

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR (COURT NO. I)

CORAM: DR. POONDLA BHASKARA MOHAN,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

Company Petition No. (IB)-156/JPR/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:

M/s. Toyota Kirloskar Motor Private Limited

...Operational Creditor/Applicant

VERSUS

M/s. R.S. Motors Private Limited

...Corporate Debtor/Respondent

For the Applicant : Sangeeta Bharti, Adv.
Anubha Dhulia, Adv.
Aishwarya Sharma, Adv.
Ashish Kumar, Adv.

For the Corporate Debtor: None-appeared

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MEMO OF PARTIES**M/s. Toyota Kirloskar Motor Pvt. Ltd.**

Through its Authorised Representative Mr. Vijay Maurya
Plot No. 1, Bidadi Industrial Area,
Ramanagara District, 562109, Karnataka

...Operational Creditor/Applicant**VERSUS****M/s. R.S. Motors Private Limited**

Registered Office at: Opposite MES Gate,
Eklinggarh, Goverdhan Vilas Road, NH-8,
Udaipur-313001, Rajasthan

...Corporate Debtor/Respondent**Order Pronounced On: 30.09.2019****ORDER**

1. This Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Toyota Kirloskar Motor Private Limited ('Applicant') claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against M/s. R.S. Motors Private Limited ('Corporate Debtor').

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2. The Applicant has filed this Application through the Authorised Representative of M/s. Toyota Kirloskar Motor Private Limited, who is authorised vide Resolution of Board of Directors dated 11.03.2019.
3. The Corporate Debtor is a Private Limited Company, incorporated under the provisions of Companies Act, 1956 on 04.12.1996, duly registered with Registrar of Companies, Jaipur bearing CIN: U34300RJ1996PTC12935, and its Registered Office is located at, Opposite MES Gate, Eklinggarh, Goverdhan Vilas Road, NH-8, Udaipur-313001, Rajasthan. The Authorized share capital of the Corporate Debtor is Rs. 50,00,000/- and Issued, Subscribed and Paid up share capital of the company is Rs. 5,00,200/-.
4. It is the case of the Applicant that the Corporate Debtor has failed to pay an amount of Rs. 3,44,39,048/- for the invoices raised by the Operational Creditor for spare parts of vehicles supplied to the Corporate Debtor. It is submitted that the Operational Creditor had entered into various dealership agreements from time to time with the Corporate Debtor to set up dealership facilities for the sale of products of the Operational Creditor. Under the said dealership agreements dated 27.07.2001 (for Udaipur), 12.06.2008 (for Kota), 10.11.2010 (for Bhilwara) and dated 05.04.2008 & 08.01.2013 (for Jaipur), the Operational Creditor authorised the Corporate Debtor to supply

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the products and render services of repair and maintenance of Products to the customers.

5. The Corporate Debtor has been running the dealership facilities at various afore stated locations under the name and style of "CHANDRA TOYOTA". The dealership agreements have been renewed from time to time and after the expiry, the business relations and transactions continued on 'holding-over on day to day basis' which is a standard clause of the dealership agreements.
6. The Operational Creditor has submitted that it has an online software system for e-purchase orders, in which all Dealers (including the Corporate Debtor) create their separate accounts. The Dealers place orders with respect to spare parts on the online system by logging into the same with their username and password. Once the order is placed, the spare parts, components, accessories etc. of the automobiles are dispatched to the said Dealer along with the invoice. On receiving the order, the Dealer issues the Delivery Challans with its seal which acts as confirmation of the said products having been delivered with payments due.
7. The Operational Creditor has submitted that after receiving an e-purchase order from the Corporate Debtor in the online software system, the spare parts, components, accessories of automobiles were dispatched to various



CHANDRA TOYOTA addresses at Bhilwara, Jaipur, Kota and Udaipur along with the invoice copy and billed in the name of the Corporate Debtor. On receiving the spare parts and components, the Corporate Debtor issued Delivery Challans with the seal of CHANDRA TOYOTA and signature. The payment against all the invoices generated in a month was due on the 10th of the next month. As per the Operational Creditor, the Default in the instant case has occurred for the invoices generated for two months i.e., June and July of 2016 between the period of 01.06.2016 and 21.07.2016 for which the due date for invoices generated in the month of June was 10.07.2016 and for invoices generated in the month of July was 10.08.2016, respectively.

8. The Operational Creditor has submitted that despite having received the products from the Operational Creditor against the invoices for the above said period, the Corporate Debtor has failed to make any payment towards the same till date. The Operational Creditor has submitted that it has sent several reminders but there has been no reply from the Corporate Debtor.
9. The Applicant has issued a notice under Section 8 of the Insolvency and Bankruptcy Code for an amount of Rs. 3,44,39,048/- on the Corporate Debtor, which was duly received by Corporate Debtor through post and tracking report as proof of service of the said Section 8 notice is annexed but the Corporate Debtor has neither replied to the Demand Notice nor raised



any dispute of the unpaid operational debt. Thus, the applicant filed the present application under section 9 of Insolvency and Bankruptcy Code, 2016.

10. The total amount claimed by the applicant as mentioned in Part IV is a sum of Rs. 3,44,39,048/- as an outstanding amount which is due and payable by the corporate debtor as described below:

PART IV		
Sr. No.	Particulars of Operational Debt	
1.	Total amount of debt, Details of Transactions Account of which debt fell due, and the date from which such debt fell due	Total Amount due and outstanding is Rs. 3,44,39,048/- (From 01.06.2016 till 21.07.2016)
2.	Amount claimed to be in default and the date on which the default occurred	The total amount being claimed is Rs. 3,44,39,048/- The Amount fell due on 10.07.2016 and 10.08.2016 for the deliveries made in June 2016 and July 2016 respectively.




11. Perusal of the records of the proceeding before this Tribunal shows that despite service of notice upon the Corporate Debtor and in view of non-appearance, this Tribunal was constrained to proceed *ex-parte* against the respondent on 28.08.2019 and the submissions of learned counsel for the Applicant were heard and orders were reserved on 20.09.2019.
12. This Tribunal perused all the relevant papers and found them to be in order. The Registered Office of the Corporate Debtor is situated in Udaipur and therefore this Tribunal has jurisdiction to entertain and try this Application. The matter is within the purview of Law of Limitation.
13. It is apparent from the records that the payment of claim amount has been defaulted by the Corporate Debtor as despite the issuance of Section 8 notice under the Insolvency and Bankruptcy Code, 2016 by the Operational Creditor and the receipt of the same by the Corporate Debtor, the payment was not made. In these circumstances the claim stands established and prima facie presumption raised that there is default in payment of the amount due to the Operational Creditor and no dispute is in existence. Hence, this Tribunal is inclined to initiate the proceedings namely, Corporate Insolvency Resolution Process ('CIRP') as against the Corporate Debtor as envisaged under the Provisions of IBC, 2016.
14. The Applicant has not proposed the name of any Interim Resolution Professional ('IRP'). In view of the same, this Tribunal appoints Mr. Sudhir

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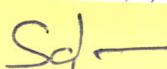
Bhansali, having Registration No. IBBI/IPA-001/IP-P01109/2017-18/11799 and email address sbhansalico@gmail.com contact number 9413801080, as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the IBC, 2016.

15. The consequences of initiation of CIRP shall be inter alia are as follows: -
- (i) The Resolution Professional Mr. Sudhir Bhansali, having Registration No. IBBI/IPA-001/IP-P01109/2017-18/11799, is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the Provisions of IBC, 2016, including the issue of publication in widely circulated newspapers, including one in English and one in vernacular in Jaipur and its hinterland, as contemplated under the Provisions of IBC, 2016 and calling for the claims from the creditors of the Corporate Debtor and collating of the same shall be done.
 - (ii) Further as a consequence of admission, Moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during CIRP of the Corporate Debtor. The IRP shall carry out Corporate Insolvency Resolution Process strictly as per the timelines specified and as envisaged under the Provisions of IBC, 2016 in relation to the Corporate Debtor.



- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016. With a view to defray his expenses to be incurred and fees on account, the Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- (Two Lakh only) to the account of IRP within 3 days from the date of this order. The IRP shall duly file the status report appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Sections 17 and 19 of IBC, 2016 all personnel of the Corporate Debtor including its promoters and Board of Directors, whose powers shall stand suspended will extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- (iv) In terms of Section 9 of IBC, 2016 a copy of this order shall be communicated to the Operational Creditor, Corporate Debtor as well as the Interim Resolution Professional appointed by this Tribunal to carry out the CIRP at the earliest not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.
16. In the circumstances this Application is admitted.


SH. RAGHU NAYYAR,
TECHNICAL MEMBER


DR. POONDLA BHASKARA MOHAN
JUDICIAL MEMBER

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