

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/42/2020 filed under Section 9 read with Sub Rule (1) of Rule 6 and other applicable Provisions of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of **M/s. Abra Motors Private Limited**

M/S. HOME TECH SERVICES PRIVATE LIMITED

203, Real Enclave, 2nd Floor,
#43, Josier Street,
Nungambakkam,
Chennai – 600 034

... Operational Creditor

-Vs-

M/S. ABRA MOTORS PRIVATE LIMITED

355A, GST Road,
Alandur,
Chennai – 600 016

... Corporate Debtor

Order Pronounced on 08.05.2020

CORAM:

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Operational Creditor : P.J. Sri Ganesh, Advocate

For Corporate Debtor : Swarnam J. Rajagopal, Advocate

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. This Application has been filed invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code-2016") in the format as prescribed under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "AAA Rules") by the Applicant viz., **M/s. Home Tech Services Private Limited** (hereinafter referred to as "*Operational Creditor*") against **M/s. Abra Motors Private Limited** (hereinafter referred to as "*Corporate Debtor*"). The Operational Creditor seeks to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company with CIN:U74930TN2001PTC046905. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U50400TN2008PTC068787 which was incorporated on 06.08.2008 and that its Authorized share capital and paid up capital is Rs.20,00,00,000.00

and Rs.11,55,00,000.00 respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 355A, GST Road, Alandur, Chennai – 600 016.

3. Part-III of the Application shows that the Operational Creditor has proposed the name of one Mr. Swaminathan Prabhu as the Interim Resolution Professional. From Part-IV of the Application, it is seen that a sum of Rs.8,93,506/- and an interest amount of Rs.1,60,831/-, thereby totalling a sum of Rs.10,54,337/- is being claimed as total debt which is due and payable by the Corporate Debtor to the Operational Creditor.

4. Part V of the Application describes the particulars of the documents, records and evidence of default of the Operational debt which *inter alia* includes the following;

- (i) Service Agreement for Security Services dated 01.08.2011
- (ii) E-mails dated 02.02.2015, 03.02.2015, 06.02.2015, 18.02.2015, 03.03.2015, 27.03.2015
- (iii) Invoices bearing Nos. 2193, 2045, 2044, 2039, 2032, 1831, 1830, 1825, 1819, 1632, 1631, 1626, 1620, 1416, 1415, 1410, 1404, 1221, 1220, 1215, 1209

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5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is a Security Agency providing security service through trained personnel under its direct employment and supervision, holding all required permits and licences under the provisions of the relevant law. It is submitted that the Corporate Debtor was looking for the round the clock watch and ward of its Company properties and offices at various locations situated in and around Chennai and hence entered into a Service Agreement for Security Service (hereinafter referred to as "Security Agreement") dated 01.08.2011 with the Operational Creditor.

6. The Learned Counsel for the Operational Creditor submitted that as per the agreed terms between the parties, the Security Agreement was initially entered for a period starting from 01.08.2011 to 31.03.2012 and was to be extended thereafter from time to time with new revised rates according to the Labour Minimum Wages on mutually agreed terms. It was further submitted that the Operational Creditor, as per the terms and conditions of the Security Agreement, deployed its skilled men and requisite machineries to provide security services to the Corporate Debtor's office at various locations and was raising bills on monthly basis and the same as per Clause 16 of the Security

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Agreement was to be paid within 7 days from the date of submission of Invoice.

7. The Learned Counsel for the Operational Creditor further submitted that as agreed between the parties, the deployment and Service Charges were revised from time to time and finally after discussions and deliberations and exchanging various e-mails and correspondences, the rates were revised and agreed between the parties. Over the period of years, the Operational Creditor and the Corporate Debtor had built a long term business relationship and the Corporate Debtor was prompt in making payments. However, around November 2018, the Corporate Debtor started delaying in making payments in contravention to Clause 16 of the Security agreement and hence the Operational Creditor vide its letter dated 10.12.2018, requested the Corporate Debtor to make payment towards the outstanding bill at the earliest and in reply to the same, the Corporate Debtor vide its letter dated 14.12.2018, admitted their liability to the tune of Rs.5,27,460/- and further stated that the Company was facing some financial difficulties and hence requested the Operational Creditor to bear with them for some time and continue to provide Security Service.

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8. The Learned Counsel for the Operational Creditor submitted that, thereupon by believing the Corporate Debtor, the Operational Creditor continued to provide its services by paying salaries to the men out of their own pocket, however the Corporate Debtor has failed to keep up its promise to clear the outstanding payments by 31.12.2018 and the Operational Creditor once again vide its letter dated 10.01.2019 requested to make payments due under various invoice, which yielded no result and thereafter various letters have been exchanged between the parties, however the Corporate Debtor was not able to settle of its dues and as a consequence thereof, the Operational Creditor stopped its Security Service from April 2019. The details of the Bills / Invoices so raised by the Operational Creditor are tabulated hereunder;

S. No.	Date	Bill / Invoice	Amount
1	22.03.2019	2193	40,577/-
2	28.02.2019	2045	13,570/-
3	28.02.2019	2044	61,360/-
4	28.02.2019	2039	43,070/-
5	28.02.2019	2032	31,649/-
6	31.01.2019	1831	13,570/-
7	31.01.2019	1830	74,930/-
8	31.01.2019	1825	43,070/-
9	31.01.2019	1819	44,250/-
10	31.12.2018	1632	13,570/-
11	31.12.2018	1631	74,930/-
12	31.12.2018	1626	43,070/-
13	31.12.2018	162	44,250/-

14	30.11.2018	1416	13,570/-
15	30.11.2018	1415	74,930/-
16	30.11.2018	1410	43,070/-
17	30.11.2018	1404	44,250/-
18	31.10.2018	1221	13,570/-
19	31.10.2018	1220	74,930/-
20	31.10.2018	1215	43,070/-
21	31.10.2018	1209	44,250/-
	TOTAL		8,93,506/-
	Interest @ 18% p.a. from 01.11.2018 to 31.10.2019		1,60,831/-
	NET TOTAL (Principal + Interest)		10,54,337/-

9. The Learned Counsel for the Operational Creditor submitted that from the details of invoices mentioned above and the various letters exchanged between the parties and based on the categorical admission made by the Corporate Debtor, it is clear that the Corporate Debtor has neglected to make the payment due under various invoices to the tune of Rs.8,93,506/-.

10. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor issued the Demand Notice in Form 3 as mandated under Section 8 of the IBC, 2016 on 04.11.2019, calling upon the Corporate Debtor to pay the principal sum due along with the interest payable and the said Demand Notice was duly received by the Corporate Debtor on 08.11.2019 and till date the Corporate Debtor has neither paid his debt nor sent any reply to the said Demand Notice. Under the said circumstances, the

Operational Creditor submitted that the Corporate Debtor has defaulted in his payment of dues and as such Corporate Insolvency Resolution Process should be initiated as against the Corporate Debtor.

11. The Learned Counsel for the Corporate Debtor, has filed reply and has submitted that the Corporate Debtor is engaged in the sale, maintenance and repairs of motorcycles and related parts and accessories and they were facing some difficulties in the market and also stated that the across India, the sale of cars had come down and the entire industry was facing losses since the business turned unviable. Further, it was submitted by the Learned Counsel for the Corporate Debtor that prior to GST, dealers like the Corporate Debtor had breathing space to pay the sales tax and VAT however post introduction of GST, dealers have to pay tax upfront and this affected the working capital and also excessive competition among dealership was one of the major reasons for the stagnation of the stocks.

12. The Learned Counsel for the Corporate Debtor further submitted that due to adversities the business came to a grinding halt and by May 2019 there was not a single car that was sold and business was ceased and gradually the Corporate Debtor

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incurred losses and the entire auto slow down added to the existing woes. Thus, by stating so, the Corporate Debtor at last concluded by stating that the Operational Creditor have benefitted all these years and could in fact *write off* the debts of the Corporate Debtor.

13. Heard the Counsel for both the parties and perused the records including the documents placed on file. From, the pleadings filed by the Corporate Debtor and the submissions advanced in relation to the same clearly shows that the Corporate Debtor has no defence to the claim made by the Operational Creditor and thus, the Operational Creditor has proved that there is an existence of 'Operational Debt' and the default of such operational debt which is payable by the Corporate Debtor to the Operational Creditor

14. The Operational Creditor has also filed the extract of the Bank Statement for the corresponding period showing that no payment has been made by the Corporate Debtor since the issuance of Form 3 by the Operational Creditor. Further, the Operational Creditor has also filed Affidavit as mandated under Section 9(3)(b) of IBC, 2016 wherein they have stated that after the issuance of the Demand Notice, the Corporate Debtor has not



issued any notice of dispute nor paid the due amount to the Operational Creditor.

15. From the list of invoices filed, it is evident that the claim as raised by the Operational Creditor is within the prescribed period of limitation of 3 years. The registered office of the Corporate Debtor is situated within the State of Tamilnadu, amenable to its territorial jurisdiction and this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

16. Thus, this Tribunal is perforce to initiate CIRP in relation to the Corporate Debtor by admitting this Petition under the provisions of Insolvency and Bankruptcy Code, 2016 read with Application to Adjudicating Authority Rules, 2016. The IRP proposed has filed his consent in Form-2 which is available at Page 455 of the typed set of document along with the Certificate as issued by IBBI is also annexed at Page 457 of the typed set of documents. In view of the consent given as well as the Certificate annexed issued by the IBBI in respect of the proposed IRP, **Mr. Swaminathan Prabhu**, Reg. No. **IBBI/IPA-001/IP-P01275/2018-19/11948** is appointed as Interim Resolution Professional in relation to the CIRP against the Corporate Debtor



as contained in the provisions of Insolvency and Bankruptcy Code, 2016 and IBBI Rules and Regulations governing this Act subject to the directions which are as follows:

17. As a consequence of the Application being admitted under the provisions of Insolvency and Bankruptcy Code, 2016 read with Application to Adjudicating Authority Rules, 2016, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

18. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



19. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

20. Based on the above terms, the Application stands **admitted** under the provisions of Insolvency and Bankruptcy Code, 2016 read with Application to Adjudicating Authority Rules, 2016, and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals

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forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond

Order pronounced by concord in terms of NCLT Circular dated 14/04/2020 through video conferencing platform. Member (T) present in person at Chennai and Member (T) through video conference from Kochi and the respective parties intimated to be present through video conferencing and after duly listing and uploading the cause list dated 08/05/2020 for Chennai Bench -I.


N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
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