

**NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.154/Chd/HP/2019

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

In the matter of :

Melrose Creations Private Limited

having its registered office at
9 Ezra Street 2nd Floor, Room No.47
Kolkata – 700001
West Bengal

...Petitioner/Operational Creditor

Versus

Dunlop Auto Tyres Private Limited

having its registered office at
Village Bathri Tehsil – Haroli Una
Himachal Pradesh - 174301

...Respondent/Corporate Debtor

Judgement delivered on: 29.10.2019

**Coram: HON’BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON’BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the petitioner-Operational Creditor : Mr. Ivan Singh Khose, Advocate

For the respondent-corporate debtor : Mr. Balwinder Sangwan, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as ‘Code’) read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 (for short hereinafter referred to as '**Rules**') by M/s Melrose Creations Private Limited (**Operational Creditor**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of Dunlop Auto Tyres Private Limited (**Corporate Debtor**). The Identification Number of the operational creditor as mentioned in Part-I of Form-5, is U92412WB2014PTC201746 (But as per the Master Data available as on 24.10.2019 at the MCA records is U15100WB2014PTC201746) and the address of its registered office is 9 Ezra Street 2nd Floor, Room No.47, Kolkata – 700001, West Bengal. The petitioner-operational creditor has authorized Mr. Rajesh Kumar Korpai to file petition on its behalf. The copy of the Resolution passed by the Board of Directors of the company is annexed as Annexure A-2. There is also an affidavit in support of the contents of the application annexed as Annexure A-11. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. M/s Dunlop Auto Tyres Private Limited (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 2013 with authorized share capital of ₹1,50,00,000/- and paid up share capital of ₹1,50,00,000/-. The CIN of the respondent-corporate debtor is U25111HP2010PTC031506 and its registered office is situated in Una in the State of Himachal Pradesh and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure A-1 of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the respondent-corporate debtor approached applicant-operational creditor and a work order was issued for providing consultancy services to the corporate debtor for restarting their cycle tyres manufacturing process at their factory

premises situated at Village Bathri Tehsil-Haroli, Una, Himachal Pradesh and as per the terms of the said Work Order dated 10.07.2018 annexed as Annexure A-4, the entire consultation work was required to be completed within 3 months from the date of issuance of the said order. The fee was decided for the entire project for the above mentioned duration was ₹2,62,575/- to be paid within a period of 30 days from the date of completion of work. The project was completed on 15.11.2018 and on the same date the bill/invoice was raised by the petitioner-operational creditor. The copy of the invoice is attached as Annexure A-6 of the petition. The last date of payment as per work order is 15.12.2018. It has been stated that despite several communications made with the corporate debtor, no payment has been made so far.

4. It is stated that the respondent-corporate debtor have failed to discharge its obligations towards the applicant-operational creditor, inasmuch as have failed to make the payment due to the applicant-operational creditor despite various reminders.

5. A demand notice in Form No.3 is stated to be issued on 08.03.2019 (Annexure A-7 of the petition). The demand notice was accompanied by the duly issued invoice in the name of the corporate debtor along with working computation of principal amount and interest. The corporate debtor vide this demand notice was called upon to repay the unpaid operational debt (in default) of ₹2,60,356/- (inclusive of ₹10,356/- interest) within 10 days from the receipt of the notice.

6. The corporate debtor in its reply to the demand notice dated 08.03.2019 has not denied its liability to pay the outstanding dues and relied upon its previous letter dated 15.01.2019, in which they have requested some

more time to clear the liability of the operational creditor. Copy of the letter dated 15.01.2019 along with the reply of the demand notice is at Annexure A-9 (Colly) of the petition.

7. It is submitted that the respondent-corporate debtor failed to comply with the demand notice dated 08.03.2019 nor made any outstanding payment and hence this petition.

8. In Part III of Form 5, the operational creditor has proposed Mr. Tuhin Kumar Chatterjee, bearing Registration No. IBBI/IPA-002/IP-N00663/2018-19/12108 as the Interim Resolution Professional. The consent of the proposed IRP is furnished in Form No. 2 is placed at Annexure A-3, in which he has stated that he is not engaged in any CIRP proceedings. It is stated that there are no disciplinary proceedings pending against the proposed Interim Resolution Professional with the Board or the Indian Institute of Insolvency Professional of ICAI.

9. Notice of this petition was issued to the Corporate Debtor on 02.05.2019 to show cause as to why this petition be not admitted and on the next date of hearing on 05.07.2019, the learned counsel for respondent sought time to file the reply and also informed that the corporate debtor is willing to settle the outstanding debt.

10. The Corporate Debtor filed reply vide Diary No.3243 dated 05.07.2019 by way of affidavit of Mr. Ram Krishna Das, Authorised Representative of the Corporate Debtor for handling all legal matters of the Company at Jalandhar, Amritsar, Chandigarh vide Board Resolution dated 28.06.2019 attached along with affidavit. It is submitted that even after availing

consultancy services from the petitioner-operational creditor, the respondent-corporate debtor could not restart its manufacturing operations of cycle tyres, therefore, there was no operation in the company and also requested vide its letter dated 15.01.2019 to the petitioner to provide them some reasonable time to make the payment as the company was unable to release the payment due to the financial crisis. It is further stated that the company is intending to clear all its dues to the applicant in a years time and should be given some more time to arrange the funds to pay all the dues to the petitioner.

11. On the last date of hearing, the learned counsel for the respondent submitted that though the respondent has filed reply, but they have admitted their liability and default to pay the debt to the petitioner.

12. We have carefully considered the submissions of the learned counsel for the corporate debtor and operational creditor and have also perused the records.

13. The first issue for consideration is whether the demand notice in Form No.3 dated 08.03.2019 was properly served. The demand notice dated 08.03.2019 was sent at the address as per the master data at Page No.18 of the petition in which the registered office is shown as Village Bathri, Teshil-Haroli, Una, Himachal Pradesh – 174301. The reply to demand notice is at page 45 of the petition.

14. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor in its reply to the demand notice dated 08.03.2019 has not disputed the liability towards the operational creditor and relied upon its letter dated 15.01.2019,

requesting some more time to clear the debt. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.

15. The provisions of Section 9(5)(i) of the Code are as follows:-

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”

16. The Hon’ble Supreme Court in **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017**, held as under:-

“51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(ii)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration

proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

17. We have gone through the contents of the application filed in Form No.5 and find the same to be complete. As discussed above, there is an unpaid operational debt amounting to ₹2,62,575/- (inclusive of ₹12,575/- as interest). Copy of Ledger Account of the corporate debtor in the books of the financial creditor for the period of 01.04.2018 to 26.03.2019 (page 46 of the petition) has been filed. The copy of invoice has been filed at Annexure A-6 of the petition. Moreover, demand notice in Form No.3 was also sent on 08.03.2019 stating that the amount due from the corporate debtor to the operational creditor is ₹2,60,356/- (inclusive of interest of ₹10,356/-). The corporate debtor in its reply to the demand notice dated 08.03.2019 has not disputed its liability and towards operational creditor and has instead asked for some time to clear the debt. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 28.03.2019 has been placed by the operational creditor stating the corporate debtor has not given any notice relating to the dispute of unpaid operational debt in terms of the Code. We have held above that the demand notice in form No.3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

18. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. The applicant-operational creditor states that from the abovementioned fact it is clear that the liability of the respondent-corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

19. 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 CIRP process in the case of the Corporate Debtor M/s Dunlop Auto Tyres Private Limited and direct moratorium and appointment of Interim Resolution Professional as below.

20. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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.

21. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, 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.

22. 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.

23. The Law Research Associate of this Tribunal has checked the credentials of Mr. Tuhin Kumar Chatterjee and there is nothing adverse against him. In view of the above, we appoint Mr. Tuhin Kumar Chatterjee, Registration No. IBBI/IPA-002/IP-N00663/2018-19/12108, R/o 5A, Sree Mohan Lane, Kolkata, West Bengal – 700026 E-mail: tuhinkc2@gmail.com, as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Tuhin Kumar Chatterjee shall be in accordance with the provisions of Section 16(5) of the Code;
- 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.) 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 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

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

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

Pronounced in the open Court.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

October 29, 2019
Anchal