

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH

Company Petition (IB)No.346/ALD/2018

In the matter of:

The Insolvency and Bankruptcy Code,2016

AND

In the matter of:

Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

AND

In the matter of :

Usha Martin Limited

.....Operational Creditor/ Applicant.

VERSUS

Rudra Auto Tech Engineering Private Limited

.....Corporate Debtor/Respondent.

ORDER DELIVERED ON : 03.09.2019

CORAM: Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

For the Applicant/ Operational Creditor: Sh. Zeeshan Haque with  
Utkarsh Malviya and Niraj Kumar  
Singh (Advocates)

For the Respondent/ Corporate Debtor: None.

As per: Sh. Abni Ranjan Kumar Sinha, Member, Judicial.

Order

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the Applicant/ operational creditor, i.e. "Usha Martin Limited" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "Rudra Auto Tech Engineering Private Limited."

2. The Applicant "Usha Martin Ltd" is a Company Incorporated under Companies Act, 1956 on 22<sup>nd</sup> May 1986 bearing CIN

No.L31400WB1986PLC091621 It is involved in Manufacture of accumulators, primary cells and primary batteries.

3. The Respondent/Corporate Debtor "**Rudra Auto tech Engineering Private Limited.**" is a Company Incorporated on 27<sup>th</sup> December,2011. under the provision of Companies Act, 1956, bearing CIN No. U34100UR2011PTC000065. It is involved in Manufacture of motor vehicles. The Nominal Share Capital of Corporate Debtor company is Rs. 1,00,000,000/-(Rupee Ten Crores Only) and Paid-up Share Capital is Rs.1,00,000,000/- (Rupee Ten Crores only).

4. Brief facts raising to the present IB to petition are stated as follows:

i. The Petitioners have stated that Mr. Mithilesh Jha ,Senior Deputy General Manager, of the Company has been authorised on behalf of operational creditor. In this connection, a copy of the power of Attorney executed by Mr. Pravin Kumar Jain, Joint Managing Director of Usha Martin Limited in favour of Mr. Mithilesh Jha (*annexed as Annexure B*). Mr. Pravin Kumar Jain is authorised to execute the power of Attorney on behalf of the Operational Creditor in board resolution to submit application. (*Authorization letter dated 21.05.2018 to make application on behalf of Operational Creditor is annexed as Annexure C of the application*).

ii. The learned counsel appearing for Operational Creditor has stated that **Usha Martin Limited** (Operational creditor) has supplied materials/good i.e Round Bars to **M/s Rudra Auto Tech Engineering Pvt. Ltd**(Corporate Debtor) and the Amount of **Rs. 34,61,000.78/- (Rupees Thirty Four Lacs Sixty one Thousand Seventy Eight Paise only)** has fallen due as on 30<sup>th</sup> April,2018, including interest @18% per annum and from 14<sup>th</sup> May, 2017, along with further interest @18% per annum till realisation thereof on . The date of default is **14<sup>th</sup> May,2017**.The workings for computation of default annexed in tabular form as "*Annexure 8 at page 55 of the Application*".

iii. Further, the operational creditor in support of its petition has annexed the following documents: -

(a) *Petitioner has annexed a copy of the Demand Notice dated 08.05.2018 along with Invoices which were issued to Corporate Debtor and received by it in its registered address. (Annexure P-4 at pages 56-64 in the application).*

(b) *Petitioner has annexed Copy of consignment agreement as (Annexure E of the application).*

(c) *The Petitioner/Operational Creditor has submitted an Affidavit regarding disclosure of the statement of Account of the bank where deposits are made, or credits normally received by the operational creditor and Bank Certificate that outstanding debt of above-mentioned amount was not received till date ( A Copy of Bank Statement is annexed Annexure J at pages 65-138 of the application).*

(d) *Further in compliance to section 9(5)(b) Operational Creditor stated on affidavit that they have not received any reply to demand notice by Corporate Debtor raising to the demand raised by the Operational Creditor against the Operational Debt owed by corporate debtor.(Annexed at Pg 139-141 of the Application).*

iv. Although the respondent filed the counter affidavit but in the course of hearing no one appeared on his behalf so the counter affidavit is taken into record. The respondent in its counter affidavit stated that the Operational Creditor has not locus standi to move this application for initiation of CIRP against respondent company. It also stated that this Tribunal has no jurisdiction to entertain the CIRP process. It is further stated that the Operational Creditor has not issued any prerequisite notice and there is no relationship of seller and purchaser between the parties to this petition thus neither Corporate Debtor placed any order with the Operational Creditor nor had supplied any good to it.

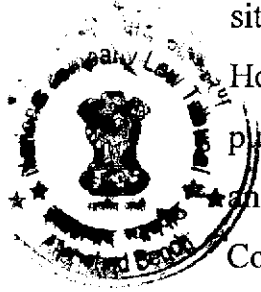
vi. It is also stated in counter affidavit that the present petition has not been filed by the competent and Authorised person i.e. Mr. Mithilesh Jha is neither



authorised nor competent to file on behalf of Operational Creditor and hence prayed that this petition is liable to be dismissed.

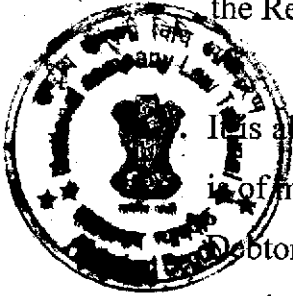
vii. The petitioner in its reply to counter affidavit stated there was no any pre-existing dispute between the Operational Creditor and Corporate Debtor and demand notice under Section 8 IBC has been served and delivered at the office of the Corporate Debtor with postal track report. In reply to counter affidavit it is also stated that the Corporate Debtor has only paid a sum of Rs. 39,003.95 to the Operational Creditor out of the total outstanding dues which itself shows that there was a privity of contract between the Operational Creditor and the Corporate Debtor since no payment could ever have been made by the Corporate Debtor to the Operational Creditor if there were no business transactions between the parties.

viii. In regard to the territorial jurisdiction to entertain this application it is stated in rejoinder affidavit that registered office of the Corporate Debtor is situated in Haldwani in Uttarakhand, which fall within the jurisdiction of this Hon'ble Tribunal and in relation to the existence of relation of seller and purchaser the Corporate Debtor has never raised dispute as regard quality and quantity of goods supplied by the Operational Creditor. Thus, the Corporate Debtor has merely made bald allegation without giving any supporting evidence. So the prayer made by Operational Creditor to initiate CIRP should to be allowed.



5. I have heard the arguments of the Ld. Counsel for the Operational Creditor and perused the material available on record and documents annexed thereof. It may be seen that in this application, the petitioner has duly complied with the provision of section 9 of IB Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor company.
6. It is matter of record that applicant filed a copy of invoices of the period ranging from 10.02.2017 to 30.03.2017, and the present petition filed under section 9 of IB code on 09.10.2018. A perusal of the same goes to show that invoices of this period are found well within the limitation (As per section 238 A of IB Code) to triggered the CIRP in respect of corporate debtor.

7. Further this Petition is found to be filed in the prescribed format by a duly authorised person. The total amount claimed in default is of **Rs. 34,61,000.78/- (Rupees Thirty Four Lacs Sixty one Thousand Seventy Eight Paise only) /-** which is more than Rs One Lakh to triggered the CIRP.
8. In the present matter, it is the matter of record that the Corporate Debtor though completed the pleadings but although being informed of the date of hearing by the petitioner did not appear despite several opportunities granted. Therefore, the Petitioner succeeded in proving its debt and the respondent failed to discharge its payment liability towards supply of goods to corporate debtor as per its purchase order. The Corporate Debtor has not paid the outstanding debt owed to operational creditor despite demand notice, issued to it under Sec 8 of the Code. Therefore, the amount and default on the side of the respondent stand proved in the present case. Therefore, petitioner is found entitled to initiate corporate insolvency resolution process as against the Respondent.



It is also matter of record that Operational Debt owed by Corporate Debtor is of more than One lakh Rupees and perusal of record shows that Corporate Debtor failed to raise any dispute through its reply to demand notice within ten days after receipt of Demand Notice as mandated under section 8 (2)(a) of the Code, hence it can be assumed that there is no existence of dispute between Operational Creditor and Corporate debtor regarding outstanding debt.

10. As far as the territorial jurisdiction of the NCLT, Allahabad Bench to entertain the matter is concerned I am of the view that that it is a settled proposition of law that an application for initiation of the Corporate Insolvency Process in respect of the Corporate Debtor has to be filed before the Adjudicating Authority having jurisdiction over the registered office of the Corporate Debtor and as far as this petition is concerned, the registered office of the Corporate Debtor is situated in Haldwani in the State of Uttarakhand and comes within the jurisdiction of ROC-Uttarakhand, so this Tribunal has jurisdiction to entertain this application as this Adjudicating Authority has its jurisdiction over the State of Uttar Pradesh and State of Uttarakhand.

11. Thus the Petitioner, in the present IB petition, has complied with section 9 (3) (b) and 9(3)(c) by filing supporting affidavit. As the petitioner fulfils the requirement for invoking CIRP in terms of Section 9 of the Code. The present application is found complete and the default of debts is established. Hence the present petition deserves for admission.

12. Hence it is hereby admitted, with following direction and observation I declare a moratorium in respect of corporate Debtor company for purpose referred to in section 14 of the Code with the following directions:

(i) Subject to provisions of sub-sections (2) and (3), on the insolvency Commencement date, the Adjudicating Authority shall by order declare a moratorium on prohibiting 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;*

(d) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.*

(ii) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(iii) 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.



(iv) The order of moratorium shall have affect from the date of 03.09.2019 till the completion of the corporate insolvency resolution process.

13. Since in the present matter the applicant did not proposed the name of the IRP. Hence, this Adjudicating Authority hereby appoint **Mr. Rakesh Singh Senger** Registration No. **IBBI/IPA-002/IP-N00455/2017-2018/11405** Email : **rakeshsenger957@gmail.com** as Interim resolutorial Professional.

14. IRP is directed to cause public announcement of CIRP immediately as provided in Section 15 of the Code.

15. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and also to IRP.

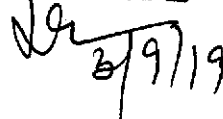
16. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

List on 18.09.2019 for the filing of the progress report.

  
Abni Ranjan Kumar Sinha  
Member(Judicial)

Date :03.09.2019

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

  
3/9/19

P. P. PANDEY  
ASSISTANT REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD-U.P.