3793/MB/C-I/2019

Under section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Premier Road Carriers Limited
[CIN: L63090WB1968PLC027309]
14th Floor, Suite No. 1405, Om Towers, 32 Chowringhee Road, Kolkata, West Bengal – 700071.
… Financial Creditor /Petitioner

VERSUS

AMS Trading and Investment Private Limited
[CIN: U51420MH2005PTC156296]
1st Floor, Shatrunjay Apart., 28 - Sindhi Lane, Nanubhai Desai Road, Mumbai – 4.
… Corporate Debtor /Respondent

Order Delivered on: 15.07.2022

Coram:

Hon'ble Member (Judicial)	:	Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical)	:	Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor	:	Mr. Anand Pai, Counsel.
For the Corporate Debtor	:	None.

ORDER

Per: Justice P. N. Deshmukh, Member (Judicial)

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by **Premier Road Carriers Limited** ("the Financial Creditors"), seeking to initiate Corporate

Insolvency Resolution Process (CIRP) against **AMS Trading and Investment Private Limited** ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares incorporated on 15.09.2005 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present Petition was filed on 24.10.2019 before this Adjudicating Authority on the ground that a loan for a sum of Rs.50,00,000/- (Rupees Fifty Lakh Only) was advanced by the Financial Creditor along with interest at the rate of 17.50 % p.a. to the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same.

4. The total amount claimed along with interest @ 24% to be in default by the Corporate Debtor is Rs.87,90,480/- (Rupees Eighty-Seven Lakhs Ninety Thousand Four Hundred and Eighty Only). The date of default stated to be is 14.12.2016.

Submissions made by the Financial Creditor:

5. The Financial Creditors submits that the Corporate Debtor approached the Financial Creditor and requested it to grant an Inter Corporate Deposit Facility ('ICD'). The Financial Creditor was willing to accede to the request of the Corporate Debtor subject to certain terms and conditions mentioned therein. An Agreement for granting ICD dated 15.03.2016 was entered into between the parties (the 'Agreement') to the tune of Rs.50,00,000/- (Fifty Lakhs only) for a period of 184 (One

Hundred and Eighty-Four) days from 15.03.2016 to 15.09.2016 with interest @17.50% (Seventeen and a Half Percent) payable at quarterly rests.

6. The Corporate Debtor accordingly offered a pledge of Rs.13,00,000/- (Thirteen Lakh Only) shares of Prakash Steelage Limited, a company listed on the National Stock Exchange as collateral security towards the ICD which the Financial Debtor accepted in good faith. As per the Agreement, the Corporate Debtor pledge 13,00,000/- (Thirteen Lakh) shares of Prakash Steelage Limited to be held by M/s Diligent Investments Limited, a group entity of the Financial Creditor as collateral security.

7. A Guarantee Agreement dated 15.03.2016 was also entered into, between the Financial Creditor and Mr. Ashok M. Seth being the Guarantor. The payment of the aforesaid amount be duly secured and guaranteed by the Guarantor.

8. The Corporate Debtor acknowledged the receipt of the ICD amount of Rs. 50,00,000/- (Fifty Lakhs) on 15.03.2016. On the same date, the Corporate Debtor drew and executed a Demand Promissory Note in favour of the Financial Creditor.

9. Thereafter the Corporate Debtor vide its letter dated on 18.03.2016 once again confirmed and accepted the receipt of Rs.50,00,000/- (Fifty Lakhs) as ICD from the Financial Creditor for 184 (One Hundred and Eighty Four) days at 17.50% p.a. with effect from 15.03.2016. The Corporate Debtor also sent cheques in favour of the Financial Creditor towards repayment of the

principal and interest (net of TDS @10%) on the due date from the ICD. Vide its letter, the Corporate Debtor also undertook to honour the said cheque(s) upon their presentation for payment along with various other undertakings mentioned in the said letter.

10. The aforesaid cheques were presented by the Financial Creditor to its bank for encashment as repayment under the Agreement which were returned back unpaid with remark of 'Payment stopped by Drawer', details of cheques as follows:

Sr. No.	Cheque No.	Cheque Date	Cheque Amount (Rs.)	Date of memo
1.	000758	15.09.2016	1,63,973	14.12.2016
2.	000759	15.09.2016	25,00,000	14.12.2016
3.	000760	15.09.2016	25,00,000	14.12.2016

11. On 16.12.2016, the Financial Creditor sent a notice to the Corporate Debtor informing it that the aforesaid pledge has been invoked and a balance of Rs.56,81,050/- was outstanding. The said notice also included a statement showing the outstanding dues of the Corporate Debtor.

12. The cause of action for this debt first arose on 14.12.2016, being the first day when the cheque towards repayment of the outstanding amount bounced. The realization of the debt is therefore not barred by the law of limitation.

13. The Financial Creditor has only received a sum of Rs.40,753/- towards repayment of interest up to 31.03.2016 and Rs.2,00,000/-

on 30.07.2018 through RTGS as partial repayment towards interest.

14. The Financial Creditor till date not received any amount of the amount claimed to be in default as mentioned in this Application from the Corporate Debtor.

Findings:

15. We have heard the arguments of Financial Creditor and perused the records.

16. It is observed from the records that Corporate Debtor has been given multiple opportunities to appear before this Tribunal and plead his case. The Financial Creditor intimated the next date of hearing and filed his Affidavit of service on record on 22.11.2019. However, The Corporate Debtor chose not to appear and plead the case or file reply on record. Therefore, the Corporate Debtor was set ex-parte vide order dated 26.11.2021. Hence, the matter is taken on merits as is to be decided ex-parte.

17. We consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

18. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the Corporate Debtor owes money to the Financial Creditor.

19. The Financial Creditor has proposed the name of **Ms. Namrata A. Randeri,** Registration No. IBBI/IPA-001/IP-P01585/2019-2020/12495, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

20. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

21. It is, accordingly, hereby ordered as follows: -

    (a) The petition bearing **CP (IB) 3793/MB/C-I/2019** filed by **Premier Road Carriers Limited,** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **AMS Trading and**

Investment Private Limited [CIN: U51420MH2005PTC156296], the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:-

(i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) **Ms. Namrata A. Randeri,** Registration No. IBBI/IPA-001/IP-P01585/2019-2020/12495, having address at 215, Laxmi Plaza, Laxmi Industrial Estate, New Link Road, Andheri (West), Mumbai – 400053, Email: pslca1988@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such

Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Financial Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs 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 (CoC).

(i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the

Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)

15.07.2022
SAM/PRR