

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

Item 110
IB-900(ND)/2020

IN THE MATTER OF:

M/s. P.R Rolling Mills Private Limited

.... Operational creditor

Versus

M/s. Hema Engineering Industries Limited

.... Corporate debtor

SECTION

U/s 9 IBC code 2016

Order delivered on 05.04.2021

CORAM:

CH. MOHD. SHARIEF TARIQ, MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

PRESENT:

For Operational Creditor

: Ms. Nivedita R. Sarada,
Mr. Rachat Sharma, Advocates.

For Corporate Debtor

: Mr. Vikas Dutta, Advocate.

ORDER
(Through Video Conference)

1. The Ld. Counsels for the Operational Creditor and Corporate Debtor are present. Pleadings are complete.

2. Under consideration is CP (IB)-900(ND)/2020 filed under Section 9 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor viz, *M/s. Hema Engineering Industries Limited*, declare Moratorium and appoint Interim Resolution Professional.

3. It is submitted by the Ld. Counsel for the Operational Creditor that the total amount of debt is Rs. 4,73,33,795/- which was due and payable by the Corporate

Debtor as on 28.11.2019. It is stated that the Corporate Debtor had approached the Operational Creditor in the month of June, 2019 for purchasing the product "Flat C-45" (hereinafter referred as "Goods") and in pursuance of the said request; the Operational Creditor had supplied goods to the Corporate Debtor. It is further stated that the payment term for supplying of goods was 45 days from the date of issuance of invoices but later on it was extended to 60 days on the basis of request made by the Corporate Debtor.

4. The goods were supplied through transport Company on consignment basis against which the acknowledgements were issued by the Corporate Debtor in the form of '**MATERIAL RECEIVED**' to the Operational Creditor on the consignment Note.

5. It is also submitted by the Ld. Counsel for the Operational Creditor that the initially the Corporate Debtor had made regular payments by issuing cheques or via RTGS and the adjustment of the said payments were done by the Operational Creditor on the basis of FIFO(First in First Out) method but in spite of regular supplies, the Corporate Debtor thereafter caused delay in making the payments that were required to be paid within 60 days from the date of issuance of invoice and ultimately stopped making the payment of the subsequent invoices raised during the period from 28.09.2019 to 28.11.2019 amounting to Rs. 4,73,33,795/-. However, few cheques were issued which are got bounced. The copies of the invoices raised are placed on record at Page 35 to 63 of the type-set filed with the petition, the acknowledgements given on different dates after receiving the consignment are also placed on record.

6. The demand notice has been issued by the Operational Creditor on 12.02.2020 wherein the same amount was claimed to which no reply was given by the Corporate Debtor. The Operational Creditor has filed affidavit in compliance of Section 9(3)(b) of the Code. The affidavit is placed on record at Page 27 wherein it is deposed that the Corporate Debtor did not bring on record the existence of and/or pendency of any suit or arbitration proceedings filed before the receipt of the Demand Notice, as contemplated under clause (a) of sub-section 2 of Section 8 of the IBC, 2016. The Ledger Account is placed on record at Page 64 and the Bank Statement from 01.09.2019 to 07.05.2020 is also placed on record at Page 141 of the type-set petition.

7. The reply has been filed by the Corporate Debtor wherein the claims and contentions of the Operational Creditor were denied. Further, it is stated in the reply that the Corporate Debtor is a solvent company and there is genuine dispute with regard to the claim made by the Operational Creditor and the initiation of insolvency proceedings would result in prejudice and irreparable harm to the business and reputation of the Corporate Debtor. It is further stated in the reply that no valid board resolution in favour of the authorize representative of the Operational Creditor to file the present application is placed on record for filing the present application. It is stated that the application has been filed by Mr. Praveen Maheshwari, Director of the Operational Creditor claiming to be authorized person vide Board Resolution dated 06.02.2020. The perusal of the board Resolution would show that Mr. Praveen Chand Maheshwari, Managing Director (and not Mr. Praveen Maheshwari, Director) of the Operational Creditor is authorized to file suit for recovery against the alleged Corporate Debtor. It is further stated that the said Resolution is limited to the filing of suit for recovery of alleged financial dues against the Corporate Debtor and not for

the purposes of filing of the present application. So, the present proceedings cannot continue on the basis of faulty Board Resolution.

8. In rebuttal, the Ld. Counsel for the Operational Creditor drew our attention to the Board Resolution dated 06.02.2020 placed on record at Page 252 of the type-set filed with the petition wherein, it is stated that Mr. Praveen Chand Maheshwari, Managing Director and/or Shri Rajeev Maheshwari, Joint Managing Director of the Company is authorized to appear, sign, verify, declare, affirm, make, present, submit and file all applications, written statements, complaints, notices, plaints, petitions and other documents against M/s. Hema Engineering Industries Limited before any Court of law or any Tribunal or any quasi-judicial or statutory or administrative authority. The language of the Board Resolution is very clear and there is no ambiguity. It is noted that the Board Resolution gives an authority to the authorize^d person to initiate the action for filing suits and applications. Therefore, as per board Resolution, the application has correctly been filed for initiating the CIR Process against the Corporate Debtor. The Board Resolution cannot be read in a manner as suggested by the Ld. Counsel for the Corporate Debtor. The Managing Director namely Mr. Praveen Chand Maheshwari is also a Director of the Operational Creditor. Therefore, the objection raised by the Corporate Debtor is devoid of merits and the same stands **rejected**.

9. It is also stated under Para 8 of the reply that the claim of the Operational Creditor is not of Rs.4,73,33,795/- as stated by the Operational Creditor, because the amount under debit notes raised is Rs.55,07,969.35/- on account of the difference in prices of the goods supplied by the Operational Creditor. Apart from the debit notes, the Operational Creditor has received an amount of

Rs.68,35,493.97/- through Hero MotoCorp Limited on different dates during the year of 2020. It is further stated that the Corporate Debtor has paid additional amount of Rs.50,00,000/- through Demand Draft and the Operational Creditor is guilty of suppression of facts and has filed the present application based upon an incorrect and untrue statement of accounts.

10. In relation to 63 debit notes stated to be raised by the Corporate Debtor for a total sum of Rs.55,07,969.35/-, no record is placed on the file to establish that any of the debit notes is raised prior to issuance of the demand notice dated 12.02.2020. It is only on 17.02.2020 after issuance of the demand notice the Corporate Debtor has come up with the plea about the debit notes, which appears to be afterthought and mere bluster. Therefore, the plea stands **rejected**.

11. In relation to the other plea of the corporate debtor that an amount of Rs.68,35,493.97/- has been paid to the Operational Creditor through Hero Moto Crop Limited during the year of 2020, no correspondence is placed on record to suggest that the said amount has been paid by the Hero Moto Crop Limited on behalf of the Corporate Debtor to the Operational Creditor. In rebuttal, it is submitted by the counsel for the operational creditor that there are separate business relations of his client with Hero Moto Crop Limited and the said amount is paid against the supply of material to the Hero Moto Crop Limited. The plea taken by the counsel for the corporate debtor is not substantiated with any documentary evidence. Therefore, the plea is **rejected**.

12. It worthwhile to record that during the course of previous dates of hearing, the Corporate Debtor has sought the reconciliation of the accounts, pursuance to which

this authority vide order dated 12.02.2020 has appointed Independent Chartered Accountant viz., M/s. R. Mohnot and Company LLP. The report has been prepared by the Chartered Accountant based on the record given by both the sides. The Chartered Accountant after reconciliation of the accounts has concluded that the outstanding amount is Rs.3,61,73,329/-. The Operational Creditor has not raised any objection in spite of the fact that the amount claimed has been reduced from Rs.4,73,33,795/- to Rs.3,61,73,329/-. However, the Corporate Debtor has raised same objections, to the report filed by the Chartered Accountant, as are discussed in the preceding paragraphs and stood rejected. The Chartered Accountant has clearly brought out in the report that no communication has been placed on record by the corporate debtor to demonstrate that at any point of time prior to the demand notice the debit notes were sent to Operational Creditor and accepted. The Ld. Counsel for the corporate debtor has shown minutes dated 09.11.2020 with regard to one debit note for an amount of Rs.2,54,650/- but there is no mention of the name of the Operational Creditor on the said minutes. Therefore, the document is not admissible in evidence. It is further recorded in the report of the Chartered Accountant that the payments made by the Hero Moto Crop Limited to operational creditor has no nexus with the Corporate Debtor.

13. The demand notice, invoices filed by the Operational Creditor, the detail of which is given under Para IV of the Petition, compliance with the requirements of Section 9(3) (b) and (c), and the report filed by the Independent Chartered Accountant, clearly established that the Corporate Debtor has defaulted in making the payments of the debt due to the Operational Creditor. Thus, the application is **admitted**, and the commencement of the CIRP is ordered against the corporate

debtor viz., *M/ Hemant Engineering Industries Ltd*, which ordinarily shall be completed within 180 days, reckoning from the day this Order is passed. (u)

14. 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 Securitisation 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.

15. 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.

16. The Operational Creditor has not proposed the name of any Resolution Professional for appointment as Interim Resolution Professional ('IRP'), therefore,

Mr. Vikas Garg registered with IBBI having Registration No. IBBI/IPA-001/IP-P01050/2017-18/11733; Email: vikas@vamindia.in & Mobile No. 9910024380 is hereby appointed as IRP. The IRP is directed to take charge of the CD's management immediately including Bank accounts. The IRP is 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.

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

18. 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 shall 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.

19. The Ld. 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.

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

21. The Order is dictated and pronounced in open court through video conferencing in the presence of Ld. Counsels for the Operational Creditor and Corporate Debtor.



**NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)**



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

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