

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH- III

IB-892/ND/2020

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

IN THE MATTER OF

KNL Driveline Parts Pvt. Ltd.

...Operational Creditor

Versus

SPM Automotive Components Pvt. Ltd.

...Corporate Debtor

Coram:

**CH. MOHD SHARIEF TARIQ, HON'BLE MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER
(TECHNICAL)**

Delivered on: 18.11.2020

Appearances:

Operational Creditor : Mr. Rishi Singhal Advocate
Corporate Debtor : Ms. Prachi Johri Advocate

ORDER

Per, Narender Kumar Bhola, Member (Technical)

1. The petition under consideration is filed by KNL Driveline Parts Private Limited under Section 9 of Insolvency and Bankruptcy Code, 2016 (“the Code”) for seeking order to initiate Corporate Insolvency Resolution Process (“CIRP”) for M/S SPM Automotive Private Limited (herein referred as the Corporate Debtor/CD).

2. The Operational Creditor/Applicant has averred as follows:

- a. The Applicant is engaged in the business of forgings of Axle shaft & Other auto parts etc., on the basis of orders placed by the Corporate Debtor, the Applicant has supplied goods from time to time to the Corporate Debtor along with its invoices for the value of goods supplied.
- b. The applicant has maintained a running account of the Corporate Debtor in its books of accounts. In spite of various follow ups the Corporate Debtor failed to pay the due debts as per agreed terms of

payment. The operational Creditor served a demand notice dated 19.03.2020 in form 3 & form 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, upon the Corporate Debtor by hand on 20.03.2020. However, the Corporate debtor failed to make the due payments and has not replied till the date of filing of application under consideration.

3.REPLY FILED ON BEHALF OF THE CORPORATE DEBTOR;

- a. The Corporate Debtor as on date is unable to pay off the Applicant as the corporate debtor company has suffered huge losses and is in financial difficulty. Upon coming to know of the application under consideration, the corporate debtor entered appearance in the application before Adjudicating Authority and board of the corporate debtor met on 21.09.2020 and it was discussed that Rs. 6,42,77,811/- is due to the Applicant.
- b. Considering the financial difficulty of the corporate debtor company it was agreed that the corporate debtor would communicate with the applicant and make a settlement offer seeking time of about 1 year for making the payment of its dues and for entering into a settlement agreement in this regard.

- c. Accordingly, the corporate debtor issued an email dated 24.09.2020 to the Applicant making an offer for settlement as aforesaid. Vide email dated 29.09.2020, the applicant rejected the proposed settlement of dues.
 - d. As resolved by the board of the Corporate Debtor in the meeting held on 21.09.2020, the Corporate Debtor acknowledges the debt due to the Applicant and submit that the Corporate Debtor is unable to pay its debt.
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4. Since the debt is acknowledged by the Corporate Debtor, this Authority hereby admits this application and initiates the process of CIRP of the Corporate Debtor. The Applicant has proposed the name of Mr. Vijay Kishore Saxena for appointment as the Interim Resolution Professional (IRP). The consent form of the proposed IRP is also attached with the application, which indicates that no disciplinary proceedings are pending against him. He has also disclosed the facts as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016. This Authority hereby, appoints Mr. Vijay Kishore Saxena, having registration number IBBI/IPA- 001/IP-P- 01766/2019-20/12708 (email

-vksaxena2159@gmail.com) as the Interim Resolution Professional (“IRP”).

5. The IRP is directed to take charge of the Respondent Corporate Debtor’s management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016, within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
6. 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 Securitisation 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.

7. 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 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.
8. 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 shall extend all assistance and cooperation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.
9. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of IBC, 2016.
10. The order is pronounced.

.Sd-

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

-Sd-

(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)