



**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 130/Chd/Hry/2019**

**Under Section 9 of the  
Insolvency & Bankruptcy  
Code, 2016**

**In the matter of:**

**M/s Prompt Enterprises Private Limited  
through its Managing Director, Sh. Mukesh Kumar  
having its Registered Office at:  
B-3/7, 1st Floor Yamuna Vihar Delhi 110053**

....Petitioner-Financial Creditor

Vs.

**M/s Dev Automates Private Limited,  
having its Registered Office at:  
43, 44, IDC Hissar Road,  
Rohtak 124001  
CIN No. U34300HR2006PTC036262**

...Respondent-Corporate Debtor

**Judgment delivered on: 01.05.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the Petitioner-Financial Creditor : Mr. Tushar Budhiraja, Advocate

For the Respondent-Corporate Debtor : Mr. Kuldeep Sheoran, Advocate.

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by M/s Prompt Enterprises



Private Limited, (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of M/s Dev Automates Private Limited (for brevity 'Corporate Debtor' / 'Respondent').

2. The Corporate Debtor, namely, M/s Dev Automates Private Limited, is a Company incorporated on 25.07.2006 under the provisions of the Companies Act, 1956 with CIN No. U34300HR2006PTC036262 with its registered office at 43, 44, IDC Hissar Road, Rohtak 124001, Haryana. Hence, the territorial jurisdiction lies with this Adjudicating Authority.

3. The facts of the case, briefly, as stated in the petition are that Prompt Enterprises Private Limited is a company engaged in the business of manufacturing of Steel Tubes and supplying to customers as per their requirement in the automotive industry, general application industry, cycle industry, etc. The applicant has been dealing with the corporate debtor and on the basis of orders placed by them from time to time for the supply of various items. The applicant has been supplying goods to the CD Company on different payment terms as to credit mentioned on invoices from time to time. It is further submitted that the material was duly delivered and there have not been any disputes with respect to any quality or quantity of the goods supplied. The operation creditor has been maintaining the running account of the corporate debtor and a certain amount is outstanding and payable towards the petitioner. The operational creditor has made several requests to the corporate debtor but no payment has been made by them.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 77,26,914/- (Rupees Seventy-Seven Lakhs Twenty-Six Thousand Nine Hundred and Fourteen Only) along with an interest of



Rs.60,92,112/- calculated @ 24% interest. The total amount due as on 19.01.2019 including interest is Rs.1,38,19,026/-. The default is stated to be on 30.04.2016 i.e. when the last payment of Rs.5,00,000/- was made to the operational creditor. Copy Statement of account (Annexure A-1/1 & A-1/2), copy of Invoices raised by the operational creditor (Annexure A-2/1 & A-2/2), Statement of Calculation of Interest (Annexure A-3), copy of Balance Sheet of CD as for the financial year 2017-18 (Annexure A-4), VAT Returns (Annexure A-5), Statement of Invoices raised by the petitioner (Annexure A-6 & A-7), Statement of account of Dev Turner Pvt. Ltd. (Annexure A-8), Statement of Bank account of the applicant (Annexure A-13) are attached with the main petition.

5. A demand notice in Form 4 dated 24.01.2019 is stated to be issued by the operational creditor on 24.01.2019 through speed post through speed post as well by email and the same has been delivered to the corporate debtor which is evident from the tracking report. The demand notice dated 24.01.2019, original postal receipts and copy of tracking report are attached as Annexure A-1A of the main petition.

6. The operational creditor has furnished an affidavit stating that after the service of demand notice the petitioner has received a reply wherein the corporate debtor has stated to adjust an amount of Rs.29,12,552/- towards the unpaid invoices. Even if the said amount is taken into consideration then also an outstanding amount of Rs.46,12,394/- is pending. There is no pre-existing dispute raised by the corporate debtor in respect of the amount or the material supply. The petitioner has neither received any payment nor any notice relating to the existence of dispute or pendency of any suit or arbitration proceedings.



7. Notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The Affidavit of Service was filed vide Diary No. 00589/4 dated 16.11.2022. The reply has been filed by the respondent vide Diary No.3140 dated 02.07.2019 stating that the operational creditor has concealed the payments received from the corporate debtor and even omitted the same from the ledger account submitted by the petitioner. The respondent has alleged that the operational creditor has failed to attach proof of acknowledgement of invoices of the alleged unpaid credit. The respondent has also filed a reply dated 05.02.2019 to the demand notice in which the respondent has stated that they have already made the payment of Rs.9,59,583/- by cheque No.6854 dated 11.01.2016, Rs.13,11,463/- by cheque No.279979 dated 23.03.2015 & Rs.8,43,474/- by cheque No.281649 dated 12.08.2015. The non-acknowledgement of the payment by the petitioner shows the fraudulent intention. The respondent has relied upon the case of **Swiss Ribbons Pvt. Ltd. vs Union Of India Civil Original/Appellate Jurisdiction, Writ Petition (Civil) No.99 of 2018** to rebut the contentions of the operational creditor. The respondent has also filed IA No.256/2022 for placing on record the copy of the ledger account of M/s Dev Automates Pvt. Ltd. i.e. respondent/corporate debtor from 01.04.2011 to 31.03.2017. The respondent has also filed short written submission by Diary No.00589/6 dated 22.12.2022.

8. We have heard the learned counsel for the petitioner and respondent and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 4 dated 24.01.2019 was properly served. The operational creditor has attached



original postal receipts along with the tracking report is part of Annexure A1/A. It is also seen that the operational creditor has also sent demand notice by email dated 30.01.2019 at the registered email address as shown in the master data of the corporate debtor (Annexure-A10). The tracking report which is attached at Page No.49A also shows the delivery of the demand notice at the registered address of the corporate debtor. The corporate debtor has also sent a reply dated 05.02.2019 to the demand notice. Hence, the demand notice was properly served upon Respondent/Corporate Debtor.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent has filed a reply dated 05.02.2019 to the demand notice stating that payment of Rs.9,59,583/- by cheque No.6854 dated 11.01.2016, Rs.13,11,463/- by cheque No.279979 dated 23.03.2015 & Rs.8,43,474/- by cheque No.281649 dated 12.08.2015 has already been made. It was alleged that certain payments were never acknowledged by the operational creditor as the petitioner has failed to acknowledge the successful transfer of Rs.16,99,482/- on 14.10.2014 which is not mentioned in the ledger account. It is noted from part IV of Form 5 that an amount of Rs.77,26,914/- (Rupees Seventy-Seven Lakhs Twenty-Six Thousand Nine Hundred and Fourteen Only) is claimed to default. The petitioner has also attached bank statement of bank account from 08.02.2019 to 15.02.2019 showing no receipt of payment from the corporate debtor during this period. However, the payments are alleged to be made prior to the period of bank statements furnished by the petitioner. Even if the alleged payments are taken into consideration, there remains an unpaid balance of more than one lakh rupees. The respondent has also taken the plea that there was a mutual agreement to supply the goods upon the global steel prices due to



which the petitioner was raising supplementary bills when the prices however, the petitioner failed to do so in case of fall in prices. Moreover, the respondent used to conduct business with the operational creditor in combination with its sister company Dev Turner Pvt. Ltd. and both companies have overpaid to the petitioner to the tune of Rs.2 crores. The aforesaid allegation with regard to the non-adjustment of the amount due to fall in prices and overpaying the petitioner is not maintainable as there is neither any agreement nor any document to prove such allegation was placed on record.

11. The other issue for consideration is whether this application is filed within limitation. The period of limitation would begin from the date of default 30.04.2016 i.e. when the last payment of Rs.5,00,000/- was made on the account. This application was filed on 19.03.2019 vide Diary No. 1334. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

12. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 77,26,914/- (Rupees Seventy-Seven Lakhs Twenty-Six Thousand Nine Hundred and Fourteen Only) along with interest. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one Lakh (prior to the amendment). Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above the threshold limit.

13. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in



payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Dev Automates Pvt. Ltd. and also direct moratorium to take effect and appoint Interim Resolution Professional as below :-

14. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. IA No.603/2023 proposing the name of Mr. Pankaj Arora as Insolvency Resolution Professional. The consent in Form-2 dated 27.02.2023 along with certificates of registration and authorisation of assignment are attached at Page No.9 to 13 of Diary No.00683 dated 03.03.2023. The Law Research Associate of this Tribunal has checked the credentials of Mr. Pankaj Arora and there is nothing adverse against him. In view of the above, we appoint Mr. Pankaj Arora , Registration No. IBBI/IPA-001/IP-P01643/2019-2020/12739, E-mail: tra.pankaj@gmail.com, Mobile No. 9350854152 the Interim Resolution Professional with the following directions:-

i) The term of appointment of Mr. Pankaj Arora shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined



on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the



Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than 8 financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

*“As per Rule 7 (f) of Companies (Registered Valuers and Valuation) Rules, 2017, Registered Valuer shall maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;”*

As per the Standard of Auditor (SA-230)

*“The retention period for audit engagements is ordinarily no shorter than seven years from the date of auditor's report , or, if later, the date of the group auditor's report.”*

In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the



corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.

vii) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

viii) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

ix) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall



file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

x) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

15. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

16. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall,



however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

17. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

18. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

19. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

20. This petition is admitted accordingly.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

May 01 , 2023  
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