IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-822/(ND)/2021

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

In the matter of:

M/s. Five Ess Precision Components Private Limited
Registered office at:
3-D 40-A, BP, NIT Faridabad
Haryana 121001

...Applicant/Operational Creditor

V/s

M/s. Hema Automotive Private Limited
Registered office at:
Sachidanand Farm House Kishangarh,
Vill Opp, Swimining Pool, Dda Sports Complex,
Lanegreen Avenue, Vasant Kunj,
New Delhi-110070

...Respondent/Corporate Debtor

Coram:

SH. P.S.N. PRASAD, HON'BLE MEMBER (Judicial)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (Technical)

PRESENT: -

For the Applicant: Mr. Jeetender Gupta.

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ORDER

Per- P.S.N PRASAD, MEMBER (JUDICIAL)

Date:08.07.2022

1. This is an application filed by the Applicant M/s. Five Ess Precision Components Private Limited seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code') against the Respondent M/s. Hema Automotive Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 3,34,54,470.42 (Rupees Three Crore Thirty-Four Lakhs Fifty-Four Thousand Four Hundred seventy and Forty-Two paisa). The details of the transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:

   i. That as per the instructions, requirement and specification of Corporate Debtor, the Operational Creditor had supplied goods along with invoice of each consignment to Corporate Debtors, at such addresses as provided by them and same were duly received by them.

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ii. That the Operational Creditor and the Corporate Debtor had an open and running account for the transactions of services rendered by Operational Creditor to the Corporate Debtor.

iii. The last invoice for the financial year 2019-2020 was raised on 21.03.2020. The outstanding amount recoverable from Corporate Debtor as per ledger maintained by Operational Creditor stood at Rs. 3,97,50,941.82 as on 21.03.2020 i.e. before the lockdown period announced by Government of India due to Covid-19 pandemic.

iv. The closing balance i.e. outstanding amount recoverable from Corporate Debtor as per ledger maintained by Operational Creditor stood at Rs. 3,97,52,516.92 as on 31.03.2020.

v. That the Corporate Debtor requested the Operational Creditor to avail a loan to the tune of Rs. 60,00,000/- (Rupees Sixty Lakhs) from a financial institution and committed to bear the interest. Accordingly, Corporate Debtor had entered into an MOU dated 17.08.2020 with the Operational Creditor. In terms of the said MOU, to enable the Operational Creditor to repay the said loan, the Corporate Debtor had committed a payment of Rs. 5,00,000/- per month as advance from August 2020 to July 2021. To meet out the said liability the Corporate Debtor also issued 12 monthly post dated cheques ("Said Cheques") of Rs. 5,00,000/- each, dated from 25.08.2020 to 25.07.2021 respectively. On the Corporate Debtor's assurances, representations and commitments, the Operational Creditor has already obtained a loan of Rs. 50,00,000/- from SIDBI. However, the Corporate Debtor has gone back on its commitment in terms of said MOU.

vi. That the said amount of Rs. 3,34,54,470.42/- (Rupees Three Crore Thirty Four Lakhs Fifty Four Thousand Four Hundred Seventy and Forty Two paisa) is still outstanding which has resulted into wrongful gain to the Corporate Debtor and Wrongful loss to the Financial Creditor even after receiving the legal notice dated 20/10/2021. Therefore, the Operational Creditor was left with no other option than to approach this Tribunal.

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2. Despite several notices to the Corporate Debtor, no one was present on behalf of the Corporate Debtor on any of the dates of the hearing and hence the Corporate Debtor as set ex-parte by this Adjudicating Authority vide order dated 08.03.2022.

3. In compliance of Section 9 (3) (b) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has filed affidavit dated 23.11.2021 stating that no notice of any pre-existing dispute has been received by the Applicant from the Corporate Debtor relating to the dispute of the unpaid Operational Debt.

4. We have heard the Ld. Counsel for the Operational Creditor and perused the averments made in the application as well as the documents enclosed with the application. The applicant has claimed the default on part of the Respondent for amount of Rs. 3,34,54,470.42/- (Rupees Three Crore Thirty Four Lakhs Fifty Four Thousand Four Hundred Seventy and Forty Two paisa).

5. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the

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arguments of the learned counsel for the Operational Creditor and upon appreciation of the documents placed on record to substantiate the claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and along with that, in the absence of any pre-existence of dispute, this Tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect.

6. This Adjudicating Authority, hereby appoints Mr. Vivek Sharma, (Email-fcsviveksharma@gmail.com), Reg. No.: IBBI/IPA-002/IP-N01077/2020-2021/13442 to act as Insolvency Resolution Professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

7. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be

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reimbursed to the Applicant to be recovered as costs of the CIRP.

8. In pursuance of Section 13(2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency and Bankruptcy Code, 2016.

9. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

"(a) 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;
(b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor 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 corporate debtor."

10. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

11. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act,

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2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

12. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this

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Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

13. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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(P.S.N. PRASAD)
MEMBER (JUDICIAL)