THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No. 159/Chd/Hry/2020

Under Section 7 of the Insolvency & Bankruptcy Code, 2016

<u>In the matter of:</u>
PPG Asian Paints Private Limited
through Mr. Mukesh Kumar Kaim,
having its Registered Office at:
6A, Shanti Nagar, Santacruz
Mumbai-400055 ….Petitioner-Financial Creditor

Vs.

Sidhi Vinayak Vehicles Private Limited
having its Registered Office at
G-10/1102, Suncity Heights
Sector-54 Gurgaon-122011
CIN No: U51109HR2008PTC064026

…Respondent-Financial Creditor

Judgment delivered on: 08.12.2022

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

<u>Present through Video Conferencing:</u>

For the Petitioner-Financial Creditor	: Mr. Piyush Singh, Advocate
For the Respondent-Corporate Debtor	: Proceeded *ex parte* vide order dated 17.03.2022.

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **PPG Asian Paints Private Limited** (hereinafter referred to as 'Petitioner/Financial Creditor') through its Authorized Representative Mr. Mukesh Kumar Kaim, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **Sidhi Vinayak Vehicles Private Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Mukesh Kumar Kaim, with the affidavit verifying the contents of the application appended thereto (Annexure A2).

2. The Corporate Debtor is stated to be incorporated on 02.09.2008. The company having its registered address G-10/1102, Suncity Heights, Sector-54, Gurgaon, Haryana-122011. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is stated to be annexed as Annexure-A3 of the petition.

3. Brief facts of the case are that the corporate debtor and financial creditor entered into an agreement dated 21.03.2018. As per Article 4(a) of the Bodyshop Agreement, Applicant agreed and contributed a sum of Rs.35,00,000/- to the corporate debtor as an upfront contribution towards the purchase of paint equipment and promotional activities. In terms of Schedule I read with Article 3 of the Bodyshop Agreement, Corporate Debtor agreed and was under a contractual obligation to procure materials worth Rs.1,00,00,000/- (Rupees One Crores Only)

during the four year tenure of the Bodyshop Agreement and accordingly, considering the forward sale, the Financial Creditor contributed a sum of Rs.35,00,000/- (Rupees Thirty-Five Lakhs Only) to the Corporate Debtor. A promissory note of Rs.35.00 Lakhs along with 12% p.a. as collateral security was executed by the corporate debtor. As per the Article 3 of agreement, corporate debtor was under an obligation to procure material of Rs.20.00 Lakhs within a period of one year i.e. on or before 31.03.2019. The corporate debtor failed to procure the material which resulted in a breach of agreement and amounted to default.

4. It is stated in Part-IV of Form No.1, the total amount claimed to be in default is Rs. 42,35,000/- (Rupees Forty-Two Lakhs Thirty-Five Thousand Only) and the date of default is 01.04.2019. Copy of Demand Promissory Note dated 21.03.2018 executed by corporate debtor in favour of Financial Creditor (Annexure-A5), the Bodyshop agreement dated 21.03.2018 (Annexure A6), computation of debt (Annexure-A9) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor vide order dated 04.03.2020 and 03.12.2021 to show cause as to why this petition be not admitted.The affidavits of service were filed vide Diary Nos. 1971 dated 12.03.2020 and 00267/1 dated 14.01.2022. None appeared on behalf of the respondent-corporate debtor nor any reply was filed. Therefore, the respondent-corporate debtor proceeded *ex parte* vide order dated 17.03.2022 of this Bench. The written submissions were filed by the applicant vide diary No.00267/3 dated 21.10.2022.

6. We have heard the learned counsel for the petitioner and have also perused the record carefully.

7. 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 are no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."

8. The first issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 01.04.2019. The present petition was filed vide Diary No. 426 dated 16.01.2020 and re-filed vide Diay No.1203 dated 13.02.2020. Therefore, the present petition is filed within limitation.

9. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by as legal notice was sent by the financial creditor to the corporate debtor, and reply dated 01.07.2019 was received wherein the corporate debtor had undertaken to clear all the legitimate dues.Copy of demand promissory note dated 21.03.2018 executed by corporate debtor in favour of Financial Creditor (Annexure-A5), The Bodyshop Agreement dated 21.03.2018 (Annexure A6), computation of debt (Annexure-A9) are attached with the main petition. As per the financial records, it is evident that an amount of Rs. 42,35,000/- (Rupees Forty-Two Lakhs Thirty-Five Thousand Only) is still pending along with the interest up to 01.04.2019 which amounts to default.

10. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Romesh Chandra Sawhney, Registration No.IBBI/IPA-001/IP-P00274/2017-18/10518 has been proposed as Interim

Resolution Professional (IRP). The Law Research Associate of this Tribunal has checked the credentials of Mr. Romesh Chandra Sawhney, and disciplinary proceedings are found as 'registration revoke disciplinary status w.e.f 08.12.2020 and remarks as 'SCN disposed of vide DC order dated 8.12.2020 without any direction against IP'. In view of the above, from the list provided by Insolvency and Bankruptcy Board of India for the period July 1, 2022 to December, 31, 2022 , we appoint Mr. Rajan Sharma, RegistrationNo.IBBI/IPA-001/IP-P-02321/2021-2022/13548,Email:rajansharma2020@yahoo.com, Mobile No.9810448934, the Interim Resolution Professional with the following directions: -

i.) The term of appointment of Mr. Rajan Sharma shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order.

i.) 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 the inventory of assets of the Corporate Debtor;

ii.) 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 morals;

iii.) 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;

iv.) 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;

v.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital

Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. 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.

vi.) 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 the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

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

11. 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 and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

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 the 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 the corporate debtor under Section 33 as the case may be.

12. We direct the Financial Creditor to deposit a sum of ₹70,000/- (Rupees Seventy 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.

13. 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.

14. The petition is admitted accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

December 08 , 2022
SD/TB