

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CP (IB) 1802/MB/2017

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

M/s. Daimler Financial Services India Private  
Limited

..... Financial Creditor  
(Petitioner / Applicant)

v.

M/s. Natconn Engineering Private Limited

..... Corporate Debtor  
(Respondent)

Order Pronounced on: 03.10.2018

**Coram :**

Hon'ble M. K. Shrawat, Member (J)

**For the Petitioner :**

Ms. Divya U. T., Advocate i/b. King Stubb & Kasiva, Advocates & Attorneys –  
Advocates for the Financial Creditor / Petitioner.

**For the Respondent :**

None Present.

*Per: M. K. Shrawat, Member (J)*

**ORDER**

1. The Petitioner/Applicant viz. 'M/s. Daimler Financial Services India Private Limited' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 26.12.2017 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. Further under the head "Particulars of Corporate Debtor" the description of the debtor is stated as 'M/s. Natconn Engineering Private Limited' (hereinafter as **Debtor**) having Registered office at, 'Plot No. 161, Unit Ni. N1, Sector - 28, Vashi, Navi Mumbai, Maharashtra – 400703'.

3. In the requisite Form, under the head “Particulars of Financial Debt” the total amount of Debt is stated as ₹ 34,00,000/- and the total amount of Debt in default is stated as ₹ 29,29,149/- alongwith Interest at the rate of 9.42 % p.a.

#### **4. Brief Background :**

- 4.1. The Financial Creditor is an Incorporated Company engaged in the business of Non-Banking Financial Services.
- 4.2. One of the Director of the Debtor viz. Mr. Vijayshankar Jha, had approached the Financial Creditor for obtaining a loan to purchase a Car in the name of the Debtor. Consequently, the Debtor in capacity of the Borrower and Mr. Jha as Co-Borrower had entered into Loan – cum – Hypothecation Agreement (hereinafter as **Loan Agreement**) dated 28.03.2013.
- 4.3. Pursuant to the Loan Agreement the Debtor was supposed to repay the availed loan amount in 36 EMIs starting from 30.03.2013 to 30.03.2016 however, since 30.03.2014 the Debtor has failed to make the re-payment of loan. The borrowed money was utilised to purchase a Mercedes Benz Car.
- 4.4. Since, the payment was outstanding the Financial Creditor has sent a Loan Recall Notice dated 06.05.2014 and despite of the receipt of the said Notice the Debtor has neglected in making the payment.
- 4.5. The Financial Creditor has thus issued a Demand – cum – Insolvency Notice dated 17.08.2017 and as the payment was not forthcoming the Financial Creditor has preferred this Petition / Application invoking the provisions of S. 7 of the Code.

#### **5. Submissions by the Financial Creditor :**

- 5.1. The Learned Advocate for the Financial Creditor has submitted that pursuant to the request of the Debtor the Financial Creditor has duly sanctioned and disbursed the loan amount to the Debtor and the Debtor is supposed to repay in 36 equal EMIs of ₹ 1,08,755/-. To this effect a Loan Agreement dated 28.03.2013 had been entered between the Financial Creditor and the Debtor. Copy of the Loan Agreement is annexed with the Petition / Application.
- 5.2. It is further submitted that the Debtor has constantly defaulted in making the payment of the availed loan amount since 30.03.2014 and therefore the Financial Creditor had sent a Loan Recall Notice dated 06.05.2014 to the Debtor. The said

notice was duly received by the Debtor however the Debtor has not made the payment. Copy of the said Notice is annexed with the Petition / Application.

5.3. It is further submitted that, as the Debtor was not making the payment the Financial Creditor was constrained to terminate the Loan Agreement and consequently vide a Loan Recall Notice, the Financial Creditor, has recalled the total Loan.

5.4. It is also submitted that the Financial Creditor has also issued an Insolvency Demand Notice dated 17.08.2017 demanding the outstanding amount to the Debtor. The said notice was also duly served upon the Debtor however the Debtor neither had replied to the notice nor repaid the outstanding amount. The copy of the said notice is annexed with the Petition / Application with proof of service.

5.5. It is also submitted that the Financial Creditor has also tried to serve the Petition / Application along with hearing notice on the Registered Address of the Debtor Company however, the same was returned marked as "Addressee Left". To this effect an **Affidavit of Service** is also placed on record. It is also submitted that the master data of the Debtor available with the RoC reflects the same address. Copy of the master data is also annexed with the Petition / Application.

5.6. In light of above submissions the Learned Advocate has vehemently argued that since the payment is outstanding and the Debtor has defaulted and neglected in making the payment this Petition / Application may be Admitted for the commencement of the CIRP.

## **6. Findings :**

6.1. I have gone through the facts and circumstances of the case and also through the submissions made by the Learned Advocate for the Financial Creditor.

6.2. It is noticed that admittedly the Debtor has availed the Loan Facilities from the Financial Creditor however, the Debtor has defaulted in making the payment. Number of notices issued and also number of opportunities granted to the Debtor by this Bench of NCLT but all went in vain. Loan defaulters has thus also committed the default of non-appearance.

6.3. It is further noticed that, there is nothing on record to prove that the Debtor has not defaulted in making the payment. Further there is **no dispute** about the existence of default.

- 6.4. It is further noticed that despite number of notices and reminders the Debtor has failed to make the payment. It is also noticed that the Financial Creditor has made due efforts to serve the Petition / Application to the Debtor but the Debtor has left its registered office. The RoC extract does not show any change in Registered Address of the Debtor Company.
- 6.5. Hence, keeping the facts and submissions in mind this Bench has come to conclusion that, the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. Further, admittedly there is a “Default” as defined under section 3 (12) of the Code on the part of the Corporate Debtor.
- 6.6. On the basis of the evidences on record and statement of account the Financial Creditor has established that the loan was sanctioned and duly disbursed to the Corporate Debtor but there is non-payment of the Balance Debt on the part of the Corporate Debtor.
- 6.7. As a consequence, keeping admitted facts in mind that the Financial Creditor had not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Financial Creditor we are of the conscientious view that this Petition deserves ‘**Admission**’.
- 6.8. The Financial Creditor has proposed the name of Insolvency Professional. The consent form of the proposed IRP reveals that there is no disciplinary proceeding pending against the proposed IP. Consequently, this Bench hereby appoints **Mr. Sekar Ananthanarayan** having address at **B – 305, Sai Jyoti Lalubhai Park West, Vile Parle (W), Mumbai, Maharashtra - 400056**, having mail id: **a.sekar.cs@gmail.com** and having Registration id as **IBBI/IPA-003/IP-N00052/2017-18/10492** as Interim Resolution Professional to initiate the Insolvency Resolution Process.
- 6.9. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

6.10. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

6.11. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. Liberty is granted to intimate even at an early date, if need be.

6.12. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

7. Ordered Accordingly.

**Dated : 03.10.2018**

SD/-  
**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

**Avinash**