

**NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**C.P.(IB)/294(PB)/2023**

**IN THE MATTER OF:**

**M/s Swiss promotions Private Limited** ...Operational Creditor

through its Authorized Representative

**Sh. Sunder Chainani**

having Office at:

B-3 Geetanjali Enclave

New Delhi-110017

**Versus**

**M/s Johnson Watch Company Private Limited** ...Corporate Debtor

having registered Office at:

C-16 Connaught Place,

New Delhi-110001

**Under Section 9 of IBC, 2016 r/w Rule 6 of the Insolvency and  
Bankruptcy (Application to Adjudicating Authority), Rules, 2016**

**Order Pronounced on: 17.01.2024**

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR**

**HON'BLE PRESIDENT**

**SH. AVINASH K. SRIVASTAVA**

**HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

**For the Operational Creditor:** Ms. Bhawna Khanna, Advocate

**For the Corporate Debtor:**

**ORDER**

1. The present application has been preferred through Authorized Representative (Mr. Sunder Chainani) on behalf of the Operational Creditor i.e. **M/s Swiss Promotion Private Limited** (hereinafter referred to as OC) under Section 9 r/ w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor i.e. **M/s Johnson Watch Company Private Limited** (hereinafter referred to as CD) for an amount due of **Rs. 1,57,03,726.94/- (Rupees one crore fifty seven lakh three thousand seven hundred and twenty six and ninety four paise only)** on account of non-payment against invoices thereof calculated from date of default in the payment against invoices till its actual realization.
2. OC is engaged in the business of distribution/agency of luxury timepieces representing various luxury brands in India. M/s Johnson Watch Company Private Limited (CD) is a Private limited Company incorporated under Companies Act, 2013 having its registered Office at C-16 Connaught Place, New Delhi-110001 and is interalia engaged in the business of direct sale of high- end watches to end user customer and have been a retailer for selling the time pieces of various brands represented by OC under their umbrella like UlysseNardin, Gucci, Bell n Ross watches at its registered retail outlet since 2012.
3. It has been recorded in order dated **08.11.2023** that neither the Corporate Debtor nor Ld. Counsel has entered appearance. On perusal of the records also, it has been found that no reply neither any written submissions have been filed.

**BRIEF SUBMISSIONS ON BEHALF OF THE OPERATIONAL CREDITOR (OC) ARE AS FOLLOWS:**

4. The OC supplied time pieces (watches) of various brands including UlysseNardin, Gucci, Bell n Ross from time to time to the CD and raised invoices respectively against the goods supplied. The OC and CD have been maintaining a recurring running account since the inception of their business relationship. OC submitted that CD started defaulting by neglecting to make any payment however OC continued to supply the time pieces considering the trust between the parties built over a long-standing relationship.
5. OC further submits that CD vide its email dated **14.03.2020** **admitted and acknowledged** the ledger account of the OC confirming the “balance confirmation as on **29.02.2020**” being an outstanding sum of **Rs. 3,89,20,755.94/-** and vide its email dated **11.05.2019** “confirming the balance as on 31.03.2019” addressed to the OC. Copy of the emails as admitted are annexed as **Annexure-4 (colly)**.
6. OC further submitted that in acknowledgement of the aforesaid operational debt, the CD issued cheques in favour of the OC in January 2021 for the month of February, March and April 2021 as payment towards part liability of the debt. OC further submits that cheque dated **08.02.2021** for a sum of Rs. 50,00,000/- stood cleared and 4 cheques of 50 lakhs each bounced and OC was compelled to file a complaint under Sec 138 of Negotiable Instrument Act. The aforesaid matter CC no 7370/2021 is now pending adjudication in the Hon’ble Court of Ms. Sheetal Rani, MM NI Act digital court-01, South East District, Saket Courts, New Delhi.
7. OC further submits that the last payment received from the CD was on **17.12.2021** for a sum of Rs. 25 lakhs only towards clearing its part liability. **Copy of ledger from 2018 till 09.03.2023 is annexed as Annexure-7 (colly). The details of the invoices outstanding and due in favour of the OC are provided below in tabular form and annexed along with the application as Annexure-8(colly):**

S. No	Date	Due Dates	Invoice Number	Amount
1	08/03/2019	06-Jun-19	UN/2018-19/276	5,80,989
2	11/03/2019	09-Jun-19	GW/2018-19/168	45,613
3	16/03/2019	14-Jun-19	UN/2018-19/288	18,00,090
4	18/04/2019	17-Jul-19	UN/2019-20/012	12,52,862
5	24/04/2019	23-Jul-19	GW/2019-20/007	1,55,534
6	01/05/2019	30-Jul-19	UN/2019-20/024	17,32,886
7	14/08/2019	12-Nov-19	UN/2019-20/075	30,99,755
8	14/08/2019	12-Nov-19	B&R/2019-20/024	26,78,534
9	12/10/2019	10-Jan-20	UN/2019-20/106	12,76,864
10	17/10/2019	15-Jan-20	UN/2019-20/108	28,45,343
11	12/12/2019	11-Mar-20	GW/2019-20/058	1,90,508
12	31/01/2020	30-Apr-20	GW/2019-20/067	44,748
<b>TOTAL-</b>				<b>1,57,03,726/-</b>

8. OC further submits that CD has not replied to nor disputed the admitted amount as claimed by OC in the Demand Notice dated **20.03.2023** which has been duly received by the CD vide email dated **20.03.2023**. Proof of service of demand notice is annexed as Annexure 10(colly). OC submits that despite the receipt of aforementioned Demand Notice dated 20.03.2023, CD has neither paid the amount due as envisaged under 8(2)(b) of IBC,2016 nor replied to the demand notice. Therefore, OC is filing this application.
9. On perusal of the documents on records and order sheet of this application, it is found that notice to the CD/Respondent has been filed on **15.05.2023** but till date there is neither any appearance marked on behalf of CD/Respondent nor any reply filed. On the direction of this Adjudicating Authority, Applicant/OC has also submitted the copy of the report of NeSL by way of affidavit and the same has been taken on record. **Section 8** of the Code mandates that on the occurrence of a default, the Operational Creditor is required to deliver a demand notice of unpaid operational debt or copy of the invoice demanding payment of the amount involved in the default to the Corporate Debtor in such form and manner as may be prescribed and the Corporate Debtor within ten days of the receipts of the notice or copy of the invoice mentioned in Section 8(1) of the Code, shall bring to the notice of the operational-creditor the existence of a dispute or show the documents that the payment of unpaid operational-debt has been made. **Section 9** makes it clear that after the expiry of period of ten days from the date of delivery of the notice

or invoice demanding payment, if the Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Section 8(2) of the Code, only in that case the Operational Creditor may file an application for initiation of the CIRP.

10. Looking at the facts of this case, the occurrence of default, delivery of demand notice and non-existence of any prior existing dispute makes it a fit case for admission of CIRP under Section 9 against CD. Further OC has placed on record an Affidavit to the effect that no notice of dispute has been given by the CD in respect with the admitted Operational Debt and Application is filed within the period of limitation, the mandatory requirements as prescribed under section 9(5) of the code are satisfied and there is no legal impediment in admitting this application and initiating CIRP against CD i.e. **M/s Johnson Watch Company Private Limited.**

#### **ORDER**

1. Accordingly, this petition is **ADMITTED**. The present company application (**C.P. No. (IB)- 294 (PB)/2023**) stands admitted and **the CIRP is hereby initiated against M/s. Johnson Watch Company Private Limited.**
2. Since section 9(4) of the code does not make it mandatory for the operational creditor to propose the name of the resolution professional along with the application to act as Interim Resolution Professional, the operational creditor has not proposed any name of resolution professional. Therefore, this adjudicating authority appoint **Mr. Pushpinder Kumar**, as the Insolvency Resolution Professional of the corporate debtor from the available list of panel of resolution professionals as maintained by IBBI. Details of Mr. Pushpinder Kumar are as follows:

**Name:** Mr. Pushpinder Kumar

**Registration No.:** IBBI/IPA-001/IP-P02548/2021-22/13338

**Email id:** [pushpinderraiip@gmail.com](mailto:pushpinderraiip@gmail.com)

**Contact No.:** 9968220076

The said IRP is directed to file his written consent to act as a resolution professional in Form-2 provided under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

3. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely **Mr. Pushpinder Kumar** to meet the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor.
4. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(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.”*

*(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota,*

*concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”*

- 5.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period.
- 6.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the ‘Corporate Debtor’.
- 7.** In case there is any violation committed by the suspended management or any tainted/illegal transaction by suspended directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect

and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

8. A copy of the order shall be communicated to the applicant, the Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order may also be sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

**-Sd/-**

**RAMALINGAM SUDHAKAR  
PRESIDENT**

**-Sd/-**

**AVINASH K. SRIVASTAVA  
MEMBER (TECHNICAL)**