IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.105/MB-IV/2021
Under Section 7 of the I&B Code, 2016

In the matter of:
Mahindra and Mahindra Financial Services Limited
[CIN: L65921MH1991PLC059642]
…Financial Creditor/Applicant
V/s
National Auto Wheels Private Limited
[CIN: U50300PN2010PTC137716]
...Corporate Debtor/Respondent

Order Dated: 13.12.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Vinay Kate, Advocate.
For the Respondent(s)	:	None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 105/MB-IV/2021 filed by Mahindra and Mahindra Financial Services Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code,

2016 (I&B Code) against National Auto Wheels Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Ms. Sushmita Garima, representative of the Financial Creditor vide its Power of Attorney dated 25.06.2019, claiming total default of Rs.1,62,46,996.62 (Rupees one crore sixty-two lakh forty-two thousand nine hundred ninety-six and sixty-two paise only) as on 19.12.2019.

3. The Date of Default as mentioned in the Petition is 17.09.2019. The Petition is filed on 31.12.2020. Date of NPA is 15.12.2019.

4. The working of Computation of Outstanding is as under:

Sr. No.	Particulars	Amount in Rs.
1.	Principal Outstanding	1,60,56,946.32
2.	Interest till date @ 11.75%	9,22,76.25
3.	Penal @ 6.25%	1,62,46,996.62
Total		1,62,46,996.62

5. The case of the Financial Creditor is as under:

a) The Corporate Debtor approached the Financial Creditor and applied for credit facility/loan. The Financial Creditor Sanctioned the loan vide sanction letter dated 28.04.2016 and 11.01.2017 respectively.

b) The Financial Creditor offered a loan of Rs.2,25,00,000/- (Rupees two crore twenty-five lakh only) with certain terms and conditions which were duly accepted by the Corporate Debtor.

c) Accordingly, Loan Agreement and other documents were duly executed on 29.04.2016 and 19.01.2017 by and between the Financial Creditor and Corporate Debtor.

d) Pursuant to terms and conditions of the Business Loan Agreement and amount of Rs.2,25,00,000/- (Rupees two crore twenty-five lakh only) was disbursed to the Corporate Debtor. Pursuant to various default, the loan account of the Corporate Debtor was classified as NPA on 15.12.2019.

e) Financial Creditor vide Sanction Letter dated 28.04.2016 & 11.07.2017 sanctioned Rs.1,00,00,000/- & Rs.1,25,00,000/- respectively. The total outstanding was to be paid on or before 60th day from each day of disbursal. Accordingly, Inventory Funding Agreements were executed on 29.04.2016 & 19.01.2017 along with Deed of Personal Guarantee and Demand Promissory Note.

f) The first date of disbursement for Rs.50,00,000/- & Rs.30,00,000/- is 25.07.2018 & last date of disbursement for Rs.15,00,000/- is 24.10.2019 under Agreement dated 28.04.2016 and the last payment of Rs.6,39,998/- was made by the Corporate Debtor on 06.11.2019.

g) The first date of disbursement for Rs.70,00,000/- & Rs.20,00,000/- is 17.10.2018 & last date of disbursement for Rs.50,00,000/- is 14.01.2019 under Agreement dated 19.01.2017 and the last payment of Rs.24,14,876/- was made by the Corporate Debtor on 02.04.2019.

6. The Financial Creditor has filed Statement of Accounts for period of 01.04.2019 to 19.12.2019, at pp 110-117 of the Petition. The Financial

Creditor has filed the Demand Promissory Note in favour of Financial Creditor for any amount of Rs.1,25,00,000/- (Rupees one crore twenty-five lakh only) which is at p.101 of the Petition.

7. The Financial Creditor has issued the Loan Recall Notice dated 14.01.2020 to the Corporate Debtor claiming total amount of Rs.71,96,996/- (Rupees seventy-one lakh ninety-sic thousand nine hundred ninety-six only) due as on 19.12.2019.

8. On 06.04.2021, the matter listed and the Financial Creditor was directed to issue Personal Notice upon the Corporate Debtor. The Notice was served upon the Corporate Debtor on 15.06.2021. thereafter, the matter was again listed on 30.09.2021 and the Court Notice was issued upon the Corporate Debtor to appear and file the reply in the matter. However, the Corporate Debtor has not appeared in the matter. Vide order dated 06.12.2021, the Financial Creditor was directed to take out substituted service by way of newspaper publication. The Corporate Debtor did not appear in the matter even after substituted service by way of paper publication on 03.01.2022. Hence, vide order dated 13.04.2022, the Corporate Debtor was set ex-parte in the matter.

Findings:

9. We have heard the arguments of the Learned Counsel for Financial Creditor and perused the records.

10. It is observed by the Bench that the Financial Creditor has provided Loan to the Corporate Debtor vide Sanction Letter dated 28.04.2016 and 11.01.2017. For this purpose, Inventory Fund Agreement dated

29.04.2016 entered between the Financial Creditor and the Corporate Debtor.

11. The Corporate Debtor has not filed its Affidavit in Reply. The Bench has given several opportunities to the Corporate Debtor to file the Reply in the matter. However, the Corporate Debtor chose not to file the Reply in the matter.

12. After perusal of the material on record, this Bench is of considered view that the there is no reason to deny the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor himself has admitted its liability.

13. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.

14. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.

15. The Applicant has proposed the name of Mr. Rajesh Kumar Mittal, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00083/2017-18/10224] as Interim Resolution Professional, to carry out the functions as mentioned under

I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 105/MB-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Mahindra and Mahindra Financial Services Limited, Financial Creditor/ Applicant against National Auto Wheels Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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 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 possession of the corporate debtor.

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

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

   a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
   b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order 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 I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.

VI. That this Bench appoints Mr. Rajesh Kumar Mittal, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00083/2017-18/10224], E-mail: csrajeshmittal@gmail.com, as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-	Sd/-
Manoj Kumar Dubey	Kishore Vemulapalli
Member (Technical)	Member (Judicial)
13.12.2022	