



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No.04
IB-245(ND)/2021

IN THE MATTER OF:

M/s. Rustagi Projects Pvt. Ltd

.....**APPLICANT/PETITIONER**

Vs.

M/s. Soni E Vehicle Private Limited

.....**RESPONDENT**

SECTION

U/s 9 of IBC, 2016

Order Pronounced on 26.04.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Hamid Mir, Advocate.

For the Respondent : *Ex parte.*

ORDER

Order pronounced in open court vide separate sheets. IB-245(ND)/2021
is **admitted.**

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT III**

Company Petition No. IB-245(ND)/2021

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s. Rustagi Projects Pvt. Ltd ...Applicant/Petitioner

Versus

M/s. Soni E Vehicle Private Limited ...Corporate Debtor

Order delivered on: 26.04.2023

Coram:

**SHRI BACHU VENKAT BALARAM DAS
Hon'ble MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Hamid Mir, Advocate.

For the Respondent : *Ex parte*.

ORDER

Per: BACHU VENKAT BALARAM DAS, MEMBER (J)

1. The present petition has been filed under Section 9 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor viz, *M/s. Soni E Vehicle Private Limited*, declare Moratorium and appoint Interim Resolution Professional.

2. The Operational Creditor is a private limited Company having CIN No. U74900MH2011PTC219088 and it is incorporated under the provisions of the Companies Act 1956. The Operational Creditor is engaged in distributorship of E Vehicles in Maharashtra.



3. The Corporate Debtor is a Private Limited Company and incorporated under the provisions of the Companies Act 1956. The Corporate Debtor is engaged in manufacturing, Market Training, Sale Purchase Import Export distribution or otherwise dealing in all types of battery operated Vehicle, batteries, its parts and accessories. The Company promotes and markets its products through its network of distributors and dealers all over India.

4. It is submitted by the Learned Counsel appearing for the Applicant that the total amount of debt payable by the Corporate Debtor to the Applicant is Rs. 1,34,69,435/- along with interest @ 18% per annum as on 25.12.2020.

5. The Corporate Debtor has been set ex parte vide order dated 13.12.2022.

6. It is also submitted by the Applicant that after coming to know about the Corporate Debtor Company and its excellence in the field, the Applicant offered to the Corporate Debtor about its willingness to be appointed as Sole distributor of the Corporate Debtor-Company for market training of the product being Battery Operated Vehicle (E-Rickshaw), its batteries and accessories exclusively for Maharashtra State. The Corporate Debtor accepted the offer given by the Applicant. Thereafter, the Applicant and the Corporate Debtor entered into Distributorship Agreement on 20.07.2016.

7. It is further submitted that according to the Agreement, the Applicant would be the Sole distributor for the Maharashtra State and the Corporate Debtor will not appoint any other Distributor. The Corporate Debtor will provide products, marketing assistance, technical advices etc. The Applicant agreed to pay an amount of Rs. 25,00,000/- as Refundable Interest Free Security Deposit. The Applicant paid Rs. 11 Lakhs at the time of signing of the Agreement and



Rs. 14 Lakhs was to be paid after approval from Maharashtra Government.

8. It is also submitted that the Corporate Debtor will incur 100% cost on advertisement at National Level whereas at State Level the Distributor as well as the Corporate Debtor Company will share the cost equally. The Applicant applied for approval from State of Maharashtra which is under process and during this period, the Applicant made further payment for the supply of said product. The Corporate Debtor neither refunded any amount nor delivered any product for the same. The Applicant requested the Corporate Debtor to refund the amount on 16.06.2018 and 26.07.2018 but the Corporate Debtor did not give any reply. The Applicant sent a reminder to the Corporate Debtor through email and made personal visits to make the payment but neither any reply has been sent nor any amount has been paid.

9. The Applicant sent a demand notice under Section 8 of IBC, 2016 to the Corporate Debtor on 28.12.2020.

10. We have heard the submissions made by Mr. Hamid Mir, Learned Counsel appearing for the Applicant and perused the records.

11. We have perused the terms and conditions of the Distributorship Agreement dated 20.07.2016, according to which the Applicant would be the Sole Distributor for the State of Maharashtra. The Applicant agreed to pay an amount of Rs. 25,00,000/- as Refundable Free Security Deposit out of which Rs. 11,00,000/- was paid at the time of signing of the agreement and the remaining amount of Rs. 14,00,000/- was to be paid after approval from the Government of Maharashtra. It was agreed that the Operational Creditor's order must accompany 30% payment of invoice value and rest to be paid at the time of loading of goods and there was no infirmity on the part of Operational Creditor. The Applicant has also placed on record the copies of the purchase order



and list of products delivered by it pursuant to the said agreement. The Corporate Debtor neither delivered any product as per the orders placed by the Applicant nor refunded the amount. The Corporate Debtor through email dated 19.02.2019 forwarded the account statement/confirmation of accounts. Further, the Applicant sent several emails dated 16.06.2018 and 26.07.2018 requesting the Corporate Debtor to refund the amount but the Corporate Debtor neither gave any reply to the said emails and nor paid the money to the Applicant.

12. Having regard to the facts of the case, we are of the considered view that the present debt falls within the meaning of “Financial Debt” under Section 5(8) of IBC, 2016 and that the Applicant is able to establish that the said amount was disbursed to the Corporate Debtor and default has occurred, since, the Corporate Debtor has failed to repay the amount.

13. We, therefore, admit the present petition i.e., IB-245/ND/2021 and initiate the CIR Process against the Corporate Debtor.

14. The Applicant has not proposed the name of the Resolution Professional for appointment as Interim Resolution Professional (IRP), therefore, **Mr. Ranjan Chakraborti, having Registration No. IBBI/IPA-002/IP-N00541/2017-2018/11618, office address at 1/22, Second Floor, Asaf Ali Road, New Delhi, National Capital Territory of Delhi, 110002 email ID ranjanns@gmail.com**, is hereby appointed as IRP from the IBBI list. The IRP is directed to take charge of the Corporate Debtor’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.



15. 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.
- (e) The explanation below section - 14 (1) also stipulates “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, permit, registration, quota,



concession, clearances or a similar grant or right during the moratorium period”.

16. 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.

17. We hereby direct the Operational Creditor to pay a sum of Rs. 2, 00,000/- to the IRP, as required under the provisions of the Code to meet out the initial 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 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.

19. The Learned Counsel for the Applicant 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. On receiving the order, the IRP is directed to communicate this Order to the Operational Creditor, the Corporate Debtor, and the concerned RoC.

20. The CP/IB-245(ND)/2021 is **admitted**.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**