

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)

CA No. 1233 of 2019 and
CP (IB) No.631/Chd/HP/2019

Under Section 9 of the Insolvency
and Bankruptcy Code, 2016

In the matter of :

Ashish Dhillon,
Ward No. 11, Lakhanpur, Tehsil Sadar,
District Bilaspur, Himachal Pradesh.

...Petitioner/Operational Creditor

Versus

M/s. Ram Hari Motors Pvt. Ltd.,
having its registered office at
Village Rani Ki Bain, P.O. Gutkar,
District Mandi, Himachal Pradesh-175021.
& Anr.

...Respondent/Corporate Debtor

Judgement delivered on: 14 .02.2020 .

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)

For the Petitioner : Mr. S.S. Brar, Advocate

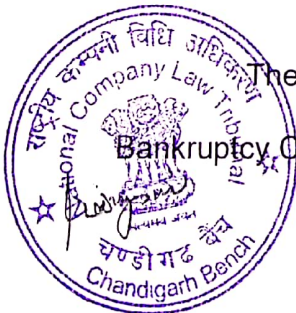
For the Respondent : Mr. Sandeep Singh Josan, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

CP (IB) No.631/Chd/HP/2019

The instant petition is filed under Section 9 of the Insolvency and
Bankruptcy Code, 2016, (for short hereinafter referred to as 'Code') read with Rule



6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short hereinafter referred to as 'Rules') by Mr. **Ashish Dhillon (Operational Creditor)**, for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s. Ram Hari Motors Pvt. Ltd (**Corporate Debtor**). A copy of the Permanent Account Number AHVPD9349R of the operational creditor is at page No. 18 of the petition, and the address of operational creditor Mr. Ashish Dhillon is Ward No. 11, Lakhanpur, Tehsil Sadar, District Bilaspur, Himachal Pradesh. There is also an affidavit in support of the contents of the application at pages 11 to 14 of the petition. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. M/s. Ram Hari Motors Pvt. Ltd. (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated on 04.11.2003 under the provisions of Companies Act, 1956 with authorized share capital of ₹2,00,00,000/- and paid up share capital of ₹1,99,50,000/-. The CIN of the respondent-corporate debtor is U50100HP2003PTC026507 and its registered office is situated at Rani Ki Bain, P.O. Gutkar, District Mandi in the State of Himachal Pradesh and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure P-2 of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the petitioner-operational creditor and the corporate debtor were into business transactions wherein the operational creditor used to supply building material to the corporate debtor. The operational creditor raised an invoice to the Corporate Debtor against the supplied materials on 05.04.2018. Copy of unpaid invoice of ₹ 12,74,700/- is placed as Annexure P-6. It is stated that corporate debtor started defaulting and failed to make payments against the invoice and the date from which



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the debt fell due is stated to be 26.10.2019. As per Part-IV of Form 5, the amount claimed to be in default is ₹6,96,700.00 as on 26.10.2019. Computation of amount is annexed at Annexure P-8 of the petition.

4. It is stated that the respondent-corporate debtor have failed to discharge its obligations towards the applicant-operational creditor, inasmuch as it has failed to make the payment due to the applicant-operational creditor despite various reminders.

5. A demand notice in Form No.3 & 4 is stated to be issued on 16.10.2019 (Annexure P-4 of the petition). The demand notice was accompanied by the copy of computation in tabular form, duly issued invoice in the name of the corporate debtor and copy of ledger account of Corporate Debtor. Copies of these enclosures are attached at pages 32 to 35 of the petition. The corporate debtor, vide this demand notice, was called upon to repay the total unpaid operational debt (in default) of ₹6,96,700/- within 10 days from the receipt of the notice. The copy of demand notice duly acknowledged by the corporate debtor is at page 25-30 of the petition.

6. The corporate debtor has replied to the above stated demand notice dated 16.10.2019 vide e-mail dated 30.10.2019 (Annexure P-5 of the petition) wherein it is stated that the corporate debtor is trying to sell out some of its properties to clear the due of all the contractors and the corporate debtor is unable to clear the outstanding of any contractor at present. It is also requested to bear with the corporate debtor till the properties are sold out.

7. It is deposed by the Operational Creditor that it has received reply to the demand notice dated 16.10.2019 admitting the debt and asking for some more time to repay the same. It is also deposed that there is no notice given by the



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Corporate Debtor relating to a dispute of the unpaid operational debt. The affidavit regarding no dispute raised by the corporate debtor is from pages 15 to 17 of the petition. It is submitted that the respondent-corporate debtor failed to comply with the demand notice dated 16.10.2019 and not made any outstanding payment and hence this petition.

8. In Part III of Form 5, the operational creditor has proposed Mr. Ravinder Kumar Goel, bearing Registration No. IBBI/IPA-001/IP-P00705/2017-2018/11252 as the Interim Resolution Professional. The consent of the proposed IRP is furnished in Form No. 2 and is placed at page 21 to 23, in which he has stated that he is currently serving as Interim Resolution Professional/Resolution Professional/Liquidator in one proceeding. It is also stated that there are no disciplinary proceedings pending against him with the Board.

9. Notice of this petition was issued to the Corporate Debtor on 20.12.2019 to show cause as to why this petition be not admitted and Mr. Sandep Singh Josan, Advocate appearing for the respondent accepted the notice.

10. The corporate debtor has filed reply vide Diary No. 168 dated 08.01.2020 stating that due to downfall of Motorised Vehicle Market, demonetization, exit of General Motors from India and other factors, the respondent-company, like many others, has been adversely affected. It is further stated that Chevrolet Motors of the General Motors group, Fiat Motors and Man Trucks whose vehicles were sold by the corporate debtor, have not performed over the past few years as a result Chevrolet Motors has left the Indian market and Fiat Motors has shut down many branches. It is also stated that in view of the admitted position of the debt and the admitted position as regards the inability to repay the same, this Tribunal may pass appropriate orders for admission of the matter.



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11. On the last date of hearing on 31.01.2020, the learned counsel appearing for the respondent submitted that respondent-corporate debtor admits the liability to pay the debt to the petitioner and also their inability to clear the said debt. It is further submitted that the respondent-corporate debtor has no objection if the CP is admitted for initiation of CIRP.

12. We have heard the learned counsel for the corporate debtor and operational creditor and have also perused the records.

13. The first issue for consideration is whether the demand notice in Form No. 3 & 4 dated 16.10.2019 was properly served. The demand notice dated 16.10.2019 was sent at the address as per the master data at Page No.20 of the petition in which the registered office is shown as Village Rani Ki Bain, P.O. Gutkar, District Mandi, Himachal Pradesh-175021. The postal receipt in respect of the Demand Notice is at page-24 of the petition.

14. The copy of demand notice duly acknowledged by the Corporate Debtor is at Page 24 to 30 of the petition. The Corporate Debtor has replied to the demand notice dated 16.10.2019 vide e-mail dated 30.10.2019 admitting the debt.

15. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor has not disputed the liability towards the operational creditor and has expressed its inability to pay the outstanding towards the operational creditor. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor. It is also observed that on the last date of hearing, learned counsel for the respondent has admitted its liability and submitted that this CP may be admitted.

16. The provisions of Section 9(5)(i) of the Code are as follows:-



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“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”

17. The Hon'ble Supreme Court in **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017**, held as under:-

“51. 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)(ii)(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.”

18. We have gone through the contents of the application filed in Form No.5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹ ₹6,96,700/-. Copy of Ledger Account of the



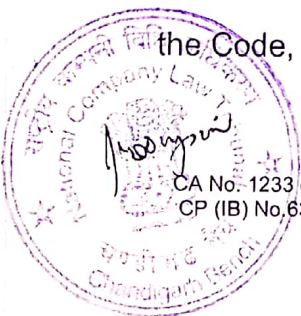
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corporate debtor in the books of, the financial creditor for the period of 31.01.2014 to 01.04.2018 (pages 36 to 45 of the petition) has been filed. The copy of invoice has been filed at Annexure P-6 of the petition. Moreover, demand notice in Form No. 3 & 4 was also sent on 16.10.2019 stating that the amount due as on 26.10.2019 from the corporate debtor to the operational creditor, is ₹ 6,96,700/-. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 13.11.2019 (page 15-17 of the petition) has been placed on record by the operational creditor stating that said demand notice has been replied admitting the liability to pay the debt and no dispute has been raised. We have held above that the demand notice in Form No. 3 & 4 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

19. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. The applicant-operational creditor states that from the above mentioned facts, it is clear that the liability of the respondent-corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

20. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP process in the case of the Corporate Debtor **M/s. Ram Hari Motors Pvt. Ltd.** and declare moratorium and appointment of Interim Resolution Professional as below.

21. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-



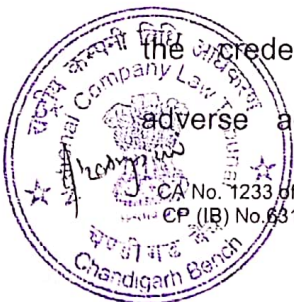
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- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, 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 Operational 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.

22. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

23. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

24. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ravinder Kumar Goel and there is nothing adverse against him. In view of the above, we appoint Mr. Ravinder



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Kumar Goel, Registration No. IBBI/IPA-001/IP-P00705/2017-2018/11252, Mobile No. 9914092211, E-mail: ravinderkumargoel@yahoo.in, resident of Flat No. 211, Platinum Tower, Peer Muchalla, Dhakoli, Sahibzada Ajit Singh Nagar, Punjab-160104 as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Ravinder Kumar Goel shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;



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- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.



A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution

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Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

CA No. 1233 of 2019 :

The operational creditor moved CA No. 1233/2019 in CP (IB) No.631/Chd/HP/2019 under Section 60(5) of the Code praying for stay on the alienation of all the assets i.e., movable and immovable of the corporate debtor. While issuing notice of this CA to the corporate debtor to show cause as to why this application be not admitted, vide order dated 20.12.2019, the respondent/corporate debtor was directed not to sell/alienate/ mortgage any of the moveable and immovable properties of the respondent/corporate debtor without the leave of this Tribunal. In view of the admission of the C.P., as ordered above, this C.A. also disposed of accordingly.

— Sd —
(Pradeep R. Sethi)
Member (Technical)

— Sd — :
(Ajay Kumar Vatsavayi)
Member (Judicial)

February 14th, 2020
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