



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**CP (IB)-365/ND/2021**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**Royal Manpower Services**

Through its Proprietor

Mr. Vasudev

Office at:

B-399 1<sup>st</sup> Floor, Nehru Ground

N.I.T Faridabad, Haryana 12001

...Applicant/Operational Creditor

**Versus**

**M/s Faridabad Autocomp System Pvt. Ltd.**

Registered Office at:

52, First Floor, Omaxe Square

Jasola District Centre Delhi 110044

...Respondent/Corporate Debtor



**Coram:**

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER**

**(JUDICIAL)**

**SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

**Counsel for Applicant/ Operational Creditor:** Mr. Sumesh  
Dhawan, Mr. Karan Gandhi, Mr. Sagar  
Thakkar and Mr. Shaurya Shyam,  
Advs

**Counsel for Respondent/ Corporate Debtor:** Mr. Bhargav Thali,  
Mr. Shreeyash U. Lalit, Mr. Abhinav  
Aggarwal, Ms. Rimjhim Garg, Mr. K.  
Abhay and Mr. Himanshu Vats, Advs.

**ORDER**

**Per RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**Date: 23.11.2023**

1. This is an application filed by the Applicant, Royal Manpower Services, through its sole proprietor Mr. Vasudev to initiate Corporate Insolvency Resolution Process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s Faridabad Autocomp System Private Limited for



the alleged default on the part of the Respondent in clearing the debt of Rs. 14,15,544/- (Rs. Fourteen Lakhs Fifteen Thousand Five Hundred and Forty Four) along with interest of Rs. 3,11,419 (Rupees Three Lakhs Eleven Thousand Four Hundred and Nineteen).

**2.** The submissions of the Petitioner are as follows:

- That, Operational Creditor is engaged in the business of providing manpower services.
- That Operational Creditor provided manpower services to the Corporate Debtor in the month of July 2017 and August 2017 and raised four invoices amounting to Rs. 49,95,331/-. Out of those 4 invoices, sum of Rs. 11,04,125/- (principal) against invoices No 0029 and 0030 dated 01.09.2017 is still due and payable.
- That despite continuous follow-ups and reminder emails by the Operational Creditor, sum of Rs. 14,15,544/- (including interest of Rs. 3,11,419/-) after adjusting PF dues paid by the Corporate Debtor on behalf of Operational Creditor still remains outstanding and no payment has been made till date.



- That since the Corporate debtor did not pay any heed to the request of the Applicant, Operational creditor sent demand notice dated 07.08.2018 to the Corporate Debtor u/s 8 of the Code via email on 08.08.2019 and the same was delivered on 09.08.2018. Corporate Debtor replied to the demand notice on 29.08.2018 raising frivolous contentions
- That based on the facts as stated above it is prayed to initiate CIRP against the Corporate Debtor

**3.** The submissions of the Corporate Debtor are as below: -

- That the petitioner has not come with clean hands and has concealed vital facts and documents. The petitioner has not disclosed about the pre-existing dispute between the parties
- That a sole proprietorship is not a legal entity and an individual and a sole proprietorship are one and the same thing. Therefore, a sole proprietorship is not a legal entity in its own right and cannot sue in its own name. Moreover, the liabilities of an individual and its sole proprietorships are one and the same.
- That the Petitioner has consistently defaulted on several statutory dues, pursuant to which the Respondent had to incur



financial liability on its behalf. Such payment of dues by the Respondent were well notified by the Respondent to the Petitioner, and then also the Petitioner failed to reimburse the same.

- That the agreement between the respondent and the petitioner envisaged certain contractual responsibilities on the part of the petitioner which the petitioner did not fulfil, resulting in there being serious disputes between the Petitioner and the Respondent with regard to the quality of the services provided.
- That there is a pre-existing dispute between the respondent and the petitioner as the respondent vide Police complaint dated 14.10.2017 had complained against the petitioner stating that due to poor services by the petitioner, the Respondent had to give the contract for supplying manpower to one company named Shree Jee Manpower Pvt Ltd. Thereafter, the petitioner along with 25-30 persons had barged in and stopped the functioning of the respondent. The respondent had further complained that the petitioner had threatened the employees working at the premises of the respondent saying that if anybody were to work further, it would not be good for



them implying harm on them and had also threatened that they would disconnect the electricity supply of the Respondent. It was also informed that Royal Manpower Services had not deposited PF and ESI contribution of the workers.

- In view of the aforesaid, it is prayed that the present petition must be rejected.
- 4. We have gone through the rejoinder as well as written submission, documents on record filed by both the parties and arguments advanced by counsels of both the parties.
- 5. It is observed that initially this petition was dismissed vide order dated 06.01.2023 on the ground of applicability of threshold limit of Rs. 1 Crores since the petition was registered on 20.07.2021. However, the Hon'ble NCLAT vide its order dated 06.04.2023 set aside the order of this Tribunal and directed the Tribunal to decide this Petition on merits. Relevant extract of order dated 06.01.2023 is reproduced as under: -

*5. The Adjudicating Authority having dismissed the application only for not fulfilling the threshold of Rs.1 crore, which does not appear to be applicable, since the application was filed in the year 2019 and*



*subsequent registration of application will not change the date of filing. Hence, on the date of filing of the application, the threshold which was to be fulfilled by the Appellant was Rupees One Lakh only. In view of the above, impugned order dated 06.01.2023 is set aside and the application under Section 9 is revived before the Adjudicating Authority to be heard and decided in accordance with law. 6. The parties may file the copy of this order before the Adjudicating Authority within a week, and both the parties may appear before the Adjudicating Authority on 24.04.2023, which date may be fixed by Adjudicating Authority on this order being brought on record.*

- 6.** Firstly, it is well settled preposition of law that a sole proprietor can file an application under IBC in his name and on behalf of proprietorship firm to initiate CIRP against the Corporate Debtor. Support can be taken from judgement of Hon'ble NCLAT in the matter of *Neeta Saha, Member of Suspended Board of Palm Developers Pvt. Ltd. v. Mr. Ram Niwas Gupta*



*Company Appeal (AT) (Insolvency) No. 321 of 2020.* Wherein it was held that sole proprietorship firm can initiate CIRP against the Corporate Debtor.

7. On perusal of the records, it is observed that the Corporate Debtor in its reply has placed on record the copy of police complaints against the Petitioner which was made prior to issue of demand notice. Relevant extract of the translated copy of the said complaint is as under: -

*On 12/10/2017, the owner of Royal Manpower Services along with 25-30 persons came and stopped the function of my company. The contractor of Royal Manpower company supply manpower to my company. **Due to bad services, the management of my company has given the contract to CD. Manpower.** This contract is effected from 01/09/2017. **There was no work of Royal Manpower in this company. And on 12/10/2017, came in the premises of my company and without any reason stopped work and has taken law in their hands, the police officer came and settled the matter and started the work.** They threatened to disconnect the electricity of the company and by threatening the labours separated from the workplace and said if anyone has done the work it will not be good.*

*On happening of this incident all workers of my company are mentally upset. Royal Manpower Services has not deposited by deducting from the worker - PF and ESI contribution of the workers. Due to the reason, I*



*gave my contract to other contractor. Owing to this they messed up so and created a panic by coming with 25-30 persons in the complex of company. So, it is requested that this type of incident will not occur in future and we can do the work easily and peacefully in your jurisdiction. Names of some persons of Royal Manpower are following who came inside the company premises and to execute the incident. Yogesh Huda, Surendra Huda, Anis, Rohit, Mohit, Sonu, Rahu, Basu and others whose names I don't know. So, it is requested that this type of incident won't be repeated in future and give us police protection so that we can do our work smoothly. Our talk kept going collectively so far but now we want legal action*

8. The above complaint clearly shows that there was a dispute prior to filing of present application and it is mandate of law that if there exists a pre-existing dispute between the parties the Adjudicating Authority must reject the application under section 9(5)(ii)(d) reliance can be placed on landmark judgement of Hon'ble Supreme Court in "*Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited 2018*) 1 Supreme Court Cases 353" Para 40 of the judgement which reads as under: -

*40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, **the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational***



**creditor** or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. **So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.**

9. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor as well as the reply filed by the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority **dismisses** the application filed by the Operational Creditor under section 9 of Insolvency



and Bankruptcy Code, 2016 as there is a pre-existing dispute between the parties, however, the claim under any other law, if permissible, can be pursued by the Petitioner as prescribed under that law.

Let copy of the order be served to the parties concerned.

**SD/-**

**(RAHUL BHATNAGAR)  
MEMBER (TECHNICAL)**

**SD/-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**