

**Before the National Company Law Tribunal,
Chandigarh Bench
Corporate Bhawan, Plot No.4B, Sector 27-B, Madhya Marg,
Chandigarh.**

No.:NCLT/Chd/Reg/ 6018

Date: 24/03/2021

CP (IB) No. 263/Chd/Hry/2018

In the matter of:

Volkswagen Finance Private Limited

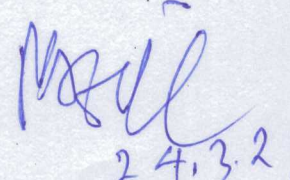
...Petitioner/Financial Debtor

To,

Sh. Rajender Kumar Jain, IRP
SCO 818, NAC
Manimajra, Chandigarh- 160101.

Please find enclosed herewith a certified copy of the Order dated 22.03.2021, as applied vide application No.496, dated 23.03.2021.

Encl: Copy of order.


24.3.21
Designated Registrar
NCLT, Chandigarh Bench

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 263/Chd/Hry/2018
With
CA Nos. 565/2019 & 1146/2019

Under Section 7 & 60(5) of the
Insolvency and Bankruptcy Code,
2016

In the matter of :

Volkswagen Finance Private Limited
having its registered office at
3rd Floor, Silver Utopia, Cardinal Gracious Road,
Off. Andheri Kurla Road, Chakala,
Andheri (East), Mumbai - 400099

...Petitioner/Financial Creditor

Versus

Zenica Cars India Private Limited
having its registered office at
Orchid Centre, Sector 53, Golf Course Road,
Gurgaon, Haryana - 122001

...Respondent/Corporate Debtor

And in the matter of:

IA No.565/2019

Zenica Cars India Pvt. Ltd.

....Applicant

Vs.

Volkswagen Finance Pvt. Ltd.

....Respondent

And in the matter of:

IA No.1146/2019

Zenica Cars India Pvt. Ltd.

.... Applicant

Vs.

Volkswagen Finance Pvt. Ltd.

.... Respondent

Judgement delivered on: 22.03.2021



**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR.RAGHU NAYYAR, MEMBER (TECHNICAL)**

For the Petitioner-Applicant : 1). Dr. Abhishek Manu Singhvi, Senior Advocate
2). Mr. Azeem Samuel, Advocate
3). Mr. Ama Pal, Advocate
4). Mr. Nihant Gautam, Advocate
5). Mr. Vardhman Kaushik, Advocate
6). Mr. Dhruv Joshi, Advocate
7). Mr. Birender Singh Rawat, Legal Manager
8). Mr. Abhishek Chand, Legal Head

For the Corporate Debtor-Respondent : 1). Mr. Anand Chhibbar, Senior Advocate
2). Mr. Ajay Kohli, Advocate
3). Ms. Priyanka Ghorawat, Advocate
4). Ms. Eshna Kumar, Advocate
5). Mr. Shikhar Sarin, Advocate
6). Mr. Viren Sibal, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

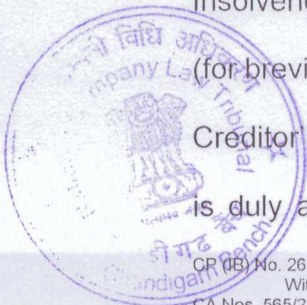
JUDGEMENT

CA No. 565/2019 & 1146/2019

These two CAs are filed for placing on record certain documents. The documents filed along with the CAs are taken on record and the CA No. 565/2019 & 1146/2019 are accordingly disposed of.

CP (IB) No. 263/Chd/Hry/2018

The present petition is filed under Section 7 of the Insolvency and Bankruptcy Code (for brevity 'IBC' / 'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'Rules') by Volkswagen Finance Private Limited (for brevity 'Financial Creditor' / 'Petitioner') through its Authorized Signatory Mr. Sandeep Bakshi, who is duly authorised vide Board Resolution dated 06.07.2018, with a prayer to



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With
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initiate the Corporate Insolvency Resolution Process (for brevity 'CIRP') against Zenica Cars India Private Limited (for brevity 'Corporate Debtor').

2. The master data of the Corporate Debtor is filed at page 59 of the petition. The Corporate Debtor is stated to be incorporated on 04.05.2007 and the registered address is stated to be Orchid Centre, Sector-53 Golf Course Road Gurgaon, which falls within the State of Haryana. Hence, the jurisdiction lies with this Bench of the Tribunal.

3. The Authorized Share Capital of the Respondent Company is ₹45,00,00,000/- and Paid-up Share Capital of the Company is ₹39,13,82,040/- as per the averments made by the petitioner.

4. In Part V of Form No.1, it is stated that the financial creditor and the respondent-corporate debtor entered into facility agreement dated 21.12.2011 whereby the corporate debtor was supplied cars by Audi India (manufacturer) and the payment on behalf the corporate debtor was made by the Applicant-Financial Creditor by way of credit and financial facilities provided by the Financial Creditor to the corporate debtor on various dates. It is stated that vide facility agreement dated 21.12.2011 the first revolving credit facility of ₹84 crores for purchase of new cars was sanctioned on 15.12.2011 (Annexure- G) and further various credit facilities were sanctioned on subsequent other dates from time to time under supplementary facility agreement as mentioned in Part V of the application.

5. As regards to the total amount involved in default and the date of default, it is mentioned by the Financial Creditor in Part IV of their application that total outstanding amount is ₹41,02,26,827/- (out of which ₹39,46,49,948/- is principal amount and ₹1,12,52,656/- is interest and ₹43,24,323/- pertains to other



penal charge/penal interest amount) and the date of default is mentioned as 02.02.2018.

6. Vide Order dated 19.08.2018, notice of the petition was directed to be issued to corporate debtor-Zenica Cars India Private Limited to show cause as to why the petition be not admitted. Accordingly, reply was filed by corporate debtor vide Diary No.596 dated 06.02.2019 stating that the applicant had already initiated arbitration proceedings, under Section 9 of the Arbitration and Conciliation Act, 1996 against the management of the corporate debtor (ARB No.298/2018 and ARB No.299/2018) before filing the present application (Annexure 7 & 8) and therefore, the applicant has approached this Tribunal with mala fide intentions. Also, the debt purportedly claimed by the applicant is not a 'financial debt' within the meaning of Sections 5(7) and 5(8) of the Code and the Facility Agreements executed are not enforceable in law, which are contrary to Section 23 of the Contract Act and to section 3(1) of the Competition Act,2002.

7. Rejoinder was filed vide Diary No.2060 dated 16.03.2020 submitting that the respondent is a habitual defaulter with several FIRs against the management of the respondent, in view of defrauding and embezzlement from several companies. Further, it is submitted that the Financial Creditor falls within the meaning of Section 5(7) and 5(8) of the Code. The Facility Agreements are enforceable as the default has occurred for non-repayment of the loan which falls within the meaning of above mentioned Sections. Also, it is stated that the arbitration proceedings are without prejudice to the present application as it does not prevent a Financial Creditor from initiating an application under Section 7.

8. Heard Dr. Abhishek Manu Singhvi, the learned Senior Advocate with Mr. Azeem Samuel, Mr. Ama Pal, Mr. Nihant Gautam, Mr. Vardhman Kaushik and Mr. Dhruv Joshi, the learned counsels for the petitioner-financial



creditor and Mr. Anand Chhibbar, the learned senior counsel with Mr. Ajay Kohli, Ms. Priyanka Ghorawat, Ms. Eshna Kumar, Mr. Shikhar Sarin and Mr. Viren Sibal, the learned counsels for the respondent-corporate debtor and perused the pleadings on record.

9. The learned senior counsel appearing for the petitioner, placed reliance, on the following decisions, in support of the CP averments:-

- (i) *Innoventive Industries Limited vs. ICICI Bank & another*, (2018) 1 SCC 407;
- (ii) *Mobilox Innovations (P) Ltd. vs. Kirusa Software (P) Ltd.*, (2018) 1 SCC 353;
- (iii) *Phoenix ARC Pvt. Ltd. vs. Hotel Horizon Pvt. Ltd.*, CP No. 1458/IBC/NCLT/MB/MAH/2017, NCLT Mumbai Bench;
- (iv) *Allahabad Bank vs. Roneecha Textiles*, CP (IB)(PB)451/2018;
- (v) *Ugro Capital Limited vs. Bangalore Dehydration and Dying Equipment Co. Ltd.*, 2020 SCC OnLine NCLAT 149; and
- (vi) *State Bank of India vs. Athena Energy*, 2020 SCC OnLine NCLAT 774;

10. The learned senior counsel appearing for the respondent, placed reliance, on the following decisions, in support of the counter averments:-

- (i) *Surendra Trading Company vs. Jugilal Kamplapat Jute Mills Company Limited & others*, (2017) 16 SCC 143;
- (ii) *Innoventive Industries Limited vs. ICICI Bank & another*, (2018) 1 SCC 407;
- (iii) *Swiss Ribbon's Pvt. Ltd. & Anr. Vs. Union of India & others*, (2019) 4 SCC 17;
- (iv) *Radha Exports (India) Pvt. Ltd. vs. K.P. Jayaram & another*, (2020) 10 SCC 538;
- (v) *Anuj Jain, IRP for Jaypee Infratech Limited vs. Axis Bank & others*, (2020) 8 SCC 401;



- (vi) *Nikhil Mehta and Sons vs. AMR Infrastructure Ltd.*, 2017 SCC OnLine NCLAT 377;
- (vii) *Vishwa Nath Singh vs. Visa Drugs & Pharmaceuticals Pvt. Ltd.*, 2017 SCC OnLine NCLAT 863;
- (viii) *K.D. Sharma vs. SAIL & others*, (2008) 12 SCC 481;
- (ix) *S.P. Chengalvaraya Naidu (Dead) by LRS vs. Jagannath (Dead) by LRS & Ors.* (1994) 1 SCC 1;
- (x) *Charanji Lal & Ors. Vs. Financial Commissioner, Haryana, Etc.* (1978) 2 ILR (PH) 361;
- (xi) *Dr. Vishnu Kumar Agarwal vs. Piramal Enterprises Ltd.*, 2019 SCC OnLine NCLAT 81;
- (xii) *SBI vs. Athena Energy Ventures Pvt. Ltd.*, 2020 SCC OnLine NCLAT 774;
- (xiii) *ICICI Bank vs. Era Infrastructure India Limited*, MANU/NC/0186/2019;
- (xiv) *Dena Bank vs. West Haryana Highways Projects Private Limited*, MANU/NC/2888/2019;
- (xv) *Oriental Bank of Commerce vs. Helios Photo Voltec Limited*, CP (IB) No. 154(Pb)/2018, NCLT New Delhi (Principal Bench), dated 10.10.2019;
- (xvi) *State of Bihar vs. Kalika Kuer alias Kalika Singh & others*, (2003) 5 SCC 488;
- (xvii) *Indo Swiss Time Limited vs. Umrao & Ors.*, AIR 1981 P&H 213;
- (xviii) *Union of India vs. Raghubir Singh (Dead) by LRS. Etc.*, (1989) 2 SCC 754;
- (xix) *Shanker Raju vs. Union of India*, (2011) 2 SCC 132;
- (xx) *State of Uttar Pradesh & others vs. Ajay Kumar Sharma & Anr.*, (2016) 15 SCC 289;
- (xxi) *Dr. Shah Faesal & Ors. vs. Union of India & Anr.*, (2020) 4 SCC 1;
- (xxii) *State of Punjab & Ors. vs. Davinder Singh & Ors.*, (2020) 8 SCC 1;



- (xxiii) *Park Energy Pvt. Ltd., through its Authorized Representative Hari Chaudhary vs. Syndicate Bank & Anr., 2020 SCC OnLine NCLAT 637;*
- (xxiv) *Supreme Commotrade LLP & Anr. Vs. Shree Sai Rolling India Ltd., 2020 SCC OnLine NCLAT 562;*
- (xxv) *Urban Infrastructure Trustees Limited vs. Neelkanth Realty Private Limited, 2019 SCC OnLine NCLT 1232;*
- (xxvi) *Shabad Khan vs. Nisus Finance and Investment Manager & Ors., MANU/NL/0251/2020;*
- (xxvii) *IFCI Ltd. vs. ACCIL Hospitality Ltd., MANU/NL/0130/2020;* and
- (xxviii) *Bijay Kumar Agarwal, Ex-Director of M/s Genegrow Commercial Pvt. Ltd. vs. State Bank of India and Anr., Company Appeal (AT) Insolvency No. 993 of 2019, dated 23.01.2020, NCLAT*

11. The Hon'ble Supreme Court of India in ***M/S. Innoventive Industries Ltd (Supra)***, observed as under:-

"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

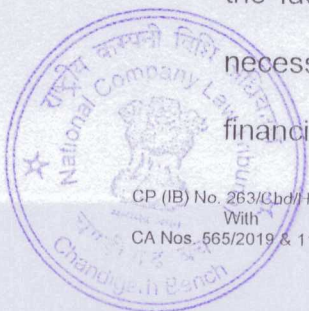
30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

12. Mr. Anand Chhibbar, the learned senior counsel appearing for the respondent-corporate debtor, while opposing the admission of the CP, *inter alia*, raised the following grounds:-

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- (i) There was no disbursement of any money by the petitioner to the corporate debtor and there was no time value of money and hence, the petitioner cannot be treated as a financial creditor of the corporate debtor. As rightly pointed out by Mr. Anand Chhibbar, the learned senior counsel for the respondent-corporate debtor, it is the settled principle of law that to establish the relationship of a financial creditor and the corporate debtor, it must be shown that there was disbursement of money by the financial creditor to the corporate debtor. However, it is equally a settled principle of law that the disbursement of money need not mandatorily be to the corporate debtor and it is sufficient if it is shown that the disbursement of money is made to any third party at the request of or at the instance of or in terms of the covenants entered into between the financial creditor and the corporate debtor. In the instant case the various documents filed along with CP sufficiently and satisfactorily proved that the petitioner-financial creditor has disbursed the money to Audi India, at the instance of and in terms of the covenants entered into between the financial creditor and the corporate debtor and the corporate debtor agreed to repay the same along with interest. In this view of the matter, the petitioner satisfied the requirement of disbursement of money and time value of money and accordingly, the contention of the respondent-corporate debtor is untenable, unsustainable and hence, rejected.
- (ii) Form 1 is incomplete and documents required to be attached to the CP are not attached. This submission of the respondent-corporate debtor, on the face of it, is liable to be rejected as the petitioner has filed all the necessary documents, to sufficiently establish the relationship of a financial creditor and the corporate debtor between the parties and that



there was disbursement of money for time value, as per the provisions of the Code and Regulations made thereunder.

- (iii) The statement on which the petitioner relied upon to show the date of default and the amount of default has no legal sanctity and cannot be treated as a document with any evidentiary value. The statement on which the petitioner placed reliance to show the date of default and the amount of default is not an isolated document and on the other hand, it is the reflection of various documents executed by the corporate debtor in favour of the financial creditor and all the said documents are also part of the CP pleadings. Therefore, this ground is also rejected.
- (iv) The CP is liable to be dismissed on the ground of suppression and misrepresentation of the facts; more particularly, with regard to the Arbitration Award. It is not in dispute that the Arbitration Award was passed in respect of M/s Zenica Performance Cars India Private Limited; but not in respect of the respondent-corporate debtor i.e. Zenica Cars India Private Limited. Hence, this submission of the respondent-corporate debtor, is also rejected.

13. Further, the respondent-corporate debtor has not given any reply to the legal notices issues calling for payment of debt and on the other hand categorically admitted the debt and default in the reply to the CP filed by him and the relevant paragraph reads as under:-

*"20. As a consequence of these actions, the sale of Audi Products by the Corporate Debtor was also adversely impacted despite the Corporate Debtor's best efforts. The sales of Audi Products by the Corporate Debtor greatly declined in 2015 & 2016 and consequently, the financial health of the Corporate Debtor took a heavy toll and the Petitioner started to default in servicing most of its credit facilities availed from various banks, such as, HDFC Bank, **the Applicant** and other financial institutions."*

[Emphasis added]



14. In view of our above findings, the various decisions on which the learned senior counsel for the respondent placed reliance are not of any help.

15. In Part-III of Form 1, the petitioner has proposed the name of IRP i.e. Mr. Rajender Kumar Jain. The proposed Interim Resolution Professional, Mr. Rajender Kumar Jain, Registration No. IBBI/IPA-001/IP-P00543/2017-18/10968 has filed Form No.2 (Annexure C5) certifying that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals. It is also stated that he is currently serving as a Resolution Professional in NIL proceedings.

16. Section 7(5)(a) of the Code is as follows:-

“(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

17. The application filed in the prescribed Form No. 1 is found to be complete. The conditions provided for by Section 7(5)(a) of the Code being satisfied in the present case, we direct that the application for initiation of CIRP against Zenica Cars India Private Limited be admitted. The directions regarding moratorium and appointment of IRP are given below.

18. We declare Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

(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;



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- (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 the possession of the corporate debtor.

19. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

20. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or pass an order for liquidation of corporate debtor under Section 33 as the case may be.

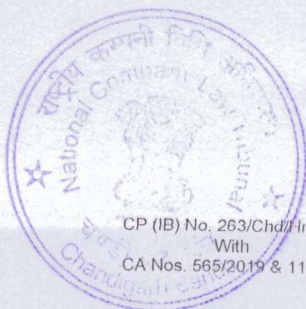
21. The Law Research Associate of this Tribunal has checked the credentials of Mr. Rajender Kumar Jain and there is nothing adverse against him.

In view of the above, we appoint Mr. Rajender Kumar Jain, House No. 3698/1, First Floor, Sector 46-C, Chandigarh-160047 having Registration No. IBBI/IPA-001/IP-P00543/2017-18/10968 and e-mail address: amicusthe@gmail.com



Mobile No. 99155-98862, the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Rajender Kumar Jain shall be in accordance with the provisions of Section 16(5) of the Code;
- ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morality;



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- iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process, in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and
- vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.



A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.


(Raghu Nayar)
Member (Technical)



Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

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 24.3.21

DD / DR / AR / Court Officer
National Company Law Tribunal
Chandigarh Bench, Chandigarh