

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

CP (IB) No. 426/Chd/HP/2019

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

State Bank of India

Head Office at:

Madame Cama Road
Nariman Point
Mumbai-400021

Branch Office at:

Stressed Asset Management Branch
Local Head Office
Madhya Marg
Sector 17A
Chandigarh-160017

....Petitioner-Financial Creditor

Vs.

Tanishka Automotives Pvt. Ltd.

Corporate Guarantor to the principal borrower
M/s Magma Autolinks Pvt. Ltd.

Regd. Office at:

Village Basdhera
Post Office Basdhera
Tehsil UNA, UNA-174315
Himachal Pradesh

Also at:

VPO Tharu
Near New Prem Petrol Pump
Tehsil Nagrota Bagwan
Distt. Kangra
Himachal Pradesh-176065
CIN No: U50500HP2014PTC000632

...Respondent-Corporate Debtor

Judgment delivered on: 23.12.2022

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

Present:

For the Petitioner-Financial Creditor : Mr. Parth Tandon, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 09.08.2021.

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **State Bank of India** (hereinafter referred to as 'Petitioner/Financial Creditor') through its Assistant General Manager Mr. Surjeet Kaushal, 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 **Tanishka Automotives Pvt. Ltd.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Surjeet Kaushal, with the affidavit verifying the contents of the application appended thereto (Page 17-18).

2. The Corporate Debtor is stated to be incorporated on 08.01.2014. The company having its registered Village Basdhera, Post Office Basdhera, Tehsil UNA, 174315, Himachal Pradesh and also, at VPO Tharu Near New Prem Petrol Pump Tehsil Nagrota Bagwan Distt Kangra. H.P (176056). Therefore, the

jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is stated to be annexed as Annexure-A2 of the petition.

3. The brief facts of the case are that on 04.03.2016 the loan application form was submitted M/s Magma Autolinks Pvt. Ltd. (borrower). The corporate guarantor is one of the associates/group of the borrower. On 22.03.2016, the financial creditor executed SME Market segment advances to the borrower and sanctioned the credit facilities. It was also stated that the corporate guarantor will extend the corporate guarantee of its company in favour of the borrower to the financial creditor. After considering the request of the borrower for sanctioning/renewal of working capital limit/term loan limit at existing/enhanced levels vide loan application dated 04.03.2016, the financial creditor sanctioned a credit facility of Rs.37.75 crores. The corporate guarantor extended the corporate guarantee of its company in favour of the borrower to the financial creditor. On 27.02.2018, guarantee agreement was executed by corporate guarantor and agreed that the guarantors would be the principal debtors jointly with borrowers and accordingly, the guarantors shall not be entitled to the rights conferred on the guarantors under Sections 131, 133, 134, 135, 139, 140 & 141 of the Indian Contract Act, 1872. On 27.02.2018 notice under Section 13(2) of SARFAESI Act, 2002 was sent by financial creditor to borrower, directors/guarantors, corporate guarantor stating the outstanding liabilities due to the bank of Rs.36,39,24,582/- as on 26.02.2018. On 13.09.2018, petition filed by the M/s Magma Autolinks Pvt. Ltd. (Borrower) under Section 10 of the IBC, 2016, was admitted and moratorium in terms of Section 14(1) of the Code was declared.

4. It is stated in Part-IV of Form No.1, the total amount claimed to be in default is Rs. 38,54,25,304.10 (Rupees Thirty Eight Crores Fifty Four Lakhs Twenty Five

Thousand Three Hundred and Four Ten Paise Only) and the date of default is 31.12.2017 i.e. date on which the account of corporate debtor was declared Non-Performing Asset. Copy of Balance-sheet as on 31.03.2016 (Annexure-A3), working sheet regarding computation of amount and days of default (Annexure-A5), Certificates of Registration of Charges issued by ROC along with search report dated 16.03.2016 along with status report in respect of search having been conducted from sub-Registrar by Samir Rohit & Associates (Annexure-A6), Loan application form dated 04.03.2016 submitted by borrower to the financial creditor (Annexure-A7), SME Market Segment executed by financial creditor in favour of borrower, sanction letter dated 23.03.2016 (Annexure-A9), Board Resolution dated 23.03.2016 (Annexure-A10 & A11), Guarantee Agreement dated 23.03.2016 (Annexure-A12), CIBIL report (Annexure A-14) and Statement of accounts (Annexure-A15) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor vide order dated 04.09.2019 and 05.11.2019 to show cause as to why this petition be not admitted. The affidavits of service were filed vide Diary Nos. 00672/1 dated 06.04.2021, 6103 dated 04.11.2019, and 175 dated 08.01.2020. 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 09.08.2021 of this Bench. The short written submissions were filed by the applicant vide Diary No.00672/3 dated 19.07.2022.

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 31.12.2017 i.e. date on which the account of the corporate debtor was declared Non-Performing Asset. The present petition was filed vide Diary No. 847 dated 19.02.2019, refiled vide Dairy No. 2255 dated 03.05.2019 and again refiled vide Dairy No. 3712 dated 29.07.2019. 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 documents:- balance-sheet as on 31.03.2016 (Annexure-A3), Certificates of Registration of Charges issued by ROC along with search report dated 16.03.2016 along with status report in respect of search having been conducted from sub-Registrar by Samir Rohit & Associates (Annexure-A6), Loan application form dated 04.03.2016 submitted by borrower to the financial creditor (Annexure-A7), SME Market Segment executed by financial creditor in favour of borrower, sanction letter dated 23.03.2016 (Annexure-A9), Board Resolution dated 23.03.2016 (Annexure-A10 & A11), Guarantee Agreement dated 23.03.2016 (Annexure-A12), CIBIL report (Annexure A-14) and Statement of accounts (Annexure-A15) are attached with the main petition. As per the financial records, it is evident that an amount of Rs. 38,54,25,304.10 (Rupees Thirty Eight Crores Fifty Four Lakhs Twenty Five Thousand Three Hundred and Four Ten Paise Only) is still pending including interest up to 31.01.2019 which amounts to

default. It is deposed by way of affidavit filed vide Dairy No.00672/4 dated 18.11.2022 that no recovery has been made from the principal borrower i.e. M/s Magma Autolinks Pvt. Ltd.

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, Ms. Ritu Rastogi, Registration No.IBBI/IPA-001/IP-P00204/2017-18/10393 has been proposed as Interim Resolution Professional (IRP). The written communication and Form-B (Authorisation for assignment) had been filed vide Diary No. 00672/6 dated 01.12.2022. The Law Research Associate of this Tribunal checked the credentials of Ms. Ritu Rastogi, and no disciplinary proceedings are pending against her. In view of the above, we appoint Ms. Ritu Rastogi, Registration No. IBBI/IPA-001/IP-P00204/2017-18/10393 ,Email:ritu_rastogi1@yahoo.co.in, Mobile No.9810037450, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Ms. Ritu Rastogi shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) 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;

- iii.) 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;
- iv.) 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;
- v.) 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;

- vi.) 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.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/ institutions/ others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.
- viii.) 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

- ix.) 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 ₹2,00,000/- (Rupees Two Lakhs 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)

December 23 , 2022

SD /TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)