IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

CP (IB) No. 892/MB-VI/2023

[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:

ASHOK INVESTORS TRUST LIMITED

[CIN- U67120MH1991PLC162315]

Registered Office: 701, The Capital G-Block Bandra Kurla Complex

Behind ICICI Bank, Plot-C70, Bandra (East)

Mumbai -400051.

…Financial Creditor

V/s

OSG AUTO CARRIERS PRIVATE LIMITED

[CIN- U63000MH2012PTC232343]

Registered Office: 1203, Plot No.39/2, Sector 30A, Vashi

Navi Mumbai, Maharashtra, 400705

...Corporate Debtor

Order Reserved On: 12.10.2023

Pronounced On: 17.10.2023

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances:

Financial Creditor : Adv. Yahya Batatawala

Corporate Debtor : Adv. Nausher Kohli

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. **Background**

1.1 This Application bearing C.P. (IB) No. 892/MB/C-VI/2023 was filed by Ashok Investors Trust Limited, the Financial Creditor (FC), on 12.08.2023 under section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of OSG Auto Carriers Private Limited, the Corporate Debtor (CD)**.** The debt involved in the present Application arises from unsecured loan provided to the CD by the FC for business purposes amounting to Rs.1,00,00,000/- under an agreement executed between the parties on 24.01.2023. According to the FC, since the CD failed to pay, it issued Demand Notice for payment of Rs.1,05,52,329/- including interest and on failure of the CD to repay the same, this Application has been filed by the FC for initiation of CIRP of the CD.

1.2 As per Part IV of the Application, total amount of Rs.1,05,52,329/- is due from the CD to the FC including interest @12% p.a. on principal amount of Rs.1,00,00,000/- and the date of default is shown as 30.06.2023.

2 Contentions of FC

2.1 The FC has submitted that loan agreement dated 24.01.2023 was entered into by the FC and the CD and that there was no security offered by the CD for disbursement of loan to it. The interest agreed upon was 12% p.a. from the date of execution of the loan agreement and payable compulsorily at the end of every quarter.

2.2 The FC has annexed a copy of the Bank statement evidencing the disbursement of Rs. 1,00,00,000/- on 24.01.2023 to the account of CD. Additionally, the CD has confirmed its liability of the outstanding amount payable by it in the book of account of the FC on 01.04.2023 and signed the same. The FC has also submitted the record of default with the Information Utility (NeSL Certificate), indicating the total outstanding amount of Rs.1,05,52,329/- including interest as on 31.08.2023. Ledger Account of the CD with the FC is also annexed to the Application which reflects the outstanding amount of Rs. 1,05,19,452/-. Hence, the FC prays for initiating CIRP in respect of the CD.

3 Contentions of CD

3.1 The CD's contention is not one of denial of debt and liability and the default but of dispute regarding maintainability of the Application in general. In its Affidavit in Reply, the CD has stated that the Application is filed by suppressing material facts and making false statements. It has been pleaded that due to COVID-19 pandemic and global recession, the CD had financial issues and it approached the FC for a short-term loan. According to the CD, it was not in a position immediately to repay the loan amount, due to certain financial issues. It even approached the FC requesting for time, around three years, to make payment of debt. On such request, the FC had verbally agreed not to take recourse to any legal action. According to the CD, the FC's conduct in filing this Application, in spite of their request for additional time for repayment after making some profit in their business, indicates malafide intentions of the FC.

3.2 It is further contended by the CD that no purpose would be served if the CD is pushed into CIRP, as being a reputed company, it is making all efforts to face financial difficulties and would get back to its feet soon.

4 Analysis & Findings

4.1 The loan agreement dated 24.01.2023 with the FC is not denied by the CD. The bank statement submitted by the FC evidences disbursement of loan to the CD, in respect of which, the CD defaulted in its obligation to pay the interest for the very 1st quarter, which was due on 01.04.2023. Later, it did not pay the interest accrued for the 2nd installment also, which was due on 30.06.2023. There is record revealing issuance of Demand Notice by FC dated 10.07.2023, for payment of loan of Rs.1,05,52,329/- including interest for the first two quarters as per their interest calculation and ledger account for the period from 01.04.2023 to 30.06.2023.

4.2 The CD must have suffered financial loss due to the pandemic or for other reasons, which does not absolve its liability to repay the loan obtained from the FC. Filing this Application in spite of any verbal request or understanding between the parties not to proceed under law to satisfy the debt due to the FC, is no reason for us to reject this Application. Financial debt as defined under Section 5(8) of the IBC and default of the said debt by the CD stand proved. When the existence of debt, liability and default by the CD due to the FC is ascertained under Section 7(4) of the IBC, we have no other option but to admit the Application.

4.3 In view of the above discussions, we find that there exists debt of more than one crore rupees in terms of Section 4 of the IBC and the default towards payment of the debt by the CD has occurred and has been duly admitted by the CD itself in its Affidavit in Reply.

4.4 Considering the above, we are of the view that in such circumstances, it is imperative that CIRP be initiated in respect of the CD. We, therefore, **admit** the present application under Section 7 of the IBC to initiate the CIRP in the matter of the CD.

4.5 The Applicant has proposed the name of Ms. Neha Jain Nemani, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P-02465/2021-2022/13927 and Email- nehavkjain@gmail.com as Interim Resolution Professional (IRP), to carry out the functions as mentioned under the IBC as per her declaration in Form 2 dated 26.08.2021 stating that no disciplinary proceedings are pending against her. Thus, this C.P. satisfies all the necessary requirements for admission.

ORDER

This Application being **C.P. (IB) No. 892/NCLT/MB/C-VI/2023** filed under Section 7 of the IBC by the FC for initiating CIRP in respect of OSG Auto-Carriers Private Limited, the CD, is **Admitted.**

We further declare moratorium under Section 14 of the IBC, with consequential directions as follows:

I. We prohibit-

a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

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

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 or for the liquidation of the CD under section 33 of the IBC, as the case may be.

IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.

V. That this Bench hereby appoints Ms. Neha Jain Nemani, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P-02465/2021-2022/13927 and Email- nehavkjain@gmail.com as Interim Resolution Professional (IRP), the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.

IX. The Registry is directed to immediately communicate this order to the FC, the CD and the IRP by way of email and WhatsApp, not later than two days from the date of this Order.

X. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-	**Sd/-**
SANJIV DUTT	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

// Akshata //