CIRP

# IN THE NATIONAL COMPANY LAW TRIBUNAL
# DIVISION BENCH, CHENNAI

**IBA/879/2019**

*Under Section 7r/w Rule 4 of the IBC, 2016*

**In the matter of M/s. Premier Security & Detective Bureau Pvt. Ltd.**

**M/s. Daimler Financial Services India Private Limited**
**---Financial Creditor/Applicant**

V/s

**M/s.Premier Security & Detective Bureau Private Limited**
**---Corporate Debtor/Respondent**

**Order delivered on: 16.12.2019**

**Coram:**
**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**
**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Financial Creditor : *Mr. Anand Johnson B, Advocate*
For the Corporate Debtor : *Mr. N.V. Prakash, Advocate*

## ORDER

**Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**Heard and dictated in Open Court on: 11.12.2019**

On the application filed by the Financial Creditor u/s.7 of the Insolvency and Bankruptcy Code, 2016 ("**the Code**") for initiation of Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor having defaulted in repaying the loan amount of ₹74,16,705.31 as on 26.06.2019.

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2. On perusal of this case, it appears that the Managing Director of the Corporate Debtor company as well as the Corporate Debtor herein jointly executed Loan Agreement dated 16.03.2018 in favour of the Applicant herein for lending ₹72Lakhs for purchase of a second hand Car "Mercedes - Benz" to repay the same within 48 months @11% interest with a value of EMIs of ₹1,86,088.

3. A Deed of Hypothecation agreement was entered into between Daimler Financial Services India Private Limited and Managing Director of the Corporate Debtor (as Borrower) and Premier Security & Detective Bureau Private Limited/Corporate Debtor (as Co-Borrower). On going through the Loan Agreement, the Applicant counsel has referred Clause 7 and Clause 26 of Loan and Disbursement which are as follows:

*"Clause – 7:*

*The Borrower(s) shall be solely liable to bear any increases in the price of the Product(s) and / or the costs of insuring or registering the Product(s) with the relevant authority and filing the relevant forms to effect the registration of the Product(s) for the purposes of the Loan or otherwise.*

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*Clause – 26:*

*The Borrower(s) shall be solely and jointly responsible for the quality, condition, fitness and performance of the Product(s) and for getting / ensuring delivery of the Product(s) from the Manufacturer and / or the relevant dealer, as the case may be, and the Lender shall not be liable or responsible for any delay in deliver(y) or (or non-delivery) of the Product or any demurrage cost or for any defect or variation in the quality, condition or fitness or performance of the Product(s) or any guarantees or warrantees given by the Manufacturer and / or the relevant Dealer in respect thereof. The Lender shall not be liable for, or bound by, any representations or warranties, whatsoever made by the Manufacturer and / or the relevant dealer in respect of the Product(s)".*

4. To prove the occurrence of default, the Applicant has referred Statement of Accounts reflecting that the Corporate Debtor failed to pay EMIs' from 13.05.2018 onwards.

5. In pursuance thereof, a recall notice was given on 03.08.2018 mentioning that these borrowers consistently not paid the EMIs in

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spite of repeated requests despite sufficient time was given to regularize their accounts, therefore, the Applicant has terminated the Contract and called upon the Corporate Debtor to repay entire outstanding dues as on 03.08.2018 amounting to ₹74,63,170.33. Since no repayment has come even after recall notice issued by the Applicant, the Applicant is constrained to file this application against the Corporate Debtor for initiation of CIRP.

6. As against this Application, the Corporate Debtor counsel has raised a defence stating that, along with other Loan Agreement mentioned above, the Applicant as well as borrowers together entered into Deed of Hypothecation, but whereas in pursuance thereof, the name of the borrower has not been mutated in the name of the Managing Director of the Corporate Debtor, whereby, it cannot be construed that this Applicant is entitled to proceed against the Corporate Debtor or the Managing Director of the Company unless the registration of the vehicle is transferred in the name of the Managing Director. Besides this, the Corporate Debtor counsel stated that the Corporate Debtor has kept on paying money to the Applicant



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until June 2019, therefore it cannot be construed that default occurred in repaying the loan amount.

7. Answering the point raised by the Corporate Debtor counsel, the Applicant counsel has stated that though part payments are shown as made up to 13.06.2019 but those part payments have not regularized the account for those part payments are not to the satisfaction of the EMIs due and payable at least until the date recall notice was given, subsequent thereto also, the account has not been regularized.

8. In view thereof, it is to be construed that these borrowers defaulted in making re-payment to this Applicant, the counsel has further stated that since cash has been taken in the name of Mr.V.Devarajan, Managing Director of the Corporate Debtor and the Corporate Debtor. Upon jointly executing loan agreement stating that they are jointly and severally liable to repay it, and the same not being regularized. As per definition debt and default mentioned in the IBC u/s.3(11) & 3(12) of the IBC, the obligation lies upon the Corporate Debtor to repay this loan amount for the Corporate Debtor and its

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Managing Director jointly executed loan agreement promising that they would be jointly and severally liable to repay the loan, in pursuance of it, loan amount released, part of it indeed paid, therefore it does not make any differences as to whether the vehicle registration is changed in the name of the Managing Director or not, because it will not have any bearing on the obligation which arose out of the loan agreement executed by the Corporate Debtor along with the Managing Director.

9. In addition to it, he has also submitted that in the Clause 26 aforementioned, it is categorically mentioned that the Borrower(s) shall be solely and exclusively responsible for the quality, condition, fitness and performance of the Product(s) (here it is a cash taken by the borrower(s) and for getting / ensuring delivery of the Product(s) from the Manufacturer and / or the relevant dealer, as the case may be, and the Lender shall not be liable or responsible for any delay in deliver(y) or (or non-delivery) of the Product or any demurrage cost or for any defect or variation in the quality, condition or fitness or performance of the Product(s) or any guarantees or warrantees given

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by the Manufacturer and / or the relevant Dealer in respect thereof. Hence, the Lender shall not be liable for, or bound by, any representations or warranties, whatsoever made by the Manufacturer and / or the relevant dealer in respect of the Product(s).

10. It is clear that all these issues such as, change of Hypothecation in the name of this Corporate Debtor the Managing Director of the Company will not come in the way of enforcing the Loan Agreement entered between the parties.

11. In view thereof, since we are satisfied that this Applicant has proved existence of debt and default, we hereby **admit** this Insolvency and Bankruptcy Application by appointing **Ms. Subramaniam Aneetha** as Interim Resolution Professionallooking at the consent letter given by him, with following directions:

I. That Moratorium is hereby declared prohibiting all of the following actions, namely,

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including



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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 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 corporate debtor.

II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

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III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from **11.12.2019** till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints **Ms. Subramaniam Aneetha, as Interim Resolution Professional, having Registration Number [IBBI/IPA-001/IP-P00376/2017-2018/10633], A2 Sarada Apartments 17/6, Sringeri Mutt Road, R.A. Puram, Mandaveli, Chennai, Tamil Nadu,**

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600028, **E-Mail: aneethaca@gmail.com, Mobile No: 9840024178** to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

12. Accordingly, this IBA/879/2019 is hereby **admitted.**

13. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-Sd-
**(S. VIJAYARAGHAVAN)**
**Member (Technical)**

-Sd-
**(B. S.V. PRAKASH KUMAR)**
**Member (Judicial)**

SR/Arpan

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18/12/19

N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
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