

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-294 (PB)/2017

IN THE MATTER OF:

BMI Minerals Pvt. Ltd.

... Applicant/Petitioner

Vs

Fenace Auto Limited

... Respondent

Order under Section 9 of Insolvency & Bankruptcy Code, 2016

Order delivered on 04.12.2017

Coram:

CHIEF JUSTICE (Retd.) M.M.KUMAR

Hon'ble President

Ms. Deepa Krishan

Hon'ble Member (T)

For the Applicant :

ORDER

On the last date of hearing learned counsel for the Corporate Debtor had represented that proceedings in C.P. (IB)-364(ND)/2017 were pending against the Corporate Debtor and consequently we passed the following order:-

“The instant petition filed under Section 9 prays for triggering of insolvency process against the Corporate Debtor. At the outset, it is appropriate to mention that the Corporate Debtor is already facing the proceeding for initiation insolvency resolution process in (IB) 364(ND)/2017. The aforesaid position has been accepted by the Counsel for the Corporate Debtor. The matter is now posted for 08.11.2017.

Despite the time given, no reply has been filed. Let reply be now filed within two weeks with a copy in advance to the Counsel opposite. The filing of reply shall be subject to payment of Rs. 5,000/- as cost. Rejoinder, if any, be filed within a week thereafter.

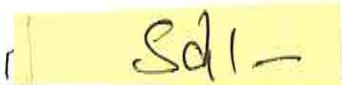
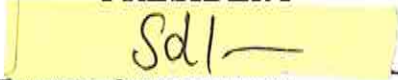
List on 4th December, 2017.”

When the matter came up for hearing in the forenoon session learned Practicing Company Secretary showed his ignorance with regard to initiation of

any Insolvency Resolution Process against the Corporate Debtor. On enquiries made from the registry it has now been revealed in the afternoon session that in C.P. (IB) 364(ND)/2017 the Corporate Insolvency Resolution Process has been triggered vide order dated 15.11.2017. Once the aforesaid position is prevailing then there is no escape except to direct the petitioner to file his claim before the Interim Resolution Professional which may be appointed by the Insolvency and Bankruptcy Board of India as per the direction issued in para 21 and 22 of that order.

In view of the aforesaid factual position the petition is disposed of with the direction that the petitioner may file its claim before the Interim Resolution Professional who is likely to be nominated by the Insolvency and Bankruptcy Board of India and which is to be finalized by the Adjudicating Authority-NCLT.

Consequently, the petition is disposed of with aforesaid observations.


(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT

(DEEPA KRISHAN)
MEMBER(TECHNICAL)

04.12.2017
VINEET