

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT-V AT NEW DELHI

Company Petition No. IB-665/ND/2021

(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:

M/s. DELHI INDUSTRIAL CORPORATION

...Applicant/Operational Creditor

VERSUS

M/s. TECHNO AUTO COMPONENTS

(INDIA) PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 11.05.2022

CORAM:

SH. ABNI RANJAN KUMAR SINHA

HON'BLE MEMBER (JUDICIAL)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Ms. Mrinali Prasad, Advocate

For the Respondent : Mr. Rajiv Singh & Eknoordeep, Advocates



MEMO OF PARTIES

M/s. DELHI INDUSTRIAL CORPORATION

Through its Partner, Mr. Sanjay Kumar

Having its office at:

25 Block-B, B-II,

Mohan Co-Operation Estate

New Delhi-110044

...Applicant/Operational Creditor

VERSUS

M/s. TECHNO AUTO COMPONENTS (INDIA) PVT. LTD.

Having its registered office at:

60, Prakriti Marg, Mehrauli Gurgaon Road,

Sultanpur, New Delhi-110030

...Respondent/Corporate Debtor

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules'), by M/s. Delhi Industrial Corporation (for brevity 'Applicant'),

through its partner Mr. Sanjay Kumar, authorized by resolution dated 01.10.2021 and authority letter dated 01.10.2021, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP), against M/s. Techno Auto Components (India) Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, is a Partnership firm, having its address at 25 Block-B, B-II, Mohan Co-Operation Estate, New Delhi-110044 .
3. The Respondent, the Corporate Debtor, namely M/s. Techno Auto Components (India) Private Limited, is a company incorporated on 19.09.1995, under the provisions of Companies Act 1956, with CIN No. U74899DL1995PTC072548, having its registered office at 60, Prakriti Marg, Mehrauli Gurgaon Road, Sultanpur, New Delhi 110030. The Authorised Share Capital of the respondent company is Rs.9,00,00,000/- and Paid Up Share Capital of the company is Rs.79,58,470/- as per Master Data of the company.



4. The Operational Creditor (“OC”) states that it is engaged in the business of manufacturing and trading of Rubber, Rubber Chemicals, Rubber/ Plastics/ PVC & Handicraft Products.
5. The OC states, it was in the business with the CD for the sale of Synthetic Rubber Chloroprene & EPDM. It was approached by the CD for supply of the said material and thereafter, the OC supplied the material and issued invoices from time to time, based on the said purchase. However, the CD has partially paid some of the invoices and the running account continued on mutual trust. It is pertinent to note that the CD never paid the invoices in full and on repeated request from the OC, the CD would give repeated assurances to clear the same in due time.
6. The OC further states that the invoices are not fully paid since 30.06.2018. Hence, the invoices fell due for payment, based on the terms and conditions decided between the OC and the CD. It is further submitted that the said debt is an “operational debt” as per clause (20) and (21) of Section 5 of the Insolvency and Bankruptcy Code, 2016.

7. The OC has annexed copies of all the unpaid outstanding invoices, raised by the applicant between 30.06.2018 to 15.10.2019, along with the Ledger at *Annexure A-6 (colly.) and Annexure A-7.*

8. In spite of various requests made and reminders sent by the Operational Creditor, the Corporate Debtor did not reply. On failure to pay the outstanding dues by the Corporate Debtor, the Operational Creditor sent a demand notice dated 02.10.2021, under Section 8 of the Insolvency and Bankruptcy Code, 2016, to the Corporate Debtor, through email and speed post on 01.10.2021 and 05.10.2021, respectively, asking them to make the entire payment of Rs.3,00,39,274/- (Rupees Three Crores Thirty Nine Thousand Two Hundred Seventy Four), within 10 days from receipt of the notice, failing which the Operational Creditor shall initiate the Corporate Insolvency Resolution process against the Corporate Debtor.

9. The OC has annexed the copy of email and postal receipts for the said demand notice, sent to CD along with the Application, as Annexure A-8.
10. After the delivery of demand notice, sent under Section 8 of the Code, the Corporate Debtor has not sent its reply to the said notice, nor raised any dispute in response to the notice. As no payment was coming, hence this application, seeking to unfold the process of CIRP.
11. The Operational Creditor, in Part-IV of the Application, has stated that total debt due and payable is, Rs.3,00,39,274/- (Rupees Three Crore Thirty Nine Thousand Two Hundred Seventy Four). The date of default is 15.10.2019.
12. Hence, the current application, under section 9 of the IBC, 2016 was filed by the Operational Creditor to initiate CIRP. The Operational Creditor has also filed an affidavit of service wherein, it states that the Corporate Debtor has been served through email on 04.10.2021 and vide speed post on 07.10.2021. The copy of email and the tracking report in this

regard, has also been annexed along with the affidavit of service.

13. After the service of said notice, the Corporate Debtor has caused an appearance in the matter and filed its reply. In its reply the Corporate Debtor states that;

“6. It is submitted that in terms of Section 215 of IBC, it is incumbent upon the Operational Creditor to furnish the record of default recorded with the Information Utility. It is stated that the record of default as available with the Information Utility is required to be annexed at Part V of Form 5 which the Operational Creditor has failed to provide.

9. Without prejudice, it is submitted that the Petitioner has filed the instant petition with the sole intent of recovery and not resolution. It is submitted that proceedings before this Hon’ble Tribunal under the provisions of the Insolvency and Bankruptcy Code, 2016 are not recovery proceedings and the instant petition preferred with the sole intent of recovery entails dismissal of instant petition.



10. It is submitted that the Hon'ble Supreme Court in the matter of K. Krishan Vs. Vijay Nirman Company Pvt. Ltd., Civil Appeal No. 21824 & 21825 of 2017 has categorically held that the IBC cannot be used as a substitute for debt enforcement procedure...

13. Without prejudice to the above, it is submitted that the Corporate Debtor is willing to safeguard the interest of stakeholders including the present petitioner. It is submitted that Corporate Debtor is willing to pay the entire outstanding debt of Operational Creditor without interest in 15 equal installments starting from 01.10.2022 and the present petition be dismissed with the aforesaid direction.

14. It is submitted that the pandemic has affected the economy of the entire nation and due to the unprecedented situation, the Corporate Debtor is facing financial difficulties, however, assures the repayment of debt of Operational Creditor in a time-bound manner.”

14. After the reply by CD to the present Application filed by OC, the OC has filed its rejoinder to the said reply, in the rejoinder the OC states as follows;

“4. That the corporate debtor denies the liability for the alleged amount/ operational debt of Rs.2,06,92,110/- (claimed as principal amount) or Rs.93,47,164/- (claimed as interest amount @ 18% p.a.) or the gross amount of Rs.3,00,39,274/- claimed by the operational creditor.

*6. That the copy of invoices allegedly being those for which the payment is outstanding from the corporate debtor annexed as Annexure A-6 and also the transport delivery challans annexed as Annexure A-10 are disputed by the corporate debtor of FOUR counts. **Firstly**, some of the invoices are made-up and even otherwise the exact number of products delivered to the operational creditor do not tally. The case of the operational creditor, by its own admission, is that the orders were placed telephonically or via email. No call record, phone*

Page | 9



record, messages, SMS, WhatsApp texts have been placed on record before the Hon'ble Adjudicating Authority by the operational creditor. **Secondly**, the operational creditor had repeatedly and regularly raised product quality issue on all deliveries. **Thirdly**, it was a tacit understanding between the parties that to resolve these concerns of the operational creditor the overall product pricing will be revised and a substantial reduced rate would be offered to the corporate debtor. **Fourthly**, on the personal request of the employees of the operational creditor that no written letter/email was issued by the corporate debtor so as to maintain good cordial business relationship and a clean record."

15. In **"Innoventive Industries Ltd.(Supra)"**, the Hon'ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the 'Corporate Debtor'. Any subsequent dispute raised while replying to the demand notice under Section 8(i) cannot be



taken into consideration to hold that there is a pre-existing dispute.

16. Further the Hon'ble Supreme of India in **Mobilox Innovations Private Limited vs. KirusaSoftware Private limited** has observed that-

“The adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?



If any one of the aforesaid conditions is lacking, the application would have to be rejected.

Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

17. It is pertinent to note that the Operational Creditor has placed on record the demand notice along with invoices, with its Application. Once the debt is shown as due, it is for the Corporate Debtor to prove that there are no outstanding dues to be paid to the Operational Creditor. Also, no such payment has been made by the Corporate Debtor.
18. The Applicant has filed an affidavit in compliance of Section 9(3)(b) of the Code, stating that no notice of dispute has been received by it.
19. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its



dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.

20. The registered office of Corporate Debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
21. The Operational Creditor has proposed the name of Interim Resolution Professional. In view of the same, this Bench confirms the same and appoints **Ms. Chhaya Gupta**, having registration no. **IBBI/IPA-002/IP-N00984/2020-21/13133**, email address is **guptachayacs@gmail.com**, as the IRP of the Corporate Debtor. The IRP is directed to take all such steps, as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the I & B Code, as per the following directions:-
 - a. The Moratorium is hereby declared prohibiting all of the following actions, namely,



- i. 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.
- ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



22. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
23. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator
24. That the order of moratorium shall have effect from the date of this Order, 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, as the case may be.
25. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.
26. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person)



Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

27. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.



(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)



(ABNI RANJAN KUMAR SINHA)
MEMBER(JUDICIAL)