

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB- 1281/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:

B.D. CONSTRUCTION CO.

...Applicant/ Operational Creditor

VERSUS

M/S STRIDE AUTOPARTS LIMITED

...Respondent/Corporate Debtor

Pronounced on: 08.01.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

For the Applicant : Mr. Prateek Gupta, Adv.

For the Respondent :

MEMO OF PARTIES

B.D. CONSTRUCTION CO.

Through its proprietor

Mr. Ram Bheer Singh

6/107, UIT Colony,

Bhiwadi- 301019, District Alwar,

Rajasthan

...Applicant/Operational Creditor

VERSUS

STRIDE AUTOPARTS LIMITED

Registered Office at:

F-16, Treveni Commercial Complex

Sheikh Sarai- I,

New Delhi- 110017

...Respondent/Corporate Debtor

ORDER

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. Ram Bheer Singh, as the proprietor of the Operational Creditor (for brevity

‘Applicant’) with a prayer to initiate the Corporate Insolvency process against M/s Stride Autoparts Limited (for brevity ‘The Company’).

2. The principal place of business of applicant is at 6/107, UIT Colony, Bhiwadi- 301019, District Alwar, Rajasthan.
3. The Respondent is the company incorporated on 26.11.2010 under the provisions of Companies Act, 1956 with CIN No. U34300DL2010PLC210810.
4. The company is having its registered office at F-16, Treveni Commercial Complex, Sheikh Sarai- I, New Delhi- 110017.
5. The Authorized Share Capital of the company is Rs. 4,70,00,000/- and Paid Up Share Capital of the company is Rs. 4,68,38,220/- as per Master Data of the company.
6. It is the case of the Applicant that Respondent company entered into a business arrangement with applicant company wherein the respondent company issued various work orders for fabrication and erection of pipes, chimney, cyclone, insulation material (with low resin bonded wool), SS pipeline, structure steel, ducting MS Chemical Tanks and construction of GSS platform, inclusive of one coat of

red oxide paint and two coats of enamel paint with all tools and trackle at the site of the respondent company situated at Bhiwadi. Further, the work orders also envisaged fixing of fittings like flanges, tee, reducer, valve, NRV etc.

7. The applicant further submitted that they carried out the aforesaid work of fabrication and erection of various items as per specification and performed all its obligations under the said work orders and has accordingly raised various invoices from time to time against the work of fabrication and erection for amount of Rs. 59,24,236/-.
8. Out of the said invoices a sum of Rs. 33,04,645/- is outstanding till date. On failure of the Corporate debtor to pay the outstanding dues of the Operational creditor, a legal notice dated 07.07.2017 was issued to the corporate debtor demanding the payment of the unpaid operational debt, however the Corporate debtor failed to make any payment of the Operational Debt.
9. The applicant has stated that Principal amount of debt due and payable by the Corporate Debtor to the applicant is

Rs. 33,04,645/- along with the interest at 18% till the payment.

10. The Applicant from time to time requested the Company to clear the outstanding amount, despite various reminders the respondent company has failed to honour its commitment and failed to pay the unpaid debt of the Applicant. Since no payment was forthcoming hence a notice under Section 8 of the Insolvency and Bankruptcy Code dated 31.05.2018 was issued on the Company.
11. In response to the demand notice sent under Section 8 of the Code, the Corporate Debtor vide its reply dated 12.06.2018 has duly admitted its liability towards the Operational Creditor. The Corporate Debtor has time and again cited its financial difficulty in arranging the funds to make the payment.
12. The Corporate debtor has appeared on 28.09.2018 and had made a statement as recorded in the order that they will negotiate the settlement but after that consistently on three dates of hearing i.e. 15.10.2018, 25.10.2018 and 26.11. 2018, the Corporate debtor neither came forward

for any reconciliation nor did the Corporate debtor made any payment to the Operational Creditor.

13. The applicant has attached the copy of the Bank statement from the period 01.04.2015 to 12.09.2018 stating that no credit has been received from M/s Stride Autoparts Limited.
14. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
15. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
16. As a consequence of the above facts and record, application is 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 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.

(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.

In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.

17. The Operational Creditor has proposed the name of an Interim Resolution Professional. In view of the same, this Bench appoints Mr. Devendra Singh having registration no. IBBI/IPA-002/IP-N00001/2016-17/10001 having email address dev_singh2006@yahoo.com as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
18. The IRP is directed to file his report within the statutory period as required under Insolvency and Bankruptcy Code, 2016
19. A copy of the order shall be communicated to the Applicant as well as to the Respondent Company above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

In addition, a copy of the order shall also be forwarded to IBBI for its records.

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)