

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
CP (IB) NO. 4431 OF 2019**

**APPLICATION BY FINANCIAL CREDITOR TO INITIATE
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER
THE INSOLVENCY AND BANKRUPTCY CODE, 2016.**

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read
with Rule 4 of the Insolvency and Bankruptcy (Application to
adjudicating Authority) Rules, 2016)*

In the matter of

PPG Asian Paints Private Limited

6- Ashanti Nagar, Santacruz (East)

Mumabi-400055, Maharashtra

.....**Financial Creditor**

Vs

Neel Motors LLP.

Sr. No. 80/2/5, 80/2/4, 80/2/3,

Jaymala Business Centre, E Wing,

Mouje, Manjari BK Pune, Pune

412307

.....Corporate Debtor

Order delivered on: 04.08.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Dinesh Jadhvani, Advocate

For the Respondent: None present

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company Petition is filed by PPG Asian Paints Private Limited, (hereinafter called "Financial Creditor") seeking to set in motion the

Corporate Insolvency Resolution Process (CIRP) against Neel Motors LLP (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Financial Creditor. This petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 59,76,936 (Rupees Fifty-Nine Lakhs Seventy-Six Thousand Nine Hundred and Thirty-Six only). i.e. (Rs. 42,00,000/- for principal amount + Rs. 8,65,200/- for interest amount calculated @ 12% per annum + GST).
3. The applicant is a private limited company, registered and incorporated under the Provisions of Indian Companies Act, 1956 and subsisting under the Companies Act, 2013. That applicant is carrying on its business of manufacturing, selling, distribution of automotive, industrial, marine paints and other related products in India.
4. The corporate debtor is a Limited Liability Partnership, registered and incorporated under the Provisions of the Limited Liability Partnership Act, 2008, engaged in the business of automotive sales, servicing and repair work etc. and in the course of its business require substantial quantities of automotive paints and refinish coating products.
5. The applicant submits that in the year 2017, the Corporate Debtor approached the Financial Creditor for financial contribution, for the purpose of sales promotions and procurement of specialized

painting equipment's for development and up-gradation of automotive painting facilities.

6. In view of the same, a "Body Shop Agreement" (hereinafter referred to as 'Agreement') was executed between the Financial Creditor and the Corporate Debtor on 26.04.2017, which came into effect from 26.04.2017. That in terms of the said agreement, a financial contribution to the tune of Rs. 42,00,000/- was made by the Financial Creditor to the corporate debtor. The Financial Creditor disbursed the amount of Rs. 42,00,000/- along with service tax to the corporate debtor in June 2017.
7. The purposes and the nature of financial contribution made by the Financial Creditor to the Corporate Debtor, as a financial debt was duly recorded under clause 4 and clause 5 of the agreement. Further, the obligations of the parties as well security given by the Corporate Debtor to the Financial Creditor, qua the financial contribution made was duly recorded under Clause 5 of the agreement. It is noteworthy that the corporate debtor issued a demand promissory note for an amount of Rs. 42,00,000/- along with interest @12% p.a. as a collateral security to the applicant, which clearly demonstrates that the amount of Rs. 42,00,000/- given by the Financial Creditor to the corporate debtor was a financial debt in terms of Section 5(8) of Insolvency and Bankruptcy Code, 2016.
8. The applicant further submits that at this juncture, in the instance case there were two separate components in the agreement i.e. financial contribution for an amount of Rs. 42,00,000/- and annual procurement schedule for 3 year to be honoured by the Corporate Debtor. In terms of Clause 3 sub clause (b) of the said Agreement, it was agreed between the parties that the Corporate Debtor will purchase/procure products of Rs. 35,00,000/- in the first year and

will confirm to the yearly purchase targets set out by PPGAP. The total purchase/procurement value for 3 years would be amounting to Rs. 120 Lakhs. However, the Corporate Debtor defaulted in complying with its obligation. It is not out of place to mention herein that a agreed between the parties, the Corporate debtor failed to procure products from the Financial Creditor as per the procurement schedule. Till date, no products worth have been procured by the Corporate Debtor from the Financial Creditor.

9. In view of the aforesaid defaults committed by the corporate debtor i.e. to perform its obligation in terms of agreement dated 26.04.2017, the Financial Creditor herein issued legal notices dated 11.01.2019 and 04.06.2019 to the Corporate Debtor seeking payment of amount of Rs. 59,76,936/- which had become due and payable.
10. The Corporate Debtor has till date failed to make payment to the Financial Creditor towards satisfaction of the unpaid financial debt. The amount as disbursed by the Financial Creditor to the Corporate Debtor to the tune of Rs. 42,00,000/- falls within the ambit of the definition of 'financial debt' as defined under Section 5(8) of the IBC, particularly section 5(8)(f) since the amount raised therein had the commercial effect of borrowing. Accordingly, the Financial Creditor has no other option but to approach this Tribunal under Section 7 of IBC against the Corporate Debtor.
11. The matter has been listed from time to time on board. Ample opportunity was given to the Corporate Debtor to file its reply. Not only the Corporate Debtor failed to file a reply but also failed to make representation before this Bench. Therefore, the Corporate Debtor was set ex-parte vide an order of this Bench dated 01.07.2021. Heard the counsel appearing for the Financial Creditor and perused the documents submitted by him. The counsel for the Financial Creditor successfully demonstrated and proved the existence of debt

and default by inviting the attention of this Tribunal to the demand promissory note and 'Body Shop Agreement' executed by the Corporate Debtor in favour of the Financial Creditor to prove the existence of Financial Debt. The debt is also within limitation. Financial Creditor also suggested the name Mr. Mukesh Kumar Gupta as IRP and enclosed the consent letter given by the proposed IRP in Form-2. Thus, the Company Petition satisfies all the requirements for admission. Since the Corporate Debtor remained ex-parte even without filing any reply, the claim of the applicant remained unchallenged. This Tribunal upon considering the arguments of the petitioner and upon perusing the documents, pass the following:

ORDER

- (a) The above Company Petition No. (IB) -4431(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Neel Motors LLP.
- (b) This Bench hereby appoints **Mr. Mukesh Kumar Gupta** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00207/2017-18/10407 having office at 171, Sitaram Apts, 102, IP Ext. Delhi- 110092 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.
- (c) The Financial Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (d) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (f) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (g) That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors

and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- (j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)