

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CP No. 350/IBC/NCLT/MB/MAH/2018

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

In the matter of

Mr. Harshad Vandradas Vora

..... Operational Creditor  
(Petitioner / Applicant)

v.

M/s. Fab Auto Parts Private Limited

..... Corporate Debtor  
(Respondent)

Heard on : 02.08.2018

Order Pronounced on : 20.08.2018

**Coram :**

Hon'ble M.K. Shrawat, Member (J)

**For the Petitioner :**

Mr. Vinay Taliwal, Advocate i/b. Mr. Tushar Goradia, Advocate – Advocate for the Petitioner / Applicant.

**For the Respondent :**

None Present.

*Per: M. K. Shrawat, Member (J)*

**ORDER**

1. The Petitioner/Applicant viz. 'Mr. Harshad Vandradas Vora' (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 06.03.2018 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as, 'M/s. Fab Auto Parts Private Limited' (hereinafter as **Debtor**) having registered address at, J – 150, MIDC, Bhosari, Pune, Maharashtra – 411026.



3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated to as ₹ 26,21,868/- which includes the Principal amount of ₹ 10,47,016/- plus interest thereon of ₹ 15,74,852/- at the rate of 30 % p.a.

**Background of Case :**

4. Operational Creditor is a sole proprietor of the M/s. Utakrsh Steel Corporation which is engaged in the business of supply of HR Steel Coils.
5. During the period of 14.02.2013 to 23.02.2013 the Operational Creditor had supplied Steel Coils to the Debtor as per his requirement. Consequently the Operational Creditor has raised Invoices time to time upon the Debtor for the supply.
6. The Debtor had made the part-payment towards these Invoices, however, thereafter has failed to make the further payment.
7. As the payment was not forthcoming, feeling aggrieved, the Operational Creditor has issued a Demand Notice U/s. 8 of the Code upon the Debtor and thereafter has filed this Petition / Application praying for the commencement of the CIRP over the Debtor.

**Submissions by the Operational Creditor :**

8. The Learned Advocate for the Operational Creditor has submitted that on the request by the Debtor the Operational Creditor has supplied Steel Coils to the Debtor and pursuant to the supply of goods had raised three Invoices bearing nos. 001316 dated 14.02.2013, 001321 dated 15.02.2013 and 001351 dated 23.02.2013. All these Invoices collectively for an amount of ₹ 13,67,016/-.
9. It is further stated that all the above Invoices had been acknowledged by the Debtor and pursuant to the same the Debtor had made the part-payment of ₹ 3,20,000/- which is evident from the Ledger Account of the Debtor maintained by the Operational Creditor. Copy of the Ledger Account is annexed with the Petition / Application.
10. It is further stated that from 01.04.2015 to 25.08.2016 the Debtor had made the payments to the Operational Creditor via Bank Transfer. Thereafter the Debtor had not paid the outstanding amount to the Operational Creditor.
11. It is further stated that since the Debtor was not making the payment the Operational Creditor has time and again requested the Debtor for making the payment but the Debtor has failed to make the same.



12. Further that, despite number of reminders as the Debtor was not making the payment the Operational Creditor has issued a Demand Notice U/s. 8 of the Code on 27.10.2017. The said notice was sent through the RPAD of the India Post and the same has been received by the Debtor on the same day as evident from the copy of the RPAD slip which is annexed with the Petition / Application.
13. It is further stated that the Debtor had neither replied to the Notice nor made the further payment hence, it can be carved out that the liability is accepted by the Debtor and therefore the Operational Creditor has filed this Petition / Application U/s. 9 of the Code.
14. It is further stated that, after filing of the Petition / Application the Operational Creditor has issued a notice for hearing to the Debtor Company and also to two directors of the Debtor Company viz. Mr. Deepak Phatangare and Ms. Pratibha Phatangare. It is also stated that the notices were duly received by the Debtor Company and the Directors, but no one has appeared before this Bench. To this effect an **Affidavit of Service** along with the tracking record of India Speed Post is placed on record.
15. It is finally argued that since the Debtor is not willing to defend his case and part-payment was made this Petition / Application may be Admitted for the commencement of the CIRP.

### **Findings :**

16. I have gone through the submissions of the Operational Creditor and also perused the pleadings on record. After perusal of the pleadings it came to my notice that, the Operational Creditor has duly supplied the goods to the Debtor and also raised valid Invoices for the same.
17. It is also noticed that the Debtor has acknowledged the said Invoices and also made part-payments towards same.
18. It is further noticed that despite receipt of the Demand Notice the Debtor has not replied to the same hence, a conclusion can be drawn that the Debtor does not want to contest the claim of the Operational Creditor and also does not want to 'Dispute' the same.
19. It is also noticed that despite receipt of the notice of hearing the Debtor does not want to represent his case before this Bench. Number of opportunities were granted since the first date of hearing i.e. 23.04.2018 but the Respondent / Debtor preferred not to



appear before this Bench hence there is no option but to proceed with the matter on merits of the case.

20. Considering the above facts and submissions, hereby I record my satisfaction that, the Operational Creditor has duly supplied the goods to the Debtor and raised valid invoices for the same but the Debtor has failed to make the payment. Hence, the Debt demanded is in the nature of "Operational Debt" as defined under section 5 (21) of the Definitions under The Code. And there is a "Default" as defined under section 3 (12) of The Code on the part of the Corporate Debtor.
21. As a consequence, as the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/Applicant, it is my conscientious view that this Petition deserves '**Admission**'.
22. The Operational Creditor has proposed the name of Insolvency Professional. Consequently this Bench hereby appoints **Mr. Uday Shreeram Sakrikar**, having R/at, **303, Rahul Vihar, Lane No. 8, Dahanukar Colony, Kothrud, Pune, Maharashtra – 411038**, and having Registration No. as **IBBI/IPA-001/IP-P01230/2018-19/11927** is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
23. Having admitted the Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
24. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
25. The IRP so appointed shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report



within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.

26. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of receipt of certified copy of this Order.

**Dated : 20.08.2018**

SD/-  
**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

Avinash