THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No. 391/Chd/Pb/2019

Under Section 9 of Insolvency and Bankruptcy Code, 2016.

In the matter of:
M/s Sanghi Movers Private Limited
having Proprietorship concern of
SY. No.92, Tathawade, Pune-411033
…Petitioner-Operational Creditor

Vs.

Chand Cranes Private Limited
with its registered office at
Near Harchand Mill Road, Motian Khan,
Mandi,Gobindgarh, Punjab147301

…Respondent-Corporate Debtor

Judgement delivered on: 27.05.2022

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

For the Petitioner-Operational Creditor : Mr. Ajay Bhagwati, Advocate

For the respondent-Corporate Debtor : Respondent already ex-parte vide Order dated 09.08.2021.

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 Sanghvi Movers Limited (**for brevity 'Operational Creditor' / 'Petitioner'**), represented by its

AGM Legal Mr. Vinayak Shirgonkar, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Chandi Cranes Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor namely, Chandi Cranes Private Limited, is a Company incorporated on 15.06.2010 under the provisions of Companies Act, 1956 with CIN No. U74900PB2010PTC034009 with its registered office at Near Harchand Mill Road Motia Khan Mandi Gobindgarh PB147301IN. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with main petition and marked as Annexure-A-1.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor was approached by the corporate debtor for supply of cranes on a hire/rental basis and various invoices were raised which were duly received and acknowledged. The details is as follows:

> *Operational Creditor (OC) state that, Corporate Debtor (CD) in search of tyre mounted cranes in market for purchasing and accordingly approached OC with a request to Purchase tyre mounted cranes of 180/200 MT and 130/150 MT capacity. Therefore, in pursuance of CD request, OC offered to sell tyre mounted cranes with model nos. Demag AC 335 (Reg no. MH 43 409, serial No. 37042) and Demag HC 510 (Reg no. MH 06 AB 3632, serial No. 8039) on "as is where is and what is" basis. OC state that, after inspecting the subject cranes thoroughly and after satisfying yourself i.e. CD regarding the working condition of said tyre mounted cranes, CD agreed to purchase the said cranes on "as is where is and what is basis" for consideration of sum of*

Rs.3,11,00,000/-+ GST as applicable. Accordingly Purchase Agreement dated January 04, 2018 was executed between SML and CD. Thereafter, Invoice nos. SML/MH/2017-18/004 and SML/MH/2017-18/005 dated 04th Jan. 2018 of amount Rs.3,66,98,000/- including GST had been raised. Copy of Purchase agreement along with MOU dated 04.01.2018 is ANNEXURE A-2. OC state that, as per the provisions effected from 01/06/2016 by Ministry of Finance, Union of India in respect of Tax Collected at Source (TCS) on sale of all Motor Vehicle (which includes a tyre mounted cranes according to definition of Motor Vehicle Act). As per new provision of Section 206 C- 'Every person, being a seller shall, who receives any amount as consideration for the sale of a motor vehicle of the value exceeding ten lakh rupees, shall at the time of receipt of such amount collected from the buyer, a sum equal to 1% of the sale consideration as income tax. OC state that, the TCs amount of Rs.3,68,980/- as per the aforesaid provision of income tax Act 2016 were charged on the above mentioned invoices. Accordingly OC have deposited the said TCS amount of Rs.3,66,980/- on CD's behalf in the month of May 2018 with Income Tax Authority. Thereafter, OC had provided CD the necessary TCS certificate to claim the benefit while filing CD's income tax return. On 12th June, 2018 OC had requested CD to kindly transfer the said amount by way of RTGS to our designated bank account and also issued the revised Invoice SML/MH/2018/033 and SML/MH/2018/034 mentioning the TCS amount. Thereafter CD has requested us for *time of few days to make the payment of said amount due to reason of poor payment collections from CD's clients. However CD has miserably failed to pay said amount in spite of OC granting CD sufficient time to clear the pay the outstanding due. Copy of Invoice is annexed as Annexure A-3 and Copy of TCS certificate is annexed as ANNEXURE A-4.*

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 3,66,980/- excluding 24% interest p.a. till date and the default occurred on 21.07.2018.

5. A demand notice in Form 3 dated 14.01.2019 is stated to be issued to the operational creditor by registered post.

6. In Part-III of Form No. 5, no Interim Resolution Professional has been proposed by the petitioner. Keeping in view of this, we appoint Mr. Bhupinder Sethi, Insolvency Resolution Professional from the list provided by IBBI.

7. Accordingly, order dated 08.08.2019, notice of this petition issued to the corporate debtor to show cause as why this petition be not admitted. As per order dated 09.08.2021 of this Tribunal, learned counsel appeared on behalf of the respondent-corporate debtor and sought time to file reply. Thereafter, matter is listed on 24.12.2020, 07.07.2021 and 09.08.2021. There was no representation from the respondent-corporate debtor and even no reply is filed. In these circumstances, this Adjudication Authority was constrained to proceed with the matter and the respondent has been set *ex parte*.

8. We have heard the learned counsel for the petitioner and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 dated 14.01.2019 was properly served. It is already stated above that the service not received and publication has been done to that effect.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that none appeared on behalf of corporate debtor despite repeated service and has been set ex parte vide order dated 09.08.2021.Moreover, petitioner has appended affidavit u/s 9(3)(b) stating that corporate debtor has not issued any notice or raised any dispute regarding the debt for which the present petition has been filed by the operational creditor.

11. The other issue for consideration is whether this application is filed within limitation. This application was filed on 21.05.2019 vide Diary No. 2575. Whereas the date of default is 21.07.2018, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

12. 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 ₹ 3,66,980/- (Principal Amount). The operational creditor has supplied goods to the corporate debtor and raised invoices attached as Annexure A-3. 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.

13. 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 that from the abovementioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by petitioner is complete in all respect. 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 Chandi Cranes Private Limited and also direct moratorium in terms of sub-section (1) of section 14 of the code to take effect and appoint Interim Resolution Professional 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.

15. 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.

16. 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.

17. The Law Research Associate of this Tribunal has checked the credentials of Mr. Bhupinder Sethi and there is nothing adverse against him. In view of the above, we appoint Mr. Bhupinder Sethi, Registration No. IBBI/IPA-001/IP-P-02144/2020-2021/13366, E-mail: ip.brsethi@gmail.com Mobile No. 9779194490 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Bhupinder Sethi shall be in accordance with the provisions of Section 16(5) of the Code;

ii.) The Interim Resolution Professional, Mr. Bhupinder Sethi is directed to file his written consent in Form-2 within one week of this order.

iii.) 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;

iv.) 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;

v.) 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;

vi.) 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;

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 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 regular progress report to this Tribunal every fortnight.

18. The petitioner is directed to deposit an amount of ₹40,000/- (Rupees Forty 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.

19. 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.

Sd/-	Sd/-
(Subrata Kumar Dash)	(Harnam Singh Thakur)
Member (Technical)	Member (Judicial)

May 27, 2022
HM/ASH