

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 503/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Ashok Leyland Limited

[CIN: L34101TN1948PLC000105]

...Operational Creditor/Applicant

V/s

Windals Auto Private Limited

[CIN: U50101MH1990PTC056302]

...Corporate Debtor/Respondent

Order Dated: **28.04.2023**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Shreyas Shrivastava i/b
Shrivatsa Legal, Advocate.

For the Respondent(s) : Ms. Prachi Johari a/w Mr. Aarsh
Thakkar, Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application being C.P. (IB) No. 503/MB/C-IV/2021 filed on 28.02.2021 by Ashok Leyland Limited, the Operational

Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Windals Auto Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Operational Creditor has filed Letter of Authorisation dated 26.02.2020 in support of authorization in favour of signatory of this Application authorising him to file the present company application on behalf of the Operational Creditor.

3.1 The total amount claimed by the Operational Creditor in the Part 4 of the Company Petition is Rs. 11,43,30,069/- consisting of Principal Amount of Rs. 7,77,23,706/-, alongwith interest of Rs.3,66,06,363/- as on 20.01.2020. The first date of default as mentioned in the Part IV of the Application is 10.03.2017 and date of default in relation to last invoice raised thereafter is 21.10.2017. The total amount in default occurring from June 2017 onwards aggregate to more than one crore rupees.

3.2 The Operational Creditor, Ashok Leyland Ltd., is engaged inter alia in the business of manufacture of trucks, buses, light vehicles, power and defence solutions. The Corporate Debtor is also a company duly incorporated under the Companies Act, 2013 and is engaged in` metal fabrication industry. The Operational Creditor initially issued a Letter of Intent dated 25.01.2013 to enter into an arrangement with the Corporate Debtor for supply of Tipper bodies and other requirements for manufacture of BOSS Load Body (formerly NGICV Lead Body) to the Corporate Debtor and as a practice, the Operational Creditor would acquire steel from various steel companies such as JSW and Essar Steel, and provide the same

to their Fabricator, namely the Corporate Debtor, on 30 days credit, who would then utilise the steel to fabricate BOSS load bodies for the Operational Creditor.

- 3.3 Under the LOI, the Operational Creditor shared the projections for the manufacture the BOSS Load Body for two years between 2013-2015 with the Corporate Debtor who would then fabricate it and sell it to the Operational Creditor.
- 3.4 The Corporate Debtor on 02.09.2015 sent an email to the Operational Creditor requesting an advance of Rs. 3 crores for meeting cash flow deficit.
- 3.5 The business transactions between the parties continued based on the purchase orders for the steel to be provided by the Operational Creditor to the Corporate Debtor. The Corporate Debtor on 11.02.2016 sent an email to the Operational Creditor regarding shutting down of larger factory and opening smaller workshop to focus on tipper bodies. Subsequently, vide email dated 19.02.2016, the Corporate Debtor acknowledged its debt and proposed to reduce the outstanding amounts by further manufacturing tipper bodies for the Operational Creditor and on 12.05.2017 another email was sent by it to the Operational Creditor outlining the plan to carry out the same.
- 3.6 Accordingly, in the month of June 2017, the parties entered into an Agreement dated 27.06.2017 for the supply of Tipper bodies for the period of one year from its smaller facility. Under this arrangement too, the steel was supplied by the Operational Creditor which was separately billed by it. Further, the Operational Creditor was allowed to deduct 45% from the

amounts payable to Corporate Debtor (for the Tipper Bodies) towards the amounts outstanding on account of steel supply. The Operational Creditor, realising the large amounts being outstanding, stopped the supply of steel in the month of August, 2017.

- 3.7 The Corporate Debtor, however, vide its email 10.08.2017 showed its inability to continue with the 45% deduction and sought the deduction to be done at 10%. The Operational Creditor responded to the Corporate Debtor vide its email dated 10.08.2017 whereby it clarified that the outstanding amount is to the extent of Rs. 8.39 Cr. In addition, the Operational Creditor realising the significance of the exposure due to the outstanding amounts, it sought a Corporate Guarantee dated 18.08.2017 from the Corporate Debtor. The Corporate Debtor vide such corporate guarantee agreed to repay the outstanding amount of Rs. 8.20 Cr. as on 17.08.2017.
- 3.8 The Corporate Debtor, vide email dated 02.09.2017 sought assistance of the Operational Creditor in achieving reduction in the outstanding amount by October 2018 and sought assistance towards recovery of the Corporate Debtor's operations. The Operational Creditor vide its email dated 02.09.2017 clarified its position and sought reduction of outstanding amount to nil by June 2018.
- 3.9 The aforesaid arrangement for the supply of Tipper Bodies continued until March 2018 until which point the Corporate Debtor had supplied 1761 Tipper Bodies to the Operational Creditor. This agreement was never renewed by the parties after the month of March 2018. However, seeing as the business

transactions with the Corporate Debtor terminated in March 2018, the Operational Creditor could not recover all its dues.

- 3.10 As on 24.09.2018, an amount of Rs. 7.73 crores was recoverable by the Operational Creditor from the Corporate Debtor. In the month of October 2018, the Corporate Debtor has issued a mail to the Operational Creditor dated 09.10.2018 whereby it has admitted an outstanding amount of Rs. 7.5 Crores.
- 3.11 In the course of various business transactions between the Applicant and the Corporate Debtor as demonstrated above, an outstanding amount of Rs 7.77,23,706/- arose due to non-payment of various invoices raised by the Applicant for the steel provided by the Applicant to the Corporate Debtor for fabrication between 2014 and 2018. The said debt first fell due on 10.03.2017, and thereafter multiple times in the course of time.
- 3.12 The said debt has been duly acknowledged by the Corporate Debtor vide email dated 16.08.2017 and they have provided a Corporate Guarantee 18.08.2017 for the amount due and payable by them.
- 3.13 The Operational Creditor issued a Demand Notice under section 8 of the Insolvency and Bankruptcy code dated 26.02.2020 to the Corporate Debtor seeking payment of outstanding debt. No reply has been received from the Corporate Debtor till filing of the present petition.

3. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.

3.1 On perusal of records, we found that the main CP was dismissed as infructuous by this Court on 25.08.2021 as the Corporate Debtor was admitted into CIRP in another Petition viz. CP(IB)-3221/MB/2019 (Order dated 02.08.2021) with a direction to file the claim with the IRP appointed in that matter. Subsequently, the Applicant filed Miscellaneous Application Number Rst.A.:06(MB)/2022 seeking restoration of the present petition in view of withdrawal of CIRP in CP(IB)-3221/MB/2019 under Section 12A of the Code. Accordingly, Rst.A.:06(MB)/2022 was allowed and CP (IB)/503(MB)/2021 was restored vide order of this Bench dated 08.07.2022. Thereafter, this matter was listed on 13.09.2022, 04.11.2022, and 05.01.2023, but none appeared for the Corporate Debtor . The Counsel for the Corporate Debtor appeared on next hearing i.e. 14.02.2023 and submitted that the settlement talks are going on and sought time to report settlement. On next date of hearing, i.e. 21.03.2023, no settlement was proposed. The Counsel for the Applicant apprises Bench that the Corporate Debtor should not be allowed further time on ground of settlement as the Corporate Debtor had settled with another Creditor and failed to honour the settlement. In view of this, this matter was Reserved for order.

4. On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant as the required threshold limit to file a petition u/s 9

of the Insolvency and Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount. The Corporate Debtor has not notified the existence of any dispute. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 9(5)(i) of the Insolvency and Bankruptcy Code, 2016.

5. The Applicant has not proposed the name of any Registered Insolvency Resolution Professional u/s 9 (4) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

ORDER

6. This Application being C.P. (IB) No. 503/NCLT/MB/C-IV/2021 filed under Section 9 of I&B Code, 2016, filed by Ashok Leyland Limited, Operational Creditor/ Applicant against Windals Auto Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 Operational 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench hereby appoints Mr. Jayanti Lal Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01792/2019-2020/12845], Email Id.- jljain.ip@gmail.com and Mobile No.- 9870201926; as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Operational Creditor shall deposit a sum of Rs. 5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing Public Notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
/LRA Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)