

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

CP (IB) No.3382/MB-IV/2019

Under Section 9 of the IBC, 2016

In the matter of

**Opulent auto care private
Limited**

[CIN: U50200PN2003PTC017868]

...Operational Creditor

v/s.

M/s Roharsh Motors Private Limited

[CIN: U50400PN20127PTC144753]

...Corporate Debtor

Order Delivered on:19.01.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mohit Kumar Jha (CS)

For the Respondent:

Vikramsingh Parmar, Advocate

ORDER

Per: Kishore Vemulapalli, Member(Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Opulent Autocare Private Limited, (through its Authorised representative Mr. Sathyaprakash Subramanian, Managing Director) ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Roharsh Motors Private Limited ("the Corporate Debtor"), [CIN: U50400PN20127PTC144753].

2. The Corporate Debtor is a company incorporated on 14.09.2012 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Pune. Its registered office is at GPT Complex,517-E, Old Pune-Bangalore Road, Kolhapur, Maharashtra-416001. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority claiming the Corporate Debtor failed to make payment of a total sum of Rs.20,51,614/- (Rupees Twenty Lakhs Fifty-One Thousand Six Hundred and Fourteen only only). The date of default is 28.02.2018.
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor is engaged in the business of Car Care products and services and has necessary expertise and skills as related to the same.
 - b) The Operational Creditor submits that, Corporate Debtor issued Letter of Intent on 15.01.2016 for purpose of promoting Waxoyl Car detailing and Value-added services across Ghatge Group of Car Dealerships (Sales and Services) which currently includes Renault and Hyundai in Pune (Baner & Wagholi), Kolhapur and Sangli.
 - c) The Operational Creditor provided the services related to Car Care to the Corporate Debtor at its different Locations. It was agreed that the Corporate Debtor shall make payment of the services and goods within Seven days from date of receipt of the Invoices as per Clause No. 7 of the said Letter of Intent.

- d) As per the terms and conditions stated in the Letter of Intent in Clause 9 (Advance Commission) the applicant being the service provider had to pay Rs. 25,00,000/- as advance commission to the Corporate Debtor and the same was paid on 09.02.2016 vide Cheque No.007277 through Bank Of India at Exhibit-2 on Pg. No. 21 of the Petition.
- e) The Operational Creditor submits that, this advance commission was to be returned by the Corporate Debtor within 3 years by way of adjusting 10% of the Invoices raised by the Operational Creditor during the contract period. The balance unadjusted amount of Advance Commission was to be returned by the Corporate Debtor with 18% p.a. interest within 3 months of discontinuation of the Contract.
- f) The Ledger Account shows the Services provided to the Corporate Debtor and adjusted the Advance Commission upto the amount of Rs.9,13,400/- at Exhibit-2 on Pg. No. 21 of the Petition.
- g) The Last Invoice raised upon the Corporate Debtor was dated 31.01.2018 and then the services of Operational Creditor was discontinued by the Corporate Debtor. In addition to the adjustment of Advance Commission the Corporate Debtor defaulted in the payment of Rs.4,65,014.
- h) The following is chart shows the Summary Statement giving the total amount of outstanding receivable from Corporate Debtor at Exhibit-3 on Pg. No. 24 of the Petition: -

Sr. No	Particulars	Amount
1	Advance to Roharsh Motors	15,86,600
2	Roharsh Motors-Baner	3,54,688
3	Roharsh Motors-Wagholi	1,10,326
Total		20,51,614

- i) The invoices/bills raised between 01.08.2016 to 28.02.2018 upon the Corporate Debtor by the Operational Creditor for the services provided for Car Care are at Exhibit-4 on Pg. No. 25-43 of the Petition. However, the Corporate Debtor failed to pay the said invoices along with the Advance Commission.
 - j) The Operational Creditor had served a Demand Notice dated 21.05.2019 to the Corporate Debtor, which is at Exhibit-5 on Pg. No. 44-47 of the Petition. The track record of Proof of Service dated 22.05.2019 is given at Exhibit-6 on Pg. No 48-49 of the Petition.
 - k) The Operational Creditor submits that, no reply of the Demand Notice received from Corporate Debtor till date. Neither have they disputed anything on the quality or on any other aspects.
 - l) The Bank Certificate as received from the Bank Of India, confirming no payment from the Corporate Debtor has been credited to this account Since 08.12.2017.
 - m) The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter.
5. The Corporate Debtor has submitted its reply as follows:
- a) The Operational Creditor claiming the amount of Rs.20,51,614/-. The said claim amount has 2 types of claims. Firstly, the amount of Rs.15,86,600/- is in the nature of an advance commission which is sought to be claimed as an Operational Debt and Secondly, the amount of Rs. 4,65,014/- is claimed against certain invoices which have been raised for alleged provision of some services to the Respondent.

- b) The Corporate Debtor submits that, the amount of Rs.15,86,600/- is not being claimed by the petitioner against provision of any goods or services to the Respondent. That there is no whisper in the whole petition about the said claim being in respect of provision of any goods or services. Therefore, the said claim amount cannot by any stretch of imagination be said to be falling within the four corners of the definition of an Operational Debt and cannot be claimed.
- c) Without prejudice to anything stated herein, the Corporate Debtor has dealt with the contents of the Reply the same are denied in the entirety and the same are taken on record.
- d) The Written Submissions submitted by the Corporate Debtor are taken on record.

Findings:

- 6. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
- 7. The Last date of invoice is 31.01.2018 and the date of filing of Petition is well within the Limitation. This Bench has jurisdiction to deal with this Petition. The date of default as mentioned in the petition is 28.02.2018.
- 8. Invoices have been placed on record at Pg. No 25-43 of the Petition. The total debt due and payable to the Operational Creditor is 20,51,614/-.
- 9. It is observed by the Bench that the Corporate Debtor has liability of Rs. 20,51,614/-. Therefore, the Petition 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 of rupees one lakh stipulated under

section 4(1) of the IBC. Therefore, the debt and default stand established and there is no reason to deny the admission of the Petition. In view of this, the Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

10. The Operational Creditor has not proposed the Interim Resolution Professional (IRP) in the matter.

ORDER

- (a) The Petition bearing CP(IB) 3382/MB-IV/2019 filed by Opulent Autocare Private Limited, (through its Authorised representative Mr. Sathyaprakash Subramanian, Managing Director) (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Roharsh Motors Private Limited (“the Corporate Debtor”), [CIN: U50400PN20127PTC144753].
- (b) 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.
- (c) Notwithstanding the above, during the period of moratorium, -
 - (v) 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;
 - (vi) 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;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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.
- (e) 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.
- (f) Mr. Hajari LaL Saini, Registration No. IBBI/IPA-001/IP-P01553/2019-2020/12494, E-mail Id: cahlsaini@rediffmail.com; is hereby appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this

regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (g) 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.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- (i) 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.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

Kishore Vemulapalli
Member (Judicial)

19.01.2022

Sd/-

Rajesh Sharma
Member (Technical)