

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**KOLKATA**

**C.P. (IB) No. 1258/KB/2018**

**In the matter of:**

**An application U/S. 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:**

**Hemang Steel Traders**, represented by its authorised representative Bivor Bagaria, having its Registered office at Flat No. 462, Block-4, City Palace. Adityapur Main Road, Jamshedpur, Jharkhand- 831013;

**... Operational Creditor**

**-Versus-**

**Omni Auto Tech Private Limited**, having its registered office at QU No. 212/2/1, P.O.- G.H. Colony, P.S. Chhota Govindpur, Jamshedpur- 831015;

**... Corporate Debtor**

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**Coram: Shri Madan B. Gosavi, Hon'ble Member [Judicial]**

**Shri Virendra Kumar Gupta, Hon'ble Member [Technical]**

**Counsel appeared:**

1. Mr. Uttiyo Mallick ]
2. Mr. Dwaipayan Ghosh ] for the Operational Creditor

**Order pronounced on 01/08/2019**

**ORDER**

**Per Shri Madan B. Gosavi, Member (J)**

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "I & B Code"] by the Operational Creditor viz., **Hemang Steel Traders** for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against the Corporate Debtor viz., **Omni Auto Tech Pvt. Ltd.** claiming that an amount of **Rs. 64,00,722/- [Rupees Sixty-Four Lakhs Seven Hundred and Twenty-Two only]** for unpaid operational debt due from the Corporate Debtor including interest @24% as on 09.04.2018. That despite demand, the Corporate Debtor did not pay the outstanding amount and hence defaulted in payment of the operational debt and therefore, the Operational Creditor has filed this application.

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2. The Operational Creditor states that the Corporate Debtor placed purchase orders and the Operational Debtor delivered the order i.e. Carbon Steel Bars 65 RCS Grade SAE 1049, subsequently three invoices were raised, and part payments were received by the Operational Creditor. The last payment was made on 03.07.2015 by the Corporate Debtor. Copies of invoices are annexed with the petition and marked as **Exhibits "D-1- D-3" colly..** The Operational Creditor further states that the Corporate Debtor has acknowledged the debt in the HST-Outstanding Bills sent to the Corporate Debtor, a copy of the same has been annexed with the petition and marked as **Exhibit "K"**.
3. Notice was sent to the Corporate Debtor, which returned with the remarks "addressee not traceable". Notice was sent via email 28.09.2018. Thereafter, a direction for substituted service by paper publication was given which was duly complied with, by the Operational Creditor and the notice was published in two newspapers on 13.12.2018. The Corporate Debtor did not appear even after newspaper publications and, hence an order for ex-parte hearing against the Corporate Debtor was passed.
4. Heard the Ld. Counsel for the Operational Creditor and perused the records.
5. The Operational Creditor produced on record all relevant evidence to establish the fact that there is a operational debt due and payable by the Corporate Debtor to the Operational Creditor and the Corporate Debtor committed default in paying such debts.
6. The Operational Creditor issued a demand notice U/S 8 of the I & B Code, dated 11.04.2018 upon the Corporate Debtor calling for payment of the debt which was delivered to the Corporate Debtor.

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7. The Operational Creditor has also filed an affidavit under Section 9 [3](b) of the I & B Code stating that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt.
8. The Operational Debtor has also filed Bank Statements till 23.06.2018, which reflect that no payments have been made by the Corporate Debtor after 03.07.2015, copies whereof have been annexed with the petition and marked as **Exhibit "F"**.
9. The Operational Creditor has not proposed the name of an Interim Resolution Professional [hereinafter referred to as the I.R.P.]. The Operational Creditor in the case in hand, succeeds in proving all the ingredients of Section 9 (5)(i) of the I & B Code and therefore, the application is liable to be admitted.
10. In view of the above-said discussion, the application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is admitted upon the following orders:-

**ORDER**

- a. The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Omni Auto Tech Private Limited is hereby **admitted**.
- b. We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- c. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of

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claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- d. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- i. 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;
  - ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - iii. 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);
  - iv. 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 services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

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- f. 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.
- g. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- h. 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 the 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.
- i. Necessary public announcement as per Section 15 of the I & B Code, 2016 may be made.
- j. **Shri Surya Kanta Satapathy**, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having **Registration No. IBBI/IPA-001/IP-P00598/2017-2018/11050**, **email i.d.: suryakantasatapathy@yahoo.co.in** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- k. The Operational Creditor/Applicant to pay Rs. 50,000/- [Rupees Fifty Thousand only] to the I.R.P. as payment of his fees as

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advance, as per Regulation 33 [3] of the IBBI [Insolvency Resolution Process for Corporate Persons] Regulations, 2016, the same shall be adjusted towards total fees.

l. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

m. Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through email.

11. List the matter on 17.09.2019 for the filing of the progress report.

12. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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11/8/2019

[Virendra Kumar Gupta]

Member [T]

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11/8/2019

[Madan B. Gosavi]

Member [J]

*Signed on this, the 1<sup>st</sup> day of August, 2019.*