

IN THE NATIONAL COMPANY LAW TRIBUNAL**JAIPUR BENCH**

**CORAM: Dr. P.S.N. PRASAD,
HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

Company Petition No. (IB)- 177/9/JPR/2019

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

IN THE MATTER OF:

**MR. YASH BHARDWAJ
SOLE PROPRIETOR OF YASH PRODUCTIONS**

**...OPERATIONAL CREDITOR/
APPLICANT**

VERSUS

SAGA AUTOMOTIVE INDIA PRIVATE LIMITED

**...CORPORATE DEBTOR/
RESPONDENT**

For the Applicant : Rishabh Khandelwal, Adv.

For the Respondent : Archit Bohra, Adv.

Mr. Yash Bhardwaj
Vs.
Saga Automotive India Pvt. Ltd.



MEMO OF PARTIES

Mr. Yash Bhardwaj
Sole Proprietor of Yash Productions
A-50, Jagdamba colony,
Naya Kheda, Ambabari,
Jaipur - 302039 (Raj.)

...Operational Creditor/Applicant

VERSUS

Saga Automotive India Private Limited
Registered office:
Office Space No. 211, Second Floor,
Jaipur Tower, M.I. Road,
Jaipur - 302001 (Raj.)

...Corporate Debtor/Respondent

Order Pronounced On: 04.03.2020

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code ('IBC'), 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Yash Bhardwaj, proprietor of Yash Productions ('Applicant'), claiming to be an Operational Creditor with a prayer for initiation of Corporate

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Insolvency Resolution Process against Saga Automotive India Private Limited ('Respondent'), the Corporate Debtor herein.

2. The Applicant is the proprietor of Yash Productions, with its office at A-50, Jagdamba Colony, Naya Kheda, Ambabari, Jaipur - 302039 (Rajasthan).
3. The Respondent is a Limited Company incorporated under provisions of the Companies Act, 1956 on 08.12.2011, duly registered with the Registrar of Companies, Jaipur, bearing CIN: U50300RJ2006PTC023129 and the Registered Office of the Respondent is at Office Space No. 211, Second Floor, Jaipur Tower, M.I. Road, Jaipur - 302001 (Rajasthan). The authorized share capital of the company is Rs. 3,75,00,000/- (Rupees Three Crores Seventy Five Lakhs Only) and paid up share capital is Rs. Rs. 3,75,00,000/- (Rupees Three Crores Seventy Five Lakhs Only), as per Master Data of the Company.
4. It is the case of the Applicant that the Applicant has been working and handling promotional events of the Respondent since 2010 and has rendered his services to the Respondent for conceptualizing and organising events such as road shows, standies, outdoor marketing and other promotional events at various locations in Rajasthan for cars such as Skoda Rapid, Skoda Superb, etc. The Respondent/ Corporate Debtor is an automotive dealership company and exclusively deals in and retails cars of Skoda in Rajasthan.

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5. The Applicant stated that the Respondent has been a regular client of the Applicant and accordingly maintained a running account pertaining to transactions between the parties. As per the terms and conditions mentioned in the invoices, payments were to be made within 15 days, for the services rendered by the Applicant. Till 2016, regular payments were being made by the Respondent, but subsequently there was delay in payments on the pretext of some financial constraints.
6. The Applicant also submitted that delayed payments continued till the year 2018 and the statement of accounts shows outstanding amount of Rs. 8,35,841/- as on 10.06.2018. Consequently, the Applicant issued a letter dated 14.06.2018 to the Respondent, requesting them to clear the outstanding balance of the abovementioned amount.
7. The Respondent vide letter dated 15.06.2018 confirmed the balance of Rs. 8,35,841 (Rupees Eight Lakh Thirty Five Thousand Eight Hundred Forty One) as due as on 15.06.2018. The difference in the balance is due to deduction of TDS u/s 194C @ 1% on the bill value before taxes, i.e. Rs. 8,472. The Respondent assured the payment of the abovementioned outstanding amount, without any dispute, as soon as possible.
8. The Applicant further submitted that several requests were made to the Respondent for clearing the outstanding admitted dues; however, no heed was paid and the payments have remained due and unpaid. Consequently,

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the Applicant issued a demand notice in Form 3 dated 31.05.2019, demanding payment of the unpaid operational debt to the Respondent at the registered office, stated in the Master Data on the MCA portal.

9. As a consequence of non-payment of the due amount and interest, this application was filed. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 8,44,313/- (Rupees Eight Lakhs Forty-Four Thousand Three Hundred Thirteen Only) and an additional interest @12% per annum until principal sum is paid, as an outstanding amount, as reflected in Part IV of the Form - 5 filed.

PART IV

Particulars of Operational Debt	
Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.	Outstanding Gross Amount Rs. 8,44,313/- Less: TDS u/s 194C <u>Rs. 8,472/-</u> Rs. 8,35,841/- Add: Interest @12% <u>Rs. 1,56,603/-</u> Outstanding Net Amount Rs. 9,92,444/-
Amount claimed to be in default and the date on which the default occurred	Total amount of debt claimed to be in default is Rs. 9,92,444/- (Rupees Nine Lakh Ninety Two Thousand Four Hundred Forty Four Only) with an additional interest @ 12% p.a. (as per worksheet I and II) Date of default: 26.06.2018 (as per last date of invoice)

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10. The Respondent filed a reply stating that the Applicant has filed a frivolous application before this Tribunal by making false statement that the amount, as mentioned above, is due against the answering Respondent.
11. The Respondent has submitted that they were the exclusive dealer of SKODA AUTO, commonly known as Skoda, a Czech automobile manufacturer, in Jaipur, Kota, Ajmer and had various outlets as well as service stations all over Rajasthan. The Respondent company had been in exclusive sales and marketing for almost a decade and sold cars of Skoda such as Fabia, Rapid, Octavia, etc.
12. The Respondent also submitted that Skoda India authorized the Respondent company to undertake the task of activities such as promotional events, advertisements, etc. for the branding and advertisement of their products. Accordingly, the Respondent engaged the Applicant for the purposes of the same as it specialised in planning and managing promotional events.
13. The Respondent further submitted that they were only acting as an agent of Skoda India and engaged vendors for the purposes of the promotion of the products of Skoda India. The Respondent was reimbursed by the Skoda India for the expenses incurred in organizing such events and cost incurred over the same. However, due to management changes in Skoda India, in the year 2016, payments were not cleared on timely basis resulting in delayed payments of the vendors by the Respondent.

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14. Furthermore, the Respondent submitted that in 2017, Skoda India withheld huge amount of money due to the Respondent and because of the same various defaults such as declaration of the accounts of the Respondent as NPA by its lenders, dues of vendors, etc. started to pile up.
15. The Respondent moreover stated that in 2018, Skoda India, contrary to the contract entered with the Respondent, engaged another dealer for Rajasthan, which led to further financial destruction of the Respondent. Since, the dealership of Skoda India was no longer with the Respondent, the Respondent could not pay the dues of the Applicant and further promotion activities were not undertaken which was duly informed to the Applicant.
16. The Respondent also stated that it has been following up with Skoda India through various mediums for the recovery of various dues, which also includes payments towards the Applicant. It had become impossible for the Respondent to make the payments and same was informed to the Applicant on various occasions and the Respondent also arranged for a meeting with the officials of Skoda India for amicable solution, however, the same remained unsuccessful.
17. Upon a detailed consideration of the application and documents filed, it is evident that the payment of claim amount as mentioned in Part IV of Form 5 has been defaulted by the Corporate Debtor. Irrespective of any

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reimbursements that the Corporate Debtor may have received from any source(s), the services have been availed by the Corporate Debtor from the Applicant/ Operational Creditor. The Corporate Debtor has also confirmed vide letter dated 15.06.2018 that it is liable to pay Rs. 8,35,841 (Rupees Eight Lakh Thirty Five Thousand Eight Hundred Forty One) to the Applicant. Hence, this Tribunal is inclined to initiate Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor as envisaged under the provisions of IBC, 2016.

18. The Applicant has named one Mr. Prashant Agrawal having Registration No. IBBI/PA-001/IP-P00053/2017-18/10127, duly registered with the Insolvency and Bankruptcy Board of India, to be appointed as the Interim Resolution Professional ('IRP'). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating therein that no disciplinary proceedings are pending against the named IRP.
19. Consequences of initiation of CIRP shall be inter-alia as follows:
 - (i) The Resolution Professional proposed by the Applicant, Mr. Prashant Agrawal, an IP registered with Indian Institute of Insolvency Professional of ICAI with Registration No. IBBI/PA-001/IP-P00053/2017-18/10127 (email: ippagrawal@gmail.com), is hereby appointed as the Insolvency Resolution Professional (IRP) to

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take over the affairs of the Corporate Debtor and discharge duties as required to be performed by him under the provisions of IBC, 2016 including issue of publication in widely circulated Newspapers as contemplated under the provisions of IBC, 2016, and calling for claims from the creditors of the Corporate Debtor and collation of the same.

- (ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lacs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time apprising this Tribunal about the progress of CIRP unfolding in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016 all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure

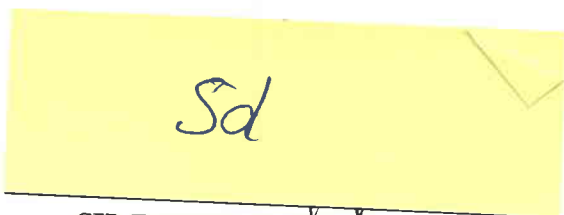
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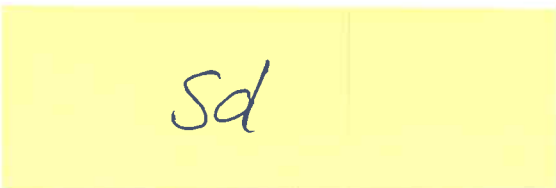
as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor as well as the Interim Resolution Professional (IRP) appointed by this Tribunal to carry out the CIRP at the earliest, not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

20. Accordingly, CP No. (IB)-177/9/JPR/2019 is admitted.

Sd

**SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)**

Sd

**SH. P.S.N PRASAD,
MEMBER (JUDICIAL)**

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