

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**C.P. (IB) 698/MB/2023**

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

*In the matter of*

**Mr. Omkar Arun Patil**

Having its address at 1206/42A, Lokmat Bhavan, J.M. Road, Shivajinagar  
Pune -411004

**..... Petitioner/ Operational Creditor**

**Versus**

**Rutuja Auto Private Limited**

Having its address at Flat No. D 903, Sr. No. 59, Bloom Ambegaon BK,  
Pune-411046

**..... Respondent/Corporate Debtor**

**Order Delivered on :- 24/01/2024**

***Coram:***

**Mr. Anil Raj Chellan  
Member (Technical)**

**Mr. Kuldip Kumar Kareer  
Member (Judicial)**

***Appearances:***

For the Operational Creditor : Adv. Avinash R. Khanolkar  
a/w Abhay Wadhwa

**ORDER**

***Per: - Kuldip Kumar Kareer, Member (Judicial)***

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Mr. Omkar Arun Patil** (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Rutuja Auto Private Limited** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Operational Debt of Rs. 1,32,39,962/- (Rupees One Crore Thirty-Two Lacs Thirty Nine Thousand Nine Hundred Sixty Two only) {Principal amount of Rs. 1,01,05,346/- along with interest amounting to Rs. 31,34,616/-.

**The submissions of the Operational Creditor are as follows:**

2. It is submitted that the Corporate Debtor executed registered Leave & License Agreement dated 22<sup>nd</sup> March 2019 with the Operational Creditor with respect to Shop No 15 & 16 totally admeasuring 664.46 sq feet along-with Basement No "A" admeasuring 1088.96 sq feet in the building situated at Akurdi, Pune. The period of License was from 01.01.2019 to 31.12.2021.

3. It is further submitted that the Corporate Debtor, though utilised the rental services of the premises, did not pay the rent on one pretext or the other and took advantage of Mr. Omkar Patil, being a relative. The License fee agreed upon was Rs 2,20,000/- p.m. with an escalation of 5% every year. Further, a security deposit of Rs 2,20,000/- was also to be paid. The total outstanding against Corporate Debtor includes Principal amount of Rs. 1,01,05,346/- plus interest i.e. 31,34,616/- totalling to Rs. 1,32,39,962/-.
4. It is further contended that the default occurred in the payment of license fee and interest thereon. The Operational Creditor has issued various reminders upon the Corporate Debtor but all went in vain and the Corporate Debtor did not pay the license fee nor the interest to the Operational Creditor. As a result, the Operational Creditor was left with no other option to issue Demand Notice under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 upon the Corporate Debtor.
5. It is further submitted that even after the receipt of the said Demand Notice, neither the Corporate Debtor have paid the amount mentioned in the application or they have sent any acknowledgement of payment. Hence the present Petition.
6. Notice of the Petition was given to the Corporate Debtor, but none has appeared on its behalf to contest the proceedings. In the circumstances, the Corporate Debtor was proceeded against ex-parte vide order dated 03.10.2023.

**Analysis and Findings:**

7. We have heard the Counsel for the Petitioner and have also gone through the record.
8. During the course of arguments, Counsel for the Operational Creditor has referred to the Leave and License Agreement dated 22.03.2019 executed between the Operational Creditor and Corporate Debtor whereby Shop No. 15 and 16 were leased out to the Corporate Debtor. As per the details given in the said agreement, the property was leased out to the Corporate Debtor for a period of 36 months commencing from 01.01.2019. As per the leave and license agreement, the Corporate Debtor was to pay a sum of Rs. 2,20,000/- per month as license fee. It was further stipulated in the leave and license agreement that the license fee would be increased by 5% every year and further that the Corporate Debtor was liable to pay an interest @ 18% p.a. in the event of non-payment of the license fee before the 10<sup>th</sup> of each month. Counsel for the Operational Creditor has further pointed out that the Corporate Debtor has failed to pay the license fee and sum of Rs. 1,01,05,346/- was outstanding along with the interest amount of Rs. 31,34,616/- . As the Corporate Debtor failed to pay the license money, a demand notice dated 26.04.2023 was issued to the Corporate Debtor but despite the receipt of the demand notice the Corporate Debtor has failed to pay the outstanding license fee. Counsel for the Operational Creditor has, thus, urged that it is a fit case for admission under Section 9 of Insolvency and Bankruptcy Code, 2016.
9. We have thoughtfully considered the contentions of the Counsel for the Operational Creditor.

10. In this case, the Corporate Debtor has not chosen to contest the proceedings and was proceeded against ex-parte vide order dated 03.10.2023. Therefore, all the averments made in the Petition have gone uncontroverted. Even otherwise, it is evident from the record that as per the leave and license agreement, the premises in question was leased out to the Corporate Debtor for a period of 3 years on monthly license fee of Rs. 2,20,000/- which was subject to increase by 5% at the end of every 12 months. The Corporate Debtor has not paid any license fee and as per the calculation (Exhibit A), annexed with the Petition, a sum of Rs. 1,32,39,962/- was outstanding at the time of filing of the present Petition which included an interest amount of Rs. 31,34,616/-. It is further evident from the leave and license agreement that the Corporate Debtor was liable to pay an interest of 18% in the event of non-payment of license fee. The Operational Creditor has further proved on record the demand notice dated 26.04.2023 which was served upon the Corporate Debtor and despite the receipt of notice, the Corporate Debtor has failed to repay the outstanding license fee.
11. As per the averments made in the Petition, the payment of license fees were to be made from 10.01.2019, the limitation period in respect of the earlier period came to an end on 10.01.2022. However, as per the judgement passed by *the Hon'ble Supreme Court in suo moto Writ Petition No. 3 of 2020*, the period from 15.03.2020 to 28.02.2022 is liable to be excluded from the limitation period which was lost in Covid pandemic. If the said period is excluded, the present Petition under Section 9 is liable to be treated to have been filed within the period of limitation.
12. As regards the nature of the operational debt, it cannot be disputed that the outstanding dues on account of leave and license agreement are in the nature

of operational debt. It is worth pointing out though the matter has been referred to a larger bench by the *Hon'ble NCLAT in the matter of Jaipur Trade Expocenter Private Limited vs M/s Metro Jet Airways Training Private Limited, Company Appeal (AT) (Insolvency) No. 423 of 2021* but as on date the legal position is clear that non-payment of license fee under the leave and license agreement amounts to operational debt in terms of Section 5 (21) of the Code.

13. As a result of the foregoing discussion, we hold that the Operational Creditor has been able to establish the existence of financial debt and its default committed by the Corporate Debtor. It has also been proved on record that the Petition under Section 9 of the IB Code, 2016 has been filed within the period of limitation. Therefore, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted and it is ordered accordingly in following terms:-

**ORDER**

- a. **The above Company Petition No. (IB) 698/(MB)/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Rutuja Auto Private Limited.**
- b. **This Bench hereby appoints Mr. Shivratn Laxminarayan Kalantri, Registration No: IBBI/IPA-001/IP-P01975/2020-2021/13202 as the Interim Resolution Professional having his address at 705, Hiradham B, Sundervan Complex, Swami**

**Samarth Road, Andheri West, Mumbai- 400053;**  
**Email:- shiv\_kalantri@yahoo.com** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their

possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

14. **Accordingly, this Petition is admitted.**

15. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**  
*Sushil*

**Sd/-**  
**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**