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

IBA/355/2020

(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. Kapico Motors India Pvt. Ltd.***

M/s. Jash Bhandari Educational Trust
No.26, Tilak Street, T. Nagar,
Chennai – 600 017

... Operational Creditor

-Vs-

M/s. Kapico Motors India Private Limited
Reg. Off:-
Old No.197, New No.39,
Poonamalle High Road, Kilpauk,
Chennai – 600 010

...Corporate Debtor

Order Pronounced on 28th January 2021

CORAM :

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

For Operational Creditor : Harshini J, Advocate
For Corporate Debtor : None present

ORDER

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

1. Under Adjudication is an Application that has been filed by **M/s. Jash Bhandari Educational Trust** (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. Kapico Motors 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 Financial Creditor from which, it is evident that the Financial Creditor is an Educational Trust, represented by its Managing Trustee. 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:U50101TN2006PTC060174 was incorporated on 09.06.2006 and that its Authorized Share capital and Issued, Subscribed & Fully paid up capital is Rs.42,00,00,000/- and Rs.39,62,10,000/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at Old No.197, New No.309, Poonamalle High Road, Kilpauk, Chennai – 600 010. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Kannan Sambasivam, Registration Number: IBBI/IPA-

001/IP-P00755/2017-18/11287 as the Interim Resolution Professional

3. From Part-IV of the Application, it is seen that a sum of Rs.49,84,109/- (which includes the Principal being Rs.37,50,000/- and interest at the rate of 21% p.a. to the tune of Rs.12,34,109/-) is being claimed by the Financial Creditor as the Financial debt. The default is said to have occurred from 01.08.2018 to 24.02.2020.

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor on 31.07.2018 has sought financial assistance from the Financial Creditor for a sum of Rs.50,00,000/- which was promised to be repaid with interest at the rate of 21% p.a and in pursuance of the same, it is submitted that the Financial Creditor has disbursed a sum of Rs.50,00,000/- as a loan to the Corporate Debtor to its account by way of RTGS and the proof of the same is attached at page No. 10 to 12 of the typed set filed along with the Application.

5. Further, it was submitted by the Learned Counsel for the Financial Creditor that subsequent to the disbursement of the loan amount, the Corporate Debtor has executed a promissory

notice for a sum of Rs.50,00,000/- on 31.07.2018 repayable with interest at the rate of 21% p.a. on demand. The copy of the promissory note is placed at page 13 of the typed set filed along with the Application. It was submitted by the Learned Counsel for the Financial Creditor that since the Corporate Debtor was facing some liquidity crunch and as a result of which, the Financial Creditor demanded the repayment of the loan amount which was disbursed to the Corporate Debtor and accordingly the Corporate Debtor has issued three post dated cheques bearing number 801334, 801335 and 801336 in favour of the Financial Creditor for a sum of Rs.6,25,000/- each. In was submitted that on presentation of the first two cheques between the month of September and October 2018, the same was honoured. However, it was submitted that on presentation of the third cheque bearing number 801336 dated 29.10.2018 for a sum of Rs.6,25,000/- the same was returned with an endorsement *"funds insufficient"*. The copy of the cheque return memo issued by the banker of the Financial Creditor is placed at page 22 of the typed set filed along with the Application.

6. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor has caused a legal notice to the Corporate Debtor on 24.12.2018 calling upon them to

discharge the cheque amount within a period of 15 days from the date of receipt of the said notice. It is submitted that the said notice was received by the Corporate Debtor on 26.12.2018, however the Corporate Debtor has failed to repay any amount to the Financial Creditor. The copy of the Legal Notice dated 24.12.2018 is placed at page 23 to 25 of the typed set filed along with the Application. Further, it was submitted that the Financial Creditor has filed a Criminal Complaint CC No. 592 of 2019 before the IV FTC / Metropolitan Magistrate Court, Chennai under Section 138 of the Negotiable Instruments Act, 1881 which is still pending on the file of the said Court. Thus, it was submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor is liable to pay the balance amount of Rs.37,50,000/- to the Financial Creditor on demand and they have failed to do so and hence the Corporate Debtor has committed default in repaying the financial debt owed to the Financial Creditor and as such prayed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

7. In relation to the Corporate Debtor, it is seen that on 09.11.2020, the Corporate Debtor has originally entered appearance through its counsel, who undertook to file vakalath on behalf of the Corporate Debtor. Thereafter, when

the matter came up for hearing on 15.12.2020, none was present on behalf of the Corporate Debtor and this Tribunal directed the Registry to issue notice to the Corporate Debtor to the Registered Office address of the Corporate Debtor. From the perusal of the tracking report it is seen that the notice was delivered to the Corporate Debtor on 02.01.2021 and inspite of the same, the Corporate Debtor has not preferred to cause appearance before this Tribunal either by itself or through any counsel. In the said circumstances, this Tribunal on 07.01.2021 was constrained proceed with the mater in the absence of the Corporate Debtor.

8. Heard the submissions made by the Learned Counsel for the Financial Creditor and perused the documents including the pleadings placed on record. It is seen that the Financial Creditor has disbursed the loan amount to the account of the Corporate Debtor and the Corporate Debtor has also executed the promissory notes and cheques in favour of the Financial Creditor. Thus, inspite of opportunities being granted to the Corporate Debtor, to file its reply or objections in relation to the same, since the Corporate Debtor has preferred not to cause any appearance before this Tribunal and from the documents placed on record by the Financial Creditor, this Tribunal is of the view that the debt and default on the part of

the Corporate Debtor is proved. The default, it is also seen from the pleadings and documents filed on the part of the Financial Creditor are much prior to the advent of the Covid-19 pandemic. 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.

9. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the Date of Default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.

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 I&B Code, 2016.

11. The Financial Creditor has proposed the name of one **KANNAN SAMBASIVAM**, having Registration Number **[IBBI/IPA-001/IP-P00755/2017-2018/11287]** as *Interim Resolution Professional* (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 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.

13. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) 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 serices 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

14. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(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 Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry, who will also 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.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond