

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-II**

CP (IB) 2043/MB/C-II/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Goldsun Auto Private Limited

[CIN: U34300TZ2008PTC014323]

12, Avarampalayam Road, Ganapathy, Coimbatore, Tamil
Nadu – 641 006

... Operational Creditor/Applicant

Versus

Autocop (India) Private Limited

[CIN: U7499MH1991PTC063312]

A-35, 2nd Floor, Street No. 2, MIDC, Andheri (East), Mumbai
– 400 093

...Corporate Debtor/Respondent

Order Delivered on 16.03.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Ms. S Manjula Devi, Advocate.

For the Corporate Debtor : Absent

ORDER

Per: Shyam Babu Gautam, Member

1. This is a Company Petition filed under section 9 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Goldsun Auto Private Limited** (“**the Operational Creditor**”), seeking to

initiate Corporate Insolvency Resolution Process (CIRP) against **Autocop (India) Private Limited ("the Corporate Debtor")**.

2. The Corporate Debtor was incorporated 18.09.1991 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is **U7499MH1991PTC063312**. Its registered office is at A-35, 2nd Floor, Street No. 2, MIDC, Andheri (East), Mumbai – 400 093.

Brief Facts of the case:

3. Operational Creditor is a private company limited by shares under the Companies Act, 1956. Its Corporate Identity Number (CIN) is **U34300TZ2008PTC014323**. Pursuant to various Purchase Orders (POs) issued by the Corporate Debtor, the Operational Creditor supplied goods as per the terms of POs in letter and spirit till Corporate Debtor stopped making payments for the outstanding bills raised by the Operational Creditor for supply of goods.
4. Operational Creditor supplied goods worth Rs. 67,88,749/- (Rupees Sixty-Seven Lakhs Eighty-eight Thousand Seven Hundred forty-nine only) as per the total invoices raised by the Operational Creditor during Financial Year 2016-17. Out of which, the Corporate Debtor admittedly has paid a sum of Rs. 46,56,133/- (Rupees Forty-Six Lakhs Fifty-six Thousand One Hundred thirty-three only) to the Operational Creditor. Thus, for the work completed by the Operational Creditor, there exists outstanding amount of Rs. 21,32,616/- (Rupees Twenty-One Lakhs Thirty-two

Thousand Six Hundred sixteen only) being legally payable by the Corporate Debtor.

5. The Operational Creditor served upon the Corporate Debtor a Demand Notice dated 06.01.2018 under section 8 of Insolvency and Bankruptcy Code, 2016 at 07th Floor, Office No. C-705, “Pramukh Plaza”, Cardinal Gracious Road, Chakala, Andheri East, Mumbai – 400 099. Pursuant to service of notice, the Operational Creditor has filed the present Petition stating date of default as 01.10.2017.

Submissions by the Operational Creditor:

6. The Operational Creditor in addition to above outstanding amount has also claimed interest of Rs. 3,86,614/- (Rupees Three Lakhs Eighty-six Thousand Six Hundred fourteen only) as general condition. The Corporate Debtor has denied any interest liability as there is no agreement for the same.
7. The Operational Creditor in addition to above outstanding amount has also claimed Rs. 6,59,493/- (Rupees Six Lakhs Fifty-nine Thousand Four Hundred ninety-three only) against non-receipt of Form-C under the relevant law. The Corporate Debtor has not disputed the above fact. However, the Corporate Debtor has delivered Form-C after issue of demand notice.

Reply Submitted by the Respondent Corporate Debtor:

8. The Corporate Debtor was absent on several occasion of hearing though the Affidavit in Reply has been filed by the Corporate Debtor on 14.10.2019 through its Company Secretary. Therefore, the same is taken as representation of the Corporate Debtor.
9. The Corporate Debtor has not disputed the facts in para 4 above. The Corporate Debtor has expressed his intent to return goods via email dated 16.01.2018 in response to demand notice issued by the Operational Creditor dated 06.01.2018.
10. **Receipt of Demand Notice:**

The Respondent argues that the demand dated 06.01.2018 was not served upon the Corporate Debtor. It is submitted that the said notice was delivered at previous registered office. It is submitted that the registered office as per MCA records is A-35, 2nd Floor, Street No. 2, MIDC, Andheri (East), Mumbai – 400 093. Copy of MCA Master Data is annexed as “**Annexure-B**” to the Reply.

11. **Goods Returned:**

The Respondent states that the demand notice raised by the Operational Creditor is false and inflated as it does not account for goods returned. To buttress this fact, the respondent relies on email dated 16.01.2018 in response to the demand notice. Goods of Rs. 1,68,475/- (Rs. One Lakh Sixty-eight Thousand Four Hundred and Seventy-five Only) were returned on 20.01.2018 which is not reflected in the petition.

12. **Non-receipt of Form-C:**

While the Corporate Debtor does not dispute the fact that Form-C of Rs.6,59,493/- (Rupees Six Lakhs Fifty-nine Thousand Four Hundred ninety-three only) have not been delivered to the Operational Creditor, it states that all such Form-C were delivered on 04.04.2018 and the same has been acknowledged by the Corporate Debtor. Hence, to that extend the claim is incorrect. It is respectfully submitted that the instant matter is essentially a money recovery suit filed in the garb of a Section 9 Petition. This is buttressed by the fact that the Petitioner deliberately suppressed the documents which showed the existence of a pre-existing dispute. The Petitioner has sought to trigger the provisions of the IBC with *mala fide* intention only to extrapolate concocted claims from the Respondent.

13. **Interest on amount outstanding:**

The Corporate Debtor denies all interest liability as no agreement to effect interest has been reached between parties.

Rejoinder Submitted by the Operational Creditor:

14. **Service of Demand Notice:**

The Corporate Debtor has filed Form INC-22 with Ministry of Corporate Affairs (MCA) on 12.04.2018 shifting registered office

from 07th Floor, Office No. C-705, “Pramukh Plaza”, Cardinal Gracious Road, Chakala, Andheri East, Mumbai – 400 099 to A-35, 2nd Floor, Street No. 2, MIDC, Andheri (East), Mumbai – 400 093 with effect from 01.04.2018. The Demand Notice was served on 06.01.2018 as per the MCA records. Copy of Form is annexed as “**Annexure - A1**” to rejoinder filed by the Applicant.

Findings:

15. We have heard the submissions of Applicant as well as the Respondent and perused the records.
16. The Corporate Debtor while replying to the demand notice has not brought to light any pre-existing dispute as required under the Code. It has, via email dated 16.01.2018, committed to return goods out of fresh stock of Rs. 1,68,475/- (Rs. One Lakh Sixty-eight Thousand Four Hundred and Seventy-five Only) after receipt of notice.
17. The Corporate Debtor has delivered various Form-C to the Operational Creditor on 04.04.2018. The Operational Creditor also fails to bring on record any document to highlight an agreement between parties pursuant to which the interest has been charged therefore in absence of the same not entitled to claim any interest.
18. Even after adjustment of above said transactions, the amount outstanding is still above Rs. 1 lakh which is due and payable and since the present petition was filed before the amendment increasing

threshold limit, the present petition is in compliance with section 4(1) of the IB Code.

19. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
20. The petition bearing **CP (IB) 2043/MB/C-II/2018** filed by **Goldsun Auto Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Autocop (India) Private Limited [CIN: U7499MH1991PTC063312]**, the Corporate Debtor, is **admitted**.
21. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - 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 (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
22. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
23. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of

the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

24. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
25. **Mr. Madan Bajarang Lal Vaishnawa**, Registration No. IBBI/IPA-001/IP-P02011/2020-2021/13052, Email Id: madan.vaishnawa@icai.org, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
26. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

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27. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
28. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
29. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
30. Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

16.03.2022

SAM

Sd/-

JUSTICE P. N. DESHMUKH (RETD.)

Member (Judicial)