IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.924/MB-IV/2021
Under Section 7 of the I&B Code, 2016

In the matter of:
HDFC Bank Limited
[CIN: L65920MH1994PLC080618]
…Financial Creditor

V/s

Ritu Automobiles Private Limited
[CIN: U50500MH2010PTC201087]
…Corporate Debtor

Order Delivered on: 03.10.2021

Coram:

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

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Abdullah Qureshi, Advocate.

For the Respondent(s) :

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being CP(IB)No.924/MB-IV/2021 filed by HDFC Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Ritu

Automobiles Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Nadeem Ladji, Deputy Vice President of Financial Creditor vide its Board Resolution dated 18.01.2020, claiming total default amount as under:

Account Number	Facility	Principal Outstanding	Interest	Total Outstanding
02400450020017 & 0240094002011	Inventory Funding	15,64,58,834.2	2,06,70,305.86	17,71,29,140.06
82504037	Term Loan 1	3,51,41,125.37	87,24,621	4,38,65,746.37
82916371	Term Loan 2	6,89,49,072.02	4,58,09,347.01	11,47,58,419.03
	Total	**26,05,49,031.59**	**7,52,04,273.87**	**33,57,53,305.46**

3. The date of Default as mentioned in the Petition is 23.07.2019. The Petition is filed on 22.04.2021. The date of NPA is 21.10.2019.

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

a) The Corporate Debtor had approached the Financial Creditor and requested to grant financial facilities from time to time. Subsequently, the Financial Creditor had sanctioned the loan through various sanction letters dated 04.04.2012, 29,09,2012, 19.06.2013, 05.08.2014, 07.07.2015, 31.03.2016, 27.05.2016, 01.02.2017, 25.10.2017, 04.06.2018, 23.07.2018 and 06.06.2019.

b) The Financial Creditor had also entered into Loan Agreement with the Corporate Debtor:

i. Loan Agreement dated 02.03.2012;

ii. Supplemental and Amendatory Loan agreement dated 12.10.2012;

iii. Supplemental and Amendatory Loan agreement dated 20.07.2012;

iv. Loan agreement dated 12.04.2016;

v. Supplemental and Amendatory Loan agreement dated 31.05.2016;

vi. Supplemental and Amendatory Loan agreement dated 22.02.2017;

vii. Supplemental and Amendatory Loan agreement dated 22.02.2017 for additional facility;

viii. Term Loan Agreement dated 23.02.2017;

ix. Supplemental and Amendatory Loan agreement dated 27.10.2017;

x. Supplemental and Amendatory Loan agreement dated 27.10.2017;

xi. Term Loan Agreement dated 30.10.2017.

c) The Financial Creditor had entered into Memorandum relating to Charge of Fixed Deposit dated 21.04.2016 and Deed of Mortgage dated 08.03.2018 and Letter of Hypothecation of Stocks and Book Debts dated 21.07.2015 and Supplemental Letter of Hypothecation of Stocks and Books Debts dated 12.04.2016, 31.05.2016 and 27.02.2017 with the Corporate Debtor.

d) The Corporate Debtor had issued various Demand Promissory Notes dated 12.10.2012, 21.07.2015, 16.04.2016, 31.05.2016, 23.02.2017, 30.10.2017 and also Letter of Continuity of Demand Promissory Note dated 12.10.2012, 21.07.2015, 16.04.2016, 31.05.2016, 23.02.2017.

5. The Financial Creditor has issued Loan Recall Notice dated 05.11.2019 to the Corporate Debtor claiming a total sum of Rs.28,82,74,214.86 (Rupees twenty-eight crore eighty-two lakh seventy-four thousand two hundred fourteen and eighty-six paise only). The Corporate Debtor had replied to the notice vide its reply dated 11.11.2019 admitting their liability and assured that payment will be made at the earliest. Further the Financial Creditor has issued a Demand Notice dated 31.08.2020 under section 13(2) of the SARFAESI Act, 2002 upon the Corporate Debtor.

6. The Financial Creditor has filed the Statement of Account as on 01.04.2021 and Certificate under section 2A (A) of the Banker's Book of Evidence Act, 1981 which is attached at Exhibit 'FF' at pp 218-237 of the Petition.

7. The Corporate Debtor has not filed its Reply in the matter. The Court Notice dated 21.10.2021 was served upon the Corporate Debtor on 03.11.2021. The Financial Creditor has made newspaper publication on 03.03.2022 clearly intimating the next date of hearing to the Corporate Debtor; one in 'Times of India' (English) and another in 'Navshakti' (Marathi). The matter was listed on 24.11.2021, 07.01.2022, 28.02.2022 and 12.04.2022. Despite sufficient service upon the Corporate Debtor, the Corporate Debtor chose not appear and file the reply in the matter. Hence, vide order dated 12.04.2022 the Corporate Debtor set ex-parte

and the matter was finally heard and made Reserved For Orders on 02.08.2022.

Findings:

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

9. We have prudently gone through the pleadings available on record. The Financial Creditor has granted vide various Sanction Letters, Financial Facilities from time to time to the Corporate Debtor. For this purpose, various Loan Agreements were entered into between the Financial Creditor and the Corporate Debtor.

10. It is observed by the Bench that despite sufficient service upon the Corporate Debtor, the Corporate Debtor has not appeared in the matter. Further, the Corporate Debtor has admitted its liability in its reply dated 11.11.2019 to the Loan Recall Notice issued by the Financial Creditor. The said reply is attached as Exhibit "JJ" at p.253 of the Petition. considering this date of 11.11.2019, the limitation criteria is fulfilled.

11. From the above observation, this Bench is of view that the Corporate Debtor failed to make payment to the Financial Creditor and the debt is due and payable to the Financial Creditor by the Corporate Debtor.

12. 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.

13. 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 and the application deserves to be admitted.

14. The Applicant has proposed the name of Mr. Rajeev Mannadiar, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00212/2017-2018/10412] 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

15. This Application being C.P. (IB) No.924/NCLT/MB/C-IV/2021 filed by HDFC Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Ritu Automobiles Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) 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. Rajeev Mannadiar, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00212/2017-2018/10412] 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/-
Manoj Kumar Dubey
Member (Technical)
03.10.2022

Sd/-
Kishore Vemulapalli
Member (Judicial)