IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT- 5, MUMBAI BENCH

C.P. No. 1258/MB/I&B/2020

Under section 7 of the IBC, 2016

In the matter of

Intec Capital Limited,

708, Manjusha Building, 57 Nehru Place New Delhi, South Delhi, DL 110019.

....Petitioner

v/s.

Atharva Auto Logistics Private Limited,

Flat No. 2, SN-199/204/206, Siddhant Classic, Viman Nagar, Pune-411014.

....Respondent

Order Reserved on: **14.02.2021**

Order pronounced on: **18.02.2022**

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

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

For the Petitioner : Ms. Nidhi Saini, Advocate, a/w Mr. Aabhas and Mr. Dhruv, Advocates.

For the Respondent: None.

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. The Petitioner is a non-banking financial institution and is in the business of financing small enterprise spread across the country. The Petitioner works on a sound business model and focuses on building and nurturing long term relationship with stakeholders.

2. The Corporate Debtor along with 3 others namely Atharva Associates approached the Petitioner for a business loan of Rs. 1.30 crores vide application dated 13.05.2016. The loan was sanctioned on 29.06.2016 and the loan agreement was executed on 30.06.2016. The loan agreement dated 30.06.2016 was executed by the Corporate Debtor, Atharva Associates, Manisha Satish Panchange and Satish Ankush Panchange (namely Borrowers/ Co-borrowers) in favour of the Petitioner. The Term of the loan agreement was 84 months and it was agreed by the borrowers/ Co-borrowers that an equal monthly instalments (EMI) of Rs. 2,80,906/- was due and payable.

3. The first tranche of disbursal of loan was made by the Petitioner on 13.07.2016. the Corporate Debtor was servicing the loan till the year 2017. However, they failed to pay the loan instalments and hence, the Petitioner was constrained to issue a recall notice on 17.08.2017 to the Borrower and all Co-borrowers and also sought for initiation of arbitration proceedings. The Learned Arbitrator passed an ex parte award on 19.01.2018. The operative portion of the award is as follows:

   "*In view of the above discussion, this Tribunal hereby passes an Award in favour of the claimant and against the Respondent/s to the following effect:*

   1. *That the Respondents shall be jointly and severally liable to pay to the claimant a sum of Rs. 1,35,35,777/- (Rupees One Crore Thirty Five Lakh Thirty-Five thousand Seven Hundred Seventy Seven Only) with pendentelite and future interest @19% per annum from 16.08.2017 till its realization.*

> 2. *The claimant is entitled to recover cost of the present arbitration proceeding which has been quantified at Rs. 25,000/- from Respondent.*
> 3. *The claimant shall be entitled to recover all costs and expenses that may be incurred in seeking recovery of the amount awarded from the Respondent.*
>
> *The Respondents are directed to comply with the terms of the present award within 30 (Thirty) days of the passing of the Award."*

4. The Petitioner further pointed out to secure repayment of loan the Corporate Debtor had mortgaged immovable property at SR no. 48, Hissa No. 1/B/26, Kalasagar Bunglow, Next to Nagar Road, Near Shivaji Putala, Bhaji Mandi, Kharadi, Pune, Maharashtra-411014.

5. The listed documents annexed by the Petitioner are as follows:
   i. A copy of the Collateral backed Loan Application Form dated 13th May 2016.
   ii. A copy of the Loan Sanction Letter dated 29th.
   iii. A copy of the Loan Agreement dated 30th June 2016.
   iv. A copy of the Mortgage Deed.
   v. A copy of the Demand Promissory Note.
   vi. A copy of the Undertaking from Loanee.
   vii. A copy of the Declaration-cum-Indemnity.
   viii. A copy of the Tripartite Agreement.
   ix. A copy of the Letter of confirmation (relating to handing over of mortgaged property).

6. The Petitioner has also filed record of default by the information utility (NESL). The statement of account produced by the Petitioner shows that the last repayment of Rs. 2 lakhs was made by the Corporate Debtor on 31.07.2018.

7. The Corporate Debtor failed to appear despite service of notice and personal notice 03.02.2022 and when the matter was called out today, the Corporate Debtor failed to appear and hence was set ex parte.

8. It is established beyond doubt that there was a loan agreement executed by the Corporate Debtor and 3 others being borrowers and Co-borrowers on 30.06.2016 for an amount of Rs. 1.30 crores and the said amount was disbursed to the Corporate Debtor. The business loan agreement further contemplates that the liability of borrowers and co-borrowers shall be joint and several. Clause 2.12 of the loan agreement is reproduced below:

> *"2.12* ***Liability of the Borrowers/ Co-Borrowers to be joint and Several***
> *Notwithstanding anything herein stated, where the Loan is provided to more than one Borrowers/ co-Borrower, the liability of the Borrowers to pay, repay and /or discharge Obligations and to observe the terms and conditions of this Agreement and/or any other agreements and documents which may have been or may be executed by the Borrower with INTEC in respect of this Loan, is joint and several."*

9. Further, the arbitration award passed by the Learned Arbitrator also demonstrates that the Corporate Debtor and 3 others are liable to pay the amount of Rs. 1,30,35,777/- to the Petitioner herein. Therefore, there is a clear debt and default of non-payment of monies. Hence the Petition is admitted.

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.

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'.

13. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

14. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, Mr. Udaykumar Bhaskar Bhat, having Email ID- udaybhat2805@gmail.com and having registration No. IBBI/IPA-001/IP/P-01425/2018-19/12234, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

15. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall

not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

16. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

17. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

18. In view of the above, the Bench "**Allows**" the Company Petition No. 1258 of 2020 u/s.7 initiating CIRP against the Corporate Debtor i.e. Atharva Auto Logistics Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

19. Ordered Accordingly.

Sd/-	sd/-
Anuradha Sanjay Bhatia	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)