



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-535(PB)2021

IN THE MATTER OF:

Mr. Abhimanyu Mittal

Resident of :

29FF, The White House, Sector-57,
Gurgaon, Haryana - 122003

...Applicant/Operational Creditor

VERSUS

M/s. Honeywell International (India) Private Limited

Registered office at :

1120-21, 11th Floor, Tower A,
DLF Tower, Jasola, Jasola District Centre
New Delhi - 110025

...Respondent

Section: 9 of the IBC, 2016

Order Delivered on : 10.11.2022

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Arun Bansal, Adv. Anubhav Bansal

For the Respondent : Adv. Saksham Ahuja, Adv. Ritesh Khare,
Adv. Akhilesh



ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Mr. Abhimanyu Mittal (for brevity, the '**Applicant/Operational Creditor**') has filed the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Honeywell International (India) Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s. Honeywell International (India) Private Limited is a Company incorporated on 09.08.1995 with CIN U74899DL1995PTC071592 under the provisions of the erstwhile Companies Act, 1956, having its registered office at 1120-21, 11th Floor, Tower A, DLF Tower, Jasola District Centre, New Delhi – 110025, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs.37,10,00,000 /- and Paid-up Share Capital is Rs.35,83,57,770/- as per the Master Data of the Respondent.

3. It is submitted that the Applicant is an ex-employee, who had been in service for more than 13 years of the Respondent Company Honeywell International (India) Private Limited. It is claimed that the Respondent has not paid the full and final settlement amount as per the "**Exit agreement.**" The Respondent defaulted in making the due



payments of the debt that fell due on 21.02.2019. The total debt amount claimed from the Respondent is Rs. 2,65,07,132/-, which after including interest @18% as on 14.08.202, amounts to Rs.3,83,24,229/-.

4. The particulars of the Operational Debt claimed including the total amount of debt/default and the date of default are mentioned in Part IV of the application, which are reproduced below:

PART IV

PARTICULARS OF OPERATIONAL DEBT

I.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	TOTAL AMOUNT OF DEBT: RS. 3,83,24,229/- (RUPEES THREE CRORE EIGHTY THREE LAKH TWENTY FOUR THOUSAND TWO HUNDRED TWENTY NINE ONLY) AS ON 14.08.2021. 1. PETITIONER/OC IS AN EX-EMPLOYEE OF RESPONDENT/CD AND THE RESPONDENT/CD HAS NOT PAID THE FULL AND FINAL SETTLEMENT AMOUNT AS PER EXIT AGREEMENT. THE RESPONDENT/CD IS UNDER DEBT OF RS.2,65,07,132/- AND THE SAID DEBT FELL DUE ON 21.02.2019. TOTAL AMOUNT OF DEBT IS RS.3,83,24,229/- AFTER INCLUDING INTEREST @ 18% AS ON 14.08.2021. 2. OPERATIONAL CREDITOR
-----------	--	--



	<p>THUS ISSUED DEMAND NOTICE IN TERMS OF FORM 3 AND FORM 4 AS UNDER SECTION 8 OF THE IBC ON 14.08.2021 DEMANDING PAYMENT FROM CORPORATE DEBTOR WITHIN 10 DAYS.</p> <p>3. DEMAND NOTICE WAS SERVED UPON RESPONDENT/CD THROUGH POSTAL SERVICE VIDE CONSIGNMENT NOS. EU339943936IN AND EU339943940IN ON 16.08.2021. THE SAME WAS DULY RECEIVED BY THE RESPONDENT/CD ON 19.08.2021. THE RESPONDENT/CD HAS NEITHER REPLIED NOR DENIED THE OUTSTANDING AMOUNT TO THE DEMAND NOTICE.</p> <p>4. SINCE CORPORATE DEBTOR</p>
--	--



		HAS NOT PAID ENTIRE AMOUNT THEREFORE IN THE LIGHT OF AFORESAID THE OPERATIONAL CREDITOR HAS RESOLVED TO FILE THE PRESENT APPLICATION BEFORE THIS HON'BLE TRIBUNAL AS THE AMOUNT OF DEFAULT IS OVER INR ONE CRORE, FOR THE INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS AS PROVIDED IN THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH THE RELEVANT RULES.
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE	TOTAL AMOUNT CLAIMED TO BE IN DEFAULT: RS.3,83,24,229/- (RUPEES THREE CRORE EIGHTY THREE LAKS TWENTY FOUR THOUSAND TWO HUNDRED AND TWENTY NINE ONLY). WORKING FOR COMPUTATION

WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	OF AMOUNT AND DATE OF DEFAULT IS ANNEXED AS ANNEXURE A/5. Page 40.
--	--



5. As per Part IV of the Application reproduced above, the Applicant has claimed an amount of Rs. 3,83,24,229/-.

6. It is stated by the Applicant that since the Respondent did not make the payment of its operational debt due, it had issued a Demand Notice dated 14.08.2021 under Section 8 of IBC 2016 at the registered office of the Respondent, which was served to the Respondent via Speed Post on 19.08.2021. The Applicant has filed the Affidavit under Section 9(3)(b) of 2016 stating that no notice of dispute was given by the Respondent. Basing on the aforesaid facts, the applicant has prayed for initiation of the CIR Process against the Respondent.

7. On issuance of the notice, the Respondent has filed its reply and raised the following objections –

7.1. The Applicant herein availed the Car Lease Policy on 15.04.2018 by filling the car lease form and executed an indemnity undertaking with the Respondent. Subsequently, the Applicant took the possession of the vehicle namely “Mahindra XUV500 R 1.99 FWD W10 AT” bearing registration no. “HR-26-DM-2705” and Engine no. WFH4H21294 (hereinafter referred to as “**the Vehicle**”) on 15.04.2018. The Lease Period of the said vehicle was valid for 4 years, effective from 15.04.2018.

7.2. As per the terms and conditions of the indemnity undertaking executed by the Applicant, in the event of foreclosure of the vehicle lease at the instance of the Applicant, the Applicant had undertaken to pay



the Respondent Company all the lease rentals due and payable under the Lease Agreement.

7.3. The Applicant resigned from the employment of the Respondent *vide* resignation letter dated 20.02.2019 and in accordance with the policy of the Respondent Company, an exit agreement was executed by between them, as per which, the Applicant was required to hand over all the company properties and other documents in its possession, in the absence of which full and final payment could not be made and which was duly informed to the to the Applicant. The Applicant failed to abide by the exit agreement duties by neither paying the lease rental nor paying the foreclosure value as per the lease agreement. The Respondent sent several reminders followed by legal notice dated 11.11.2020 demanding the Applicant to complete the payment towards the vehicle, close the company car lease and have the ownership transferred into his name maximum by 30.11.2020.

7.4. In a bid to arm twist the Respondent, the Applicant served it a legal notice dated 18.05.2021, to which the Respondent sent a reply dated 07.07.2021 denying and disputing all the allegations levelled by the Applicant.

7.5. The Respondent was constrained to send a legal notice dated 07.07.2021 to the Applicant demanding payment of Rs.23,79,564/- towards monthly Lease Rentals and foreclosure value of the Lease Agreement, which has not been replied by the Applicant till date.



However, the Applicant had sent a rejoinder dated 06.08.2021 to the reply given by the Respondent to the notice dated 18.05.2021 of the Applicant.

8. The Applicant has filed its Rejoinder denying contentions raised by the Respondent in its Reply and further submitted the following:

8.1. The Applicant was made to resign/leave the company job on the demerger of the company as such there was no continuance of Car Lease policy, which stood rescinded at the end of the Corporate Debtor. Accordingly, the vehicle was offered to the Respondent by the Applicant, but the same was not received by the Respondent. Hence, the Applicant had no option but to maintain the vehicle owned by the Respondent. It is stated that despite accepting the resignation letter dated 20.02.2019, the Respondent failed to comply with the terms and conditions of said letter and did not pay the due amount to the Applicant.

8.2. It is submitted that no such notice dated 11.11.2020 was ever issued on the applicant. However, on becoming aware at the end of January 2021, the applicant replied to the said notice vide email dated 01.02.2021 stating that the issue regarding the vehicle is pending at the end of the Respondent.

9. We have heard both the parties and perused the documents placed on record. It is observed that the Applicant is claiming the operational debt based on the Exit Agreement dated 20.02.2019 signed by and between the parties, which is reproduced overleaf :


Honeywell

THE POWER OF CONNECTED

Honeywell International (I) Pvt. Ltd.
CIN: U74899DL 1995PTC071582
Unitech Trade Centre
6th Floor, Sector 43 & 27
Block C, Sushant Lok - I
Gurgaon - 122 002, Haryana, India
Tel : +91 124 6182700
Fax : +91 124 6182750

EXIT AGREEMENT**This AGREEMENT made at Gurgaon on 20th Feb 2019****BETWEEN**

Honeywell International India Ltd., a Company incorporated under the Companies' Act, 1956 having its Registered Office Unitech Trade center, Block C Sector 43, Gurgaon, Haryana-122002, India, represented by its Authorized Signatory Ms Koninika Mitra hereinafter called the "Company", the Party of the First Part

AND

Mr. Abhimanyu Mittal, residing at 29FF, The White House, Sector-57, Gurgaon-122003 hereinafter called the "Employee", the Party of the Second Part,

The expressions shall unless excluded by or repugnant to the context be deemed to include their heirs, executors, administrators, legal representatives and assigns.

WHEREAS, the Employee has been employed with the Company since 21st Oct 2005 and currently designated as Leader Finance & Compliance.

AND WHEREAS, the Employee submitted his resignation to the post held by him vide Letter dated 20th Feb 2019 and requested for relieving him and to pay some financial assistance to enable him to settle down post relieving from the service.

AND WHEREAS, the matter was discussed between the parties and the terms and conditions for relieving from the service were discussed and agreed between the parties.

Registered Office: Nagpal Business Tower, Ground Floor, A/91, DDA Industrial Phase II, New Delhi - 110020
E-mail: india.communications@honeywell.com | Website: honeywell.com/country/in

Abhimanyu Mittal
Km
TRUE PHOTOCOPY
Advocate

(IB)-535/(PB)/2021

Abhimanyu Mittal Vs. Honeywell International (India) Pvt. Ltd.



39

NOW THESE PRESENT WITNESSES and It is mutually agreed by and between the parties as follows: -

1. The Employee submitted his resignation to the post held by him in the Company by his Letter dated 20th Feb 2019. The Company on its part accepted the resignation, the Employee will be relieved from the service of the Company effective from 21st Feb 2019
2. It is agreed by and between the parties that the relationship of Employer and Employee would come to an end w.e.f. 22nd Feb 2019
3. The Company agrees to pay a sum of 29,341,665 INR as lump sum payment to the Employee by way of Financial Assistance besides the Terminal Dues payable to the employee in accordance with the Rules of the Company. This will be subject to tax deduction.
4. The Employee hereby releases the Company of all the obligations as contemplated under the terms of appointment and the relationship of Employer and employee between the Company and the Employee has come to an end with effect from 22nd Feb 2019
5. The Employee on his part agrees and accepts that with the payment of Lump sum amount, agreed to under this Agreement nothing is due to him from the Company towards his employment. The settlement of terminal dues and full and final settlement will be done subsequently as per company process.
6. The Employee further agrees and undertakes that in view of this Agreement and the Payment made as above, he shall not raise any claim, monetary or otherwise on the Company before any Court, Forum or Authority with regards to his Employment in the Company.

WITNESS WHEREOF the parties have appended their signature on the day, month and year mentioned above in token of having accepted the above terms and conditions.

COMPANY

Konika
Konika Mitra

HR Leader - Corporate

(EMPLOYEE)

Abhimanyu Mittal
Abhimanyu Mittal

e324444

WITNESSES:

1. *Nidhi Mahesh*
- 2.

Abhimanyu Mittal
(9)

TRUE PHOTOCOPY
[Signature]
Advocate

10. On perusal of the clause 3 of the said Exit Agreement, it is observed that "The (Respondent) Company agrees to pay a sum of 29,341,665 INR as lump sum payment to the Employee by way of Financial Assistance besides the Terminal Dues payable to the employee in accordance with the Rules of the Company. This will be subject to tax deduction."



11. From the reply of the Respondent, it is observed that the Respondent has neither denied the abovesaid liability nor challenged the existence of the Exit Agreement. The only objection raised by the Respondent is that as per the duties, the applicant was required to handover all the company properties and other documents which has been in its possession. However, on perusal of the terms and conditions of the Exit Agreement (Supra), we do not find any such condition mentioned at all or condition precedent for releasing the lump sum amount of Rs. 02,93,41,665/- as was agreed in the clause 3 of the said Exit Agreement.

12. Further, it is contended by the Respondent that vide legal notice dated 11.11.2020, it had asked the Applicant to pay an amount of Rs.23,79,564/- towards monthly Lease Rentals and foreclosure value of the Lease Agreement in respect of the vehicle. We find that the Respondent has failed to establish any direct relationship between these two counter claims, which could justify the default on the part of the Respondent. For the sake of argument, even if the amount of Rs. 23,79,654/- is deducted from the total amount claimed by the Applicant, the balance dues still remain above the minimum threshold of Rs 1 (one) Crore.

13. In the facts and circumstances narrated above, the Operational Creditor has established the default on the part of Corporate Debtor in payments of its operational debt being above the minimum threshold limit. The Petition filed under Section 9 fulfills all the requirements of



law. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 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 corporate debtor.”

14. As proposed by the Applicant, this Bench appoints Mr. Gopal Lal Baser IP (Email: gopal.baser1972@gmail.com), having Registration No. IBBI/IPA-002/IP-N00553/2017-2018/11677, as IRP subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are





made by him within a period of one week from this Order. This Adjudicating Authority orders that :

“Mr. Gopal Lal Baser as IRP having Registration No. IBBI/ IPA-002/IP-N00553/2017-2018/11677, (Email: gopal.baser1972@gmail.com) is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

15. The Applicant is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

16. A copy of this order shall immediately be communicated by the Registry/Court Officer to the Applicant, the Corporate Debtor and the IRP mentioned above. In addition, a copy of the order shall also be forwarded by the Registry/Court Officer to the IBBI for their records.


(L. N. GUPTA)
MEMBER (T)


(BACHU VENKÁT BALARAM DAS)
MEMBER (J)