



NATIONAL COMPANY LAW TRIBUNAL
INDORE SPECIAL BENCH
COURT NO. 1

ITEM No.201

TP 59 of 2019 [CP(IB) 427 of 2018]

Order under Section 9 IBC

IN THE MATTER OF:

Rashnidhi Kumar & Bros

.....Applicant

V/s

Shreepati Steel Tubes Pvt Ltd

.....Respondent

Order delivered on 16/06/2025

Coram:

Shammi Khan, Hon'ble Member(J)

Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

Neeraj



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE SPECIAL BENCH, AT INDORE**

**TP(IB)/59/MP/2019
Old CP (IB) 427 of 2018**

(An application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of: **Shreepati Steel Tubes Pvt Ltd.**

M/s Rashnidhi Kumar & Bros.

Through authorised signatory
Rajindra Nihalkumar Majumdar
34, Warehouse Road,
Vinobhapath, Indore,
MP-452007.

**Applicant/
Operational Creditor**

VERSUS

**Shreepati Steel Tubes Private
Limited**

CIN: U27106MP1996PTC011382

87, Taraganj Industrial Area,
Sarangpur, MP 465697,
stlgroupindore@gmail.com.

**Respondent
/Corporate Debtor**

Order pronounced on 16.06.2025

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV KUMAR SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicant/OC : Mr. Pavan S. Godiawala, Advocate.

For the Respondent/CD Ms. Soumya Dharwa, Advocate.



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ORDER

1. This Company Petition is filed on 18.07.2018 by **M/s Rashnidhi Kumar & Bros**, a proprietorship firm, under Section 9 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency Resolution Process against **Shreepati Steel Tubes Pvt Ltd**, a private limited company, for default in payment of Rs.6,37,63,095, comprising principal of Rs.5,34,15,815 and interest of Rs.1,39,47,280 calculated at 24% per annum up to 30.04.2018. The petition is supported by Exhibits A to L annexed with the Company Petition.
2. On perusal of Part-I of the Form-5 revealed that the Applicant/Operational Creditor - **M/s Rashnidhi Kumar & Bros** is a proprietorship firm. It has its office at 34, Warehouse Road, Vinobhaphath, Indore, MP-452007. Further, the Petition is filed through Rajindra Nihalkumar Majumdar, who is authorized by its Sole Proprietor, Ravindra Kumar Gupta. A copy of the Declaration of



Proprietary Firm as well as the Authority Letter dated 18.07.2018 are annexed with the Petition as **Exhibit-A** & **Exhibit-B** respectively.

3. On perusal of Part-II of the Form-5 revealed that the Respondent/Corporate Debtor is **Shreepati Steel Tubes Private Limited** (CIN: U27106MP1996PTC011382). The Respondent/Corporate Debtor was incorporated on 05.11.1996 under the provisions of the Companies Act, 1956. The registered office of the Respondent/Corporate Debtor is situated at 87, Taraganj Industrial Area, Sarangpur, MP 465697. A Copy of Master Data of Corporate Debtor downloaded from MCA website dated 25.03.2022 is annexed with the Additional Affidavit filed on 02.06.2022 as **Annexure-I**.
4. On perusal of Part-III of the Form-5 revealed that the Operational Creditor has named **Mr. Amar Vijaykumar Agarwal**, having Registration No. IBBI/IPA-001/P-P00086/2017-18/10182, having address: NIRPL 3rd Floor, Nakhatra, 377, Abazari Road, Gandhi Nagar, Nagpur, Maharashtra-440011 (**e-mail:** nirpltd@gmail.com) Mobile



No.98230-38552 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). The copy of valid Consent cum Written Communication of IRP in Form-2 is annexed with the Petition as **Exhibit-C**. However, as per the IBBI Website, the proposed IRP's **AFA** (Registration No. IBBI/IPA-001/P-P00086/2017-18/10182) is not valid as of 16.06.2025, necessitating the appointment of an alternative IRP from the IBBI Panel List, despite the valid consent provided in Form-2 (**Exhibit-C**). However, as per details available on the IBBI Website, his **AFA** is not valid as of the date. Therefore, the Tribunal will appoint a new IRP due to the current invalidity if so required.

5. Further, on perusal of Part-IV of the Form-5 reveals the details of the claimed debt of Rs.6,37,63,095, comprising principal of Rs.5,34,15,815 and interest of Rs.1,39,47,280 calculated at 24% per annum up to 30.04.2018. The interest rate of 2% per month, as stipulated in the invoices (Exhibit-F), is contractually agreed between the parties and supported by the balance confirmation letter (**Exhibit-E**). The default occurred between 21.02.2017 to 18.04.2017,



corresponding to the due dates of invoices issued for goods supplied.

6. The Applicant supplied goods, specifically H.R. Coils and H.R. Slits, to the Respondent based on purchase orders, raising 35 invoices between 07.01.2017 and 03.03.2017, with a total principal amount of Rs. 5,34,15,815. The invoices stipulated a 45-day payment period, with interest at 2% per month for delayed payments, as evidenced in **Exhibit-F** annexed with the Company Petition. The Respondent acknowledged receipt of goods, as supported by delivery challans annexed with the Company Petition.
7. The Applicant issued a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, on 02.06.2018, demanding Rs. 6,37,63,095, served at the Respondent's registered office on 08.06.2018, as evidenced by proof of service in **Exhibit-D** annexed with the Company Petition and a letter from the Department of Posts dated 12.07.2018 in the Compliance Affidavit dated 02.06.2022.
8. The Respondent failed to pay within 10 days of the demand notice, with the date of default specified as 21.02.2017 to



17.04.2017 in Form-5, of the Company Petition. The Applicant clarifies in the Written Submission filed on 15.04.2025 that the date of default is 18.04.2017, based on the 45-day payment term from the last invoice dated 03.03.2017.

9. The Applicant filed the Company Petition on 18.07.2018, supported by evidence of debt and default, including invoices, delivery challans, demand notice, and a balance confirmation letter dated 01.04.2017, as provided in Exhibits C, E, and F annexed with the Company Petition. The Applicant affirms no dispute exists, as supported by an affidavit in **Exhibit-J** annexed with the Company Petition.
10. That on issuance of the notice in the Petition, the Respondent has appeared and filed its reply on 17.12.2020, denying various averments made in the Petition. The Respondent submits that no goods were supplied, and the invoices in **Exhibit-F** annexed with the Company Petition lack Goods Receipt Number or Motor Receipt Number, as stated in the Reply.



- 11.** The Respondent claims its premises were under Punjab National Bank's possession since 08.03.2017 under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as evidenced by a possession notice in **Annexure R-2** annexed with the Reply.
- 12.** The Respondent denies receipt of the demand notice dated 02.06.2018, citing Punjab National Bank's possession, as stated in the Reply and supported by **Annexure R-2** annexed with the Reply. The Respondent claims the invoices in **Exhibit-F** annexed with the Company Petition lack authorized signatures, as stated in the Reply.
- 13.** The Respondent alleges the balance confirmation letter dated 01.04.2017 in **Exhibit-E** annexed with the Company Petition is forged, citing a similar letter in Application No. TP/MP/174/2019, as evidenced by **Annexure R-3** annexed with the Reply. The Respondent submits that the Applicant's bank statement in **Exhibit-H** annexed with the Company Petition shows no payment to STL Exports Ltd for goods, as stated in the Reply.



14. The Respondent seeks dismissal of the petition, alleging lack of evidence and requesting action under Section 76 of the Insolvency and Bankruptcy Code, 2016, as stated in the Reply and Written Submission filed on 17.04.2025.
15. The Applicant filed a Rejoinder Affidavit on 31.07.2021, denying the Respondent's claims, asserting goods were supplied and consumed, as evidenced by the Respondent's VAT Return in Form 10 for 01.01.2017 to 31.03.2017 and the Applicant's ledger, collectively marked as **Annexure-I** annexed with the Rejoinder.
16. The Applicant submits that goods were purchased from STL Exports Ltd, consigned to the Respondent, as evidenced by purchase invoice no. 67 dated 03.03.2017 for Rs. 14,91,100 and sales invoice SAR-0051 dated 03.03.2017 for Rs. 15,97,113, both in Annexure I annexed with the Rejoinder. The VAT Return in Form 10 shows purchases of Rs. 3,38,24,267, as provided in Annexure I annexed with the Rejoinder.
17. The Applicant refutes the Respondent's claim of non-receipt of the demand notice, citing proof of delivery in **Annexure D**



annexed with the Company Petition and the Department of Posts letter in the Compliance Affidavit dated 02.06.2022. The Applicant denies forgery of the balance confirmation letter, as stated in the Rejoinder.

- 18.** The Compliance Affidavit dated 02.06.2022, pursuant to the order dated 25.03.2022, includes MCA Master Data of the Respondent, confirming its registered address and active status, and a Department of Posts letter dated 12.07.2018 confirming delivery of the demand notice on 08.06.2018, as provided in the Compliance Affidavit dated 02.06.2022.
- 19.** The Applicant's Written Submission filed on 15.04.2025 reiterates the claim of Rs. 6,37,63,095, supported by 35 invoices, computation of interest, demand notice, no-dispute affidavit, MCA record, and VAT Return in Form 10, as provided in Exhibit C, D, G, I annexed with the Company Petition, Rejoinder, and Compliance Affidavit dated 02.06.2022.
- 20.** The Respondent's Written Submission filed on 17.04.2025 denies supply, citing lack of Goods Receipt Number in Exhibit-F annexed with the Company Petition, Punjab



National Bank's possession in Annexure R-2 annexed with the Reply, and absence of authorized signatures in Exhibit-F annexed with the Company Petition. The Respondent alleges forgery of the balance confirmation letter, referencing Annexure R-3 annexed with the Reply.

21. We have heard the arguments of Ld. Counsel for the Applicant/Operational Creditor as well as Ld. Counsel for the Respondent/Corporate Debtor and perused the material available on record. In lieu of the same the following issues are framed for determination: -

- (a). Whether an Operational Debt exists?
- (b). Whether the Demand Notice was served?
- (c). Whether a Pre-existing Dispute exists?
- (d). Whether the Petition is within the limitation period?
- (e). Whether the petition complies with the Insolvency and Bankruptcy Code, 2016?

22. On the existence of Operational Debt, the Applicant submits 35 invoices for Rs. 5,34,15,815, with interest of Rs. 1,39,47,280, as provided in **Exhibit-F** annexed with the Company Petition. The VAT Return in Form 10 for



01.01.2017 to 31.03.2017 shows purchases of Rs. 3,38,24,267, as provided in Annexure I annexed with the Rejoinder. The ledger shows a balance of Rs. 3,38,35,658 as of 02.02.2017, as provided in Annexure I annexed with the Rejoinder.

- 23.** The transaction involving STL Exports Ltd, with purchase invoice no. 67 dated 03.03.2017 and sales invoice SAR-0051 dated 03.03.2017, confirms supply to the Respondent, as provided in Annexure I annexed with the Rejoinder. The Respondent's claim of non-supply, citing lack of Goods Receipt Number in **Exhibit-F** annexed with the Company Petition, is contradicted by the VAT Return claiming credit, as provided in Annexure I annexed with the Rejoinder.
- 24.** Section 27 of the Central Sales Tax Act, 1956, and Rule 12 of the Central Excise Rules require proof of receipt for VAT credit, which the Respondent claimed, as evidenced in Annexure I annexed with the Rejoinder. The balance confirmation letter dated 01.04.2017, in **Exhibit-E** annexed with the Company Petition, supports the debt, though the



Respondent alleges forgery, as stated in the Reply and Annexure R-3 annexed with the Reply.

25. The Respondent's reference to Application No. TP/MP/174/2019 in Annexure R-3 annexed with the Reply does not prove forgery, as no expert report or prior complaint is provided. The Applicant's evidence establishes an operational debt exceeding Rs.1.00 Lakh, which meets the threshold limit as required in section 4 of the IB Code, 2016, un-amended (prior to amendment dated 20.03.2020 qua the threshold limit).

26. On service of the Demand Notice, the Applicant provides proof of delivery on 08.06.2018, as evidenced in **Exhibit-F** annexed with the Company Petition and the Department of Posts letter in the Compliance Affidavit dated 02.06.2022. The Respondent's claim of non-receipt of Demand Notice, citing Punjab National Bank's possession of the Registered Office U/s 13(4) of the SARFAESI Act, 2002 R/w Rule 8(1) in **Annexure R-2** annexed with the Reply, is unsupported by a Panchnama in terms of Rule 8(1) R/w Rule 4(1) of the Security Interest (Enforcement) Rules, 2002.



- 27.** The MCA Master Data in the Compliance Affidavit dated 02.06.2022 shows the Respondent as active with filings until 31.12.2020, and Punjab National Bank's charge as satisfied. The demand notice complies with Section 8(1) of the Insolvency and Bankruptcy Code, 2016, and service is established.
- 28. On the existence of a pre-existing dispute,** the Applicant submits that no dispute was raised before the demand notice, as evidenced by the no-dispute affidavit in **Exhibit-J** annexed with the Company Petition. The Respondent's claims of non-supply and forgery, as stated in the Reply and Written Submission filed on 17.04.2025, are raised post-petition.
- 29.** In ***Mobilox Innovations Pvt Ltd v. Kirusa Software Pvt Ltd (2018) 1 SCC 353***, the Supreme Court held that a dispute must be pre-existing, genuine, and substantiated before the demand notice. The Respondent's objections, supported by Exhibit R-2 and R-3 annexed with the Reply, lack evidence of prior correspondence, as required under Section 8(2) of the Insolvency and Bankruptcy Code, 2016.



30. The Respondent's reliance on ***Ramco Systems Ltd v. Spicejet Ltd (Company Appeal (AT) (Insolvency) No. 31 of 2018***), as stated in the Reply, is inapplicable, as the Applicant provides evidence of supply in Exhibit C, F, I annexed with the Company Petition and Rejoinder, unlike the lack of evidence in ***Ramco***.
31. No pre-existing dispute exists, satisfying Section 9(5)(i)(d) of the Insolvency and Bankruptcy Code, 2016. The Respondent's claim under Section 76, as stated in the Reply, lacks evidence of fraud by the Applicant.
32. **On the limitation period**, the Applicant submits that the petition was filed on 18.07.2018, within three years from the default date of 18.04.2017, as clarified in the Written Submission filed on 15.04.2025. The invoices are from 07.01.2017 to 03.03.2017, as provided in **Exhibit-F** annexed with the Company Petition.
33. Under Article 137 of the Limitation Act, 1963, the limitation period is three years from the cause of action. The default date of 18.04.2017, based on the 45-day payment term from 03.03.2017, renders the petition filed on 18.07.2018 within



time. The Respondent's allegation of forgery of the balance confirmation letter **(Exhibit-E)** is unsubstantiated, as no evidence, such as an expert report, was provided. The letter, signed by the Corporate Debtor, constitutes a valid acknowledgment under Section 18 of the Limitation Act, 1963, as affirmed in ***B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates (2019) 11 SCC 633.***

- 34. On compliance with the Insolvency and Bankruptcy Code, 2016**, the Applicant provides Form-5, demand notice, evidence of debt, no-dispute affidavit, and Interim Resolution Professional details, as provided in Exhibit A to L annexed with the Company Petition. The petition satisfies Section 9(3) and Section 9(5)(i) of the Insolvency and Bankruptcy Code, 2016.
- 35.** The Respondent's claim of Punjab National Bank's possession, as stated in Annexure R-2 annexed with the Reply, is contradicted by MCA Master Data in the Compliance Affidavit dated 02.06.2022. The Respondent's non-operational status is unsupported, as filings continued



until 31.12.2020, as provided in the Compliance Affidavit dated 02.06.2022.

- 36.** The Applicant's evidence establishes debt, default, and compliance, with no pre-existing dispute. The petition meets the requirements under Section 9(5)(i) of the Insolvency and Bankruptcy Code, 2016, for admission. Further, the Petition is maintainable in the present form filed by the Proprietorship Firm in view of the judgment of Hon'ble NCLAT rendered in ***Fipola Retail (India) Pvt. Ltd. v. M2N Interiors, (2021) ibclaw.in 415 NCLAT.***
- 37.** The Respondent's request for dismissal and action under Section 76 of the IBC, as stated in the Reply and Written Submission filed on 17.04.2025, is rejected, as the Respondent failed to provide cogent evidence of wilful or knowing false information by the Applicant. The Applicant's evidence in **Exhibits A to L** annexed with the Company Petition and Rejoinder is credible and consistent.
- 38.** Hence, in our view, the present Petition is complete in terms of Section 9 of the Code. The Operational Creditor is entitled to claim its dues, establishing the operational debt and



default in payment of the Operational Debt beyond doubt. The outstanding Operational Debt is of more than rupees one lakh, which meets the threshold limit as per un-amended (prior to amendment dated 20.03.2020) section 4 of the IB Code, 2016, and is well within the limitation for filing the present Petition. Moreover, the aforesaid said default is not covered under the period exempted under Section 10A of IBC, 2016. Accordingly, the Petition filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

- 39.** The Operational Creditor in Part-III of the Form-5 has proposed the name of the IP **Amar Vijaykumar Agarwal**, having Registration No. IBBI/IPA-001/P-P00086/2017-18/10182, having address: NIRPL 3rd Floor, Nakhatra, 377, Abazari Road, Gandhi Nagar, Nagpur, Maharashtra-440011 (**e-mail:** nirpltd@gmail.com) Mobile No.98230-38552 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). The copy of Consent cum Written Communication of IRP in Form-2 is annexed with the



Petition as **Exhibit-C**. However, as per details available on the IBBI Website, his **AFA** is not valid as of the date, which necessitates the appointment of an alternative IRP from the IBBI Panel List.

40. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under: -

- (i) The Respondent/Corporate Debtor **Shreepati Steel Tubes Pvt Ltd** is **admitted** in the Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence thereof, a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - 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 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.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements 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. The moratorium does not apply to transactions notified by the Central Government, as per Section 14(3)(a) of the IB Code, 2016.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the Corporate Debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) Since the **AFA** of the proposed IP is not valid as of the date, as per details available on the IBBI Website. Therefore, we appoint **Gagan Jhavar**, having Registration No. IBBI/IPA-001/IP-P-02382/2021-2022/13579, E-mail:jhavar_co@yahoo.com, Mobile No.



9826047298, under Section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**) from the IBBI Panel List, subject to submission of written consent and declaration in terms of Regulation 3(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The nominated IRP's details shall be communicated to the Registry, Operational Creditor, and Corporate Debtor.

- (vi) The IRP so appointed shall make a public announcement (e.g., newspapers, websites) under Regulation 6(2) of IBBI Regulations, 2016, of the initiation of the Corporate Insolvency Resolution Process and call for submissions of claims under section 15 within three days of appointment as per Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its promoters, or any other person associated with the management of the Corporate Debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the Corporate Debtor, its promoters, or any other person



required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the Corporate Debtor's assets and documents without any delay whatsoever within seven days of this order. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor company' and manage the operations of the Corporate Debtor company as a going concern as a part of the obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority a periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.5,00,000/- (Rupees Five Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides



about his fees/expenses. The payment shall be made to a designated bank account to be provided by the IRP within three days of appointment, and this amount shall be adjustable against the IRP's fees as approved by the Committee of Creditors under Regulation 33 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (xii) The Registry is directed to communicate this order to the Operational Creditor, Corporate Debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update the Master Data of the Corporate Debtor on the MCA portal to reflect its status as 'under Corporate Insolvency Resolution Process' pursuant to this order and shall forward the compliance report to the Registrar, NCLT.
- (xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.



41. Accordingly, this Petition being **TP(IB)/59/MP/2019**, old CP (IB) 427 of 2018 is admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

Sd/-
SHAMMI KHAN
MEMBER (JUDICIAL)