

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1794(ND) 2019

In the matter of

IDEMITUS LUBE INDIA PVT. LTD
603, 6th Floor,
Eros Corporate Tower,
Nehru Place,
New Delhi-110019

.....Operational Creditor

V/s

M/S. NATH MOTORS PVT. LTD.
1187/7, Nai Walla,
Karol Bagh,
New Delhi-110005

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 16.10.2019

CORAM:

JUSTICE (RETD) RAKESH DAYAL KHARE, MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Adv Sandeep Bajaj, Adv. Aakanksha Nehra,
Adv. Devansh Jain for the Petitioner
None present for the Respondents

ORDER

Per Ms. Sumita Purkayastha (Member Technical)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.

(IB)-1794(ND) 2019

page 1 of 5

Sd/-

Sd/-

2. The Operational Creditor is engaged in the business of manufacturing wide range of Automotive Lubricants and had been supplying different types of automotive lubricant oils to the Corporate Debtor. The Operational Creditor and the Corporate had since long been transacting on the basis of the terms and conditions incorporated on the back of the invoice issued by the Operational Creditor, upon sale of the lubricants by the Operational Creditor. It was contractually agreed that the payments would be due within thirty (30) days from the date of the invoice issued by the Operational Creditor. Further, during the period commencing from September 2018 to October 2018, the Operational Creditor had supplied lubricant oils to the Corporate Debtor as per their requirements. However, the Corporate Debtor failed to make the payment of the following invoices:

S.NO.	INVOICE NUMBER	DATE OF INVOICE	AMOUNT PAYABLE (IN INR)	DATE OF DEFAULT
1.	3510001088	September 11, 2018	2,08,142.64/-	October 11, 2018
2.	3510001215	September 27, 2018	2,77,863.08/-	October 27, 2018
3.	3510001216	September 27, 2018	2,50,981.76/-	October 27, 2018
4.	3510001217	September 27, 2018	2,07,309.16/-	October 27, 2018
5.	3510001326	October 10, 2018	2,07,162.92/-	November 09, 2018
6.	3510001327	October 10, 2018	2,05,671.72/-	November 09, 2018
		TOTAL	13,57,131.28/-	

3. The Petitioner served Demand notice dated 21.05.2019 by speed post, courier, email and Whatsapp to the Corporate Debtor U/Sec.8 of the Insolvency & Bankruptcy Code, 2016 seeking refund of payments within 10 days from the date of receipt of the notice. That neither a reply to the Demand Notice nor any payment has been received by the Petitioner.
4. The Petitioner has therefore filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 13,57,131,28/- plus interest charged at 24% p.a. from the relevant due date till the date of payment.
5. The present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) of Code are on record to corroborate his case. The requirement of 9(3)(c) has not been complied with.
6. As per the averments of the Petitioners the Corporate Debtors did not make the payment against the default of. None appeared on behalf of the Corporate Debtor to oppose the prayer made by the petitioner, hence were proceeded ex-parte vide order dated 03.09.2019. The present petition being filed in July, 2019 is within the limitation, being within three years from the date of the cause of action. Considering the circumstances this Tribunal is inclined to admit this

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petition and initiate CIRP of the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

- (a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) *transferring, encumbering, alienating or disposing of by the corporate debt or 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 Securitisation 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.*

Further:

(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. (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 process period, if the Adjudicating

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Authority approves the 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.”

7. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Anil Goel, an Insolvency Professional, registration no. IBBI/IPA-001/IP-P00118/2017-18/10253 email-anilgoel@aaainsolvency.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
8. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
9. Petition is therefore admitted.

Sd/-

SUMITA PURKAYASTHA
Member (T)

Sd/-

JUSTICE RAJESH DAYAL KHARE
Member (J)