THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)

CP (IB) No.4/Chd/J&K/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:
M/s Daimler Financial Services India Private Limited,
2nd Floor, Campus 3A, RMZ Millennia Business Park II,
143, Dr. MGR Road, Perugundi, Chennai- 600096
Through Authorized Signatory Rajendra Joshi, Senior Manager-II, Collections
...Petitioner-Financial Creditor

Versus

M/s Lands End Trucking Private Limited,
2nd Floor, Ansari Complex, Sonwar, Srinagar,
Union Territory of Jammu & Kashmir- 190001
(E-mail mirassociates01@gmail.com)
...Respondent-Corporate Debtor

Judgment delivered on: 11.11.2022

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

Present through Video Conferencing:
For the Petitioner/Financial Creditor : Mr. Prateek Mahajan, Advocate
Respondent/corporate debtor already *ex-parte* vide order dated 12.07.2022

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short hereinafter referred to as '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Daimler Financial Services India Private Limited (for short hereinafter referred to as '**petitioner/financial creditor**') for initiating the Corporate Insolvency Resolution Process (for short hereinafter referred to as the '**CIRP**') against M/s Lands End Trucking Private Limited (for short hereinafter referred to as the '**respondent/corporate debtor**'). The petition is signed by Mr. Rajender Joshi, who has been authorized by the Board of the Directors of the financial creditor vide Resolution dated 21.01.2019 (Annexure N) and the affidavit verifying the contents of the application has been annexed with the petition.

2. The corporate debtor, namely, M/s Lands Transmission Engineering Limited, is a company incorporated on 08.02.2018 under the Companies Act, 2013, having CIN U50400JK2018PTC010275 and its registered office is at 2ND Floor, Ansari Complex, Sonwar Srinagar, Union Territory of Jammu & Kashmir- 190001. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the corporate debtor is at Annexure B of the petition.

3. The brief facts, as stated in the petition, are that the financial creditor is a non-banking financial company duly incorporated and registered under the Companies Act 1956, and is also registered with the Reserve Bank of India and is engaged in the business of providing financial assistance in the form of vehicle loans to its customers. These loan facilities are also provided by the financial creditor to the dealers of commercial vehicle segments of M/s Daimler India Commercial Vehicles Private Limited, which is a reputed name in the truck manufacturing by way of inventory funding and other funding facilities.

4. It is stated that the corporate debtor approached the financial creditor through its Directors Mr. Irfan Reza Ansari and Ms. Samiya Syed along with Mrs. Sakina Hussain (Guarantor) with a proposal to approve and advance an inventory funding limit of Rs.10 Crores for the purpose of booking and buying commercial trucks M/s Daimler India Commercial Vehicles Private Limited and to offer the same for sale at

its dealership in Srinagar and it was represented that the corporate debtor has sufficient means to repay the proposed loan facility.

5. It is further stated that induced by the representations and assurances made by the corporate debtor, the financial creditor agreed to advance the said financial assistance and entered into a Master Loan Agreement dated 20.11.2018 (Annexure D), on mutually agreed and acknowledged terms and conditions. In the said arrangement reached between the corporate debtor and the financial creditor, it was agreed that upon request made by the corporate debtor acting through its Directors to M/s Daimler India Commercial Vehicles Pvt. Ltd. to deliver trucks to them, a parallel request shall be made to the financial creditor to issue loan advance to the above said manufacturer for funding the purchase of trucks by the corporate debtor. An advance/funding limit of Rs. 10 crores was approved by the financial creditor in the above said Agreement for purchase of the said vehicles. Upon execution of the aforesaid Loan Agreement various vehicles purchased by the corporate debtor from M/s Daimler India Commercial Vehicles Private Limited were financed by the financial creditor and a total number of 103 vehicles were funded.

6. Further, it has been stated that the corporate debtor vide aforesaid Loan Agreement agreed to the repayment of the loan amount upon the sale of the respective vehicle(s) and in the event of delay in sale of the vehicle, the financial creditor was entitled to charge an additional interest from the corporate debtor.

7. An (Un-attested) Hypothecation Deed dated 20.11.2018 (Annexure F) was also executed by the corporate debtor in furtherance of the Loan Agreement and this this Hypothecation Deed created first and exclusive charge on all the assets (Vehicles) and accounts in the favour of the financial creditor. It is further stated that

two guarantors Mr. Irfan Reza Ansari and Mrs. Sakina Hussain, one of whom is the Director of the corporate debtor, also executed a personal Deed of Guarantee (Annexure G) in the favour of financial creditor on 20.11.2018, wherein it was stated that in event of any default of corporate debtor in terms of payment/re-payment or in terms of any default on the part of Loan Agreement, these Guarantors shall pay the outstanding dues to the financial creditor without any protests or demur. Furthermore, these Guarantors also agreed to keep financial creditor indemnified against all losses/damages/costs/claims and expenses etc.

8. Subsequent to the execution of above said documents the financial creditor made various loan advances to the corporate debtor towards the purchase of vehicles from M/s Daimler India Commercial Vehicles Private Limited and the said loan advances were partly repaid by the corporate debtor at different intervals of time. It is stated that suddenly since 06.11 2019, the corporate debtor discontinued the re-payments which were due to the financial creditor and upon the enquiry the financial creditor was told that there has been a drop in the sale of vehicles and thus the corporate debtor is unable to make the payments. Thereafter, the financial creditor apprised the corporate debtor that any delay in making the payments will attract regular interest, however, no cogent response was received by the financial Creditor from the side of corporate debtor and the Guarantors. However, upon verification it was discovered that the corporate debtor had already disposed-off remaining 27 trucks by selling the same to different persons/entities without accounting for the same to the financial creditor and without making payment against the loan amount advanced against the said vehicles. Therefore, the corporate debtor committed a material breach of the contract by not only delaying

the repayments of the loan account but also concealing actual accounts from the financial creditor.

9. Thus, according to the financial creditor, owing to the above said breach of contract by the corporate debtor, the financial creditor was forced to recall the sanctioned loan and vide its notice dated 18.02.2020 (Annexure H) issued through its Counsel called upon the corporate debtor to pay an amount of Rs.8,69,19,226.82/- (Rupees Eight Crores Sixty Nine Lakhs Nineteen Thousands Two Hundred Twenty Six and Paise Eighty Two only) which was due as on 31.01.2020 within 7 days of receipt of the notice. However, despite service of the said notice, the corporate debtor failed to settle the amount due with the financial creditor.

10. Thereafter, the corporate debtor through its Directors and Guarantor approached the financial creditor thereby representing that they have all the good intentions to pay the dues and requested the financial creditor for amicable settlement of the dues. Thus, the corporate debtor entered into a Memorandum of Understanding (Annexure I) with the financial creditor on 22.09.2020 wherein, the corporate debtor agreed to repay the entire outstanding dues amounting to Rs.7,66,37,578/- (Rupees Seven Crores Sixty Six Lakhs Thirty Seven Thousands Five Hundred Seventy Eight only), as due on 15.9.2020, by paying an amount of Rs.60,00,000/- (Rupees Sixty Lakh) every month till all the dues are cleared.

11. However, the corporate debtor failed to meet its commitment to repay the outstanding amount in accordance with the abovesaid Memorandum of Understanding and on 24.03.2021, the corporate debtor entered into another Memorandum of Understanding (Annexure J) with the financial creditor wherein it

was agreed that corporate debtor would make a payment of Rs.40,00,000/- (Rupees Forty Lacs only) per month, starting from 10.04.2021, until all the dues were cleared. However, the Corporate Debtor has not complied with the terms of above said Memorandum and failed to honour this commitment as well.

12. It is contended on behalf of the financial creditor that on failure of the corporate debtor to pay the amount as per the Memorandum of Understanding dated 24.03.2021 as well, the financial creditor was constrained to issue a demand notice dated 13.07.2021 (Annexure K) through its counsel to the corporate debtor calling upon them to pay the outstanding sum of Rs.8,19,46,756/- due as on 02.07.2021 along with the applicable interest and other charges within 10 days, clearly conveying to the corporate debtor that in case of the said amount being not paid, the financial creditor shall be constrained to initiate CIRP in terms of Section 7 of the Code.

13. According to financial creditor, the Corporate Debtor has failed to pay the outstanding loan amount despite expiry of 10 days from the said notice. It is thus, submitted that the corporate debtor has not failed to adhere to the terms and conditions of Memorandum of Understanding but also to specifically clear the outstanding amount as the Loan Agreement. Therefore, the corporate debtor has committed default within the meaning of the Code which entitles the financial creditor to file the present application.

14. Notice of this petition was issued to the corporate debtor vide order dated 10.01.2022 to show cause as to why this petition be not admitted. The financial creditor filed affidavit of service vide Diary No.01506/1 dated 08.02.2022, wherein it has been deposed that notice was sent to the respondent/corporate debtor at its

registered address by speed post as well as the e-mail address of the respondent/corporate debtor. Copy of postal receipt dated 02.02.2022, tracking report and e-mail has been annexed with the affidavit. A perusal of tracking report shows that the notice sent at the registered address of the respondent/corporate debtor has been delivered on 07.02.2022.

15. When the matter was listed on 12.07.2022, there being no representation on behalf of the respondent/corporate debtor, it was proceeded ex-parte and matter was listed for ex-parte arguments on 30.09.2022, on which date after hearing the learned counsel for the petitioner/financial creditor, the matter was reserved.

16. We have heard the learned counsel for the financial creditor and have also perused the record carefully.

17. 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 is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

18. The issue for consideration is whether the present application is filed within limitation. It is seen from the record that the present application was filed vide Diary No.01506 dated 09.12.2021 (re-filed vide Diary No.01506 dated 29.12.2021) and the date of default as mentioned in the petition is 14.07.2021 and the amount claimed to be in default in Rs.8,19,46,756/-. Therefore, it can be safely inferred that this application has been filed within limitation.

19. Another issue for consideration is whether a default has occurred or not. It is observed from the record that in the present case, the occurrence of default is, *inter alia*, evidenced by Memorandum of Understanding dated 22.09.2020 (Annexure I), Memorandum of Understanding dated 24.03.2021 (Annexure J).

20. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In Part-III of Form No.1, Mr. Parminder Singh Bhullar, Registration No.IBBI/IPA-002/IP-N01127/2021-2022/13700, has been proposed as Interim Resolution Professional. In the written communication dated 06.12.2021 submitted in Form 2 by the proposed Interim Resolution Professional, it has been certified that there are no disciplinary proceedings pending against him with the Board or the IIP of ICSI.

Thus, the application filed in the prescribed Form No.1 is found to be complete. The Law Research Associate of this Tribunal has checked the credentials of Mr. Parminder Singh Bhullar, and there is nothing adverse against him. In view of the above, we appoint Mr. Parminder Singh Bhullar, Registration No. IBBI/IPA-002/IP-N01127/2021-2022/13700, Address: House No.E-10/313, Mangal Puri Gali, Ghanupur Road, Khandwala, Amritsar- 143104, Email:- advocate.psb@gmail.com, Mobile No.:- 9988001158, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of Code, 2016.

21. 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. More so, the respondent has admitted the claim and expressed its inability to pay back the debt. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry.

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 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 corporate debtor under Section 33 as the case may be.

22. The following directions are issued to the Interim Resolution Professional:-

i.) The term of appointment of Mr. Parminder Singh Bhullar 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 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 moral;

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.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons

Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to the Interim Resolution Professional after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and completing the resolution process in a time-bound manner. 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 and move an application seeking appropriate remedy, if required.

vii.) 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 first meeting of the

Committee within seven days of filing the report of constitution of the Committee; and

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

16. We direct the Financial Creditor to deposit a sum of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand 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.

17. Accordingly, the petition is admitted.

18. 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 e-mail address forthwith.

Sd/- 11.11.22

(Subrata Kumar Dash)
Member (Technical)

Sd/- 11.11.22

(Harnam Singh Thakur)
Member (Judicial)

November 11, 2022
MK