

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/1362/IB/2018 filed under
Section 9 of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 6
of the Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016

In the matter of *M/s. MPL Automobiles Agency Private Limited*

M/s. Opulent Auto Care Private Limited

... Operational Creditor

-vs-

M/s. MPL Automobiles Agency Private Limited

... Corporate Debtor

Coram:

**R. VARADHARAJAN,
Hon'ble Member (Judicial)**

**ANIL KUMAR B,
Hon'ble Member (Technical)**

*Counsel for Operational Creditor: Ms. D. Elavarasi, Counsel
Counsel for Corporate Debtor : Ms. Ambili Meno, Counsel*



ORDER

Per: Mr. R. VARADHARAJAN, MEMBER (JUDICIAL)

Order delivered on 24.10.2019

1. This Application has been filed invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code-2016") in the format as prescribed under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "AAA Rules") by the Applicant in the capacity of the Operational Creditor viz., M/s. Opulent Auto Care Private Limited against the Respondent viz., M/s. MPL Automobiles Agency Private Limited.

The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company. Part-

II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor was incorporated on 21.08.2003 and that its authorised capital and paid up capital is ₹13,30,00,000 respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at House No.6/43, Navaratna Gardens, II Cross Street, Ekkaduthangal, Chennai, Tamilnadu – 600 032. Part-III of the Application shows that the Operational Creditor has not proposed any Interim Resolution Professional. From Part-IV of the Application, it is seen that a sum of Rs.10,41,149/- as on 13.08.2018 is being claimed by the Operational Creditor as Operational Debt, the breakup of which has been given as follows:-

Outstanding as on 30.04.2016	Rs.7,74,917.00
Interest @ 15% till 13.08.2018	Rs.2,66,232.00
Total amount claimed to be in default	Rs.10,41,149.00

3. The transactions given as to the amount claimed by the Operational Creditor as against the Corporate Debtor is stated to have arisen in view of the Operational Creditor acting as a channel partner of WAXOYL AG car care products and that upon approaching Mahindra & Mahindra seeking for the approval of the products, which in turn had informed its dealers including the Corporate Debtor for availing the services of the Operational Creditor in relation to exterior care and paint protection and interior engine enrichment and engine care. Pursuant to the said reference by Mahindra & Mahindra, the Corporate Debtor has availed the services of the Operational Creditor and that the claim had arisen. Part-V of the Application sets out the details of the Invoices as Annexure I of the Application.

4. It is seen that the Operational Creditor has issued Demand Notice under Section 8 of the I&B Code, 2016 on 16.08.2018 to the Corporate Debtor to the address as

given in the said notice. The Track Consignment Report in relation to the delivery of Notice is also annexed along with Application at page 72 of the typed set filed with the Application.

5. The Operational Creditor has filed Affidavit by complying with Section 9 (3) (b) of the I&B Code, 2016, along with the typed set of document at pages 12 and 13, wherein under Para 2, it has been deposed that the Operational Creditor has not received any payment or notice of dispute with regard to the unpaid operational debt. The Operational Creditor has also filed the Statement of Accounts for the period from 01.04.2015 to 01.12.2018 in the additional typed set filed along with the Application in compliance of Section 9 (3) (c) of the I&B Code, 2016.

6. As seen from records, it is evident that neither Reply has been sent by the Corporate Debtor to the Demand Notice nor any payment has been made to the

Operational Creditor, and in the said circumstance, the Operational Creditor has filed the present Application before this Tribunal seeking for initiation of Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

7. From the record of proceedings, it is evident that the Corporate Debtor upon notice, entered appearance through its Counsel and time was granted to file Reply, as evident from the Order dated 20.03.2019. Since no reply has come forth from the Corporate Debtor, this Authority vide its Order dated 04.09.2019 was constrained to forfeit the right of filing Reply by the Corporate Debtor, however, an opportunity was given to the Corporate Debtor to participate in future proceedings. From the Order dated 25.09.2019, it is seen that an opportunity was given to the Corporate Debtor for making a substantial payment by way of Demand Draft and also to file the Schedule for Payments and for the above said purpose the date was fixed as 21.10.2019 and the matter was listed before this

Bench on 21.10.2019, wherein the Learned Counsel for the Corporate Debtor represented that a Memo has been filed given out the Schedule of Payments, by which it is seen that the Corporate Debtor is willing to pay a sum of Rs.5 Lakhs in three tranches. However, the Learned Counsel for the Operational Creditor, upon the instructions, has represented that the Operational Creditor is not inclined to take up the offer of the Corporate Debtor as the Operational Creditor is insisting on the entire amount claimed be paid, or in the alternative, willing to proceed with the matter today itself.

8. In the circumstances, the matter was taken up. The Counsel for the Operational Creditor has referred to the documents as filed along with the Application and reiterated that the averments contained therein to establish the claim. It is brought to the notice of this Authority that while the matter was pending before this Tribunal it came to the knowledge of the Operational

Creditor that the Corporate Debtor had changed the Registered Office Address of the Corporate Debtor subsequent to the issuance of the Demand Notice and filing of this Application, and in the circumstance, an Application seeking for amendment of the cause title reflecting the name of the Registered Office of the Corporate Debtor presently given in the Master Data had been filed before this Tribunal and this Authority was pleased to allow the said Application vide Order dated 05.04.2019. In view of the same, the Master Data reflecting the present registered address of the Corporate Debtor is also furnished which is taken on record as the same is not disputed and being a public record.

9. It is evident that the Corporate Debtor is not having any defence as no Reply has been sent to the Demand Notice as issued by the Operational Creditor to the Corporate Debtor which it is seen that has duly been served on the Corporate Debtor as per the Rule



prescribed under AAA Rules. Further, the Corporate Debtor has failed to file any Reply thereby allowing it for forfeiting the right of filing the Reply on the part of the Corporate Debtor. Further, it is seen that by furnishing the Schedule of Payments, even though not for the claim amount as made in the Application, but however for Rs.5 Lakhs on 21.10.2019, the Corporate Debtor expressly admits that the amount in excess of Rs.1 Lakh is due to the Operational Creditor and that there has been default on the part of the Corporate Debtor.

10. By taking into consideration all the above, we are inclined to admit the Application as has been filed by the Operational Creditor and consequently Corporate Insolvency Resolution Process is initiated. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mrs. Usha Balasubramanian, with registration



number IBBI/IPA-002/IP-N00180/2017-18/10451 (e-mail ID: ubaindia@gmail.com, Mobile No. 9962003282) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial 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 respondent.



11. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) 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.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



12. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such

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approval or Liquidation Order, as
the case may be.

13. The Operational Creditor is directed to pay a sum of Rs.2,00,000/- to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall

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also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Mrs. P. ATHISTAMANI