

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

CP (IB) 1005/MB/C-II/2019

Under section 7 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Indian Overseas Bank

...Financial Creditor

(Petitioner/Applicant)

Versus

Varron Autokast Limited

[CIN: U29253MH2011PLC220578]

...Corporate Debtor

(Respondent)

Order Delivered on 13.12.2019

Coram:

Hon'ble Member (Judicial) : Mr. M.K. Shrawat

Hon'ble Member (Technical) : Mr. Chandra Bhan Singh

Appearances:

For the Financial Creditor : Mr Vishal S. Shriyan, Advocate

For the Corporate Debtor : None

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Indian Overseas Bank ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Varron Autokast Limited ("the Corporate Debtor"). The Petitioner/Applicant i.e. Indian Overseas Bank has furnished information in Form 1 under Rule 4 of the Insolvency and Bankruptcy Code 2016, Application to Adjudicating

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Authority Rules 2016, in the capacity of Financial Creditor on 11.03.2019.

2. In the requisite Form, Under the Head Particulars of Financial Debt the total Debt granted is stated to be a sum of Rs.220,55,77,846.00 (Rupees two hundred twenty crore fifty-five lakh seventy-seven thousand and eight hundred and forty-six only) as principal as on 28.02.2019 along with concessionary Rate of interest @ 12.80%. The date of default is stated to be 31.07.2016. The date on which the Financial Creditor classified the Account as NPA is 30.09.2019.
3. The Corporate Debtor is a Private company limited by shares and incorporated on 05.08.2011 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U29253MH2011PLC220578. Its registered office is at Khasra No. 174, 176/1, 185, 186/2, 191, 196, 201/2 & 201/5 at Chimnazari, Chandrapur road, Taluka Nagpur (rural), Chimnazari, Nagpur - 441108. Therefore, this Bench has jurisdiction to deal with this petition.
4. **Submission made by the Financial Creditor: -**
 - 4.1 The Financial Creditor had on 17.11.2014 sanctioned Term loan facility of Rs.155 crores and disbursed it on 16.01.2015. The Financial Creditor also allowed an Over Draft in current account of Rs.14,46,925.00, which was disbursed on 06.04.2018 to the Corporate Debtor. Therefore, on the date of default i.e. on 31.07.2016 the total amount in default was Rs. 220,55,77,846/- . Security for same was given as Land, Residential Flat located in Pune, Corporate office premises located in Pune and also pledged 51% of shareholding in the debtor Company. The Financial Creditor/Applicant in its written submission have given details of security given by the Corporate Debtor in this instant case.

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- 4.2 The Applicant has also presented a copy of the sanction letter has in its written submission. The Sanction letter provides for Interest rate of 12.80%. The Total Debt due and payable to the Financial Creditor as reflected in the sanction letter is Rs.220,55,77,846.00 (Rupees two hundred twenty crore fifty-five lakh seventy-seven thousand and eight hundred and forty-six only).
- 4.3 The Applicant has also in its Petition enclosed a copy of the “Recall and Demand” Notice to the Respondent dated 30.06.2018 addressed for making payment of outstanding dues. Again on 08.07.2018 another Demand Notice was sent by the Learned Counsel of the Applicant to the Corporate Debtor. Copy of the service of these notices has been attached to the Petition.
- 4.4 The Applicant in furtherance of his case has enclosed copies of CIBIL Report of the Corporate Debtor which clearly testifies to the “Debt” and also “Default” on the part of the Corporate Debtor exists in the books of the Applicant for the Loan extended as well as the overdraft.
5. The copy of the Petition was served on the Corporate Debtor vide letter dated 11.03.2019. Necessary Proof of service in this regard have been placed on record by the Petitioner.

6. Submission by the Respondent/Corporate Debtor :-

The Petition was filed on 11.03.2019. This case has come up for hearing on 08.05.2019, 24.06.2019, 30.07.2019 and lastly on 21.08.2019. However, no reply has been filed by the Corporate Debtor.

Findings: -

7. This Bench heard the arguments of the Financial Creditor and perused the records.

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8. On the last date of hearing i.e. on 21.08.2019, this Bench observed that

“1. The Learned Representative for Petitioner is Present.

2. When called none appeared for the Respondent / debtor.

3. Sufficient opportunities are granted in the past and adjournment was also granted which is recorded from the side of the respondent to file Reply.

4. However Learned Counsel of the Petitioner inform that no Reply has been served till date.

5. Considering the non-compliance and non-appearance this is a fit case to proceed exparte qua the Respondent. Heard. Discussed the matter with the Learned Counsel of the Petitioner. RFO.”

Therefore, this Petition was heard exparte qua the Respondent.

9. The Corporate Debtor made repayment of the two amounts one of Rs.1.23 Crore thereafter of Rs.1.15 Crore was made to the Financial Creditor on 11.06.2019. This is evident from the Order Sheet of this Bench dated 30.07.2019. However, this Bench on 30.07.2019 had observed that “the Respondent cannot take excuse of non-compliance of undertaking as the OTS settlement by making payment in small tranches and thereafter differing payment”, After this the matter was finally heard on 21.08.2019, when no one appeared from the side of the Respondent.
10. It is established that on the date of default the total debt due was Rs.220,55,77,846. During hearing of this Petition in the month of June 2019 a part amount of Rs. 2.28 crore was paid by the Respondent as per some mutual settlement. However, this settlement process was subsequently abandoned by the Respondent.

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11. On going through the facts and submissions of the petitioner and upon considering the same, the Financial Creditor has established beyond doubt that the loan was duly sanctioned and duly disbursed to the Corporate Debtor and that there has been default in payment of the Debt by the Corporate Debtor.
12. The Financial Creditor has proposed the name of **Mr Avil Menezes**, Registration No. IBBI/IPA-001/IP-P00017/2016-2017/10041, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
13. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
14. The petition bearing **CP(IB)- 1005/MB/C-II/2019** filed by **Indian Overseas Bank**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Varron Autokast Limited [CIN: U29253MH2011PLC220578]**, the Corporate Debtor, is **admitted**.
15. There shall be a moratorium under section 14 of the IBC, in regard to the following:

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- i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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 (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

16. Notwithstanding the above, during the period of moratorium:-

- i. 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;
- ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

17. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the

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IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

18. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
19. **Mr Avil Menezes**, Registration No. IBBI/IPA-001/IP-P00017/2016-2017/10041, having address at 403, Crescent Business Park, Sakinaka Telephone Exchange Lane, Sakinaka, Andheri (East), Mumbai – 400072, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
20. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
21. The Financial Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
22. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email

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immediately, and in any case, not later than two days from the date of this Order.

23. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
24. Ordered accordingly.

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

13.12.2019
SAM

Sd/-

M.K. SHRAWAT
Member (Judicial)