

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT- 5, MUMBAI BENCH**

**C.P. No. 670/MB/I&B/2021**

Under section 7 of the IBC, 2016

In the matter of

Tata Capital Financial Services Limited,  
Peninsula Business Park, Tower A, 1101,  
Ganpatrao Kadam Marg, Lower Parel, Mumbai  
- 400013.

....Petitioner

v/s.

VS Omnitrade India Private Limited,  
301, 3<sup>rd</sup> Floor, Nitco Biz Park, Plot No. C/19,  
Road No. 16/U, Wagle Estate, MIDC, Thane -  
400601.

....Respondent

Order Reserved on: **06.10.2022**

Order pronounced on: **14.10.2022**

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner : Ms. Jyoti Ghag and Mr. Vyom Shah, Advocate

For the Respondent: None.

*Per: Anuradha Sanjay Bhatia, Member (Technical)*

**ORDER**

1. The Petitioners viz. 'Tata Capital Financial Services 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 "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'VS Omnitrade India Private Limited' (**hereinafter as 'Corporate Debtor'**). This Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the '**Code'**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 1,87,22,289.81/- inclusive of contractual interest and additional interest.
2. The Petitioner is a company registered under the provisions of the Companies Act, 1956 being a non-banking financial company and is in the business of granting lease finance and other credit facilities.
3. The listed documents annexed by the Petitioner on which the Petitioner relied are as follows:
  - i. A copy of the Loan Sanction Letter dated 28.07.2018.
  - ii. A copy of Channel Finance Agreement dated 27.08.2018
  - iii. A copy of the Letter of Guarantee dated 27.08.2018.
  - iv. A copy of the National E-Governance Services Ltd. (NeSL) Information Utility Report dated 23.06.2021.
  - v. A copy of the Letter of Undertaking cum Indemnity dated 27.08.2018.
  - vi. A copy of the Certified True copy of Ledger Statement of account of Corporate Debtor in books of Petitioner.
  - vii. A copy of the NPA Certificate dated 29.06.2021.

4. The Petitioner has granted channel finance/inventory funding/trade advance facility to the extent of Rs. 2,00,00,000/- in terms of sanction letter dated 28.07.2018, wherein the basic terms and conditions are set out. On 27.08.2018, the Corporate Debtor and the Petitioner entered into a Channel Finance Agreement.
5. The Corporate Debtor has also executed a Letter of Undertaking cum Indemnity and Affidavit dated 27.08.2018, in favour of the Petitioner, thereby creating a first and exclusive charge in respect of all movable and immovable assets of the Director, as mentioned in Net Worth Certificate dated, 17.08.2018, issued by the Director's Chartered Accountant.
6. The Petitioner submits that, the Corporate Debtor since March 2019, has committed defaults, in spite of repeated follow ups, hence, the Petitioner was constrained to issue a Legal Recovery notice dated 13.09.2019, demanding immediate repayment of Rs. 1,87,22,289.81/- failing which the Petitioner would forced to take action, including recall of loan and initiation of IBC proceedings.
7. Petitioner submits that, pursuant to above notice, no payment has been made towards the Financial Debt by the Corporate Debtor, and no notice has been given by the Corporate Debtor relating to the dispute of the Unpaid financial Debt. Therefore, there is a clear acknowledgement of debt and default of non-payment of monies. Hence this Petition.
8. The Petitioner has also filed record of default by the Information Utility (NESL) dated 23.06.2021. The statement of account of Corporate Debtor in the Books of Financial Creditor are produced by the Petitioner.
9. The Corporate Debtor failed to appear despite service of notice and personal notice 26.07.2022 and when the matter was called out today, the Corporate Debtor failed to appear and hence was set ex parte.

10. Ongoing through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
11. Considering the above facts, we come to conclusion 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 qualifications, 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. Besides, the Company Petition is well within the period of limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.
12. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘Admission’ by passing the following:

**ORDER**

- a. The above Company Petition No. 670/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **VS Omnitrade India Private Limited**.
- b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, **Mr. Dhiren Shantilal Shah**, having Email ID- [dss@dsshah.in](mailto:dss@dsshah.in), having Address - B-102, Bhagirathi Niwas,

Near Natraj Studio, Sir M V Road, Mumbai - 400069 and having registration No. IBBI/IPA-001/IP-P00220/2017-18/10419, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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 corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 670/IBC/MB/2021 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

Anuradha Sanjay Bhatia  
Member (Technical)

Sd/-

H.V. Subba Rao  
Member (Judicial)