BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
CP (IB) NO. 2999 OF 2019

APPLICATION BY FINANCIAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

(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
PPG Asian Paints Private Limited
6- Ashanti Nagar, Santacruz (East)
Mumabi-400055, Maharashtra
……**Financial Creditor**

Vs

Shakti Motors Automobiles Private Limited.
Unit No.4, ground floor, banking complex 02, Plot No. 9/10, Sector 19 A, Vashi, Navi Mumbai, Maharashtra-400705
…….Corporate Debtor

Order delivered on: 03.02.2021

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

For the Applicant: Mr. Ashish Pyashi

Per: Shri Shyam Babu Gautam, Member

ORDER

1. This Company Petition is filed by PPG Asian Paints Private Limited, (hereinafter called "Financial Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Shakti Motors Automobiles Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the financial Creditor in view of the invoices raised by them upon the Corporate Debtor, by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code (hereinafter called the "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The applicant is a private limited company, registered and incorporated under the Provisions of Indian Companies Act, 1956 and subsisting under the Companies Act, 2013. That applicant is carrying on its business of manufacturing, selling, distribution of automotive, industrial, marine paints and other related products in India.

3. The corporate debtor is a private limited company, registered and incorporated under the Provisions of the Companies Act, 2013, engaged in the business of automotive sales, servicing and repair work etc. and in the course of its business required substantial quantities of automotive paints and refinish coating products.

4. The applicant submits that in the year 2016, the corporate debtor approached the applicant for financial contribution, for the purpose of sales promotions and procurement of specialized painting equipment's for development and up-gradation of automotive painting facilities.

5. In view of the same, a "Body Shop Agreement" (hereinafter referred to as 'Agreement') was executed between the applicant and the corporate debtor on 22.03.2016, which came into effect from 01.03.2016. that in terms of the said agreement, a financial contribution to the tune of Rs. 22,50,000/- was made by the applicant to the corporate debtor. The applicant disbursed the amount of Rs. 22,50,000/- along with service tax to the corporate debtor on 26.02.2016.

6. The purposes and the nature of financial contribution made by the applicant to the corporate debtor, as a financial debt was duly recorded under clause 4 and clause 5 of the agreement. Further, the obligations of the parties as well security given by the corporate debtor to the applicant, qua the financial contribution made was duly recorded under Clause 5 of the agreement. It is noteworthy that the corporate debtor issued a demand promissory note for an amount of Rs. 22,50,000/- along with interest @12% p.a. as a collateral security to the applicant, which clearly demonstrates that the amount of Rs. 22,52,000/- given by the applicant to the corporate debtor was a financial debt in terms of Section 5(8) of Insolvency and Bankruptcy Code, 2016.

7. The applicant further submits that at this juncture, in the instance case there were two separate components in the agreement i.e. financial contribution for an amount of Rs. 22,50,000/- and annual procurement schedule for 4 year to be honoured by the corporate debtor. In terms of Clause 3 sub clause (b) of the said agreement, it was agreed between the parties that the corporate debtor will purchase/procure products of Rs. 20 Lakhs on an annual basis for 4 years amounting to Rs. 80 lakhs. However, the corporate debtor defaulted in complying with its obligation. It is not out of place to mention herein that as agreed between the parties, the corporate debtor failed to procure any products from the applicant.

8. In view of the aforesaid defaults committed by the corporate debtor i.e. to perform its obligation in terms of agreement dated 22.03.2016, the applicant herein issued legal notices dated 11.01.2019 and 31.05.2019 to the corporate debtor seeking payment of amount of Rs. 35,55,930/- (Rupees Thirty Five Lakhs Fifty Thousand Nine Hundred and Thirty Rupees only) i.e. (Rs. 22,50,000/- for principal amount + Rs. 13,05,930/- for interest amount calculated @ 12% p.a. + GST) which had become due and payable.

9. The corporate debtor has till date failed to make payment to the applicant towards satisfaction of the unpaid financial debt. The amount as disbursed by the applicant to the corporate debtor to the tune of Rs. 22,50,000/- falls within the ambit of the definition of 'financial debt' as defined under Section 5(8) of the IBC, particularly section 5(8)(f) since the amount raised therein had the commercial effect of borrowing.

10. In spite of the above, the Corporate Debtor has failed to repay the outstanding amounts due to the Applicant and hence, the Applicant is constrained to file the present Application for triggering Corporate Insolvency Resolution Process of the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016. Since the Registered office of the Corporate Debtor is situated in Mumbai, this Hon'ble Tribunal has territorial jurisdiction to entertain the present Application.

11. The matter has been listed from time to time on board. Ample opportunity was given to the Corporate Debtor to file its reply. Not only the Corporate Debtor failed to file a reply but also failed to make

representation before this Bench. Therefore, the Corporate Debtor was set ex-parte vide an order of this Bench dated 05.12.2019. Later the constitution of the Bench was changed and the Corporate Debtor again was given an opportunity to be present before this Bench and make representation if any on their behalf and the corporate debtor did not chose to appear. Heard the counsel appearing for the Financial Creditor and perused the documents submitted by him. The counsel for the Financial Creditor successfully demonstrated and proved the existence of debt and default. Financial Creditor also mentioned the name Mr. Mukesh Kumar Gupta as IRP and enclosed the consent letter given by the proposed IRP in Form-2. The debt is within limitation. Thus, the Company Petition satisfies all the requirements for admission. Since the Corporate Debtor remained ex-parte even without filing any reply, the claim of the applicant remained unchallenged. This Tribunal upon considering the arguments of the petitioner and the documents, pass the following:

ORDER

(a) The above Company Petition No. (IB) -2999(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Shakti Motors Automobiles Private Limited.

(b) This Bench hereby appoints **Mr. Mukesh Kumar Gupta** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00207/2017-18/10407 having office at C-124, Ground Floor, Lajpat nagar-1, new Delhi- 110024 , as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.

(c) The Financial Creditor shall deposit an amount of Rs.1 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

(d) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(f) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(g) That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

(j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/- **Sd/-**

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

H.V. SUBBA RAO
MEMBER (JUDICIAL)