

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IBA/1237/2019**

*(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 **M/s. UCAL Auto Pvt. Ltd.**

**M/s. Precifine Die and Casting**

4/471, Gokul Gardens,  
Kundrathur Main Road,  
Chennai – 600 128

*... Operational Creditor*

-Vs-

**M/s. UCAL Auto Private Limited**

Reg. Off:-  
#10, Rajakrishna Road,  
Teynampet,  
Chennai – 600 018

*...Corporate Debtor*

*Order Pronounced on 4<sup>th</sup> June 2021*

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : K. Ravi, Advocate*

*For Corporate Debtor : None present*

**ORDER**

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. Under Adjudication is an Application that has been filed by **M/s. Precifine Die and Casting** (hereinafter referred to as 'Operational Creditor') under Section 9 of the Insolvency &

Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. UCAL Auto Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Partnership firm represented by its Partner K. Ganesh in the present proceedings. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U35911TN1999PTC042573 which was incorporated on 28.05.1999 and that its Nominal Share capital is Rs.2,00,00,000/- and its Paid up Capital is Rs.1,87,75,500/-. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.10, Rajakrishna Road, Teynampet, Chennai – 600 018. Part-III of the Application shows that the Operational Creditor has not proposed any "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part-IV of the Application, it is seen that a sum of Rs.1,18,77,303.29/- is being claimed by the Operational Creditor as Operational Debt, plus interest at the rate of 12.5% per annum on dues relating to the period 15.05.2016 to 25.05.2017 and 21% per annum as interest on dues relating to the period 26.05.2017 to 17.01.2018. The date of default is stated to be various dates on which the debt fell due as per the invoice. The present Application is filed before this Tribunal on 26.09.2019

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is *inter alia* engaged in the manufacturing, marketing, distribution and sale of various two – wheelers auto parts as original equipments like auto chain tensioners, oil pump, manual and auto fuel cocks, fuel filters, etc. It was submitted that the Corporate Debtor has been associated with the Operational Creditor as their Distributor since 2001 and the Operational Creditor has from time to time dispatched various goods traded and marketed by the Operational Creditor against their respective purchase orders.

5. The Learned Counsel for the Operational Creditor submitted that the debt fell due for the first of the Invoice bearing No. C16/17-249 on 15.05.2016 and thereafter in respect of the goods supplied to the Corporate Debtor, the Operational Creditor has

issued various Invoices for the period 15.05.2016 to 17.01.2018. It was further submitted that the Operational Creditor has been maintaining a running current account in relation to the Corporate Debtor. As against the Statement of Account / Ledger maintained by the Operational Creditor, a sum of Rs.83,38,396.74/- is still due and payable by the Corporate Debtor, apart from the interest for a sum of Rs.39,34,163.55/-. The copy of the statement of account / ledger as maintained by the Operational Creditor is placed at pages 323 to 335 of the typed set filed along with the Application.

6. The Learned Counsel for the Operational Creditor submitted that on various occasion, the Operational Creditor has requested the Corporate Debtor to clear off the pending due amount by way of email and by making personal visits, however all such request have yielded no fruitful result and the Corporate Debtor has wilfully neglected to pay the dues to the Operational Creditor.

7. It was submitted that the Operational Creditor issued a Demand Notice as mandated under Section 8 of IBC, 2016 to the Corporate Debtor on 06.02.2019 and the same was delivered on 08.02.2019 and it was submitted that after receiving the Demand Notice, the Corporate Debtor has failed to clear the dues of the Operational Creditor within 10 days thereafter and has also failed to send any reply to the said notice.

8. It was further submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor in a meeting dated 25.05.2017, has promised the Operational Creditor to pay of all the dues along with interest and the Operational Creditor has also enclosed the copy of the said minutes along with the typed set filed with the Application. Hence the present Application is filed by the Operational Creditor seeking to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

9. The Respondent / Corporate Debtor has filed Counter. It is averred in the Counter that the Application is filed by the Applicant in the capacity as a Partnership Firm. The Operational Creditor has produced an identification number, however the Operational Creditor has not produced any certificate of Registration of the Partnership firm. Further, it is stated in the Counter that the Corporate Debtor is not liable to make any payment as the Corporate Debtor has already made payments to the Operational Creditor for the supplies made by the Operational Creditor and also stated that there is a dispute with regard to the quality of the products that were delivered with inferior quality to the Corporate Debtor. It is averred in the counter that the goods were rejected by the Corporate Debtor and they have raised a Purchase Return Slips (PRS) to the Operational Creditor informing the rejection of

the materials. Further, it is stated that the PRS raised would mean that the quantum of goods have been rejected by the Corporate Debtor.

10. It is further stated in the Counter that out of the Invoices raised for the period from March 2016 to September 2017 the Operational Creditor has made a claim of Rs.1,14,20,020/- including interest, out of which, it is stated that the Corporate Debtor has paid a sum of Rs.40,43,174.43/- to the Operational Creditor for the supply of goods which were without any defects and the claim in relation to the balance amount is stated to be in relation to goods which were defective and as such the Corporate Debtor is not liable to make any payment. Under the circumstances, it is prayed in the counter to reject the present Application.

11. Heard the submissions made by the Learned Counsel for the Operational Creditor and perused the file including the pleadings placed on record. It is seen from averments made in the counter that the Corporate Debtor has stated that there exist a dispute between the parties as to the quality of goods supplied by the Operational Creditor. However, the Corporate Debtor has miserably failed to place on record any document to substantiate such statement made in the counter. Further the Corporate Debtor has

also failed to bring to the notice of this Tribunal any correspondence being sent to the Operational Creditor before the issuance of the Demand Notice, in relation to the quality of goods being supplied by the Operational Creditor. It is only for the first time in the counter, the Corporate Debtor is trying to take such defence in order to defeat the claim of the Operational Creditor.

12. Further, from the minutes of the meeting held on 25.05.2017, between the parties, it is seen that the Corporate Debtor has promised the Operational Creditor to pay of all the dues along with interest. However, now the Corporate Debtor is trying to raise a spurious defence that the goods delivered by the Operational Creditor were of inferior quality and the Corporate Debtor also not placed on record any evidence or documents to show that the same was raised with the Operational Creditor before the issuance of the Demand Notice. Thus, this Tribunal is convinced that the defence raised by the Corporate Debtor is spurious defence without any documents in order to substantiate the same.

13. Thus, the default, on the part of the Corporate Debtor is proved from the documents filed and the submissions made by the Learned Counsel by the Operational Creditor. Further, it is also pertinent to note that the default arising in the present Application

is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option other than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

14. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor on 26.06.2019.

15. In relation to the 'Question of Limitation' is concerned, it is evident from the perusal of the Invoices as filed by the Petitioner / Operational Creditor in relation to the Corporate Debtor which discloses that the invoices have been raised commencing from 31.03.2016 to 09.12.2017 and the account being maintained on a running account basis, the present Application under Section 9 of



IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 26.09.2019 and as such it falls well within the period of limitation.

16. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January - June 2021 appoints **Mr. Narayanan Seshasayee**, Registration No. *IBBI/IPA-002/IP-N01015/2020-2021/13292* (email: - *seshasayeen@rediffmail.com*) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 the possession of the respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

17. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

18. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (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 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.

19. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be

communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-  
**ANIL KUMAR B**  
MEMBER (TECHNICAL)

-Sd-  
**R. VARADHARAJAN**  
MEMBER (JUDICIAL)

*Raymond*