

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, NEW DELHI
COURT-III

CP (IB)-1666(ND)/2019

IN THE MATTER OF:

M/s. Dunlop Taikoo (Jinjiang) Aircraft Tyres Co. Ltd.

.... Operational creditor

Versus

M/s. Magnum Aviation Pvt. Ltd.

.... Corporate debtor

SECTION

U/s 9 IBC code 2016

Order delivered on 03.03.2021

CORAM:

CH. MOHD. SHARIEF TARIQ, MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

PRESENT:

For the Applicant/OC : Ms. Nandini Sharma & Mr. Mudit Sharma, Advocates

For the Respondent/CD : Mr. M.K.Tyagi, Advocate.

ORDER

(Through Video Conference)

1. The Learned Counsel for the Operational Creditor is present. The Learned Counsel for the Corporate Debtor is present.
2. Under Consideration is an application CP (IB)-1666(ND)/2019 filed under Section 9 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor viz, *M/s. Magnum Aviation Pvt. Ltd.*, declare the Moratorium and appoint the Interim Resolution Professional.

3. It is submitted by the counsel for the Operational Creditor that the total amount of debt in United States Dollar is 71,301.00 (Equivalent to Rs. 49,01,936.61 considering the exchange rate of Rs. 68.7499 = 1 USD as on 5th July, 2019).
4. It is also submitted that the Operational Creditor is the supplier of varied quantities of Aircraft Tyres and other allied materials to the Corporate Debtor. During the course of business, the supply has been made and invoices have also been raised. However, the detail of the invoices given in the application pertain to the period from 15th June, 2016 to 15th November, 2016 and the total amount of is USD 77,257.00. However, it is stated that after adjustment of costs/credit of USD 5,956.00, a sum of USD 71,301.00 was due and payable by the Corporate Debtor to the Operational Creditor, which the Corporate Debtor failed to pay in spite of the notice sent Under Section 8 of the IBC on 29.05.2018. The copy of the notice is placed on record at Page No.65 to 68 to which the reply has been given by the Corporate Debtor dated 27th June, 2018 wherein, it is stated that the supply made was further sold and the payment is withheld by their customer due to which the payment has not been made to the Operational Creditor. In other words, in the reply the default in making payment is admitted. It is further noted in the reply that the Corporate Debtor is ready to make the payment.
5. The Corporate Debtor has filed the reply, at the outset, it is stated that the proceedings initiated by the Operational Creditor is not maintainable as no amount is due and payable from the Corporate Debtor to the Operational

Creditor much less the sum of United States Dollar 71,301.00 or otherwise. However, as seen from the record, the Bank Statement is not placed on record. It is noted that Import Transaction Advice is placed on record wherein the invoice number is given and payment is shown. However, in these documents, the invoice numbers against which the claim is made do not tally with the invoice number and the amount along with the date of the invoices, the amount of which is stated to be in default.

6. In short, the counsel for the Corporate Debtor could not substantiate his submissions with any documentary evidence. This was the only ground taken by the Corporate Debtor in their defence, which appears to be mere bluster and there is no proof of a pre-existing dispute between the parties.

7. In the light of the submissions made by the counsel for the Operational Creditor and the documentary evidence placed on record. We are inclined to allow the application as the defence raised is devoid on merits and stands rejected. These documents are sufficient to ascertain the default on the part of the Corporate Debtor. Therefore, all the legal requirements are fulfilled, the application is **admitted**, and the commencement of the CIRP is ordered against CD namely *M/s. Magnum Aviation Pvt. Ltd.*, which ordinarily shall be completed within 180 days, reckoning from the day this Order is passed. The Operational Creditor has not proposed the name of any Resolution Professional for appointment as Interim Resolution Professional ('IRP'), therefore, **Mr. Gaurav Rohilla**, registered with IBBI having **Registration No: IBBI/IPA-003/IP-N00303/2020-2021/13293** Email: **adv.gauravrohill@gmail.com** as provided in the list of IBBI is hereby **appointed** as IRP. The IRP is directed to take charge

of the CD's management immediately including Bank Accounts. The IRP is also directed to cause public announcement as prescribed under Section 15 of IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.

8. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit 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.

9. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

10. We hereby direct the Operational Creditor to pay a sum of Rs. 2,00,000/- to the IRP, upon filing necessary declaration Form, to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the IBC, 2016.

12. The Learned Counsel for the Operational Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016.

13. The Registry is also directed to communicate this Order to the Operational Creditor, the Corporate Debtor, and the concerned RoC.

14. The Order is dictated and pronounced in open court through video conferencing in the presence of Learned Counsel for the Financial Creditor and Learned counsel for the Operational Creditor.

- sd -

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

- sd -

(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

Shammy
Court-III