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**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT NO. IV)**

**Company Petition No. IB- 1525/ND/2019**

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

**IN THE MATTER OF:**

**M/s DYNAMIC SECURITY**

**...APPLICANT/OPERATIONAL CREDITOR**

**VERSUS**

**M/s AJIT AUTOMOTIVE SERVICES PRIVATE LIMITED**

**...RESPONDENT/ CORPORATE DEBTOR**

**Pronounced on: 19.08.2019**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SH. PRADEEP R. SETHI**

**HON'BLE MEMBER (Technical)**



C.P. No. (IB)- 1525(ND)/2019  
M/s Dynamic Security vs. M/s Ajit Automotive Services Pvt. Ltd.

**MEMO OF PARTIES:**

**M/s DYNAMIC SECURITY**

Through its Partner:

Mr. Karan Singh

Having its registered office at:

V 15-A, Old Nangal Delhi Cantt,

South West Delhi- 110010

**... APPLICANT / OPERATIONAL CREDITOR**

**Versus**

**M/s AJIT AUTOMOTIVE SERVICES PRIVATE LIMITED**

Having its registered office at:

C-91/10, Wazirpur Industrial Area,

New Delhi- 110052

**.... RESPONDENT / CORPORATE DEBTOR**

**JUDGMENT**

**DR. DEEPTI MUKESH, MEMBER (JUDICIAL)**

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Dynamic Security (for brevity



'Applicant') through its Partner Mr. Karan Singh who is duly authorized vide General Power of Attorney dated 15.06.2019, with a prayer to initiate the Corporate Insolvency process against M/s Ajit Automotive Services Private Limited (for brevity 'Respondent').

2. The Applicant namely M/s Dynamic Security is a Partnership firm, having its registered office at V 15-A, Old Nangal Delhi Cantt, South West Delhi- 110010.
3. The Respondent namely M/s Ajit Automotive Services Private Limited is a company incorporated on 29.03.1995 under the provisions of Companies Act, 1956 with CIN No. U74899DL1995PTC066882, having its registered office at C- 91/10, Wazirpur Industrial Area, New Delhi- 110052.
4. The Authorised Share Capital of the respondent company is Rs. 3,00,00,000/- and Paid Up Share Capital of the company is Rs. 3,00,00,000/- as per Master Data of the company.
5. The Applicant namely M/s Dynamic Security had provided security services to the Respondent M/s Ajit Automotive Services Private Limited during the period



01.03.2019 to 31.05.2019 and had subsequently raised invoices against the provisions of such services. As per the understanding and the terms agreed upon between the parties, the Respondent had to make the payments upon the receipt of the invoices from the Applicant.

6. Applicant issued invoices against the services provided to the Respondent, however, the Respondent M/s Ajit Automotive Services Private Limited has failed to make payment of an amount of Rs. 4,52,514/- (Rupees Four Lakhs Fifty-Two Thousand Five Hundred and Fourteen only) despite receipt of the copy of invoices from the Applicant, the details of which are as follows:

DATE	INVOICE NO.	BALANCE PAYMENT
31.05.2019	Invoice no. 1117	Rs. 1,39,089/-
31.05.2019	Invoice no. 1118	Rs. 1,39,089/-
31.05.2019	Invoice no. 1119	Rs. 58,112/-
<b>TOTAL</b>		Rs. 4,52,514/-



7. Subsequently, the Applicant, M/s Dynamic Security sent a demand notice dated 01.06.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Respondent asking them to make the entire outstanding payments of Rs. 4,52,514/- (Rupees Four Lakhs Fifty-Two Thousand Five Hundred and Fourteen only) within 10 days from receipt of the notice.
8. In Part-IV of the present application, the Applicant has given the details of the total amount of the Operational debt and the transactions on account of which the debt fell due.

<b>PARTICULARS OF OPERATIONAL DEBT</b>	
<b>1. TOTAL AMOUNT OF DEBT</b>	The total amount of debt due is Rs. 4,52,514/- (Rupees Four Lakhs Fifty-Two Thousand Five Hundred and Fourteen Only).
<b>2. AMOUNT CLAIMED TO BE IN DEFAULT</b>	The amount of default is Rs. 4,52,514/- (Rupees Four Lakhs Fifty-Two Thousand Five Hundred and Fourteen Only).



9. The Respondent vide its letter dated 07.06.2019 replied to the demand notice dated 01.06.2019 issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 whereby the Respondent admitted and acknowledged the debt amount. However, it has been clearly stated therein that the Respondent is facing financial constraints and is not in a position to make the payment of the admitted liability. It has further been stated that they have certain disputes with the Company (M/s V.E. Commercial Vehicles Pvt. Ltd.) and therefore, they have Arbitration claims against the said company and hence, payment could only be made by them after receiving the Arbitration award in their favour.

10. It is further submitted by the Respondent that the claim of the Applicant stands admitted by the Respondent in as much as the Respondent has already acknowledged and admitted the liability of Rs.4,52,514/- (Rupees Four Lakhs Fifty Two Thousand Five Hundred and Fourteen only) due and payable against payment of invoices raised for rendering of security services to the Respondent Company. It is further submitted that Respondent is not in a position to make the payment of the invoices to the Applicant



impending the Arbitration claims of the Respondent with VE Commercial Vehicles Limited. Furthermore, the liability owed to the Applicant herein is duly recorded in the Respondent's financial books and would be repaid once the Respondent Company succeeds in its Arbitration claims against VE Commercial Vehicles Limited.

11. Hon'ble Supreme of India in **Mobilox Innovations Private Limited vs. Kirusa Sortware Private limited** has observed that-

*"The adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

*(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act)*

*(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*

*(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the*



*demand notice of the unpaid operational debt in relation to such dispute?*

*If any one of the aforesaid conditions is lacking, the application would have to be rejected.*

*Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

As per the reply filed by the Respondent, it can be inferred & concluded that there is an ‘Operational debt’ against the Respondent and the same is admitted by the Respondent. Such a plea of financial constraints and pending arbitration claim taken by the Respondent is totally vague and contingent upon winning its Litigation against a third company. This reply therefore does not have any value in the eyes of law. It is further seen that the demand notice in the present case was issued under



Section 8 (1) of the Code on 01.06.2019 and the same was not disputed.

12. The applicant has attached the copy of the Bank statement issued by Syndicate Bank for a relevant period in compliance of Section 9(3)(c).
13. The registered office of Respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The amount of default exceeds Rs. 1,00,000/- as per the requirement under section 4 of the Code, 2016. Hence, this application is within the purview of section 9 of the IBC, 2016.
15. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfilment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall



follow in relation to the Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in vogue.

17. The Applicant has proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Mohinder Singh having registration no. IBBI/IPA-001/IP-P00593/2017-18/11046 having email address [mohinder@singhandsingh.in](mailto:mohinder@singhandsingh.in) contact number is 9910522800 as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
18. The IRP is directed to file his report within the statutory period as required under Insolvency and Bankruptcy Code, 2016.
19. A copy of the order shall be communicated to the Applicant as well as to the Respondent Company above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the



Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records.

Sd/-

**(PRADEEP R. SETHI)**  
**MEMBER (TECHNICAL)**

Sd/-

**(DR. DEEPTI MUKESH)**  
**MEMBER (JUDICIAL)**

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member (T), Sh. Pradeep R. Sethi is not holding Court today.



Sd/-

**(Sh. A. K. PAL)**  
**COURT OFFICER**

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सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
C.G.O. COMPLEX, NEW DELHI-110003