

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P NO. (IB)-15(PB)/2017
CA NO.

DATE:

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

SH. R.VARADHARAJAN
Hon'ble Member (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF PRINCIPAL BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 10.03.2017

NAME OF THE COMPANY: M/s. *clutch* Auto Ltd.

SECTION OF THE COMPANIES ACT: U/s 10 of Insolvency And Bankruptcy Code 2016

S. NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1)	Abhinav Lal	Advocate	100 Applicant	<i>Abhinav</i>

ORDER

Order reserved.

SDP

(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

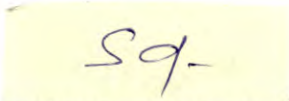
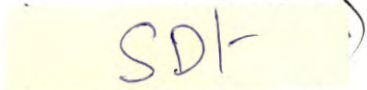
SDP

(R. VARADHARAJAN)
MEMBER (J)

ORDER

This Petition was initially filed on 09.2.2017 and was again re-filed on 20.2.2017. However, Counsel for the petitioner requested for listing of the petition on 10.3.2017.

The matter was heard on 10.3.2017 and the order was reserved. On account of the short spell of vacation, the Tribunal remained closed from 01.4.2017 to 09.4.2017. However, the orders are being pronounced on 10.04.2017 which is within the period of 24 days (14+10 days).


(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

(R. VARADHARAJAN)
MEMBER (TECHNICAL)

April 10, 2017

against the 'corporate debtor' , namely, M/s. Clutch Auto Limited. In the second Petition, filed under Section 10 of 'the Code', the 'corporate debtor' (M/s. Clutch Auto Limited) has come forward with a prayer to initiate insolvency process against itself. The second Petition was filed earlier than that of the first Petition.

IB 15 (PB)/2017 :

2) M/s. Clutch Auto Limited has approached this Tribunal under Section 10 of 'the Code' read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 (for brevity 'the Rules'). According to averments made in the petition, the 'corporate debtor' was incorporated as a private limited company on 13.05.1971 and thereafter, it was converted into public limited company on 23.01.1982. The authorized share capital of the corporate debtor is Rs.30 crores (Thirty crores) and the paid up capital was Rs.18,76,04,300 (Eighteen Crores Seventy six lacs and four thousands three hundred only). Vide Board Resolution dated 14.12.2016, Mr. V.K. Mehta, Chairman & Managing Director has been authorized to file the instant petition in this Tribunal (Annexure-2). The name of the Interim Resolution Professional has also been proposed which is that of Mr. Mahipal Sharan Gupta, 2425-A, Hudson Lane, Mall Road, Dr. Mukherjee Nagar, Delhi - 110 009, Email:mahipal@indiacap.com. His certificate of eligibility and acceptance to function as an Interim Resolution Professional has also been placed on record (Annexure-5).

3) A list of financial and operational creditors has also been attached (P-3). A perusal of the list would show that the 'corporate debtor' is in default for the last more than 3 years. There is then a list of 'operational creditors' which contains as many as 293 names and a total sum owes to them is declared to be



Contd.

Rs.12,88,32266 (at page 25 of the paper book). The petitioner has further disclosed the details of property against which the loan of the corporate debtor is fully or partially secured along with details of the date of its creation, its estimated value etc. A copy of the audited financial statements of the 'corporate debtors' as petitioner for the financial year ending 31.03.2016 and 31.03.2015 along with certified provisional financial statement as on 31.01.2017 has also been placed on record (Annexure-6). The statement of affairs has also been filed along with documents as on 31.12.2016, list of assets and liabilities as on 31.1.2017 (P-7), details of the financial/operational creditors (Annexure-3), particulars of any debt owed by or to the 'corporate debtor' or by persons connected to it (Annexure-8) have also been placed on record along with guarantees given in relation to the debts (Annexure P-9). It has also given details of the members of the 'corporate debtors' along with their share holding as on 31.01.2017 (Annexure P-10). An affidavit in support of the Petition has also been filed. It has also been revealed that a reference was filed before the BIFR and the order of admission of reference passed in 2014 has been placed on record (Annexure P-12). A copy of the extract of minutes of the working capital consortium members of the company held on 17.12.2012 approving TVE Study/restructuring package by banks along with numerous letters have also been placed on record. The other record has also been filed.

4) We have heard learned Counsel in both the Petitions and are of the view that the insolvency process deserves to be initiated as the requirements of Section 10 of the Code and Rules framed there-under have been fulfilled. A perusal of Section 10 would show that a corporate debtor may file such application for initiating the insolvency resolution process where it has committed a default. It is required to furnish information relating to its books

(17)

contd-

of accounts and the documents relating to the period as may be specified. A perusal of the paper book would show that books of accounts and other attendant documents have been filed and an Interim Resolution Professional has also been proposed. The petitioner itself has admitted default. Accordingly, we hold that the Petition merits admission and the same is accordingly admitted.

5) The result of the admission is that moratorium as per the provisions of Section 14 would commence from the date of the admission and all the following acts are prohibited as enumerated which are selected in Section 14 of the Code.

14. Moratorium – (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall be order declare moratorium for prohibiting all of the following, namely :-

(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 (54 of 2002) ;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



Contd.

(4) *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process ;*

Provided that where at any time during the corporate insolvency resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

6) We believe and trust that interim insolvency resolution professional would show greater efficiency in the instant case for the reason that the 'operational debtor' has already enjoyed 'Moratorium' for a long period of many years on account of registration of reference with BIFR. It is trite to observe that from the day a reference use to be registered with BIFR, there was automatic Moratorium in terms of S.22 of Sick Industrial Companies (Special Provisions) Act, 1985 (see KSL & Industries Ltd. v. Arihant Threads Ltd. & Ors. 2008 INSC 1421; Rishabh Agro Industries Ltd. v. PNB Capital Services Ltd. (2000) 5 SCC 515). We have made these observations keeping in view the object of the 'Code' namely to get rid of 'NPA' accounts and allow the dead investment to come into circulation. We were in fact disposed to the view of refusing Moratorium in the present case for the above reasons but have not taken that extreme view. However, the resolution in the present case must conclude within 180 days. No further time would be warranted unless creditors decide otherwise.

7) The Interim Resolution Professional shall perform all other duties cast upon him in accordance with the provisions of the code like making of public announcement, taking over the affairs of the management of the corporate debtors and many other duties as per the Code.



Contd -

- 8) We make it clear that the operational creditors in IB No.20(PB)/2017 may file its claims before the Insolvency Resolution Professional in accordance with the public notice to be issued like all other claimants.
- 9) As a sequel to the above discussion, IB No.15(PB)/2017 is admitted and is disposed of as such. However, IB No.20(PB)/2017 is dismissed with the observation that 'operational creditor' therein may file its claim before the Insolvency Resolution Professional, as per the public notice which is likely to be issued.
- 10) Both the Petitions stand disposed of on the above terms.

SDF

**(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT**

SDF

**(R. VARADHARAJAN)
MEMBER (JUDICIAL)**

Surjit
10.04.2017