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IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IBA/454/2020

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s. Power Car India Private Limited***

M/s. Sri Ambey Investments
Rep. by Proprietor
M/s. Narendra Kumar & Sons HUF
Through its Kartha, Mr. Narendar Shah
No.10/3, Barnaby Road,
Kilpauk, Chennai – 600 010

... Financial Creditor

-Vs-

M/s. Power Car India Private Limited
No.2/398, Mount Poonamalle Road,
Iyyappanthangal,
Chennai – 600 056

...Corporate Debtor

Order Pronounced on 2nd September 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : Sreenik S Jain, Advocate
For Corporate Debtor : None appeared

ORDER

***Per:* R. SUCHARITHA, MEMBER (JUDICIAL)**

Under Adjudication is an Application that has been filed by M/s. Sri Ambey Investments (hereinafter referred to as '*Financial*

Creditor") under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Power Car India Private Limited** (hereinafter referred to as *'Corporate Debtor'*). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the details of the Financial Creditor from which, it is evident that the Financial Creditor is a proprietorship. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U66000TN2015PTC102390 and was incorporated on 30.09.2015 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.2/398, Mount Ponamalle Road, Iyyappanthangal, Chennai – 600 056. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. V. Venkata Siva Kumar, as the Interim Resolution Professional, who has also filed his consent in Form – 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.21,25,000/- (Rupees Twenty One Lakh Twenty Five Thousand

only) is being claimed by the Financial Creditor as the Financial debt. Part – V of the Application discloses about the details of the documents which has been filed by the Financial Creditor in order to prove the 'Financial debt', which are as follows;

a) Promissory Note dated 29.05.2018
b) Bank Statement of Accounts of the respective loan along with the receipt of the payment made
c) Ledger Account maintained by the Financial Creditor
d) Schedule of Payment
e) Legal Notice dated 09.11.2019 and 23.11.2019
f) Master data of the Corporate Debtor.

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor has availed a loan from the Financial Creditor to the tune of Rs.21,25,000/- and in order to secure the said loan, the Corporate Debtor had executed a promissory note dated 29.05.2018, whereby the Corporate Debtor agreed to repay the principal amount along with interest at the rate of 18% pa. within a period of 10 months.

5. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor failed to repay the said amount and as on the date, the amount which is repayable by the Corporate Debtor accumulates to Rs.27,94,375/-, however the Corporate Debtor has managed to pay only a sum of Rs.5,00,000/- on 02.08.2018 and

hence a sum of Rs.22,94,375/- is outstanding due and payable by the Corporate Debtor as on date.

6. The Learned Counsel for the Financial Creditor submitted that inspite of several demands and repeated request made by the Financial Creditor, the Corporate Debtor neglected the same and deliberately delayed and avoided the due payment for a long time. Further, it was submitted that the Financial Creditor has sent a legal notice to the Corporate Debtor on 09.11.2019 for the outstanding payment which is due and payable and also on 23.11.2019, the Financial Creditor has sent a letter to the Directors of the Corporate Debtor, who have received the said legal notice, however, failed to repay the said outstanding amount till date. Hence, it was submitted that the Financial Creditor has moved the present Application under Section 7 of IBC, 2016 seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

7. In relation to the Corporate Debtor, it is seen from the record of proceedings that there was no appearance on behalf of the Corporate Debtor and this Tribunal vide its order dated 24.11.2020 directed the Financial Creditor to send notice and accordingly the Financial Creditor has filed an Affidavit of Service before this Tribunal on 07.01.2021, from which it is seen that the same was

returned with an endorsement "Left". Thereafter, it is seen that the Financial Creditor has filed IA/225/CHE/2021 before this Tribunal seeking effecting paper publication and this Tribunal vide its order dated 18.03.2021 has directed the Financial Creditor to cause the paper publication and fixed the date of hearing as 29.04.2021. Accordingly, it is seen that the Financial Creditor has caused paper publication in 'Makkal Kural' and 'Trinity Mirror' on 01.04.2021. In spite of effecting paper publication, there was no representation on behalf of the Corporate Debtor and under the said circumstances, we are constrained to proceed with this matter in the absence of the Corporate Debtor in the present Application. It is seen that IBA/1335/2019 is filed against the same Corporate Debtor and is pending adjudication before Bench – II of this Tribunal and one counsel Mr. A.G. Sathyanarayana appeared on behalf of the Corporate Debtor, however there was no representation on behalf of the Corporate Debtor in this matter.

8. Heard the submissions made by the Learned Counsel for the Financial Creditor and perused the records. From the promissory note issued by the Corporate Debtor it is seen that the same has been affixed with the common seal of the Corporate Debtor and duly signed. Further, the Financial Creditor has proved the existence of the 'financial debt' and the 'default' committed on the part of the Corporate Debtor in relation to the same. Further, the

said default arising much prior to the advent of Covid-19, the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

9. Thus, the Financial Creditor has proved that there exist a 'debt' between the parties and the said debt qualifies to be a 'financial debt' as defined under 5(8)(c) of IBC, 2016 and also the Corporate Debtor has defaulted in repayment of the said 'financial debt' which is due and payable to the Financial Creditor. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

10. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016

11. The Financial Creditor has proposed the name of one **V. VENKATA SIVA KUMAR**, having Registration Number **[IBBI/IPA-001/IP-P00184/2017-2018/10852]** *(email id:- vsk.insolvencyprofessional@gmail.com)* who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted

to the said IRP till 29.12.2021. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

12. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

13. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and mange the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

14. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

15. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond