

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI

COURT-III

IB- 621/ND/2018

In the matter of :

GANDHAR OIL REFINERY INDIA LTD  
DLH PARK , 18<sup>TH</sup> FLOOR,  
S.V. ROAD, GOREGAON (WEST),  
MUMBAI- 400 062.

..PETITIONER

VS.

FRIENDS AUTO (INDIA) LIMITED,  
B-222, L.R. COMMERCIAL COMPLEX, BADARPUR,  
NEW DELHI – 110044.

.. RESPONDENT

SECTION

Under Section 9 of IBC, 2016

Order delivered on 06.8.2019

Coram :

Sh. R. Varadharajan,  
Hon'ble Member (Judicial)  
Shri Kapal Kumar Vohra,  
Hon'ble member (Technical)

For the Petitioner /Op. Creditor :Mr. Ajay Gaggar, Ms. Upama Bhattacharjee,  
Ms. Vinita Rathore, Ms. Adhikari, Advocates  
For the Respondent/Corporate Debtor :Mr. B.L. Satija, Proxy Counsel

ORDER

(Order dictated in the open Court)

Learned Counsels for the parties are present. This petition has been moved by the Operational Creditor as against the Corporate Debtor under the provisions of Insolvency & Bankruptcy Code, 2016 (IBC, 2016) in relation to

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non-payment of dues in a principal sum of Rs. 35,05,959/- and interest of Rs.12,91,620/- aggregating in all to the amount of Rs.77,80,808/-. It is averred in the application that based on the Purchase order raised by the Corporate Debtor, goods were supplied to the Corporate Debtor and there are details of unpaid Invoices given at Page-30 of the petition as given below :

OUTSTANDING STATEMENT FRIENDS AUTO INDIA LIMITED									
Invoice no.	Inv. Date	Inv. Amt in Rs.	Qty supplied in Ltrs	O/s amt. in Rs.	Due date	As on 01.2.18	No. of days of delay	Int. @ 24% PA	Total o, including int. in Rs.
LINV-EXC-SIL-1200001119	30.4.16	17384.70	23020	700000	30.5.16	01.2.18	612	281688	981688
LINV-EXC-SIL-1200001333	07.5.16	748125	5670	748125	0.6.6.16	01.2.18	605	297610	1045735
LINV-EXC-SIL-1200003336	30.6.16	1353998	17929	1353998	30.7.16	01.2.18	551	490555	1844553
LINV-EXC-SIL-1200004101	25.7.16	264537	2100	264537	24.8.16	01.2.18	526	91994	356033
LINV-EXC-SIL-1200006967	08.10.16	439299	4410	439299	07.11.16	01.2.18	451	130273	569572
<b>Total :</b>		4544429	53129	3505959				1291620	4797579

2. Despite repeated demands, payments were not forthcoming from the Corporate Debtor, the petitioner was compelled to issue notice of demand on February 20, 2018 to the Operational Creditor and that despite receipt of the demand notice, the Corporate Debtor had failed to pay the amount in default nor notice of dispute was sent by sending reply to the demand notice

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and that in the circumstances, this petition has been filed before this Tribunal seeking for the initiation of Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

3. It is evident from the record of proceedings that the petition was moved and directions were given to the petitioner to file the Ledger extracts of the Corporate Debtor as maintained in the books of accounts of Operational Creditor vide Order dated 04.6.2019. The same has also been complied with as can be seen from the Order dated 02.7.2019 by way of filing vide diary No.4038 dated 18.6.2018.

4. Upon receipt of notice of the proceedings, the Corporate Debtor has been represented by its Counsel and based on the statement of the Counsel made by the Corporate Debtor that the parties were exploring settlement in the matter and the same was adjourned from time to time. Since the petitioner reported that settlement was not coming through as between the parties as recorded in the Order dated 27.9.2018, the parties were directed to complete the pleadings in the matter and upon completion of <sup>Pleadings</sup> proceedings, the matter was finally taken up today for consideration. d

5. During the course of the submissions made on behalf of the petitioner by Ld. Counsel for the petitioner, the Invoices which have been annexed and which remain unpaid were pointed out as enclosed vide filing dated 01.5.2019 . Ld. Counsel for the petitioner also points out to the statement of accounts as filed pursuant to the directions of this Tribunal which fact has also been brought in the Paragraph supra, the balance which has remained unpaid co-relating with the principal amount as claimed in the prescribed Form filed under the provisions of IBC, 2016 read with Insolvency

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and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is in a sum of Rs.35,05,959/-.

6. In addition, Ld. Counsel for the petitioner also points out that for the Invoices remaining unpaid and for delay in payment of the Invoice, interest @ 24% PA is payable by the Corporate Debtor (interest calculated @ 24% PA comes to Rs.12,91,620/- ).

7. The reply has been filed by the Corporate Debtor and Ld. Counsel for the petitioner points out that the principal amount as claimed by the petitioner vis-à-vis. Corporate Debtor has not been disputed and in fact, post-dated Cheques amounting to Rs.35,05,959/- (the principal amount) was received, however, in view of the non-payment of interest amount being included in the payment, settlement did not come through and by way of the correspondence, the cheques issued were returned vide letter dated October 8, 2018 and the correspondence as enclosed along with the rejoinder filed to the reply of the Corporate Debtor and which made the Tribunal to pass the order dated 27.9.2018 recording the settlement not coming through and directing the parties to complete the pleadings.

8. Ld. Counsel for the Corporate Debtor is present and seeks adjournment in the matter which we are not in a position to entertain as this matter is pending since long, for more than a year. It is required to be noted that as IBC being a time bound process, repeated indulgence seeking for adjournment on the part of either of the Counsel cannot be granted and in the circumstances, no adjournment was granted as requested by the Counsel appearing for the Corporate Debtor. It is also evident that the Corporate Debtor is not having any substantial defence and the claim which is sought for

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of Rs.47,97,579/- by the Operational Creditor, the Corporate Debtor is not inclined or in a position to pay the amount as claimed by the petitioner upon notice of demand and since the defaulted amount it is seen is more than Rs. One lakh, being the minimum threshold amount prescribed under the provisions of IBC, 2016, this Tribunal can entertain the petition. Under the provisions of IBC, 2016 which had been invoked default is also in existence and debt not paid despite issue of demand notice.

9. In the absence of any bonafide dispute raised, this Tribunal is constrained to admit the petition and initiate the Corporate Insolvency Resolution Process (CIRP), in relation to the Corporate Debtor and Ld. Counsel for the petitioner, on a query posed whether any IRP has been proposed in the petition in Part-III and in the prescribed Form, it is represented that no such proposal has been made.

Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Rajneesh Kumar Aggarwal, IRP (IBBI/IPA-001/IP-P00886/2017-2018/11483 (email id : [ca@arkadvisors.in](mailto:ca@arkadvisors.in) (Mobile 9810073042) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate Debtor and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

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(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.

However, during the pendency of the moratorium period in terms of Section

14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-



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(4) The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process.

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 section 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.

10. The Applicant is directed to pay a sum of rupees two lakhs to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of IBC, 2016 to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. Based on the above terms, the Application/Petition stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this order forthwith by the Registry.

Sd-

(K.K. VOHRA)  
MEMBER (TECHNICAL)



Sd-

(R. VARADHARAJAN)  
MEMBER (JUDICIAL)

Sd-  
09/08/19

सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
C.G.O. COMPLEX, NEW DELHI-110003

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