

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-1293/ND/2018**

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

IN THE MATTER OF:**Mr. RAJ VIJ****Sole Proprietor of Unity International****...Applicant/ Operational Creditor****VERSUS****M/s MARKETING TIMES AUTOMOBILES PRIVATE LIMITED****...Respondent/ Corporate Debtor****Judgment Pronounced on: 14.11.2018****CORAM:****DR. DEEPTI MUKESH****MEMBER (Judicial)****For the Applicant:** Mr. Madan Lal Sharma, Advocate**For the Respondent:** Mr. R.R. Gupta, Advocate

MEMO OF PARTIES

Mr. Raj Vij

Sole Proprietor, Unity International

Registered office at - G-64 A, LGF

Kalkaji, New Delhi-110019

...Applicant/Operational Creditor

VERSUS

M/s Marketing Times Automobiles Private Limited

Registered office at: 16 A,

Uday Park-230 E, Masjid Moth

New Delhi-110049

...Respondent/ Corporate Debtor

JUDGEMENT

1. The present application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Raj Vij, Sole Proprietor of Unity International, (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/s

Marketing Times Automobiles Private Limited (for brevity 'Corporate Debtor').

2. The Applicant is proprietary firm of Mr. Raj Vij as proprietor having registered office at G-64 A, LGF Kalkaji, New Delhi-110019 and is carrying on the business of providing technology services.
3. The corporate debtor is a private limited company incorporated under the provisions of the Companies Act, 1956 on 31.12.2003 having CIN U50101DL2003PTC123777 as per Master Data.
4. The Authorized Share Capital of the Corporate Debtor is Rs. 10,00,00,000/- and Paid Up Share Capital is Rs.7,97,55,000/- as per Master Data of the company.
5. The corporate debtor is having its registered office at 16-A Uday Park-230 E, Masjid Moth, New Delhi-110049.
6. As per the Applicant, since 2015, the applicant has been providing IT services to M/s Marketing Times Automobile Private Limited, at the showroom and the workshop of the corporate debtor as per the demand/requirements and the last renewed agreement is dated 25.03.2018. In pursuant

to agreements and service provided were raised by the applicant from time to time out of which the invoices for Rs. 4,46,133/- are still unpaid.

7. The applicant states that despite various repeated requests, reminders and verbal assurances, the Corporate Debtor failed to pay any outstanding amount to the applicant.
8. The Applicant issued a Demand Notice under section 8 of the Insolvency and Bankruptcy Code, 2016 dated 19.07.2018 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016), through registered post which is duly received by the corporate debtor on 21.07.2018.
9. Since neither notice of dispute is raised by Corporate Debtor nor money is paid, the applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application which is duly received by the Corporate Debtor and the affidavit of service is filed by the applicant.

10. In compliance of section 9(3)(b), the Applicant has filed an affidavit affirming that in respect of the amount claimed or any part thereof, the Applicant has not received nor had any person, on its behalf had received in any manner the amount due to them nor any dispute is raised by corporate debtor. The copy of bank account of ICICI Bank for the period 01.04.2017 to 31.03.2018, is annexed in compliance of section 9(3) (c).
11. The respondent in the reply stated that it was declared as NPA by the Central Bank of India due to financial created faced on account of massive frauds being conducted by the employees and due to lack of working capital, the CD is unable to run the business and no fresh capital or any other resources are left in order to pay due of the creditors. Therefore the CD has admitted the outstanding amount of Rs. 4,46,133/- as operational debt due to the applicant.
12. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

13. The default in payment of balance operational debt became due and payable from the date 25.07.2017 raised by the Applicant and subsequently this application is filed hence the debt is not time barred and application is within limitation period.
14. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which are admitted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. In the light of above facts and records the present application is admitted, before and to initiate CIRP of corporate debtor.
15. 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. Ashwani Kumar , with registration number IIBI/IPA-001/IP-P01015/2017-18/11666 ([email-ashwanikumarsaxena1207@gmail.com](mailto:ashwanikumarsaxena1207@gmail.com)) 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 Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Respondent and the Operational Creditor herein 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.

16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following:

- 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—*
 - a. such transaction as may be notified by the Central Government in consultation with any financial sector regulator.*

b. a surety in contract of guarantee to a Corporate Debtor.

17. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant 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 be also furnished with copy of this order forthwith by the Registry.

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)