

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.433/Chd/Pb/2019

Under Section 7 of the IBC 2016

In the matter of:

YES BANK LIMITED

having its Regd. address at
YES BANK TOWER, IFC-2, 15th Floor,
Senapati Bapat Marg, Elphinstone (W), Mumbai- 400013 Maharashtra
Corporate Office at: Nehru Centre, 9th Floor,
Discovery of India, Dr. A.B. Road, Worli, Mumbai-400018,
Branch office at: Plot No. B, 15-19, Miller Ganj, G.T. Road, Ludhiana--141003

....Petitioner-Financial Creditor

Vs.

M/S CHADHA SUPER CARS PVT.LTD.

having its Regd. Office at
Village Bhanohar, Ferozpur Road,
Near Haveli Restaurant, Mullanpur, Ludhiana-141102,
Email : radianttoyota@rediffmail.com
CIN No.U50101PB1999PTC022440

....Respondent-Corporate Debtor

Judgment delivered on: 08 .01.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

For the Petitioner/Financial Creditor : Mr. Amit Rishi, Advocate

For the Respondent/Corporate Debtor : Mr. Rakesh Bhalla, Advocate

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

JUDGMENT

The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Yes Bank Limited** (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/S Chadha Super Cars Pvt. Ltd.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Ajay Singh Rana authorized by the Financial Creditor and the affidavit verifying the contents of the application is attached with the petition. A copy of the power of attorney dated 21.05.2019 is attached as Annexure A-1/1 of the petition.

2. The master data of the corporate debtor is stated to be filed as Annexure-1/2 of the petition. The Corporate Debtor is stated to be incorporated on 06/04/1999. The company has its registered address at Village Bhanohar, Ferozepur Road, Near Haveli Restaurant, Mullanpur, Ludhiana-141102. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are narrated hereunder:

3.1 The petitioner financial creditor is a Schedule Commercial Bank within the meaning of term 'Scheduled Bank' defined under section 2 (e) of the Reserve Bank of India Act 1934 and a corporate body having its Registered Office at Yes Bank Tower, IFC -2, 15th Floor, Senapati Bapat Marg, Elphinstone (W) Mumbai, Maharashtra - 400013 and is engaged in the business of banking and finance among other operational functions /

portfolios permissible under Banking Regulation Act 1949 and action of the financial creditor is subject to the guidelines of The Reserve Bank of India promulgated from time to time.

3.2 M/S Chadha Super Cars Pvt. Ltd. (**'Corporate Debtor'/'Respondent'**) is in the business of sale of cars manufactured by Toyota Kirloskar Motors Pvt. Ltd. and has availed financial facility from the petitioner/financial creditor bank.

3.3 That the corporate debtor was in need of financial assistance and requested the financial creditor for grant of financial facility. Following facility was granted to the corporate debtor : -

Sr. No.	Loan Type	Date of Renewal Letter	Amount Sanctioned	Amount Due as on 30.05.19
1.	Trade Advance Facility (modified from the earlier Sanction Limit granted on 07.11.2014 for Rs.200 lacs)	07.04.2017	Rs.1,95,00,000	Rs. 1,28,78,924.86 paise
	Total		Rs 1,95,00,000	

3.4 That the corporate debtor is a private limited company and had availed of financial facility from the applicant/ financial creditor. The account of the corporate debtor became irregular and in spite of repeated requests, and as such the account of the corporate debtor was classified as Non Performing Asset on 30.06.2018.

3.5 That the financial creditor also filed a Original Application number 170/2019 dated 23.01.2019 at Debt Recovery Tribunal-III, Chandigarh under Section 19 of the Recovery of Debts Due to the Banks and Financial Institutions Act (Now Recovery of Debts and Bankruptcy Act) and the matter is pending before the said tribunal. And despite various measures taken by the financial creditor, the corporate debtor failed to repay outstanding dues of the said facility. Hence, the present application before this tribunal as the amount of default is above the threshold limit as provided in the Insolvency and Bankruptcy Code, 2016 read with the relevant rules.

4. It is stated in Part-IV of Form No.1 that the total outstanding dues of the corporate debtor towards the financial creditor amounting to Rs. 1,28,78,924.86/- with interest upto 30.05.2019 (Rupees One Crore Twenty Eight Lakhs Seventy Eight Thousand Nine Hundred Twenty Four and paise Eighty six Only) with pendente lite and future interest @12.50% p.a. with monthly rests alongwith costs. The date of default is 30.06.2018 i.e. when the corporate debtor was classified as Non-performing asset (NPA). Copy of Statement of Account (Annexure-AI/3), Guarantee Agreement (Annexure-A-I/4), O.A (Annexure-A-I/5). Copy Facility letter, renewal letter and loan agreement (Annexure-A-I/6), cibil report extract (Annexure-A-I/7), the Demand Promissory Note (AnnexureA-I/9), board resolution (Annexure-A-I/10), Bankers' Book Evidence (AnnexureA-I/11) are attached with the main petition.

5. The notice of this petition was issued to the respondent-corporate debtor so as to why this petition may be not admitted. The Affidavit of service was filed vide Diary No. 5461 dated 10.10.2019. The Reply has been filed by learned

counsel for the respondent-corporate debtor vide diary No.1158 dated 12.02.2020 wherein it is submitted that the petitioner has failed to establish in the statement of account as annexed with the petition for the occurrence of default, because Annexure A-1/3 shows account statement maintained by the corporate debtor in daily routine transactions. No record of Information Utility has been produced. The last payment of Rs.5 lacs was deposited on 01.05.2019, which has not been shown in the statement of account. Even the record of default as mentioned in Part-V of para No.3 has not been attached. So, in the absence of a filing record of default the present petition is premature. Also submitted that the petitioner has already availed its remedy in Debt Recovery Tribunal vide O.A. No. 170/2019, whereby they have filed an application under Order 38 Rule 5 CPC, which is pending consideration and reply has already been filed by the answering respondent. Therefore, the petitioner is estopped by its own act and conduct and cannot avail two remedies on the same cause of action.

Further submitted that there is no resolution of board of directors authorizing Mr. Neeraj Dhawan as stated in Power of Attorney, in the absence of letter dated 28.04.2017, he has no locus to delegate his powers and give power of attorney to Mr. Ajay Singh Rana as alleged. Also the renewal letter dated 07.04.2017 has been signed by Sh. Sumesh Chadha but there is no resolution by board of Directors to authorize him to sign renewal letter. Lastly submitted that as stated in admission notice page 4, that the corporate debtor started creating the default in repayment from 10.06.2013, therefore, the present petition is barred by limitation.

6. The written submissions have been filed by the petitioner vide Diary No. 00169/1 dated 24.04.2023 and by the respondent/corporate debtor the short synopsis vide diary No. 467 dated 16.01.2023 was filed wherein the similar facts

are stated in the application have been mentioned. Therefore, for the sake of brevity, the same are not repeated herein.

7. Further reliance has been placed by the financial creditor on the judgements i.e. ***Rajendra Narottamdas Sheth and others Vs Chandra Prakash Jain & Anr.*** – Apex Court Judgement: dated 30.09.2021 ; ***Punjab National Bank vs Aabha industries*** – NCLT Chandigarh Bench Judgement: dated 23.12.2022

8. We have heard the learned counsel of the petitioner and the respondent-corporate debtor and have also perused the records available carefully.

9. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there are no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

10. The first issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is mentioned as 30.06.2018 i.e. when the corporate debtor account was classified as Non-Performing Asset. The present petition is filed vide Diary No. 2894 dated 07.06.2019, refiled vide diary No. 3631 dated 25.07.2019 and was again re-filed vide diary No. 4163 dated 19.08.2019. Therefore, the present petition is filed within a 3 years period of limitation.

11. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by a copy of Statement of Account (Annexure-A-I/3), Guarantee Agreement (Annexure-A-I/4), O.A (Annexure-A-I/5). Facility letter, renewal letter and loan agreement (Annexure-A-I/6), cibil report extract (Annexure-A-I/7), the

Demand Promissory Note (AnnexureA-I/9), board resolution (Annexure-A-I/10), copy of Bankers' Book Evidence (AnnexureA-I/11) are attached with the main petition. As per the financial records it is evident that an amount of Rs. 1,28,78,924.86/- with interest upto 30.05.2019 (Rupees One Crore Twenty Eight Lakhs Seventy Eight Thousand Nine Hundred Twenty Four and paise Eighty six Only) with pendente lite and future interest @12.50% p.a. with monthly rests along with costs are still pending which amounts to default, when the corporate debtor avoided the payment of aforesaid outstanding dues, despite repeated requests by petitioner-financial creditor. Although, it is argued by Ld. counsel for the corporate debtor that no record of information utility has been produced but this contention is devoid of legal force because this case pertains to the year 2019 and even if no record of information utility is produced then there is cogent evidence that bank account of the respondent/ corporate debtor was declared NPA on 30.06.2018. Similarly, the argument of Ld. counsel for the respondent/ corporate debtor that the application has not been filed by authorized person is also not much convincing because it is depicted in power of attorney dated 28.04.2017 (Annexure A-I/1) duly executed by Mr. Neeraj Dhawan, Constituted Attorney of the bank, there he has been empowered and authourised by virtue of the Management Delegation by Managing Director and CEO as per Clause 2 thereof to nominate and appoint one or more officers/heads of department(s) of the Bank or Substitute Attorney(s) to carry out all or any of the powers delegated to him. Therefore, he has further nominated, constituted and appointed Mr. Ajay Singh Rana to file the present petition.

12. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings

pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Smt. Mandeep Gujral has been proposed as IRP, however, vide order dated 25.11.2022 of this Adjudicating Authority, through IA No. 1633/2022, new IRP, Sh. Bhupinder Sethi was proposed. Copy of Form No.2 dated 04.06.2019 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional is attached at Annexure-3 of the application. The Law Research Associate of this Tribunal has checked the credentials of Sh. Bhupinder Sethi, his AFA Certification is valid up to 11.10.2024 and there is nothing adverse against him. In view of the above, we appoint Sh. Bhupinder Sethi, Registration No. IBBI/IPA-001/IP-P02144/2020-2021/13366, Email: ip.brsethi@gmail.com, Mobile No. 9779194490, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Sh. Bhupinder Sethi shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership

rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing

this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.
- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry

of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

13. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the

Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

- f) 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 passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

14. We direct the Financial Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

15. A copy of the order shall be communicated to both 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 a copy of this order to the Interim Resolution Professional at his email address forthwith.

16. The petition is admitted accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

January 08 ,2024

J.S.W.

Sd/-

(Harnam Singh Thakur)
Member (Judicial)