

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 884 of 2022

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

**M/s Capital Trade Links Limited
B-4, LGF Ashoka Niketan,
Delhi, 110092 IN**

...Applicant/Financial Creditor

Versus

**M/s Thukral Electric Bikes Private Limited,
Plot 18 A Floor Ground Floor,
Rajan Babu Road, Near Adarsh Nagar Metro Station,
Adarsh Nagar New Delhi- 110033**

...Respondent/Corporate Debtor

Order pronounced on: 13.02.2024

Coram:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

Appearances:

For the Applicant : Pankaj Agarwal, Shashawat Srivastava advocates
For the Respondent: Mr. Vikram Aggarwal, Ms. Anjali, Advs

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is an application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with rule 4 of the Insolvency and

Bankruptcy (Application to Adjudicating Authority) Rules,2016, by M/s Capital Trade Links Limited (hereinafter referred to as 'Financial Creditor'), through its Authorized Representative Mr. Shivam Kumar, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s Thukral Electric Bikes Private Limited [CIN: U35911DL2014PTC273183] ("Corporate Debtor"). The instant application was filed on 14.11.2022.

2. The Corporate Debtor was incorporated on 14.11.2014, having CIN: U35911DL2014PTC273183, under the Companies Act, 1956. Its registered office is at Plot 18 A, Ground Floor, Rajan Babu Road, Near Adarsh Nagar Metro Station, Adarsh Nagar New Delhi 110033. Therefore, this Bench has jurisdiction to deal with this application.
3. The present application is filed before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 1,05,95,166 /- (Rupees One Crore Five Lakh Ninety-Five Thousand One Hundred Sixty-Six only) as on 17.10.2021 (Date of Default).

Submissions of learned Counsel appearing for the Applicant are as under: -

4. The details of transactions leading to the filing of this petition as averred by the Applicant is as follows:
 - a) In the present case, the Financial Creditor is a RBI registered NBFC, involved in providing financing services to Medium and small scale businesses, whereas Corporate Debtor is engaged in Importing, Exporting, Trading, Supplying & Manufacturing of Electric Rickshaw (tricycles) and have a sales network in across Delhi NCR, wherein Corporate Debtor involves local Shopkeepers as authorized vendors/seller/distributors/agency holder/retail counters of Electric Rickshaw Manufactured by Corporate Debtor.
 - b) Corporate Debtor along-with M/s. Meerut Enterprises (one such authorized vendors/seller/distributors/agency holder/retail counters) approached Financial Creditor for lending/ providing loaning facility at retail counter of M/s. Meerut

Enterprises to the buyers of Electric Rickshaw (tricycles) manufactured by Corporate Debtor. Based on the assurance and corporate guarantee given by Corporate Debtor, Financial Creditor entered into the agreement for providing finance facility to the prospective customers buying Electric Rickshaw from counter/dealership of M/s. Meerut Enterprises.

- c) It is alleged by the Financial Creditor that the Corporate Debtor as guarantor along with M/s. Meerut Enterprises, and the Applicant, had jointly entered into the agreement for providing finance facility to the prospective customers of the M/s. Meerut Enterprises, who were eventually customer of Corporate Debtor. The Financial Creditor, on request of Corporate Debtor had agreed to extend the Finance Facility up to a maximum Seventy Percent (70%) of on Road Price of the product to the prospective customers approaching the M/s. Meerut Enterprises for financing of the product, manufactured by the Corporate Debtor on the specific terms and conditions.
- d) Financial Creditor agreed to extend the finance facility to the buyers as recommended by the vendor/distributor from time to time in terms of this agreement. Accordingly, on 01.04.2019, a Loan Agreement was signed between the M/s Meerut Enterprises, Financial Creditor, and the Corporate Debtor. As per the terms of loan agreement, Corporate Debtor was to pay an interest @ 20 % P.A. on the loan amount. Copy of the Loan Agreement dated 01.04.2019 is placed on record as Annexure A2 of the petition.
- e) Financial Creditor has disbursed loans to various Customers/ borrowers on request and guarantee of the Corporate Debtor and as of now till date, an amount of Rs.1,05,95,166 (Rupees One Crore Five Lakhs Ninety- Five Thousand One Hundred Sixty-Six Only) has been due from its borrowers and the Corporate Debtor. Copy of bank account statement is placed on record as Annexure A3. Corporate Debtor made certain repayments to the Financial Creditor, but in year 2021, Corporate Debtor defaulted in the repayment of the loan amount along with the monthly interest of the said loan. The first default occurred on 17.10.2021

when Corporate Debtor failed to repay the loan amount to the financial Creditor and the since then it is continuing default.

- f) Further, on 04.12.2022, Financial Creditor had also registered and submitted the Record of Financial Information in FORM C with the National E Governance Services Limited. (NESL) about the details of the said loan given to the Corporate Debtor with the Information Utility. Copy of Record of Default/Financial Information in FORM C is placed on record as Annexure A4.
- g) Moreover, after much chasing to repay loan amount and having left with no alternative Financial Creditor on 16.08.2022, sent a notice to Corporate Debtor informing about invocation of Corporate Guarantee given by Corporate Debtor in favour of Financial Creditor. However, no reply was received by Financial Creditor from Corporate Debtor to said letter. Copy of notice dated 16.08.2022 sent Financial Creditor to Corporate Debtor is invoking the Corporate Guarantee given by Corporate Debtor in favor of Financial Creditor is placed on record as Enclosure 1. That having left with no option Financial Creditor approached this Adjudicating Authority for seeking initiation of CIRP for Corporate Debtor. It is evident from the facts and records that Corporate Debtor has time and again committed the defaults. Loan was given for a period of 24 months only. The default occurred on 17.10.2021.
- h) It is pertinent to note that Corporate Debtor in its reply dated 27.01.2023, has admitted the debt but has raised only objection to the amount of debt, without disclosing the correct number of Loan Accounts disbursed by the Financial Creditor. No other material objections are raised by the Corporate Debtor. Further, Financial Creditor filed the rejoinder dated 15.03.2023, to the reply dated 27.01.2023 filed by the Corporate Debtor refuting objections and further detailing the various loan accounts.
- i) Additionally, on 11.10.2023, on query raised by this Hon'ble Tribunal, the Financial Creditor has filed certain additional documents placing on record the Tripartite agreements entered into between Financial Creditor on behest of

Corporate Debtor and the Customer/Purchaser of E-Rickshaw of Corporate Debtor and agent of Corporate Debtor. That Financial Creditor have a square covered case wherein the debt is disbursed by Financial Creditor and default is committed by the Corporate Debtor, hence the Captioned Under Section 7 of IBC filed by Financial Creditor is liable to be admitted and Corporate Insolvency Resolution Process for Corporate Debtor be initiated.

Submissions of learned Counsel appearing for the Corporate Debtor are as under:

5. The details of the submissions made by the Corporate Debtor are as follows:
 - a) It is stated that the contract in question is a tri-partite contract with Financial Creditor and Vendor/Distributor/Dealer and Corporate Debtor as the parties and as per contract the Corporate Debtor is not the guarantor. It is pertinent to mention here that the only duty upon the manufacturer is to deduct the amount so due from the amount standing to the credit of Vendor's Account with the Manufacturer, if the Vendor fails to own its responsibility towards the repayment of the Finance Facility on the intimation of the Financial Creditor.
 - b) It is pertinent to note that it is admitted fact that no such letter/communication is made to the Corporate Debtor in this regard. It is pertinent to note here that the oral reliance of the Financial Creditor upon the clause 6.10 of the contract at page 26 of the petition to support this argument is also bad in the eyes of law. It is pertinent to mention here that the 6.10 clearly states that in case of default on the part of Vendor/Dealer regarding its duty towards the Capital Trade I.e. Financial Creditor, Corporate Debtor i.e. manufacturer shall be liable and take appropriate action as defined in para 5.1 and giving a cheque of not more than Rs.10,00,000/- (Rupees Ten Lakhs Only) to recover the said outstanding. It is pertinent to mention here that from the reading of this clause it seems that there is typographical error in typing of clause 5.1 instead of 6.1 and even if it is seen as it is clause 5.1 doesn't talk about the Corporate Debtor i.e. Manufacturer at all. Hence, the Corporate Debtor is not a guarantor under the contract in question and it is admitted fact that no amount is provided to Corporate Debtor. And thus,

the Corporate Debtor is not liable for the loan distributed by the Financial Creditor to the borrower rather it is the Vendor/Distributor/Dealer who is guarantor.

- c) Further, the Financial Creditor in its petition in para number XIII at page no. 9 submitted that Corporate Debtor is liable to pay interest on the principal amount on monthly basis and the rate of interest is 20% per year, chargeable on the last date of each calendar month. Additionally, according to the contract only Vendor/Distributor/Dealer is the guarantor against the loan and the rate of interest of loan is 20%. (Refer Annexure -B of the contract at page 32 of the petition);
- d) Further malafide intention of then Financial Creditor can be seen from the fact that the column pertains to “deposit amount” is left blank and if for the sake of arguments if it is assumed that the blank means nil then the twenty-six entries pertain to loan issued in the year 2019 is time barred. Further malafide intention of the Financial Creditor can be seen from the fact that the interest shown at the page no.32 of the petition is stated as @20% per annum but under the statement of account at page no. 34 of the petition it is applied arbitrarily i.e. interest @20% on Rs.73,300/-, since 16/10/2019 till 14/11/2022 (i.e. date of petition) comes to Rs.45,201.667/- (Rupees Forty Five Thousand Two Hundred One And Six Hundred And Sixty Seven Paise Only) but closing balance shows a figure of Rs.18,91,978.17/- (Rupees Eighteen Lakh Ninety One Thousand Nine Hundred Seventy Eight And Seventeen Paise Only). The calculation of the loan and interest is shown in tabular form and is placed on record as Annexure - CD-1.
- e) It is pertinent to note here that as per statement of account submitted by the Financial Creditor with the petition the total withdrawal amount is Rs.55,04,266/- (Rupees Fifty-Five Lakh Four Thousand Two Hundred Sixty-Six Only) and the interest @ 20% (submitted by the Financial Creditor) for the tenure(i.e. date of first default i.e. 17/10/2021 as stated by the Financial Creditor till filing of petition i.e. 14/11 /2022) comes to Rs.11,85,302.21/- (Rupees Eleven Lakh Eighty Five Thousand Three Hundred Two and Twenty-One

Paisa) and accordingly the total due comes to only Rs.66,89,568.21/- (Rupees Sixty Six Lakh Eighty Nine Thousand Five Hundred Sixty Eight and Twenty One Paisa) (this amount will further reduce when we see it from the date of default and deduct the amount so received by the Financial Creditor from the borrower) and not a sum of Rs.1,05,95,166/-(Rupees One Crore Five Lakh Ninety Five Thousand One Hundred and Sixty-six Only) which shows further malafide intention of the Financial Creditor.

- f) Further, Financial Creditor included certain loan account against which it already issued NOC to dealer i.e. M/s. Meerut Enterprises and further an entry of refund is included in the statement of account filed with the petition and the same is admitted by the Financial Creditor where in Financial Creditor filed a new statement of account thereby removing only these entries of which NOC was provided but then again fabricate the account to cheat and play fraud upon the Adjudicating Authority.
- g) The total default is calculated on a self-made formula as stated on page 11 of the rejoinder i.e. total default is sum of instalment overdue (based on EMI) plus overdue interest @ 0.11% per day i.e. 40.15% per year. It is mandatory to note here that contract rate of interest as per petition and contract is 20% per annum and no other rate of interest is provided in the contract under any term nor any other document is placed on record by the Financial Creditor to prove the same as admitted rate of interest which is mandatory under the law. The number of days for which interest is stated to be applied in the statement of account filed with the rejoinder is for more than three years i.e. 1095 days in most of the cases which is, first, time barred debt, second, how this contention is tenable when Financial Creditor submitted the claim for a period from the date of default i.e. 17/10/2021 till 14/11/2022 (i.e. date of petition). It is pertinent to note here that the Financial Creditor put future interest in the calculation of statement of account to forcefully reach the amount of the petition and invoke jurisdiction of this Adjudicating Authority by use of forge and fabricated document. Hence, the present Application.

Analysis and Findings

6. We have heard the Learned Counsels for the Applicant and the Corporate Debtor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.
8. It is the case of the Applicant that the Corporate Debtor has acted as Guarantor and in terms of Section 5(8)(h) of the IB Code, an Agreement of Guarantee also falls within the definition of financial debt. However, in the present case, Corporate Debtor along-with M/s. Meerut Enterprises (one such authorized vendors/seller/distributors/agency holder/retail counters) approached Financial Creditor for lending/ providing loaning facility at retail counter of M/s. Meerut Enterprises to the buyers of Electric Rickshaw (tricycles) manufactured by Corporate Debtor. Therefore, Financial Creditor, the Corporate Debtor, along with M/s. Meerut Enterprises, jointly entered into the agreement for providing finance facility to the prospective customers of the M/s. Meerut Enterprises, who were eventually customer of Corporate Debtor. The Financial Creditor, on request of Corporate Debtor had agreed to extend the Finance Facility up to a maximum Seventy Percent (70%) of on Road Price of the product to the prospective customers approaching the M/s. Meerut Enterprises for financing of the product, manufactured by the Corporate Debtor on the specific terms and conditions.
9. Subsequently, on 01.04.2019, a Loan Agreement was signed between the M/s Meerut Enterprises, Financial Creditor, and the Corporate Debtor. Financial

Creditor has disbursed loans to various Customers/ borrowers on request and guarantee of the Corporate Debtor and as of now till date, an amount of Rs.1,05,95,166 (Rupees One Crore Five Lakhs Ninety- Five Thousand One Hundred Sixty-Six Only) has been due from its borrowers and the Corporate Debtor.

10. In the instant case, the claim of the Applicant is based on the Tripartite Agreement entered between the Applicant, the Respondent and M/s Meerut Enterprises, wherein the Applicant contends that the Corporate Debtor is a guarantor in the said Agreement. However, there is no supporting documents regarding the same by the Applicant as to which para of the Tripartite Agreement dated 01.04.2019, indicates that the Corporate Debtor act as a guarantor in the Agreement.
11. On perusal of the Agreement dated 01.04.2019, the Corporate Debtor's liability is stated in Para 6.1 of the Agreement, which is extracted and reproduced below:

“6.1 Third Party i.e., the Manufacturer agrees and undertakes that he will inform the First Party i.e. CAPITAL TRADE about his genuine Vendors/Dealers and also take their responsibility. CAPITAL TRADE will provide finance only to those Buyers/Borrowers who were recommended by the Vendors/Dealers, as approved by the Manufacturer. The Manufacturer also confirms that, if the Vendor falls to honor its responsibility towards repayment of the Finance Facility, as disbursed to the Buyer/Borrower as specified in Clause 4 along with interest, costs, charges, etc. then, Manufacturer shall in its sole discretion and without prejudice to rights of CAPITAL TRADE; be authorized to and it may, without requirement of any consent from and/or any notification to the Vendor/Dealer in this regard, deduct, the amount so due from the amount standing to the credit of Vendor's Account with the Manufacturer. The Manufacturer undertook that he will be responsible for all the acts and conducts of the Vendor/Dealer as recommended by it.”

In light of Para 6.1 of the Agreement, it is evident that the Corporate Debtor in the instant case is not the guarantor in the said Agreement, but have only limited liability.

12. Further, it is pertinent to mention that the liability in case of default is expressed in Clause 5.7 of the Agreement, which is extracted and reproduced hereunder:

“5.7 It is undertaken by the Vendor/Dealer that in case of default by the borrower, the Vendor/Dealer will assures for the recovery of the Dues and in event of non-recovery of loan, he is liable to pay due loan amount to the CAPITAL TRADE in relation to repayment of loan as advanced by the CAPITAL TRADE.”

13. Admittedly, no loan in the instant case was given to the Corporate Debtor. Therefore, from the above clause, it is clear that there was no liability of the instant Corporate Debtor to repay the loan amount given to the Vendor/Dealer, in case of default, rather the Vendor/Dealer is liable to pay the due loan amount to the Applicant. We are of the view that, that the Tripartite Agreement placed on record by the Financial Creditor, nowhere substantiates the fact that the debt owed to the Applicant were due and payable by the Corporate Debtor. Therefore, a major ingredient of Section 7, that there is a debt owed by the Corporate Debtor to the Financial Creditor, does not stand substantiated in the instant case.
14. In the light of the above this Adjudicating Authority concludes that, the instant petition bearing **COMPANY PETITION IB (IBC)/884(ND)/2022** lacks merit, cannot be admitted and is hereby dismissed.

Sd/-
DR. SANJEEV RANJAN
Member (Technical)

Sd/-
MAHENDRA KHANDELWAL
Member (Judicial)