

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
C.P. (IB)/226(AHM)2023

Order under Section 7 IBC

IN THE MATTER OF:

Kataria Automobiles Private Limited
Vs
Samvid Steels Private Limited

.....**Applicant**

.....**Respondent**

Order delivered on: 17/04/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT – 2**

CP (IB) No. 226/ NCLT / AHM / 2023

[Application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency & Bankruptcy Code, 2016]

Kataria Automobiles Pvt. Ltd.

... Applicant/Financial Creditor

Versus

Samvid Steels Pvt. Ltd.

... Respondent/Corporate Debtor

MEMO OF PARTIES

Kataria Automobiles Pvt. Ltd.
(CIN: U66000GJ1990PTC013736)

A Company incorporated under the relevant provisions of the Companies Act, 1956 and having its registered office at: Ground Floor, Kataria Arcade, Nr. Adani School, Off S. G. Highway, Makarba, Ahmedabad, Gujarat - 380051, India

...Applicant/Financial Creditor

Versus

Samvid Steels Private Limited
(CIN:U55100GJ1992PTC018421)

A Company incorporated under the relevant provisions of the Companies

Act,1956 and having its registered address at: 2, Ashima Complex, Kadi - Kalol, Highway, Karan Nagar, Kadi, Mehsana, Gujarat – 382 727, India.

...Respondent/Corporate Debtor

Order pronounced on: 17.04.2024

**Coram: Mrs. Chitra Hankare, Member (J)
Dr. Velamur G Venkata Chalapathy, Member (T)**

Appearance:

For the Applicant: Ms. Hirva Dave, Adv. a.w Mr. Jaimin
Dave, Adv.
For the Respondent: Mr. Tirth Nayak, Adv.

JUDGMENT

1. The Present Application is filed on 05.09.2023 under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') through Shri Rupen P Chhaya CFO of M/s. Kataria Automobiles Pvt. Limited (for brevity 'Applicant/Financial Creditor') authorised vide resolution dated 03.07.2023, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s. Samvid Steels Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Corporate Debtor is a Private Limited Company, incorporated under the provisions of the Companies Act, 1956 on 14.10.1992 duly registered with Registrar of Companies, Gujarat having registered office at Mehsana, Gujarat. The authorised share capital of the corporate debtor is Rs.1,00,00,000/- and the paid-up share capital is Rs. 95,00,000/-.

3. It is submitted by the Applicant that the Corporate Debtor had availed financial assistance by way of a secured loan from Punjab and Sindh Bank. The said loan account had become irregular on account of defaults on the part of the Corporate Debtor and the same was classified as a Non-Performing Asset by the Punjab and Sindh Bank. Thereafter, the Corporate Debtor entered into OTS with the Punjab and Sindh Bank for an amount of Rs. 4,00,00,000/-. However, the Corporate Debtor did not have the requisite funds/ resources to honour OTS. The offer failed and the debt was in default.

4. It is submitted that the Corporate Debtor approached the Financial Creditor/Applicant to advance a sum of Rs. 4,00,00,000/-. Thereafter, on 01.06.2019, the Corporate Debtor entered into a MoU for availing financial assistance of Rs.

4,00,00,000/- . As per the said MoU, the Financial Creditor disbursed an amount of Rs. 2,00,00,000/- to the Corporate Debtor on 11.06.2019, Rs.1,00,00,000/- on 29.06.2019 and Rs.1,00,00,000/- on 12.07.2019 respectively. Thereafter, on 11.07.2019, the Corporate Debtor executed a promissory note in favour of the Financial Creditor to pay the outstanding sum along with interest as per MoU dated 01.06.2019. It is further submitted that the Corporate Debtor had acknowledged its debt towards the Financial Creditor in its Statutory Audit Report for the F.Y. 2019 – 20, 2020 – 21, 2021 – 22 and 2022-23. Later on, the Corporate Debtor defaulted in repayment of the loan. It is stated that after the execution of the promissory note and expiry of three years from the date of execution of the MoU, the Corporate Debtor failed to repay the loan amount.

5. On account of the non-payment of dues and in accordance with the terms of the MoU dated 01.06.2019, the Financial Creditor called upon the Corporate Debtor to execute the Deed of Mortgage with respect to the 2 properties. On 24.03.2023, a registered deed of simple mortgage bearing registration number 5857 of 2023 was executed between the Corporate Debtor and the Financial Creditor with respect to the said properties to secure the debt due.

6. After the execution of a registered deed of simple mortgage, the Financial Creditor requested the Corporate Debtor to clear the outstanding dues at the earliest. After that, the Applicant sent a demand notice dated 01.07.2023 to the Corporate Debtor to pay the outstanding sum along with compounding interest at the rate of 15% per annum. That despite receipt of the said notice, the Corporate Debtor has failed to pay the outstanding debt.

7. The corporate debtor filed an affidavit in reply submitted that the Corporate Debtor does not dispute the claim of the Applicant and is bound to pay Rs. 4,00,00,000/- towards the principal outstanding amount and Rs. 3,23,63,499/- along with further compounding interest at the rate of 15% per annum. It is further submitted that at present, the Corporate Debtor is going through a financial crunch and therefore it is unable to pay the dues of the applicant and other creditors.

8. As per Form 1, part IV of the application, the corporate debtor is in default of Rs.7,23,63,499/- including principal amount of Rs. 4,00,00,000/- and interest amount of Rs. 3,23,63,499/- is due and payable by the Corporate Debtor to the Financial Creditor from 01.07.2023 till the date of realization, which the Corporate Debtor is admittedly unable to repay. Taking into

consideration various Statutory Audit Reports for F.Y. 2019 -20 to F.Y. 2022-23 of the corporate debtor wherein the corporate debtor has acknowledged its debt and the present application is filed on 05.09.2023 and the date of default occurred on 11.07.2023 when the CD failed to repay the outstanding sum along with compound interest at the rate of 15 % p.a. as per MOU dated 01.06.2019 within 10 days from the date of receipt of notice dated 01.07.2023. Therefore, the present application is within limitation.

9. Based on the submissions and documents annexed, it is evident that the debt is due and payable and the default has occurred. This appears to be an arranged deal to led funds between the applicant and respondent even though the board resolution and other documents to lend have not been enclosed. The Corporate Debtor also appears to have defaulted on other loans to financial creditors. However, the default has been admitted by the Corporate Debtor to the applicant and the chances of recovery are remote and there is a security created by a simple mortgage. The present application is complete in terms of Section 7 (5) of the Code.
10. Hence, we pass the following order:

ORDER

- I. The application is allowed.
- II. The CIRP is ordered to be initiated against the corporate debtor- M/s. Samvid Steels Private Limited.
- III. The applicant has proposed the name of Mr. Manish Santosh Buchasia as IRP, who is hereby appointed as IRP of the corporate debtor having registration number IBBI/IPA-002/IP-N00487/2017-2018/11449 having an office at 306, 3rd Floor, (Part A), “Gala Mart”, Nr. Sobo Centre, Before Safal Parisar, Above SBI/Union Bank / Hindmart, South Bopal, Ahmedabad, Gujarat 380058, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.
- IV. We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the IRP, namely Mr. Manish Santosh Buchasia to meet the

expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.

- V. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate Debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.
- VI. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. A copy of the order along with a complete copy of the application be served to IRP by the applicant within 7 days of the order.

In addition, a copy of the order shall also be forwarded to IBBI for its records and to take steps for updating the Master Data of the corporate debtor in the MCA portal and shall forward the compliance report to the Registrar, NCLT.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)