

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

CP 1434 (IB)/MB/2017

Under Section 7 of the I&B Code, 2016

In the matter of

Daimler Financial Services Private Limited

...Financial Creditor/ Petitioner
v/s

E-Global Trading Limited

...Corporate Debtor

Order Dated 03.07.2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh

Hon'ble Member (Technical) Mr. Ravikumar Duraisamy

For the Petitioner: Adv. Amiy Kumar, Adv. Avnendra Kumar &
Adv. Kunal Tiwari.

For the Respondent: Adv. Abhilasha Sinha, Adv. Deepa
Premchandran & Adv. Nibha Jha

Per: V.P. Singh, Member (Judicial)

ORDER

1. This is a petition being CP 1434/2017 filed by **Daimler Financial Services Private Limited**, Financial Creditor or Petitioner, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **E-Global Trading Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**). The Petition is filed on 22.9.2017.
2. The Petitioner is in the business of providing Financial assistance to its borrowers for purchasing or leasing Mercedes-Benz Passenger Cars and Bharat Benz Commercial Vehicles. The Corporate Debtor was previously incorporated by the name of E-Global Recyclers Limited. The Corporate Debtor changed its name to E-Global Trading Limited.
3. The Financial Creditor submits that the total amount of debt is ₹1,98,49,255.64, including interest. It is submitted that one of the Directors of the Corporate Debtor approached the Petitioner for obtaining a loan to purchase to Mercedes-Benz Car and sought to make the Corporate Debtor as a co-borrower.

Eventually, the Corporate Debtor in the capacity as co-borrower entered into two loan-cum-hypothecation Agreement dated 14.7.2014 and 30.10.2014 for an amount of ₹1,36,00,000/- and ₹51,67,000/- respectively. The said loans were to be repaid as per the terms of the respective Agreement, including interest and instalments. It is stated that the said loan amount was utilised by the Corporate Debtor to purchase two new cars bearing Registration No. PY 01 CG 0063 and MH 02 DZ 4440.

4. It is stated that the Corporate Debtor failed to make payment under the Loan Agreement dated 14.7.2014 from 14.11.2015 and for Loan Agreement dated 30.10.2014 from 02.3.2016. The Petitioner sent two loan recall notices dated 9.5.2015 for both the Loan Agreements. These notices are said to be neglected and ignored by the Corporate Debtor as it did not make any repayment.
5. The Petitioner sent a legal notice dated 17.5.2017 under Section 271 of the Companies Act, 2013 to the Corporate Debtor demanding repayment of ₹55,34,342.62. The copy of the said notice is annexed to the Petition. The Petitioner has also annexed two Early Termination Quotation dated 2.8.2017 for both the loan accounts for a total aggregate outstanding of ₹1,98,49,225.64.
6. The Petitioner has also annexed the Statement of Accounts, dated 2.8.2017, of the Corporate Debtor as maintained in the books of Petitioner reflecting the defaults in the repayment of the loan amount.
7. The Corporate Debtor has filed its Affidavit in reply dated 4.12.2018 in which it has admitted to the debt and default. The only dispute raised by the Corporate Debtor is that the outstanding amount, as stated by the Petitioner in its Petition is incorrect or miscalculated. The Corporate Debtor has stated that it has made several settlement proposals to the Petitioner, and since the Corporate Debtor is in a financial crisis, it is not in a position to repay the loan amount. The Corporate Debtor has stated that it owes an amount of ₹1,14,28,350/- to the Petitioner under two Loan Agreements.

8. We have heard the parties and perused the records.
9. The Petition is filed by Mr Navin Ajwani, authorised vide the board resolution dated 28.4.2014.
10. The Petitioner has annexed the Loan-cum-hypothecation Agreement No.10110393 dated 14.7.2014 vide, which the Petitioner had extended ₹1,36,00,000/- and Loan-cum-hypothecation Agreement No.10111565 dated 30.10.2014 vide which the Petitioner had extended a ₹51,67,000/- as loan to the Corporate Debtor as co-borrower. Further, the Petitioner has also annexed a copy of the Board Resolution passed by the Board of Directors of the Corporate Debtor resolving to avail the loan from the Petitioner and authorising its Director for the same.
11. The Petitioner has annexed a Statement of Account of the Corporate Debtor as maintained by the Petitioner, dated 2.8.2017, reflecting the defaults in the repayment of the loan amount.
12. The Petitioner, in its two loan recall, notices dated 9.5.2015, has intimated the borrower about the default and demanded the outstanding dues of ₹1,32,45,307.09 and ₹52,21,146.69 as on 7.5.2015. Further, the Petitioner in its notice dated 17.5.2017 called upon the Corporate Debtor to repay a sum of ₹55,34,342.66, under Loan Agreement dated 30.10.2014, within three weeks for settlement of its dues.
13. The Corporate Debtor, in its reply, has admitted the debt and the default. It has also admitted that it has defaulted in repayment of ₹1,14,28,350/- to the Petitioner under the two Loan Agreements. It has also expressed its inability to repay the debt in its Affidavit in reply.
14. Given the submissions of the Corporate Debtor in its Affidavit in reply and the documents submitted by the Petitioner on record, it is held that the Corporate Debtor has defaulted in repayment of the loan amount for more than ₹1,00,000/-.
15. The Petitioner has proposed the name of Mr Sekar Ananthanarayan, a registered insolvency resolution professional having Registration Number [IBBI/IPA-003/IP-N00052/2017-18/10492] as **Interim Resolution Professional**, to carry out

the functions as mentioned under I&B Code, and given his declaration; no disciplinary proceedings are pending against him.

16. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the I&B Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This petition filed under Section 7 of I&B Code, 2016, filed by **Daimler Financial Services Private Limited**, Financial Creditor against **E-Global Trading Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints Mr Sekar Ananthanarayan, a registered insolvency resolution professional having Registration Number [IBBI/IPA-003/IP-N00052/2017-18/10492] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
17. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated registrar is to be submitted today.**

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

3rd July, 2019