

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

CP (IB) No. 209/Chd/Hry/2020

**Under Section 9 of the Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

M/s Prompt Enterprises Private Limited,
through Mr. Mukesh Kumar, Managing Director
having its registered office at
B-3/7 1st Floor Yamuna Vihar Delhi - 110053
CIN: U51909DL2003PTC123366

...Petitioner-Operational Creditor

Vs.

M/s AGM Auto Private Limited
having its Registered office at
2009, Sector-21, Panchkula
Haryana - 134109
CIN: U50500HR2013PTC048231

...Respondent-Corporate Debtor

Judgment delivered on: 28 .10.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Mr.Tushar Budhiraja, Advocate

For the Respondent-Corporate Debtor : Mr. Vishav Bharti Gupta, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC**'/'**Code**'), by M/s Prompt Enterprises Private Limited (for brevity '**Operational Creditor**'/ '**Petitioner**'),

represented by its Managing Director, Mr. Mukesh Kumar, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/s AGM Auto Private Limited (for brevity '**Corporate Debtor**'/ '**Respondent**').

2. In the present case the learned counsel for the petitioner-operational creditors was replaced. Thus, by order dated 17.01.2022, the new counsel was directed to file Vakalatnama on the next date of hearing and also to inform the next of hearing to the opposite counsel through e-mail and file an affidavit of service to that effect. It came to the notice of this Adjudicating Authority that neither affidavit of service nor Vakaltanam was filed in compliance of the order dated 17.01.2022. Thus, matter was relisted on 02.09.2022 for further consideration on account of non-compliance of the order dated 17.01.2022 passed by this Bench. In compliance of the said order, affidavit of service was filed vide Diary No.00724/15 dated 09.09.2022 and Vakalatnama was filed vide Diary No.00724/16 dated 09.09.2022.

3. The Corporate Debtor namely, M/s AGM Auto Private Limited, is a Company incorporated on 31.01.2013 under the provisions of Companies Act, 2013 with CIN No.U50500HR2013PTC048231 with its registered office at # 2009, Sector-21, Panchkula, Haryana - 134109. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure A-9.

4. The facts of the case, briefly, as stated in the petition, are that:-

4.1 The petitioner-operational creditor is a company manufacturing inter alia, Steel Tubes and supplying to customers as per their requirements in the automotive industry, general application industry,

cycle industry etc. The petitioner-operational creditor supplied goods to the Corporate Debtor Company from time to time in terms of various invoices raised, and there has been a running account between the applicant company, and the Corporate Debtor company maintains regular books of accounts and the accounts are regularly audited in accordance with the law and as per the records maintained by them an amount of Rs.1,58,61,398/-(Rupees One crore fifty-eight lakhs sixty-one thousand three hundred ninety-eight only) has been outstanding since the last supply made to Corporate Debtor Company on 09.01.2020.

4.2 In terms of an email dated 02.01.2020 received from Corporate Debtor Company along with the statement of account of petitioner for the period 01.04.2019 to 02.01.2020 (Annexure A-4) corporate debtor admitted an amount of Rs.200,60,910.18 as on 26.12.2019. On 26.12.2020, as per the books of the petitioner-operational creditor, an amount of Rs.2,14,28,519.52 was outstanding and recoverable from the Corporate Debtor Company. On reconciliation with the statement of account provided by Corporate Debtor Company, it appears that the difference is on account of an amount of Rs.12,66,522.69 debited on 01.12.2019 by Corporate Debtor Company unauthorizedly on account of the Discount receivable (non-GST i.e. without reversing GST) which was neither communicated to Applicant nor accepted by them and is not permissible in law. In addition to this, Corporate Debtor Company also debited an amount of Rs.1,01,010/- on different dates as per the statement attached as Annexure A-5. Accordingly, there is a difference

of Rs.13,67,532/- plus an unknown difference of Rs.77/-, which may be on account of approximation error. In this manner, the difference between the books of Corporate Debtor Company and the books of the petitioner comes to Rs.13,67,609/-.

4.3 As per the statement of account in the books of the petitioner, the amount outstanding as on 22.01.2020 is Rs.1,72,29,007/-. The admitted amount read with the statement of account of Applicant (Annexure A-1) as on 22.01.2020 comes to an admitted total amount of Rs.1,58,61,398/- and the difference of amount recoverable from Corporate Debtor Company comes to Rs.13,67,609/- which is subject to reconciliation. Therefore, in terms of the notice of demand u/s 8 of IBC, the petitioner is restricting the demand to Rs.1,58,61,398/- on the basis of the amount admitted by Corporate Debtor Company. The receipt of goods in respect of all the invoices has been duly acknowledged by Corporate Debtor Company. Apart from the principle operational debt, Corporate Debtor Company is also liable to pay interest @ 24%.

4.4 The petitioner has been supplying goods to the Corporate Debtor Company on the assurance that they shall make payment from time to time and, in any case, would clear the entire outstanding amount at the end of each financial year. There has not been any dispute with respect to the quality or quantity of the products supplied, and consequently, the acknowledgement of goods supplied in terms of various invoices is the confirmation of having received the goods by the Corporate Debtor Company.

4.5 On 01.02.2020, the petitioner sent a notice of demand to the Corporate Debtor Company in terms of Section 8 of the Insolvency and Bankruptcy Code, 2016, read with Rule 5(1)(a) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 3 and Form 4 prescribed thereunder along with the copies of invoices and other documents relied upon by the petitioner. The notice was duly delivered by speed post and email. Except that on 05.02.2020, the Corporate Debtor transferred an amount of Rs.10.00 lakhs vide RTGS no. RTGSVIJBR520200205000 66205 in the account of the applicant with ICICI Bank Limited. Similarly, another payment of Rs.10.00 lakhs was transferred by the Corporate Debtor Company in the same bank on 19.02.2020 vide RTGS no. RTGSVIJBR520200219000 58265 and another payment of Rs. 10.00 lakhs was transferred by the Corporate Debtor Company on 02.03.2020 in the same bank ICICI Bank Limited vide RTGS No. RTGSVIJBR520200302000 48104. These payments were discovered by the petitioner during bank reconciliation, but no advice or intimation or communication of any kind was sent by the Corporate Debtor to this effect.

4.6 The Corporate Debtor has accordingly failed to clear the entire default amount of Rs.1,58,61,398/- and interest thereon and has also failed to demonstrate any pre-existing dispute. After payment of Rs.30.00 lakhs, an amount of Rs. 1,28,61,398/- plus interest thereon continues to be in default. That after the service of notice, apart from Rs.30.00 lakhs, neither any payment has been made by the corporate

debtor nor there it has given any notice relating to the existence of a dispute or any record of the pendency of any suit or arbitration proceedings filed before the receipt of such notice in relation to such dispute nor any reply has been received within a statutory period of 10 days.

5. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.1,67,27,124/- (including interest @24% p.a amount of Rs.8,65,726/-) as on 30.01.2020. The balance as per the books of account of the operational creditor excluding interest is Rs.1,72,29,007/- and the difference of Rs.13,67,609/- is subject to reconciliation. After the service of notice, the corporate debtor has transferred an amount of Rs.30.00 lakhs through RTGS and accordingly net amount of default is Rs.1,28,61,398/- plus interest.

6. A demand notice in Form 3 dated 01.02.2020 is stated to be issued to the operational creditor through e-mail at agminfo01@gmail.com, yadavmanohar430@gmail.com and through a registered post attached as Annexure-1/A.

7. It is submitted In Part-III of Form No. 5, Interim Resolution Professional is not proposed as it is optional in terms of Section 9(4) of the IBC, 2016 and this Hon'ble Tribunal may appoint any competent person in terms of Section 16(3) of the Code. Keeping in view of this, we appoint Mr. Anil Kumar Singhal, Insolvency Resolution Professional.

8. Notice of this petition was issued to the corporate debtor vide order dated 01.12.2020 to show cause as to why this petition be not admitted. None appeared on behalf of the corporate-debtor. Thereafter as per order

dated 17.01.2022 of this Tribunal, the authorized representative for petitioner-operational creditor informed the date of hearing to the opposite counsel and the compliance affidavit has been placed on record as per the direction. Reply along with Vakalatnama has been filed by respondent-corporate debtor by Diary No.00724/13 dated 25.07.2022. It is submitted by learned counsel for the respondent-corporate debtor that as per Para No.3 of the reply the respondent corporate debtor company has been facing a very high liquidity crunch due to non-materialization of receivables and has incurred defaults of other operational creditors also. Keeping in view the admission made on behalf of respondent-corporate debtor, it is stated by learned counsel for petitioner-operational creditor that there is no need to file any rejoinder to the said reply.

9. We have heard the learned counsel for the petitioner as well as respondent and have perused the records.

10. The first issue for consideration is whether the demand notice in Form 3 dated 01.02.2020 was properly served. The petitioner has placed a copy of e-mail and registered post details which was delivered to the corporate debtor. Therefore, demand notice was duly served.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The claim amount was not disputed. Rather, it is admitted that the amount was not paid due to financial crunch in the business.

12. The other issue for consideration is whether this application is filed within limitation. This application was filed on 06.10.2022 vide Diary No.00724. Whereas the date of default is 30.01.2020, therefore, this

Adjudicating Authority finds that this application has been filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹1,67,27,124/-. The operational creditor supplied goods to the corporate debtor and raised invoices attached as Annexure A-2. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

14. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

15. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s AGM Auto Private Limited and also direct moratorium in terms of Section 14 of the code to take effect as below:-

- 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 Operational 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 corporate debtor;
- e) it is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor;
- f) the order of moratorium shall have effect from the date of this order till 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.

16. The Law Research Associate of this Tribunal has checked the credentials of Mr. Anil Kumar Singhal and there is nothing adverse against him. In view of the above, we appoint Mr. Anil Kumar Singhal, Registration No. IBBI-/IPA-001/IP-P00468/2017-18/10811, E-mail: anilsinghalca@gmail.com Mobile No.9811190142 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Anil Kumar Singhal shall be in accordance with the provisions of Section 16(5) of the Code, subject to his written consent within 7 days of the order;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and

custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the

Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi.) This Adjudicating Authority further directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The RP is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and by completing the resolution process in a time-bound manner.

- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

18. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

19. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

October 28, 2022

SD/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)