

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT No. IV)**

COMPANY APPLICATION No. IB-398/ND/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:

**Gitansh International Private Limited ... Applicant/
Operational Creditor**

Versus

**Sri Ganesh Automotive Impex Private Limited ... Respondent/
Corporate Debtor**

Order Pronounced on: 30 / 11 /2021

Coram:

**Dr. Deepti Mukesh, Hon'ble Member(Judicial)
Ms. Sumita Purkayastha, Hon'ble Member (Technical)**

MEMO OF PARTIES

Gitansh International Private Limited

Having its office at
Village – Seerha, Rahon Road
Industrial Zone
Ludhiana 141 008 (Punjab) ...

Applicant/Operational Creditor

Versus

Sri Ganesh Automotive Impex Private Limited.

Having its registered office at
P-39, Second Floor (Rear Block)
South Extension Part II
New Delhi – 110 049 ...

Respondent/Corporate Debtor

Appearance:

For the Applicant : Mr. Amit Goel, Advocate
For the Respondent : Mr. Karan Gandhi, Advocate
Mr. Ankur Agrawal, Advocate

ORDER

Per: Dr. Deepti Mukesh, Member (Judicial)

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 **Gitansh International Pvt. Ltd.**, through its Director Mr. Ankush Goyal who is duly authorized via board resolution dated 06.12.2018 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against **Sri Ganesh Automotive Impex Private Ltd.** (for brevity 'Corporate Debtor').

2. The Applicant is a Private Limited Company, incorporated under the Companies Act, 1956 duly registered with the Registrar of Companies, bearing CIN: U70101PB1995PTC017232 and having registered office at Village Seerha, Rahon Road, Industrial Zone, Ludhiana, Punjab State. The Applicant is engaged in supply of steel round bars.
3. The corporate debtor is a Private Limited Company, incorporated under the provisions of companies Act, 1956 on 30.01.2008, duly registered with Registrar of Companies, New Delhi with CIN: U45400DL2008PTC173378 and having registered office at South Extension Part II, New Delhi 110 049. The Authorized share capital of the Respondent is Rs. 4,00,00,000.00 and Issued, Subscribed and Paid up share capital of the company is Rs. 3,72,40,000.00.
4. It is submitted by the applicant that during the month of June 2014, the respondent company approached the applicant company for supply of mild steel round bar and after various discussions, deliberation and meetings between the officials of both the companies, the applicant company started supplying mild steel round bar to the respondent as per the orders received from the respondent from time to time beginning from 11.07.2014. All the supply of goods by the applicant was subject

to VAT and the respondent company was issuing 'C' forms acknowledging the receipt of goods till introduction of Goods & Service Act in July, 2017. All the supply of goods were duly accepted by the respondent without any protest or objection whatsoever which is evident from the payments made by the respondent from time to time. The operational has placed on record statements of bank accounts for the period from 01.04.2015 to 06.12.2018 where deposits are made and credits received normally by the operational creditor in respect of the debt of the corporate debtor. As on 01.08.2018, there was an outstanding balance of Rs. 3,34,59,623/- in the books of the applicant receivable from the respondent against the supply of goods.

5. It is further submitted by the applicant that when the respondent failed to make payment of outstanding amount, demand notice dated 18.10.2018 under Section 8 of the I & B Code was issued calling upon the respondent to make payment of outstanding amount of **Rs. 5,54,16,012/- (Rupees five crores fifty-four lacs sixteen thousand twelve only)** which include the interest of Rs. 2,19,56,389/-. Despite receipt of the demand notice, the respondent failed to make payment of outstanding amount and instead sent a frivolous reply dated 14.11.2018 denying its liability. The applicant filed present application under Section 9

of the I & B Code which was also duly served on the respondent's registered office address. The applicant filed service affidavit and has placed on record postal receipt and delivery status report as proof of service.

6. The applicant has annexed to the application copies of all the documents like letter of authorization to file the application, invoices, interest calculation, demand notice along with proof of service, copy of reply dated 14.11.2018, affidavit in support of the application and other related documents.
7. The corporate debtor has filed reply to the application controverting the averments made in the application and has asserted as follows
 - i. That the allegations made by the applicant are highly vague, devoid of merits and falls which are denied in toto. The claim filed by the applicant is with respect to defective goods for which debit notes were raised by corporate debtor. Hence, nothing is payable to the applicant by corporate debtor.
 - ii. That it has been categorically held by various judicial fora that the issuance of form 'C' by an entity is not acknowledgement of the quality of goods thus received and

it only proves that the applicant was charged 2% CST against the supply of goods.

8. The applicant filed rejoinder and has asserted as follows: -
- i. That the corporate debtor has failed to prove that there was a pre-existing dispute between the applicant and the respondent before filing of the present application or service of demand notice by the applicant and every contention taken in the reply is an after-thought and blatant attempt to mislead the Tribunal.
 - ii The corporate debtor has failed to file its balance sheet after 31.03.2016. There was no complaint received for the material supplied.
 - iii That the corporate debtor has failed to file any document which shows that the corporate debtor ever communicated the applicant regarding the defect in any of the supplies made by the applicant or credit notes issued by the customers of the corporate debtor.
 - iv. In February, 2018, as the Directors of the Corporate Debtor approached applicant for further supply and had assured the applicant that not only will they make timely payments for new supplies but also clear the entire old

outstanding dues of the applicant which they failed to do so.

9. As per Form 5, Part IV, the corporate debtor is liable to pay an outstanding sum of Rs. 5,54,16,012/-. Since the default is a continuing default as the corporate debtor had been making ad hoc part payments against the invoices raised by the applicant from time to time, the last such payment being made on 31.07.2018, the date of default has been considered as 31.07.2018.
10. The applicant has filed an affidavit under Section 9 (3)(b) which stands complied.
11. The registered office of the corporate debtor is situated in Punjab and therefore this Tribunal has jurisdiction to entertain and try this application.
12. The date of default as per Form 5 occurred on 31.07.2018, and the present application was filed on 12.12.2018, hence the debt is not time barred and the application is filed within the period of limitation.
13. Heard submissions made and perused the documents on record. The present application is complete and the Applicant is entitled

to claim its dues. The corporate debtor has disputed the payment of claim of applicant, but has totally failed to show that there is a pre-existing dispute and the amount claimed by the applicant is not payable. No documentary evidence is filed by the corporate debtor to substantiate the existence of a dispute. It is shown that the corporate debtor used to make payment against supply and the last payment was made in July, 2018. We are convinced that the debt is due and payable and default has occurred. As held by the Hon'ble Supreme Court in case of "Mobilox Innovative Private Limited vs. Kirusa Software Private Limited" the dispute has to be genuine and not mere moonshine dispute. The present application is admitted, in terms of section 9 (5) of IBC, 2016.

14. The applicant has not proposed the name of the Interim Resolution Professional (IRP), hence, we hereby appoint Mr. Umesh Chand Goyal, having Registration No: IBBI/IP-001/IP-P-01876/2019-2-2-/12974 having Email Address: goyaluc.cp@gmail.com and having office at AAA Insolvency Professionals LLP, E-10A, Kailash Colony, Greater Kailash-1, New Delhi 110 048 to act as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in

relation to the CIRP of the Corporate debtor and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

15. We direct the Operational Creditors to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Umesh Chand Goyal to meet out the expense to perform the functions assigned to him 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 one week from the date of receipt of this order by the Operational Creditor. The amount however 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.
16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the

Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

17. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-
Ms. Sumita Purkayastha
Member (Technical)

KMN

SD/-
Dr. Deepti Mukesh
Member (Judicial)