

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TCP No. 939/IBC/NCLT/MB/MAH/2017

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
M/s. Idemitsu Lube India Pvt. Ltd.
..... Operational Creditor
V.
M/s. Omsai Auto World Pvt. Ltd.
..... Corporate Debtor

Order delivered on: 02.01.2018

Coram :

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

For the Petitioner :

1. Adv. Kapil Shetye, Advocate for Petitioner.
2. Adv. Nishtha Sikroria, Advocate for Petitioner.

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. This is a transferred Petition from the Hon'ble High Court. The Petitioner had earlier moved before the Hon'ble High Court for "Winding Up" under the old provisions Section 433, 434 of Companies Act 1956. On transfer the creditor has filed this Petition on 10th July, 2017 on Form no. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Financial Creditor.
2. In the requisite Form, under the Head "Particulars of Operational Debt" the total Principal amount in default is stated to be Rs. 1,36,154.25/- (Rupees One Lakh Thirty-Six Thousand One Hundred Fifty-Four and Twenty-Five Paise Only).
3. Further under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as M/s. Omsai Auto World Private Limited having Registered office at, Jyoti Plazas, V Road, Kandivli (West), Mumbai – 400067, Maharashtra.
4. Learned Counsel of the Petitioner has described the "Nature of the Debt" that, the Corporate creditor is in the business of manufacturing and supplying lubricants namely Genuine Oil to various authorized dealers of automobiles and two wheelers in India and had set up its first plant in India for manufacturing of the said lubricants.
5. Further it is submitted that, the Operational Creditor has raised 1 Invoice, payment of which is Outstanding, which is attached to the Petition.
6. The operational creditor issued sales invoice in favour of the corporate debtor aggregating to Rs. 2,26,154.25/ (Rupees One Lakh Twenty-Six Thousand One

Bhaskara Pantula Mohan:

Hundred Fifty-Four and Twenty-Five Paise only) through 1 invoice dated 20th March, 2014. The payment of Rs. 90,000/- (Rs. Ninety Thousands only) was received by the Operational Creditor from the Corporate Debtor till 28th August, 2016.

7. Hence, on account of non-payment of balance amount i.e. Rs. 1,36,154.25/- (Rupees One Lakh Thirty-Six Thousand One Hundred Fifty-Four and Twenty-Five Paise Only), the Petitioner has issued a Demand Notice under section 8 on prescribed Form No. 3 on 12th June, 2017 by post to the Registered Address, Corporate Office Address of Corporate Debtor, which was returned on 16th June, 2017 with the remark 'Left'. Additionally, the Ld, representative of the operational creditor has served the Demand notice through email also dated 8th July, 2017. However, the same also bounced back mentioning the reason as "because the address couldn't be found". The acknowledgement to this effect, is attached to the Application/Petition.
8. It is submitted that, the Corporate Debtor has not raised any dispute/objection to the Demand Notice of the Operational Creditor till the filing of this Application under I&B Code, 2016.
9. The statement of bank account of the Operational Creditor stating that, in the account of the Operational Creditor no payment has been received after 23rd August, 2016 by the Corporate Debtor till date.
10. **FINDINGS :-** Considering the above facts, it is established by the Operational Creditor that the nature of Debt is an "Operational Debt" as defined under section 5(21) of the Definitions under The Code. It has also been established that admittedly there was a "Default" as defined under section 3(12) of The Code on the part of the Corporate Debtor. On the basis of the evidences on record the Petitioner has established that the advance was given against the goods to be supplied and invoices were raised to claim the amount but there was non-payment of Debt on the part of the Corporate Debtor.
11. We have perused the notice sent under Section 8 (2) of the Insolvency and Bankruptcy Code, 2016 and if the Respondent wanted to place on record evidence of 'dispute' then he could have raised the objection within 10 days as prescribed under section 8(2) of The Code which had also lapsed now.
12. As a consequence, after the expiry of the said period as prescribed under The Code and keeping admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner. We are of the conscientious view that this Petition deserves '**Admission**'.
13. The Operational Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Operational Creditor, Mr. Sandeep Goel, having address at, 410, Pratap Bhawan 5 Bahadur Shah Zafar Marg, New Delhi, Delhi, 110002 having Registration no. IBBI/IPA-003/IP-N00073/2017-18/10583 is appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
14. In Form No. 2 dated 4th September, 2017, the Insolvency Resolution Professional has conveyed his willingness to accept his appointment in the above case. He has also given the necessary certificates/affirmation from his side to this Tribunal in this regard.



15. 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 order 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.
16. 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.
17. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench.
18. The IRP so appointed shall also comply the other provisions of the Code including section 15 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.
19. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

Sd/-

Bhaskara Pantula Mohan
Member (J)

Sd/-

M. K. Shrawat
Member (J)

Dated : 2nd January, 2018