

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.31/9/HDB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of IBC, 2016

In the matter of

M/s IVP Limited,

Registered office at
Shashikant N. Redij Marg,
Ghorupdeo, Mumbai – 400 033,
Maharashtra.

**...Petitioner/
Operational Creditor**

AND

M/s Deccan Brakes Private Limited,

Registered office at
D No. 36-37, Defence Colony,
Sainikpuri, Secunderabad,
Andhra Pradesh – 500 094

**...Respondent/
Corporate Debtor**

Date of order: 11.09.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Parties / counsels present:

For the Petitioner : Shri Nitish Bandari for Shri P.Vikram,
Advocate.

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[Signature]



For the Respondent: Ms. K.Srilatha, Advocate.

Heard on: 26.08.2019

ORDER

Hon'ble Shri Narendra Kumar Bholra, Member (Technical)

1. The present Petition is filed by IVP Limited against M/s Deccan Brakes Private Limited. The Corporate Debtor had defaulted in paying Rs. 11,78,946/- (Rupees Eleven Lakhs Seventy-Eight Thousand Nine Hundred and Forty-Six only). Hence this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. The averments made in the Petition are as follows:
 - a. It is stated between April 2018 and September 2018, the Corporate Debtor placed orders on the Operational Creditor for supply of IVAREZ 33 Resin ("**Material**") of various grades. Pursuant to the order placed by the corporate debtor, the Operational Creditor supplied the Material in accordance with the terms of the orders.
 - b. The Operational Creditor duly supplied the Material and successfully delivered it to the Corporate Debtor as per the requirements. The Material as well as the Invoices raised in respect of each supply, were duly received by



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the Corporate Debtor. The Corporate Debtor never raised any dispute or demur *qua* the quantity or quality of the Material and/or *qua* the Invoices. The Material has been utilized by the Corporate Debtor for its intended purposes.

- c. It is stated that as per the terms of agreement between the Operational Creditor and Corporate Debtor, the amount under each invoice was due and payable within 45 (Forty-Five) days of the issuance of the Invoice. However, the Corporate Debtor failed to pay any amount against any of the Invoices, and all the Invoices remained outstanding as on date.
- d. Further, as per the terms of the Invoices, if the invoice amount was not paid by the Corporate Debtor within the stipulated time of 45 days, the Operational Creditor would be entitled to charge interest at the rate of 2% per month. As on 02.01.2019, a sum of Rs. 11,78,946/- (Rupees Eleven Lakhs Seventy-Eight Thousand Nine Hundred and Forty-Six only) is due and payable by the Corporate Debtor to the Operational Creditor.
- e. In view of the default in payments by the Corporate Debtor, the Operational Creditor issued a Demand Notice dated 12.12.2018 through email to the Corporate Debtor, under the provisions of section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016), demanding a total operational debt of Rs. 11,64,176/- (Rupees Eleven Lakhs Sixty-Four Thousand One Hundred and Seventy-Six only), including interest up to 12th December 2018. A copy of the Demand Notice is annexed hereto and marked as **Annexure-6** to the application.

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f. The detailed computation of claim by operational creditor is reproduced below:

.NO	Invoice No.	Invoice date	Invoice amount	Amount Received	Amount Outstanding	payment due date	Non of months/Days delayed	Interest@24% p.a	Total out standing
1	APR-0159TPR/1819	16.04.2018	139240	-	139240	31.05.2018	7 months and 2 days	19680	158920
2	MAY-0380TPR/1819	05.05.2018	159300	-	159300	19.06.2018	6 months and 14 days	20604	179904
3	MAY-0505TPR/1819	18.05.2018	159300	-	159300	02.07.2018	6 months and 14 days	19116	178416
4	May-0637TPR/1819	30.05.2018	151040	-	151040	14.07.2018	5 months and 19 days	17016	168056
5	June-0946TPR/1819	28.06.2018	151040	-	151040	12.08.2018	4 months and 21 days	14198	165238
6	July-1194TPR/1819	20.07.2018	151040	-	151040	03.09.2018	3 months and 30 days	12083	163123
7	Sept-1799TPR/1819	10.09.2018	158120	-	158120	25.10.2018	2 months and 8 days	7169	165289
		Total	1069080		1069080			109866	1178946

g. The Corporate Debtor replied to the Demand Notice vide its letter dated 31.12.2018 and raised disputes *qua* the claims of the Operational Creditor, instead of paying the outstanding amount demanded in the Demand Notice. Reply dated 31.12.2018 through mail is annexed hereto to the application at **Annexure-9**.

h. It is averred by operational creditor that the Corporate Debtor is attempting to manufacture an alleged 'pre-existing dispute' *qua* the Material supplied by the Operational Creditor earlier where no such dispute exists at all.

i. It is averred that the alleged claim of Rs. 15,68,465/- raised by the Corporate Debtor in his reply is based on three Debit Notes issued to the Operational Creditor, viz. (i) Debit Note No. 12/2016-17 dated 10.02.2017 for Rs. 4,14,900, (ii) Debit Note No. 13/2016-17 dated 10.02.2017 for Rs. 4,14,900, and (iii) Debit Note No. 04/2017-18 dated 30.09.2017 for Rs. 3,63,288, plus interest there on @24% p.a till 24.12.2018 amounting to Rs.375377/- which were purportedly sent by the



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under its invoice no. 3722 dated 07.12.2016 and/or invoice no. 3964 dated 24.12.2016 and/or invoice no. 2141432TPR/17-18 dated 24.08.2017 by which corporate debtor suffered loss in use of the material supplied by the Operational Creditor under the invoices.

- n. It is averred that Invoices raised by the Operational Creditor towards the orders placed from April to September 2018 form a distinct and independent contract between the parties; the Operational Creditor had duly performed its obligations under the said contract by supplying the Material. However, the Corporate Debtor has failed to perform its obligations in the contract and had defaulted in making payments against the Invoices for the Material supplied.
- o. Thus, the operational debt demanded by the Operational Creditor continues to be in default. It is stated that there is no dispute with respect to the operational debt, and in view thereof, the Corporate Debtor is liable to be declared insolvent and CIRP be initiated against the Corporate Debtor.



3. Reply/counter filed by the Corporate debtor:

- a. Corporate Debtor denied the allegations made by the operational creditor.
- b. Corporate Debtor denied the operational debt along with interest @2% which is said to have been arisen for the supply of material between April, 2018 to September, 2018.
- c. Corporate Debtor avers that the seven invoices on which the operational creditor relied upon are only to the debit notes raised by the corporate debtor but not for the material supplied to the corporate debtor.
- d. Corporate Debtor avers that from the date of commencement of business with operational creditor,

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corporate debtor is disputing the quality of material supplied by the operational creditor and continued the business with a hope that operational creditor will supply better quality of material in future.

- e. He avers that the allegation made by the operational creditor that corporate debtor failed in making the payment within 45 days is false as corporate debtor is prompt in making payments for the supplies received by the corporate debtor and in case if there is any delay in making payments to the operational creditor was only for the defective material supplied by the operational creditor.
- f. It is averred that the no amount is due and payable by the corporate debtor to the operational creditor and if any due amount is shown by operational creditor arose due to non-adjustment and non-inclusion of the debit notes raised by the corporate debtor towards return of rejected defective material.
- g. It is averred that the operational creditor's plant manager has accepted that there was defect in the material supplied by them and requested the corporate debtor not to discontinue the business with them with an assurance of supplying the superior quality material and simultaneously assured to clear the debit notes from time to time. The mails pertaining to it is annexed to the counter at Pg No.65 and 70.
- h. It is averred that the material received from the operational creditor towards adjustment of rejected material which were returned by the corporate debtor for which the operational creditor is alleging that they have supplied material and corporate debtor committed default in payment of invoice amount.

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- i. It is averred that the operational creditor has supplied the material and raised the invoices pertaining to the adjustment of the debit notes raised by the corporate debtor and the same cannot be termed and claimed as debt.
- j. It is also averred that even after filing the present application operational creditor sent an email on 24.01.2019 and 19.02.2019 and demanded the bill amounts from the corporate debtor and the corporate debtor replied to the email on 22.02.2019 requesting for settlement of the debit notes by the operational creditor.
- k. It is averred that there are no outstanding balances payable by the corporate debtor to the operational creditor but only to adjust the debit notes raised by the corporate debtor and if debit notes were adjusted there was no amount payable by the corporate debtor to the operational creditor.

4. Rejoinder filed by the operational creditor.

- a. He denied the allegations made by the corporate debtor regarding the alleged defective goods by the operational creditor. It is averred that corporate debtor while relying upon the supply of defective material supplied in terms of some invoices the corporate debtor failed to demonstrate and establish how there is a dispute.
- b. It is averred that the corporate debtor has right to reject the material within 15 days from the date of invoice where as corporate debtor has not rejected or raised any dispute regarding quality of material.
- c. It is averred that corporate debtor alleged debit notes raised upon operational creditor. The debit notes and alleged letters, are completely bogus and fabricated



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documents which are created by corporate debtor to evade the payment. In fact the alleged debit notes and alleged letters were received for the first time only on 24.10.2018.

d. It is averred that in October, 2018 when operational creditor called upon the corporate debtor to pay outstanding amounts due then the corporate debtor merely forwarded the alleged debit notes under alleged letters.

5. We have heard the counsel for Operational Creditor and corporate debtor. This Petition is filed by Operational Creditor under section 9 of Insolvency and Bankruptcy Code, 2016. Operational creditor filed Form-5 and furnished the information with regard to the operational debt which is committed default by corporate debtor.

6. It is the case of counsel for operational creditor that they have supplied material worth Rs.10,690,80 through seven invoices dated 16.04.2018 to 10.09.2018 and the same become un paid by the corporate debtor as on January, 2019. The amount due from corporate debtor towards these invoices along with interest there on as per the claim of operational creditor comes to Rs11,78,946. Counsel for operational creditor argues that the corporate debtor has for the first time came up with the dispute with regard to the quality of goods supplied by raising counter claim through debit notes amounting to Rs.15,68,465/-

7. In this connection it is observed that the debit notes as raised by the corporate debtor are not against the materials supplied through the seven invoices dated 16.04.2018 to 10.09.2018 as extracted at para 2.f above. Instead the said debit notes referred to altogether different invoices bearing no's 3722 dated 07.12.2016, 3964 dated 24.12.2016 and 2141432

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dated 24.08.2017 as available at page no.58, 60 and 79 of reply dated 15.05.2019 filed by corporate debtor.

8. In view of the above we are of the considered view that the operational creditor has been able to establish un disputed debt against corporate debtor and the corporate debtor has been in default with regard to the payment of dues to the operational creditor amounting to Rs.11,78,946/-
9. The Operational creditor is able to establish through documents that corporate debtor committed default of operational debt and there is no prior existing dispute. Thus, this Petition is complete and is liable to be admitted.
10. The operational creditor in his application filed under section 9 before this Tribunal has requested the Tribunal to suggest the name IRP as per the discretion of this Tribunal. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period 1st July 2019 to 31st December, 2019 in compliance
11. with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Chillale Rajesh, having registration number IBBI/ IPA-001/ IP-P00699/ 2017-2018/11226; Mob No. 9866294434 e-mail id: chillalerajesh@yahoo.co.in as Interim Resolution Professional. The aforesaid interim resolution professional has no disciplinary proceedings pending against him. He shall file his written communication and all relevant paper immediately before Registrar of this Tribunal but not later than two days.
12. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-
 - (1) The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the







professional is under duty to protect and preserve the value of the property of the Corporate Debtor and shall perform all his functions strictly in accordance with the provisions of the Code.

(5) The Petitioner is directed to pay a sum of Rupees 1,00,000/- (One Lakhs Only) to the interim resolution professional to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the committee of creditors as accounted for by interim resolution professional and shall be paid back to the petitioner.

(6) That the order of moratorium shall have effect from 11.09.2019 till the 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, whichever is earlier.

(7) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

Accordingly, this Petition is admitted.



AKW
11.9.2019
NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

[Signature]
11.9.19
RATAKONDA MURALI
MEMBER (JUDICIAL)

Pavani

[Signature]
Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER..... *CP (IB) NO. 31/9/HDB/2019.*
निर्णय का तारीख
DATE OF JUDGEMENT..... *11/9/19*
प्रति तैयार किया गया तारीख
COPY MADE READY ON..... *13/9/19.*