

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB) 376(ND)/2017

In the matter of:

Daimler Financial Services Pvt. Ltd

..... Petitioner

V/s

Avvani Projects Pvt. Ltd.

..... Respondents

SECTION: U/s 7 of IBC, 2016

Order delivered on: 08.03.2018

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI.R.VARADAHRAJAN, HON'BLE MEMBER (J)

For the Petitioner: Mr. Ritesh Khare, Advocate
Mr. Rahul Lal Akhriya, Advocate
Mr. Raj Dev Singh, Advocate

For the Respondent: None

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The present petition has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the

Respondent/Corporate Debtor on grounds of their inability to liquidate the financial debt.

2. As per averments made in the petition, the petitioner is a Non Banking Financial Company registered with the Reserve Bank of India Act 1934 and incorporated under the Companies Act 1956. It is engaged in the business of providing financial assistance to its borrowers in purchasing/ leasing Mercedes- Benz cars and Bharat Benz Commercial vehicles. It is submitted that the respondent/ Corporate Debtor approached the financial creditor for availing financial assistance for purchase of a Mercedes Benz Car. A loan of Rupees 17 Lakhs was granted with which the Corporate Debtor purchased Mercedes Benz GLA 200 CDI Sports, bearing registration no. UK 07 BP 6087.

3. To enable the Corporate Debtor avail the aforesaid loan facility, a loan agreement dated 07.01.2016 was executed by the Corporate debtor, agreeing to pay the loan along with the interest at the rate of 10.01% per annum which amounted to Rs. 21,68,040/- as the Contract Value. This amount was required to be repaid in 60 Equated Monthly Instalments of Rs. 36,134/- wef 07.02.2016 to 07.01.2021. It is submitted that the Corporate Debtor failed to adhere to the repayment Schedule. Despite repeated requests and reminders, including a notice u/s 271(2) of the Companies Act, the Corporate Debtor failed to liquidate its outstanding liability. The financial Creditor submits that as on 10.06.2017 when they invoked the Early Termination Quotation, the Corporate Debtor was liable to pay Rs. 20,51,132.33/- .

4. As per the Statement of Account maintained by the Financial Creditor during the course of its normal business filed along with the petition, the liability of the Corporate Debtor stands at Rs. 20,51,132.33 which includes the outstanding liability of Rs. 6,42,886.28 receivable from the Corporate Debtor till May, 2017.

5. The Respondent/Corporate Debtor, despite being served vide various modes, including through the process of the Bench, failed to put in any appearance to resist the Petitioner's prayer for initiating the Insolvency resolution process. They were accordingly proceeded ex parte.

6. The Petition has been filed in the required format through its duly authorised signatory and has proposed the name of Mr. Vineet Aggarwal as the IRP whose Registration No. with the IBBI is IBBI/IPA-001/IP- 00475/2017-2018/10818 as the IRP. His letter of consent along with the Certificate of eligibility in the required format is on record.

7. In the light of the averments, there is clearly a default in repayment of a financial debt. As per Section 3(11) of the Code, "debt" is defined as a liability or obligation in respect of a claim which is due from any person. Further, a financial debt has been clarified to mean and include money borrowed against payment of interest.

Given the facts and circumstances and the Statement of Account filed, the outstanding debt due being Rs. 20,51,132.33, the Petitioner's prayer merits

consideration. Accordingly, the petition is Admitted. A moratorium in terms of Section 14 of the Code is imposed forthwith in terms of the following:-

“(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 Securitisation 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.

Further

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.



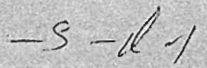
(3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

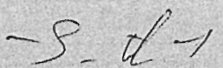
(4) *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”*

8. The IRP proposed by the Petitioner is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15,17, 18, 20 and 21 of the Code and file his report within 30 days before this Bench.

9. Copy of the order be communicated to the parties.

8. Renotify this case for report of the IRP on. 11th April, 2018.


(R. Varadharajan)
Member (J)


(Ina Malhotra)
Member (J)