

**In the National Company Law Tribunal
Single Bench, Chennai**

CP/546/(IB)/CB/2017

Under Section 9 of the IB Code, 2016

In the matter of

Meritor HVS (India) Limited
V/s
Visuwam Auto Spares Private Limited

Order delivered on: 07.08.2017

For the Petitioner/OC: Kannan P.T., Advocate

For the Respondent/CD: R. Vidhya Shankar, Advocate

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under Consideration is a Company Petition filed by Meritor HVS (India) Limited (in short, '**Petitioner/Operational Creditor**') against Visuwam Auto Spares Private Limited (in short, '**Respondent/Corporate Debtor**') under section 9 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.

3. Shri Kannan P.T., the learned counsel appearing on behalf of the petitioner/OC submitted that the petitioner is engaged in automobiles business including axles and brakes parts. In ordinary course of business, the Respondent/CD approached the petitioner and expressed its requirements for various parts, spares etc. Accordingly, the petitioner supplied the said products from time to time under various invoices. In respect of the present issue, the respondent had placed various orders with petitioner between January 2015 and December 2015, which the petitioner processed and delivered to the respondent and the respondent received and acknowledged the goods without raising any disputes with regard to rates, quality and quantity of the goods. It is also submitted that the Invoices were due and payable within 45 days from the date of each invoice. However, the respondent failed to make payments within the due date. It is also submitted that several cheques issued by the respondent towards part payment of the amount dues were dishonoured. Therefore, as on the date of filing petition, the Petitioner/OC is entitled to recover a sum of Rs. 27,68,937/- together with the interest @ 18% per annum from the respondent.

4. It is further submitted that the petitioner, after making several requests for settling the dues with the respondent and having waited for a long period of time for his legitimate dues, sent a Demand Notice dated 19.04.2017 as per the provisions under section 8 of the IB Code 2016 r/w Rule 5 of the IB Rules 2016 calling upon the respondent to make the payment of the outstanding due of Rs. 27,68,937/- together with the interest @ 18% per annum and thus claimed to be an Operational Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.
5. Shri R. Vidhya Shankar, the learned counsel caused appearance on behalf of the Respondent Company/CD and submitted that the Company is not running anymore and he has no representation to make in response to the claim made in the instant petition, therefore, there is no resistance from the respondent side either by way of filing a counter or oral submissions.
6. The Petitioner has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016.
7. After hearing submissions of the counsel for the petitioner and respondent and having perused the record, this Adjudicating

authority is satisfied that the petitioner could make out his case by establishing that this Corporate Debtor has defaulted the payment dues on various occasion to this petitioner/OC. In the circumstances, I am inclined to admit the instant application.

8. Therefore, the instant petition is admitted and I order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

9. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit all of the following, namely :

(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 Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

10. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

11. It is pertinent to mention herein that the Petitioner has not proposed the name of an IRP and prayed before the Adjudicating Authority to make a reference to the Insolvency and Bankruptcy Board of India (IBBI) for recommending the name of an IRP. Therefore, the Registry is directed to make a reference to IBBI for recommending the name of an IRP.

12. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.



K. ANANTHA PADMANABHA SWAMY
Member (J)

RLS