

**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-361 (PB)/2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

VOLKSWAGEN FINANCE PVT. LTD.

APPLICANT/FINANCIAL CREDITOR

Vs.

EVO GREEN TRADING PVT. LTD.

RESPONDENT/CORPORATE DEBTOR

Order Delivered on:- 10.02.2022

CORAM:

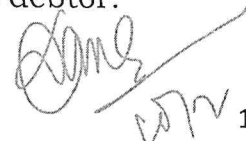
SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: Sh. DHARMINDER SINGH, MEMBER, (J)

1. The instant application has been filed by Volkswagen Finance Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Evo Green Trading Pvt. Ltd., referred to as the corporate debtor.



2. The applicant company Volkswagen Finance Pvt. Ltd., is a company registered under the Companies Act, 1956 on 16.01.2009 with the registered office situated at 3rd floor, wing-A, silver utopia cardinal gracious road, chakala, andheri Mumbai-400099. Mr. Abhishek Chauhan, duly authorized on behalf of applicant vide Board Resolution dated 29.05.2019, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the Code. A copy of the Board Resolution dated 29.05.2019 has been placed on record.

3. The Respondent Company M/s. Evo Green Trading Pvt. Ltd. (CIN No. U74140DL2008PTC182908) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 05.09.2008 having its registered office situated at 1/5, W.H.S.Kirti Nagar, New Delhi-110015. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

4. Precisely the case of the applicants is that the corporate debtor had availed financial facility from the financial creditor on 30.07.201 and the corporate debtor has agreed to repay the amount wherein the corporate debtor has defaulted in payment of the said loan.

Therefore, as per part IV of the application it is claimed that as on

16.12.2019 a sum of Rs. 1,00,00,500.00/- is due and payable by the respondent company. The applicant has placed following documents on record to prove its claim:

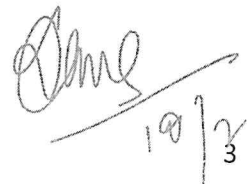
i. Copy of loan application form and loan agreement dated 30.07.2015.

ii. Copy of demand notice dated 18.12.2019.

5. The respondent corporate debtor remained absent despite service. Henceforth, the said matter has been processed ex-parte vide order dated 8.02.2022.

6. Needless to say, that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs.1 Lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

7. In the facts it is seen that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that respondent has committed default in repayment of the outstanding financial debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in



the same. the evidence produced by the applicant company remained un-rebutted.

8. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

9. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

10. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Kamal Agarwal, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/P00868/2017-18/11466 resident of 151 3rd floor ambica vihar paschim, vihar New Delhi-110087 with email - id advocate.kamal.aggl@gmail.com. Mr. Kamal Agarwal has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Kamal Agarwal as per the requirement of the IBBI Regulations. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

11. Consequently, Mr. Kamal Agarwal, having registration number IBBI/IPA-001/P00868/2017-18/11466 having email - id advocate.kamal.aggl@gmail.com is appointed as an Interim Resolution Professional for corporate debtor.

12. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

13. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Kamal Agarwal to meet out the expenses 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 needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.

14. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows

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from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(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 the possession of the corporate debtor.”*

15. However, It is made clear that the provisions of moratorium shall not apply to transactions, which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f.



06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

16. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.

17. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

18. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution

Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible, but not later than seven days from today.

SD/-

(MS. SUMITA PURKAYASTHA)
MEMBER (T)

SD/-

(DHARMINDER SINGH)
MEMBER (J)