



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER**

IA (IBC) No. 66/JPR/2023
In CP No. (IB)- 14/7/JPR/2021

IN THE MATTER OF:

SU1 CAPITAL PRIVATE LIMITED

...Financial Creditor

VERSUS

GRD TRUCKS PRIVATE LIMITED

...Corporate Debtor

MEMO OF PARTIES

ASHOK LEYLAND LIMITED

Registered & Corporate Office:
No. 1, Sardar Patel Road, Guindy,
Chennai- 600032 (TN)

...Applicant

VERSUS

MR. PRASHANT AGRAWAL,

RP of Grd Trucks Pvt. Ltd.

Building No. F-174, First Floor
(F-106), Sumer Complex, Gautam
Marg, B/h Bagadia Bhawan, C-
Scheme, Jaipur- 302001
(Rajasthan)

...Respondent

FOR THE APPLICANT:

Suruchi Kasliwal, Adv.
Guru Kumar Hebbar, Adv.

FOR THE RESPONDENT:

Prashant Agrawal, RP

Order Pronounced On: 12.10.2023



ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Adjudicating Authority had admitted an Insolvency Application filed by *SUI Capital Pvt. Ltd.* under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') and directed the commencement of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor namely *GRD Trucks Private Limited*; thereby appointing *Mr. Prashant Agrawal* as the Interim Resolution Professional ('IRP') vide order dated 28.04.2022.
2. It is seen that the present application has been filed by the Resolution Professional subsequent to the filing of the application bearing *IA No. 559/JPR/2022* seeking liquidation of the Corporate Debtor under Section 33(2) read with Section 60(5) of the IBC, 2016.
3. The present application has been filed on the following grounds:
 - 3.1. In the normal course of its business transactions, a Vehicle Dealer Agreement dated 27.02.2018 was executed between the Applicant and the Corporate Debtor wherein the Corporate Debtor was appointed as a Dealer of the Applicant Company for mentioned territories. The same was mentioned in the agreement and both parties were governed by the terms of the said agreement.



3.2. A Private Limited Company namely, *M/s Super Mobility Services Pvt. Ltd.* gave an order of 40 fully built buses to the Corporate Debtor and as per the direction of the Corporate Debtor the chassis for all the 40 buses were to be manufactured by the Applicant and body of the said buses was to be developed by another entity working in the name and style of *Azad Coach Pvt. Ltd.* In respect of the said orders, the same were delivered to the Corporate Debtor and body work was executed by *Azad Coach Pvt. Ltd.* However, even after *Super Mobility Services Pvt. Ltd.* made payments for the first lot of 20 vehicles to the Corporate Debtor, the Corporate Debtor forwarded the said payments both to the Applicant Company herein as well as to *Azad Coach Private Limited*, after a considerable delay. In so far as the next batch of 15 buses is concerned, a sum of Rs. 4,49,93,628/- and a sum of Rs. 1,12,48,407/- were received by the Corporate Debtor on 17.08.2020 and September 2020, respectively from *Super Mobility Services Pvt. Ltd.* However, despite regular follow-ups, the appropriate pre-agreed payments to be made to the Applicant Company herein, from and out of the said sums were not made by the Corporate Debtor. Several mails and calls were also made but all went in vain. In addition to the aforementioned amount, which remains due towards 15 Chassis supplied by the Applicant,



the Corporate Debtor is also liable to pay the amounts towards the supply of the last tranche of 5 Chassis.

3.3. On account of such failure on the part of the Corporate Debtor, huge sum became due and payable to the Applicant Company, the details of which are as below:

- i) Towards cost of the unpaid 20 Chassis of the second and last tranche Rs. 4,00,10,000/-
- ii) Towards Interest compounded @ 18% p.a. for delayed payments on the 20 chassis of first tranche (from April 2020 until 18.01.2021)- Rs. 1,71,84,408
- iii) Towards Sundry payables to the Applicant company is Rs. 29,99,769/-. The break-up of sundry payables is, as under:

DESCRIPTION	AMOUNT
Wow Vehicles	28,80,000
Parts	20,853
Service	24,253
I-Alert	1,03,109
Training Invoices	20,060
Total	29,99,769

- iv) The total sum of (i), (ii) and (iii) amounts to Rs. 6,01,94,177/-. Pertinently, claim of Payment of Interest @ 18% p.a. came to be demanded by the Applicant Company from the Corporate



Debtor on the rate of interest as agreed under the Vehicle Dealer Agreement dated 27.02.2018.

- 3.4. The Applicant company issued several reminder demand letters, including demand letter dated 05.11.2020 to the Corporate Debtor, which were replied to by the Corporate Debtor without disputing its liability to pay the sums demanded by the Applicant company from the Corporate Debtor. However, the Corporate Debtor failed make payment. Subsequently, the Applicant company called upon the Corporate Debtor to return certain items belonging to the Applicant company vide its legal notice dated 05.02.2021. The description of the items is annexed in this application.
- 3.5. Eventually, the Applicant company invoked the Arbitration clause and filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court of Madras, seeking appointment of an Arbitrator, which came to be allowed by the Hon'ble Madras High Court vide order dated 28.10.2021. The total outstanding amount towards Corporate Debtor till the date of filing of the Arbitral Claim was Rs. 6,57,72,678.30/-. Accordingly, a claim statement was filed before the Arbitrator appointed by the Hon'ble High Court of Madras seeking following reliefs:
- i) Direct the Corporate Debtor to pay a sum of Rs. 6,57,72,678.30 with interest @ 18% p.a.;



- ii) Direct the Corporate Debtor to hand over the custody of the 6 buses parked in their premise or to pay the value of the 6 buses, which is Rs. 1,56,31,788/-; and
- iii) Direct the Corporate Debtor to pay the compensatory costs to the Applicant company.

3.6. Subsequent to the CIRP order dated 28.04.2022, the Applicant could not submit its claim within the stipulated time period because being based in Chennai, it did not have any access to publications made in newspapers in Jaipur, Rajasthan and as such, the Applicant company was not aware of the CIRP commencement date. The Applicant Company received mail dated 29.07.2022 through which the IRP sought some details about the Corporate Debtor which was replied to vide letter dated 25.08.2022 and the claim which was pending against the Corporate Debtor was also provided. However, the IRP vide its mail dated 05.09.2022 mentioned that the legal team of IRP is going through the documents sent by the Applicant and requested for the physical copies, which were sent by the Applicant Company. On 02.11.2022, the IRP addressed an email to the Applicant Company and sought some additional information from the Applicant Company while also requesting the Applicant Company to submit its claim against the Corporate Debtor, if any. Upon receipt of the above-mentioned mail from the IRP, the Applicant filed its



claim before the IRP, which was rejected by the IRP vide mail dated 02.12.2022. Moreover, the Applicant had relied on the following set of judgments:

3.6.1. Edelweiss Asset Reconstruction Co. Pvt. Ltd. Vs. Adel Landmarks Ltd., MANU/ND/8365/2019

3.6.2. Paharpur Cooling Towers Limited vs. Pankaj Srivastava, RP for Empee Sugars and Chemicals Limited, MANU/NC/5222/2022

3.6.3. Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors, MANU/NC/5222/2022

3.7. The rejection of claim of the Applicant Company by the IRP on a hyper technical ground of delay of few days is completely wrong and since the moratorium is also in place, the Applicant Company is put into a precarious situation of not being able to realize the huge sums lying outstanding. Permitting the Applicant Company to participate in the CIRP will result in aiding and balancing the interest of all the stakeholders, which is the primary object of the Insolvency and Bankruptcy Code (IBC). The deadlines set out for submission of proof of claim in the Regulations are brought into force in aid of mere delegated powers so as to ensure smooth, quick and effective resolution process within the given timeline.



4. The RP filed its reply dated 10.03.2023 whereby the following was submitted:

4.1. The RP has relied on section 25(2)(a) of the Code, 2016 which provides for the RP to take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor. In light of the mentioned duties, the RP had been following up with the suspended directors of the Corporate Debtor to get control of the assets of the corporate debtor and the same had been provided in bits and parcels. However, the detailed data and transactions relating to the Applicant was not provided by the suspended director of the Corporate Debtor, assigning the reason vide email dated 20.07.2022 that the database was kept and maintained on a software of Applicant and after termination of dealership agreement, the concerned database is not available with them.

4.2. Thereafter, the RP took cognizance and wrote an email dated 29.07.2022 to the Applicant, intimating them about the commencement of CIRP of the Corporate Debtor and requested the Applicant to provide all relevant data of the Corporate Debtor under their possession of at the earliest to proceed further in the matter. When no response was received from the Applicant, the RP once again sent a reminder email dated 09.08.2022 to the Applicant to



provide the information sought from earlier. The Applicant responded vide email dated 25.08.2022 wherein they provided the order of the Hon'ble High Court of Madras dated 28.10.2021 for appointment of an arbitrator and their claim statement filed with the arbitrator. The Applicant offered to send the hard copies of the documentation to the RP for better understanding.

4.3. Since no resolution plan was submitted by the Prospective Resolution Applicants till the last date of its submission, the Committee of Creditors, in their fifth meeting dated 18.10.2022, considered the future course of action of the Corporate Debtor. Since the last date of CIRP was 25.10.2022, the committee by exercising their voting rights, decided to liquidate the Corporate Debtor with 90.60% votes in favour. The balance voting rights of 9.40% belonged to Mahindra & Mahindra Financial Services Private Limited; they chose to abstain from the voting on the resolution.

4.4. Consequently, the RP moved an application vide *IA No. 559/JPR/2022* dated 02.11.2022 for initiation of liquidation of the Corporate Debtor. Subsequent to filing of application for liquidation, the RP received claim from the Applicant in Form- B (in the capacity of Operational Creditor) on 01.12.2022. In response, the RP explained the Applicant that not only the claim has been received beyond the time-line mentioned in regulation 12(2) of the CIRP



Regulations, 2016, but the same has been received at a stage where the Committee of Creditors have approved to liquidate the Corporate Debtor and an application to its effect has been filed for consideration.

- 4.5. The suspended board of directors have provided their statement of defence and reply filed before the Hon'ble High Court of Madras which shows the existence of counter claim and submission regarding the payment made towards of various elements of sundry expenses. Therefore, the RP requested the Applicant to clarify their position and status of claim for its consideration in the CIRP of the Corporate Debtor.
5. The Applicant filed its rejoinder vide Diary No. 1476/2023 dated 09.06.2023, submitting the following:
 - 5.1. It is pertinent to mention that contents of the email dated 20.07.2022 are not correct for the reason that Corporate Debtor had an independent and direct access to the DBM/DMA portal in the SAP System which is meant for the dealers of the Applicant and as such, all the required details required could be extracted by the Corporate Debtor directly. Further, on account of expiry of the Dealership Agreement, the Applicant herein ceased to maintain its records, except those that have been presented to this Authority/ Arbitrator. Even otherwise, since all the transactions in the systems were



carried-out by the Corporate Debtor, all relevant data ought to have been available with the Corporate Debtor too and for this reason also, it is wrong and thus, denied on the part of the Respondent to refer to and rely upon the contents of the email dated 20.07.2022.

- 5.2. The Applicant Company timely submitted its response vide letter dated 25.08.2022 whereby, it was informed to the RP that due to non-adherence of the terms of the Vehicle Dealer Agreement by the Corporate Debtor, the subject dealership came to be terminated and that in order to recover the amount payable by the Corporate Debtor under the Dealership Agreement inclusive of the amount of sundry debtors, an arbitral claim is already pending adjudication.
- 5.3. It is denied that documentation was received by the RP at the end of October 2022, since, the same was given by the Applicant Company vide its email dated 25.08.2022. The Applicant had along with the said email attached copy of the Order passed by the Hon'ble Madras High Court appointing the Arbitrator, Claim Statement along with the documents as submitted before the Arbitrator by the Applicant Company. The RP had also acknowledged receipt of the said email on 05.09.2023 by way of e-mail.
- 5.4. Despite having participated in the arbitral proceedings, the Corporate Debtor did not choose to file any counter claim against the Applicant company. The Corporate Debtor mentioned about the



alleged counter claim only in its reply submitted to the Application filed by the Applicant Company under Section 11 of the Arbitration and Conciliation Act, 1996, which in itself does not by any stretch of imagination suffice to operate as a counter claim which is envisaged in Section 23(2A) of the said Act of 1996. In the instant case, a bare perusal of the Order dated 28.10.2021 appointing Arbitrator passed by the Hon'ble Madras High Court reveals that the Corporate Debtor did not seek reference of the dispute for adjudication of the alleged counter claim. Moreover, the record of the arbitral proceedings as well as record of the Corporate Debtor available with the RP would reveal that the Corporate Debtor did not even choose to file any counter claim during the arbitral claim.

- 5.5. It is not proper for the RP to attempt to set-off the claim which has been submitted by the Applicant Company while invoking its right to do so under Section 60(5) of the IBC. As per the scheme of the IBC, after public announcement is made under Section 15 thereof, all creditors including operational creditors such as the present Applicant, are permitted to submit their respective claims along with proof under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and RP is supposed to collate and collect all such claims and after verification of such claims and formation of the



Committee of Creditors. An information memorandum containing relevant information including claims by the creditors is to be prepared by the RP so that the Resolution Applicant can access it and submit a resolution plan in accordance with the provisions of the IBC. As per the provisions of the IBC, at no stage has the RP been bestowed with the powers/ jurisdiction to adjudicate the claims submitted by the Operational/ Financial Creditors. The Applicant relied the judgment of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. UOI & Ors.*, (2019) 4 SCC 17.

- 5.6. The liquidator, is required to consolidate and verify the claims, and either admit or reject such claims under Sections 38 to 40 of the Code. Regulation 29 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 confers jurisdiction on the Liquidator to set-off the amount due from a party where there are mutual dealings between the Corporate Debtor and the Creditor. Had the legislature intended to confer the powers as have been vested in a liquidator with the IRP or the RP, then it would have done so by way of legislating an express provision to the said effect. As such, it is only the Liquidator, who has under the scheme of IBC been conferred with the power to entertain / admit or reject a claim or set-off the amount of the claim. Accordingly, in the light of the said legal position, it would be proper to state here that an IRP or the



RP, on receipt of a claim and on the same having been substantiated by a Creditor, are bound in Law to admit the claim of the creditor. The IBC also does not envisage that an IRP/RP, would get into disputed questions of fact to set-off the amount due as has been duly fortified by the Supreme Court in *Swiss Ribbons (Supra)*.

- 5.7. Furthermore, as per the law laid down by the Hon'ble Supreme Court, under Section 60(5)(b), the Adjudicating Authority can only decide questions of fact or law arising solely out of or in relation to insolvency resolution proceeding or liquidation proceeding of the Corporate Debtor. The Adjudicating Authority, under Section 60(5), cannot pass an order which is de hors the provisions of the IBC. If under the scheme of IBC, during the CIRP, the claim of the Creditor cannot be set-off then the Adjudicating Authority cannot direct him to admit part of the Claim since that would be de hors the provisions of the IBC. Such an exercise would have been possible if the liquidation proceedings were in vogue.
6. We have heard the Ld. Counsel & the RP and perused the averments made in the Application, Reply and Rejoinder along with the documents enclosed with the Application.
7. Learned Counsel for the Applicant has submitted that the total outstanding amount towards Corporate Debtor is Rs. 6,57,72,678.30/- (Rupees Six Crores Fifty-Seven Lacs Seventy-Two Thousand Six Hundred Seventy-



Eight and Thirty Paise) till the date of filing of the arbitral claim. Accordingly, a claim statement has been filed before the Arbitrator appointed by the Hon'ble High Court of Madras.

8. The Applicant has submitted that it was unable to submit its claim within the stipulated time period because being based in Chennai, it did not have any access to publications made in newspapers in Jaipur, Rajasthan and the Applicant Company was not aware of the CIRP commencement of the Corporate Debtor. On the contrary, the RP has submitted that an email dated 20.07.2022 was sent to the Applicant, intimating them about the commencement of the CIRP of the Corporate Debtor and requesting the Applicant to provide all relevant data of the Corporate Debtor in its possession to proceed further in the CIRP of the Corporate Debtor. The RP again sent a reminder email dated 09.08.2022 which was responded to by the Applicant. Moreover, order passed by Hon'ble High Court of Madras was supplied by the Applicant to the RP.
9. It is seen that the claim filed by the Applicant is beyond the timeline as provided under regulation 12(2) of the CIRP Regulations, 2016 and the same has been resolved and thereby received at a stage where the Committee of Creditors had already approved to liquidate the Corporate Debtor. An application to this effect was also moved by the RP before the Adjudicating Authority bearing *IA No. 559/JPR/2022*.



10. The Hon'ble Supreme Court has recently in the matter of *M/s RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr. Civil Appeal No. 5590 of 2021* dealt with the issue of inviting claims. In Para 20 of the Judgment it is stated that Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP in the newspapers. This would constitute deemed knowledge on part of the Applicant. In any case, the plea of the Applicant not being aware of newspaper pronouncements is not one which should be available to a commercial party.
11. In *M/s RPS Infrastructure Ltd. (Supra)*, resolution plan was approved by CoC and was pending approval before the Adjudicating Authority. The Hon'ble Supreme Court held that taking the invited claims can lead to going back and forth infinitely, thereby making CIRP an endless process. This would result in the re-opening of the whole issue, particularly, there may be other similar persons who may jump onto the bandwagon. In the present matter, CoC by mandate of 90.60% voting, has decided to liquidate the Corporate Debtor. An application under Section 33(2) of the IBC has been filed before this Adjudicating Authority which has been disposed of by this Adjudicating Authority and Liquidator has duly been appointed. In view of the Order passed in *IA (IBC) No. 559/JPR/2022*, at this stage, the Corporate Debtor is undergoing liquidation. Therefore, it is not proper to allow the plea of the Applicant at this stage.



12. In view of the foregoing, the Applicant may present its claims during liquidation process before the Liquidator under Regulation 16(1) of the IBBI (Liquidation Process) Regulations, 2017.
13. Accordingly, this application is rejected & thereby disposed of.

-Sd-
DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

-Sd-
ATUL CHATURVEDI,
TECHNICAL MEMBER