

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

CP/640/(IB)/CB/2017

Under Section 9 of the IB Code, 2016

In the matter of

M/s. Autocop (India) Private Limited

V/s

M/s. Digital Security Solutions Private Limited

Order delivered on: 28.12.2017

Coram:

K. Anantha Padmanabha Swamy, Member (Judicial)

S. Vijayaraghavan, Member (Technical)

For the Petitioner/OC: *Shri. Monish K. Vig, Advocate*

For the Respondent/CD: *Ex-Parte*

ORDER

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

1. Under Consideration is a Company Petition filed by M/s. Autocop India Private Limited (in short, '**Petitioner/Operational Creditor**') against Digital Security Solutions 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. The Petitioner Company was incorporated under the provisions of the Companies Act, 1956 and is engaged in manufacturing, marketing and supplying the facility Security Solution Products, Electronic Car Security System & Car Infotainment products, batteries etc. whereas the Respondent is engaged in the business of Digital Security Solutions etc.
4. Shri Monish K. Vig, the learned counsel appearing on behalf of the Petitioner/OC submitted that the Respondent/CD approached and negotiated and expressed its requirements for supply of Facility Security products and accordingly, the Petitioner supplied the said products in terms of the negotiations from time to time through specified invoice follow under:

Sl.No	Invoice/ Date	Amount (Rs)	Amount Received (Rs)	Balance Amount (Rs)
1	SS502498 10.02.2016	3,57,117	3,10,290	46,827
2	SS5033059 31.03.2016	1,03,173	Nil	1,03,173
Total Amount due				1,50,000

It is further submitted that the aforesaid supplied material under the referred invoices is duly received and also acknowledged by the Respondent. As such, there is no dispute with regard to supplied quality, quantity, rates and of nature of business. The goods were delivered on Credit basis against specific invoices, bill etc. given the nature of the business and as a result the petitioner has always maintained a running account for the respondent.

5. It is further submitted that the respondents defaulted in agreed payment as per invoice within 30 days. The respondents committed breach in agreed terms under the supply contract. Therefore respondent is also liable to pay the interest at the agreed rates under the supply contract @ 24% p.a on delayed and non-payments. The petitioner has calculated the interest on delayed payments at 24% p.a on the aforesaid due amount up to 20.07.2017 which comes to Rs. 44,639. However, there was a part payment of Rs. 3,10,290 by the respondent. Thereafter on persuasion the respondent issued a cheque for Rs. 1,50,000 on 05.08.2016 drawn on City Union Bank Limited, in discharge of the part liability under the supply contract. The said cheque was returned unpaid by the banker of Respondent with a remark "Fund Insufficient". It is further

submitted that the petitioner had issued statutory demand notice dated 06.10.2016 under the provisions of sections 433 and 434 of the Companies Act, 1956 and which is duly received and acknowledged by the Respondent and but has failed to pay the debt within stipulated period of time.

6. 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 19.09.2017 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. 1,94,636/- (Principal Amount of Rs. 1,50,000/- along with interest of Rs. 44,636/- as per agreed rate of interest at 24% p.a) and 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.
7. Before proceeding with the matter, it is necessary to mention herein that the Respondent was set ex-parte vide order dated 04.12.2017 due to non-appearance on several occasions. The Respondent neither gave a reply or filed any counter nor caused appearance before this Adjudicating Authority in spite

of several notices. The petitioner has also placed on record proof of sending notices and e-mail communication. The Applicant/OC has filed an affidavit and bank statement under section 9(3)(b) and 9(3)(c) of I & B Code. The Petitioner has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process.

8. After hearing submissions of the counsel for the petitioner and having perused the record, this Adjudicating authority is satisfied that the petitioner has clearly made out his case by establishing that the Corporate Debtor has defaulted the payment. Also, the petitioner has proved by placing overwhelming evidence viz. Invoices, Demand Notice, financial transactions, dishonoured cheques and Bank statements to establish that default has occurred which the Corporate Debtor was responsible to pay. Therefore, we are of the opinion that the petitioner has established clearly that the amount in default committed by the corporate debtor is genuine and is supported by the documentary evidence placed before this Adjudicating authority. In the circumstances, having satisfied with the submissions put forth by the learned counsel for the petitioner, we hereby admit the instant petition.

9. The instant petition is admitted and we 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.

10. We appoint Shri. S. Rajagopal as Interim Resolution Professional (**IRP**) proposed by the Operational Creditor. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

11. We 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. We 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.

12. 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.


13. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his

functions under Section 20 of the I&B Code, 2016.

Accordingly, the application is admitted.

14. The IRP is further directed to protect and preserve the value of the property of the Corporate Debtor as a going concern as a part of its obligation imposed under section 20 of the IB Code 2016 and perform all his duties strictly in accordance with the provisions of the IB Code 2016.
15. The Petitioner/OC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
16. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
17. The address details of the IRP are as follows: -

Shri. S.Rajagopal
Regn. No: (IBBI/IPA-002/IP-N00082/2017-2018/10223)
11/108, 4th Street,
Karpagam Avenue,
R.A Puram, Chennai-600028
E-Mail: Infonet.irp@gmail.com
Mobile No.9444053214


(S. Vijayaraghavan)
Member (Technical)

TJS


(K. Anantha Padmanabha Swamy)
Member (Judicial)