

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

**CP (IB) No. 259/Chd/Hry/2019**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of:**

**S K Uni Print Private Limited**

having its registered office at  
F-26, Green Park  
New Delhi – 110 016

Also At:  
R-8, First Floor  
Green Park Main  
New Delhi – 110 016  
through its Director  
Mr. Mohit Nayar

...Petitioner/Operational Creditor

Vs.

**ADI Automotives Private Limited**

having its registered office at  
58 KM Milestone,  
Delhi Jaipur Highway  
Binola Industrial Zone  
Gurgaon, Haryana - 122 413

...Respondent/Corporate Debtor

**Judgement delivered on: 08.01.2020**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the Operational Creditor: 1). Mr. Arun Kumar, Advocate  
2). Mr. Manish Jain, Advocate

For the Corporate Debtor : Mr. Mayur Kanwar, Advocate

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

### **JUDGMENT**

This petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **Rules**) by S K Uni Print Private Limited (**Operational Creditor**) for initiating the Corporate Insolvency Resolution Process (**CIRP**) in the case of ADI Automotives Private Limited (**Corporate Debtor**).

2. The corporate debtor was incorporated on 16.03.2004 as a Public Limited Company under the provisions of Companies Act, 2013. The CIN of the corporate debtor is U34300HR2004PTC035338. As per master data at page 24 of the petition, the registered office of the Corporate Debtor is at 58 KM Milestone, Delhi Jaipur Highway Binola Industrial Zone, Gurgaon, Haryana - 122 413. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. It is stated that the operational creditor has been transacting with the corporate debtor since February, 2010 and supplying raw material to the corporate debtor. It is also stated that a running account was maintained by the operational creditor wherein payment received from the corporate debtor were adjusted towards the outstanding on First in First Out (FIFO) basis. It is submitted that an amount of ₹4,85,239.34 with additional interest @ 12% per

annum remained outstanding towards the corporate debtor. It is also stated that the business relations between the petitioner and respondent remained cordial until 2017, when the corporate debtor first started to delay on the payments.

4. It is further submitted that the operational creditor continued supplying materials on the verbal assurances of the representatives of the corporate debtor, but the corporate debtor failed to pay the outstanding till present. Copy of unpaid invoices raised by the operational creditor for the period ranging from January to April, 2019 is appended with the petition as Annexure A-5. It is also mentioned that the last payment received from the corporate debtor in respect of the outstanding was ₹10 lacs on 28.03.2018. Copy of bank statement of the operational creditor and ledger account of the corporate debtor is attached as Annexure A-10 and A-11 respectively. A detailed computation of outstanding claim in respect of invoices is also found attached with the petition as Annexure A-9.

5. A demand notice in Form No. 4 is stated to be issued on 17.04.2019 being Annexure A-6 of the petition. It is stated that the demand notice was accompanied by the duly issued invoices in the name of corporate debtor wherein the corporate debtor was called upon to pay the debt due within 10 days of the receipt of this notice. The demand notice in Form 4 is stated to be served by way of speed post/courier on the corporate debtor and the postal receipts alongwith tracking report are at Annexure A-7 (Colly) of the petition.

6. The corporate debtor in its reply dated 26.04.2019 to the above demand notice has denied and disputed the amount claimed by the operational creditor in the statutory demand notice. It was also stated in the reply that no claim whatsoever has been adjudicated by any of judicial Forum, therefore, there is no occasion for any default of non-payment of debt on the part of corporate debtor.

7. The petition is signed by Mr. Mohit Nayar, Director of the operational creditor and has also filed an affidavit dated 30.05.2019 verifying the contents of Form No. 5 (page No. 21-22).

8. In Part III of Form 5, the operational creditor has proposed Mr. Sanjay Kumar Dewani, bearing Registration No. IBBI/IPA-001/IP-P00423/2017-18/10746 as the Interim Resolution Professional. The consent of the proposed IRP is furnished in Form 2 at Page No. 26-28 in which he has stated that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

9. Notice of the petition was directed to be issued to the corporate debtor on 06.06.2019 and Mr. Mayur Kanwar, Advocate was present and accepted notice on behalf of the respondent-corporate debtor and filed memo of appearance and sought time to file the reply.

10. The corporate debtor in its reply (Diary No. 4072 dated 14.08.2019) has submitted that the respondent company has been transacting with the operational creditor since February 2010 and had developed cordial relations in regular business transactions amounting to ₹79 lacs over the

years. It is also submitted that due to the dynamic economic environment, the corporate debtor faced sudden business losses which led to certain financial constraints and difficulty in making regular payments. It is stated that there is no ill-will or malafide intention on behalf of the corporate debtor to withhold any legitimate dues of the operational creditor.

11. Rejoinder was filed vide Diary No. 4289 dated 23.08.2019 wherein the operational creditor has denied each and every objection raised by corporate debtor and reiterated the contents of the petition.

12. On the last date of hearing, learned counsel for the corporate debtor submitted that he was instructed by his client to state that since the respondent-corporate debtor is not in a position to pay-back the debts, the instant CP may be admitted.

13. We have heard and carefully considered the submissions of the learned counsel for the operational creditor and corporate debtor and have also perused the records.

14. We find that in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2017) 140 CLA 123 (SC), Civil Appeal No. 9405 of 2017*** the Hon'ble Supreme Court has held in Para No. 40 thereof 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.”*

The facts of the present case are being examined with reference to the judgment of the Hon'ble Supreme Court.

15. The present petition is filed by the operational creditor since the payment for the invoices issued for the period of 27.01.2019 to 10.04.2019 has not been paid by the corporate debtor. The total amount of debt is stated to be of ₹4,85,239.34 excluding 12% additional interest per annum. Along with the petition, the operational creditor has filed copy of the ledger account of the corporate debtor in its books (Annexure A-11), copy of the invoices (Annexure A-5), copy of detailed computation of the outstanding in respect of the invoices raised (Annexure A-9) and bank account statement for the period 30.11.2018 to 02.04.2019 (Annexure A-10).

16. There is abundant evidence that the corporate debtor has made a default in discharging the debt towards the operational creditor and the same is not disputed. Further, learned counsel for the respondent-corporate has

also submitted that respondent-corporate debtor is not in a position to pay-back the debts, the instant CP may be admitted.

17. In view of the above discussion, this petition deserves to be admitted.

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

*“(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.”*

19. No objections are being raised to the completeness of the application filed under Section 9(2) of the Code. As discussed above, the operational debt remains unpaid, the demand notice was delivered to the corporate debtor and reply was received within the stipulated 10 days period.

As discussed above, the proposed Resolution Professional Shri Sanjay Kumar Dewani has filed Form No.2 in which he has stated that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

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 ADI Automotives Private Limited and direct 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:-

- (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.

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 financial 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. Sanjay Kumar Dewani and there is nothing adverse against him. In view of the above, we appoint Mr. Sanjay Kumar Dewani, D-55, Defence Colony, New Delhi-110 024, Registration No. IBBI/IPA-001/IP-P00423/2017-18/10746, Mobile No. 98105-71800, e-mail id: [sanjaydewani@gmail.com](mailto:sanjaydewani@gmail.com) the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Sanjay Kumar Dewani 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;
- 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 financial 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 Professional forthwith. The Registry is also directed to send copy

of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

January 8<sup>th</sup>, 2020  
Yashpal