

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

C.P. (IB)- 52 (PB)/2021

SECTION: 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 (for brevity 'the Rules')

IN THE MATTER OF:

**M/s. MAHINDRA AND MAHINDRA
FINANCIAL SERVICES LIMITED**

...Financial Creditor/Applicant

VERSUS

M/s. STAN AUTO PRIVATE LIMITED

...Corporate Debtor/Respondent

Order pronounced on: 18.02.2022

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT
SHRI. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Ms. GunjanChaubey, Mr. Vinay Katey, Advocates

For the Respondent : Ms. Akansha Mathuir, Proxy Counsel



MEMO OF PARTIES:

**M/s. MAHINDRA AND MAHINDRA
FINANCIAL SERVICES LIMITED**

Having its registered office at:
Gateway Building, Apollo Bunder,
Mumbai-1100001

...FINANCIAL CREDITOR/APPLICANT

Versus

M/s. STAN AUTO PRIVATE LIMITED

Having its registered office at:
C-20, South Extn. Part II,
New Delhi-110049

...CORPORATE DEBTOR/RESPONDENT

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. The present application is filed 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 (for brevity 'the Rules') by M/s. Mahindra and Mahindra Financial Services Limited, claiming to be 'Financial Creditor' (FC) (for brevity 'Applicant') has filed this application, through its authorised representative, Ms.



Sushmita Garima, authorized by the Power of Attorney dated 25.06.2019, with a prayer for initiation of Corporate Insolvency Resolution Process (“CIRP”), in respect of respondent company, M/s. Stan Auto Pvt. Ltd. (for brevity ‘Respondent’).

2. The Respondent, Corporate Debtor (“CD”), namely M/s. Stan Auto Private Limited (CIN-U74899DL1991PTC044879), was incorporated on 05.07.1991 under the provisions of the Companies Act, 1956. The registered office of the respondent company is situated at C-20, South Extn., Part II, New Delhi 110049. Its authorized share capital is Rs. 7,00,00,000/- and paid up capital is Rs.5,83,50,000/- which is based on the details given in the Master Data as reflected on the official website of Registrar of Companies under MCA.
3. The registered office of the CD is in Delhi, therefore, this Tribunal, being the Adjudicating Authority (“AA”), has territorial jurisdiction in respect of CD as per the provisions of sub-section (1) of Section 60 of the Code.



4. The Applicant/ Financial Creditor ("FC"), states that it is a Non- Banking Financial Company ('NBFC'), duly registered under the provisions of Companies Act, 1956. That the CD approached the FC and applied for credit facility/ loan. The FC offered a loan of Rs. 12,50,00,000/-, with certain terms and conditions, which were duly accepted by the CD. Accordingly, Loan Agreement and other documents were duly executed on 15.12.2018, 21.12.2018 & 15.03.2019 by and between the FC and CD.
5. The records, as submitted by the Applicant/ FC, reveal that Master facility agreement was entered between the parties for an amount of Rs.5,00,00,000/- dated 15.12.2018, whereby the tenure of the credit facility was 12 months. Also, a Supplemental Agreement was entered into between the parties dated 21.12.2018, for an amount of Rs.2,50,00,000/-, whereby the tenure of the facility was 12 months. Also, a supplemental Agreement was entered between the parties dated 15.03.2019, for an amount of



Rs.5,00,00,000/-, whereby the tenure of the facility was 60 days.

6. The Applicant states that the amount in default is Rs.5,22,09,522/- (Rupees Five Crore Twenty Two Lakhs Nine Thousand Five Hundred Twenty Two), as on 28.11.2019, with interest further thereon. The last disbursement was done on 18.04.2019 for Loan amount of Rs. 5,00,00,000/- (Rupees Five Crore only), vide Master Facility Agreement dated 15.12.2018. The last disbursement was done on 28.06.2019, for Loan amount of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs only), vide Supplemental agreement dated 21.12.2018 and the disbursement was done on 28.06.2019, for Loan amount of Rs. 5,00,00,000/- (Rupees Five Core Only), vide Supplemental Agreement dated 15.03.2019 under Customer Id No. 0009373962, First default occurred on 27.08.2019. The Loan account has been classified as NPA on 25.11.2019.



7. It is further submitted by the FC that the CD failed to adhere to the repayment schedule of credit facilities and defaulted in the repayment of the loan.

8. The CD has also filed its reply in the matter, in its reply the CD states that;

“6. it is submitted that with respect to the outstanding debt, the Corporate Debtor had repaid an amount of Rs. 7,27,90,478/- (Rupees Seven Crores Twenty Seven Lakhs Ninety Thousand Four Hundred Seventy Eight) out of a total disbursed amount of Rs.12,50,00,000/-. However, in respect to the outstanding amount due and payable by the Corporate Debtor to the Financial Creditor, the Corporate Debtor submits that admittedly it has failed to repay the outstanding dues claimed by the Financial Creditor.”

9. Having heard learned counsels for the parties we are of the considered view that the FC has succeeded in making out a case for triggering the CIRP. The material on record clearly goes to show that the CD had availed the loan facility and



has committed default in the payment of the said debt amount. The FC has placed on record evidence in support of the claim as well as material to prove the debt and default. The CD by its own admission in reply acknowledges the existence of financial debt and default. There is no document placed on record by CD to show repayment of debt.

10. Under sub-section (5)(a) of section 7 of the code, the application filed by the Applicant, Financial Creditor ("FC") has to be admitted on satisfaction that:

- (i) Default has occurred and has been accepted by the CD
- (ii) Application is complete, and
- (iii) No disciplinary proceeding against the proposed IRP is pending.

11. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We



are satisfied that a default has occurred and debt has remained unpaid. Thus, the application warrants admission as it is complete in all respects and is hereby admitted initiating CIRP as prescribed under the Code. Further, the present application is not hit by Section 10A of the Code.

12. The 'Financial Creditor'- applicant has proposed the name of Insolvency Resolution Professional, Mr. Rajesh Kumar Mittal, address at 204/A, Navjyoti Darshan CHS, Near Purnima Talkies, Murbad Road, Kalyan (w)- 421301 and having registration No. IBBI/IPA-002/IP-N00083/2017-18/10224. A written communication sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record.

13. There is a declaration made by him in an affidavit, that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or ICSI. In addition, further necessary disclosures have been made by Mr. Rajesh Kumar Mittal, as per the requirement of the IBBI



Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

14. In pursuance of Section 13 (2) of the Code, we direct the Interim Insolvency Resolution Professional to make a public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

15. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) of IBC, 2016 shall follow in relation to the CD, prohibiting the CD as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of sub-section 2 and 3 of Section 14 of the Code shall come in force.



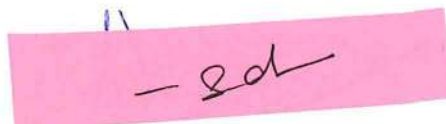
16. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs, with the Interim Resolution Professional,¹ to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however will be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

17. The registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest, but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

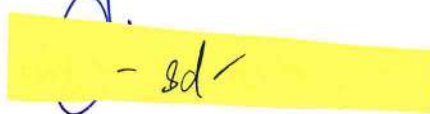


18. Accordingly, the IB- 52 (PB)/2021 stands admitted and disposed of in terms of the order.

Let a copy of the order be served to the parties.




[CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR]
(PRESIDENT)



(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (T) Sh. Hemant Kumar Sarangi, is not holding the court today.



Court Officer

18.02.2022