

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI**

SPECIAL BENCH

COMPANY APPLICATION No. IB-1088/ND/2020

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

Axis Bank Limited

**Applicant/
Financial Creditor**

Versus

JMT Auto Limited

**Respondent/
Corporate Debtor**

Order Pronounced on: 23/02/2022

Coram:

**Dr. Deepti Mukesh, Hon'ble Member(Judicial)
Shri Avinash K. Srivastava, Hon'ble Member (Technical)**

MEMO OF PARTIES

Axis Bank Limited

Trishul, 3rd Floor
Opp. Samarteshwar Temple
Near Law Garden
Ellisbridge
AHMEDBAD 380 006

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Applicant/Financial Creditor

Versus

JMT Auto Limited

3-LSC Pomposh Enclave
Guru Nanak Market
Opp. L.S.C. Market
New Delhi 110 048

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Respondent/Corporate Debtor

Appearance:

For the Applicant :

For the Respondent :

ORDER

Per: Dr. Deepti Mukesh, Member (Judicial)

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by **Mr. Shailendra Kumar**, Vice President (for brevity 'Applicant') authorised by Circular Resolution dated 23.08.2017, with a prayer to initiate the Corporate Insolvency process against **JMT Auto Limited** (for brevity 'Corporate Debtor').

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2. The Applicant financial creditor is a company incorporated under the Companies Act, 1956 on December, 3, 1993 carrying on its banking business under the banking Regulation Act, 1948. The applicant initially known as UTI Bank Limited. Thereafter, in August, 2007 the name was changed to Axis Bank Limited. The applicant is having Registered office at Ahmedabad and CIN L65110GJ1993PLC020769.
3. The corporate debtor is a public limited company, incorporated under the provisions of companies Act, 1956 on 16.01.1997, duly registered with Registrar of Companies, New Delhi with CIN: L42274DL1997PLC270939 and having registered office at, New Delhi 110 048. The Authorized share capital of the Respondent is Rs. 52,50,00,000/- and paid up share capital of the company is Rs. 50,38,32,140/-. The corporate debtor is engaged in manufacture of auto components.
4. It is submitted by the applicant that vide letter dated 21.05.2011 the applicant had sanctioned credit facilities aggregating to Rs. 45.00 crores in favour of the corporate debtor against issuance of various securities such as promissory notes, deeds of guarantee, and deeds of hypothecation in favour of the applicant as per the details annexed to the application. Subsequently, vide letter dated 01.01.2012, the applicant approved enhancement of

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credit facilities from Rs. 45.00 crores to Rs. 50.00 crores against various promissory notes dated 08.10.2012 in favour of the applicant. Vide letter dated 17.06.2013, the corporate debtor requested the applicant to convert a sum of Rs. 15.00 crores out of the aforesaid amount into Working Capital Demand Loan (WCDL). To avail the said facility, the corporate debtor issued two Post Dated Cheques (PDCs) dated 30.06.2016 and 31.12.2016 for total amount of Rs. 17.00 crores in favour of the applicant as security against the loan of Rs. 50.00 crores. Thereafter, on request of the corporate debtor dated 30.12.2015, additional WCDL of Rs. 25.00 crores was sanctioned to the corporate debtor over and above the pre-existing credit facilities of Rs. 50.00 crores. Therefore, the resultant aggregate credit limit extended to the corporate debtor as on 30.12.2015 became Rs. 75.00 crores.

5. It is further submitted by the applicant that in order to obtain the aforesaid additional credit facility of Rs. 25.00 crores in furtherance of sanction letter, the applicant and the corporate debtor entered into a term loan agreement. As per the said agreement, the tenure of loan was one year, carrying interest rate of 0.50% plus Axis Bank's Base Rate and the penal interest rate was 2% on due amount. As per this agreement, the outstanding amount was to be paid within one year from the date

of utilisation. The corporate debtor executed a demand promissory note of Rs. 25.00 crore dated 31.12.2015 in favour of the applicant waiving its right to present the said demand promissory note and further dispensing with the requirement of notice under Section 98 (a) of the Negotiable Instruments Act, 1881. On request of the corporate debtor, the said amount of Rs. 25.00 crores was credited to the account of the corporate debtor on 31.12.2015.

6. It is also submitted by the applicant that on furtherance of the sanction letter, the corporate debtor entered into a demand/short term credit facility agreement and the corporate debtor issued three post-dated cheques of total amount of Rs. 17.00 crores. Thereafter, an amendment cum link agreement was entered into between the parties on 11.08.2017 whereby the rate of interest qua the various credit facilities extended by the applicant amounting to Rs. 75.00 crores stood modified. The corporate debtor also issued another undated cheque for a sum of Rs. 24.50 crores to the applicant towards security for repayment of the credit facilities. The outstanding amount to be paid by the corporate debtor mounted to Rs. 67,86,30,418.08 as on 23.08.2018 and the corporate debtor issued acknowledgement of debt to this effect on 23.08.2018. As per RBI's guidelines, the WCDL cannot be rolled over more than

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twice, the applicant was constrained to withdraw the additional credit facility of Rs. 25.00 crores sanctioned to the corporate debtor. Therefore, the applicant, vide letter dated 07.01.2019, renewed the credit facilities of the corporate debtor to the limit of Rs. 50.00 crores and called upon the corporate debtor to immediately clear all the outstanding dues along with interest as per the original terms. As per the search report obtained by the applicant the corporate debtor had created charges against several loans in favour of State Bank of India, SIDBI, Bank of India and L & T Finance. On account of the defaults of the corporate debtor, account of the corporate debtor was declared NPA by the applicant on 17.05.2019. Thereafter, vide letter dated 21.08.2018, the corporate debtor acknowledged that it owed a sum of Rs. 64,53,68,396.68 to the applicant. Due to failure on the part of the corporate debtor to repay the acknowledged debt, the applicant had issued recall notice dated 27.10.2020 to repay the outstanding amount of Rs. 67,93,53,540.20. As a result, the present application was filed by the applicant for total amount of Rs. 60,27,24,736.27 (Rupees sixty crores twenty-seven lacs twenty-four thousand seven hundred thirty-six and paise twenty-seven only) as financial debt, as per part IV, form 1. The application was served and service affidavit has been filed.

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7. The corporate debtor filed affidavit in reply inter alia stating
- That the applicant herein is considering a resolution plan under the aegis of RBI circular dated 07.06.2019 according to which once the borrower is under consideration for restructuring mechanism, there is a moratorium as regards initiation of any other proceedings against the borrower during the claim period and the Reserve Bank of India Act, 1934 is binding upon the applicant. As the instant application filed by the applicant is without following the due process envisaged under the circular dated 07.06.2019, is premature and liable to be dismissed;
 - That the instant application is barred by Section 10A of the IB Code as the right to sue in the instant case occurred after non-payment of the debt as mentioned in recall notice dated 27.10.2020. Section 10A of the IB Code specifically bars the creditors to initiate CIRP against the corporate debtor for any default arising on or after 25.03.2020;
 - That the failure to repay the debt on the part of the corporate debtor, when it was called upon by the applicant through its recall notice dated 27.10.2020, is the event of default and the same being subsequent to 25.03.2020, the instant application is barred in terms of Section 10A of IB Code;
 - That it is mandatory for the financial creditor to submit financial information and information relating to assets in relation to which

any security interest has been created, with the information utility i.e. M/s. National E-Governance Services Limited;

- That the corporate debtor is one of the largest auto component manufacturers in India and can be duly resolved in terms of the resolution plan as pending under the RBI circular dated 07.06.2019;

8. The applicant filed rejoinder to the affidavit in reply filed by the corporate debtor responding to the contentions raised by the corporate debtor;

- That Clause 9 of RBI circular dated 07.06.2019 does not have any provision regarding a moratorium if the corporate debtor has chosen to apply the said circular and Clause 9 specifically vests liberty in the hands of the lenders to choose legal proceedings against the borrower;
- That the present application is not barred by Section 10A of the IB Code because the date of default in repayment of the debt is admittedly much prior to 25.03.2020, as the account of the applicant was declared as NPA on 17.05.2019 and the financial creditor had directed the corporate debtor to repay its debts by multiple mails dated 16.04.2019, 14.08.2019, 30.09.2019, 29.01.2020 and 06.10.2020;

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- That bare perusal of Section 215 of the IB Code would make it clear that there is no mandate to submit the record of debt from the Information Utility.
9. Heard the submissions and perused the documents on record. It is beyond doubt that the default has occurred with respect to the payment of financial debt due to the applicant. Disbursement of the loan is nowhere denied having received by the corporate debtor, as per bank statements of the applicant annexed to the application. The applicant has brought on record copy of acknowledgement of various amounts of debt by the corporate debtor on different dates as and when facilities were availed by the Corporate debtor starting from 09.10.2012 to 21.08.2020. The applicant has also brought on record copies of sanction letters, various securities issued by the corporate debtor, promissory notes, declaration cum undertakings, hypothecation deed, amendment cum link agreement, computation of debt and other related documents in support of their claim. All the above documents clearly reflect that the corporate debtor had availed disbursement of loan and has failed to repay the same.
10. As per part IV of form 1 the date of default is 17.05.2019 and application is filed on 28.11.2020, which is well within the period of limitation and not barred by law.

11. The registered office of the corporate debtor is situated in New Delhi and, therefore, this Tribunal has jurisdiction to entertain and try this application.
12. The present application is complete in terms of Section 9 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt which is time and again acknowledged and admitted in writing by the corporate debtor from time to time vide letters dated 01.10.2012, 09.10.2012, 29.09.2015, 31.12.2015, 23.08.2018 and 21.08.2020. In light of the above facts and records the present application is admitted and CIRP is ordered to be initiated against corporate debtor.
13. The applicant has proposed the name of Mr. Pradeep Kumar Sethi as Insolvency Resolution Professional, who is be and hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-001/IP-P00711/2017-18/11265 having office at Unit No. 1121, Building No. 11, 2nd Floor, Solitre Corporate Park, Chakala, Andheri-Kurla Road, Andheri (East), Mumbai 400 093 subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP is filed in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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14. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Pradeep Kumar Sethi to meet out the expenses for performing 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 needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.
15. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
16. In terms of above order, the application stands admitted in terms of Section 7 (5) of IBC, 2016. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also

directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

— Sd —

Avinash K. Srivastava
Member (Technical)

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Dr. Deepti Mukesh
Member (Judicial)

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