

308

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**Coram : (1) Shri Madan B. Gosavi,
Hon'ble Member (J)
&
(2) Shri Virendra Kumar Gupta,
Hon'ble Member(T)**

CP(IB) 764/KB/2019

In the matter of:

**An application for initiation of Corporate Insolvency Resolution
Process under Section 9 of the Insolvency and Bankruptcy
Code, 2016 read with Rule 6(1) of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2016;**

-And-

In the matter of:

**M/s. Tirupati International, (Sole Proprietor: Deepak Sultania)
Laxmi Niwas, Ranchi-1;**

...Operational Creditor

-Versus-

In the matter of:

**Universal Auto Components Private Ltd., having its registered
office at 715, Large Sector, Phase-VIII, Srirampur, Gamharia-
832 108, CIN: U29255JH2010PTC013933;**

....Corporate Debtor

Counsel appeared:

Mr. Shashi Agarwal, C.A.	]	Operational Creditor
Mr. Tapas Kumar Das, Advocate	]	

Date of Pronouncement of Order: 18.02.2020

ORDER

Per Shri Madan B. Gosavi, Member (J):

This application under section 9 of Insolvency & Bankruptcy Code, 2016 (for short, IBC) is filed by **Mr. Deepak Sultania- the proprietor of M/s. Tirupati International** against **Universal Auto Components Private Ltd.-** Corporate Debtor to start Corporate Insolvency Resolution Process (for short, CIRP) of the corporate debtor alleging that the corporate debtor committed default in paying the operational debt of Rs.26,22,491/-.

2. The following facts are not in dispute.

2.1 The Operational Creditor had sold and supplied the goods to the corporate debtor under various invoices in between 24.03.2014 to 19.07.2016 (Annexure-A). The operational creditor has maintained running a continuous accounts of the credit/debit of the transaction. He states that amount of Rs.26,22,491/- is due and payable by the corporate debtor towards sale of goods. In spite of repeated demands, the corporate debtor failed and neglected to pay the same. Hence, on 11.02.2019, the operational creditor sent the corporate debtor demand notice of section 8 of IBC. In spite of receipt of the notice, the corporate debtor did not clear the outstanding dues and thereby committed default in paying operational debt. Hence, this proceeding.

2.2 The corporate debtor has been served notice of this application. It appeared through one of its directors, Mr. Arun Kumar Tiwari. He filed affidavit-in-reply.

3. We have gone through the contents of the affidavit-in-reply. The corporate debtor raised only one defence that the claim is barred by law of limitation. He

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also raised some disputes about certain amount of the debt but despite his contentions thereto, the fact remained on record is that the corporate debtor committed default in paying operational debt of more than Rs.26 lakhs.

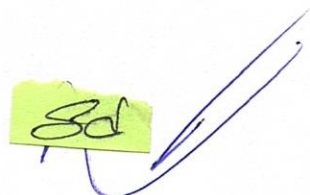
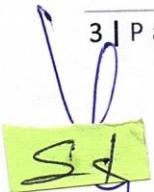
4. We heard the Ld. Counsel for the operational creditor on the point of limitation. He brought to our notice that the last trench of goods were sold and supplied in the year 2016. So debt became due and payable thereafter. This application is filed in 2019. It is not barred by law of limitation.

5. We considered his argument, which is uncontroverted on record. Moreover, the material on record also supports his oral submissions. We find that right to sue for recovery of the debt accrued against the corporate debtor in the year 2016. This application is filed within period of three years thereafter (Article 137 of Law of Limitation).

6. Operational creditor filed affidavit stating that after receipt of demand notice of section 8 of IBC, the corporate debtor did not pay the debt. It did not point out pendency of any dispute about the amount claim or quantity of goods, etc. He thereby complied provisions of section 9(3)(b) and ((3)(c) of IBC.

7. Operational Creditor has not suggested any name for appointment as the Interim Resolution Professional. However, while admitting this application, we are giving name from the list given by the IBBI for appointment as IRP. This application is defect free. The operational creditor proved both the facts that there is debt due and payable by the corporate debtor and the corporate debtor committed default, we admit the corporate debtor in CIRP. Hence, we pass the following order.

ORDER



- (i) The application filed by the Operational Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **M/s. Universal Auto Components Private Limited**. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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

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action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v) 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.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- vii) 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 Sec.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.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.
- (ix) As the Operational Creditor has not suggested any name for appointment as the IRP, Mr. Manish Jain, CA (Mob.98302 48684) having registration no. IBBI/IPA-001/IP-P00582/2017-2018/11023 and email id.

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manishmahavir@gmail.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan. The IRP is directed to submit his written consent in form-2, as per the proforma, within seven days to the Tribunal.

x) The Operational Creditor to pay to IRP a sum of Rs.50,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

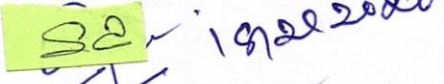
xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

xii) Registry is hereby directed to communicate the order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **07.04.2020** for filing progress report.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 18th day of February, 2020.