



NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

26. C.P.(IB)-2480(MB)/2018

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **11.04.2023**

NAME OF THE PARTIES: 3M India Ltd

V/s.

MPS Car Care & Services (P) Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Bhargav Kosuru, Mr. Aayu Saxena, Ms. Richa Bharti i/b. Indus Law,
counsel appearing for the Operational Creditor is present through virtual
hearing.

C.P.(IB)-2480(MB)/2018

Heard the argument of counsel appearing for the Operational Creditor and
the above company petition is **admitted**. Detail order would follow:

Sd/-
MADHU SINHA
Member (Technical)
//SKS//

Sd/-
H.V.SUBBA RAO
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 2480/IBC/MB/2018

*Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Under
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication
Authority) Rule 2016)*

In the matter of

3M India Limited

(CIN: L31300KA1987PLC013543)

Address : Concorde Block, UB City, No. 24,
Vittal Mallya Road, Bangalore – 560 001.

.....Operational Creditor

V/s.

MPS Car Care & Services Private Limited.

(CIN: U50404PN2008PTC132580)

Registered office at: Building No. 3, Flat No. 201, 202,
Empire Estate Old Mumbai, Pune Highway,
Chinchwad, Pune – 410 014.

.....Corporate Debtor

Order dated: 11.04.2023.

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

For the Petitioner: Mr. Bhargav Kosuru, Mr. Aayu Saxena,
Ms. Richa Bharti i/b. Indus Law, Advocate,

ORDER

1. This Company petition is filed by *3M India Limited* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *MPS Car Care & Services Private Limited* (hereinafter called "Corporate Debtor")



alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. **1,44,23,432.48/-** (Rupees One Crore Forty Four Lakhs Twenty Three Thousand Four Hundred and Thirty Two and Forty Eight Paise Only).
3. The Corporate Debtor has filed affidavit in reply Mr. Sachin Nasli, Authorized Signatory of MPS Car & Services (P) Limited in a routine manner opposing the admission of the above company petition.
4. Heard Mr. Bhargav Kosuru, counsel appearing for the Operational Creditor. None appeared for the Corporate Debtor despite specific direction given to the Corporate Debtor to appear and address their arguments today failing which the matter will be reserved for order treating the argument of Corporate Debtor as heard. The counsel appearing for the Operational Creditor invited the attention of this Tribunal to the reply filed by the Corporate Debtor particularly para 4 clearly in which the Corporate Debtor admitted the invoices and the default. The relevant portion is extracted here below for ready reference:

Para 4:- *At the further outset, I say and submit that there exists a dispute among the parties as the Operational Creditor has willfully failed and neglected to perform its obligations and discharge its liability of remitting the amounts outstanding towards VAT to the Department,*



despite repeated reminders in that regard being addressed by the Corporate Debtor. I say that the Corporate Debtor has always made prompt and timely payments to the Operational Creditor. It is only on account of the default on the part of the Operational Creditor that certain amounts payable on the invoices raised by the Operational Creditor were withheld by the Corporate Debtor. Additionally, it is pertinent to note that the Operational Creditor has conveniently not taken into account the fact that a sum of Rs. 21,00,000/- (Rupees Twenty-One Lakhs Only) was paid by the Corporate Debtor to the Operational Creditor despite the defaults committed by the Operational Creditor. It is therefore submitted that the Operational Creditor has sought to file the present Petition to mislead this Hon'ble Tribunal by suppressing material facts and attempting to cover up its own lacunae.

5. Counsel appearing for the Operational Creditor also invited the attention of this Tribunal to the Demand Notice dated 03.10.2017 got issued by the Operational Creditor for which no reply has been sent by the Corporate Debtor. After hearing the submissions and upon perusing material available on record this bench observe that the limited defense raised by the Corporate Debtor is that they could not make payment to the Operational Creditor due to incorrect TIN Number furnished by the Operational Creditor. It is also the further contention of the Corporate Debtor that the Operational Creditor has not paid the VAT to the department. Which are not legally valid defences in an application U/sec. 9 of the Code Non payment of VAT by Operational Creditor is an issue and jurisdiction of concerned tax department not of Corporate Debtor.



6. After hearing the submissions and upon perusing the record this bench thoroughly convinced that there is an “Operational debt” due and payable by the Corporate Debtor and the Corporate Debtor has committed “default” despite receiving Demand Notice. The invoices being of the year 2016, the above CP filed on 28.06.2018 is within limitation.
7. Counsel appearing for the Operational Creditor claims to have filed consent form of the proposed IRP before Court No. IV which is not available on record. Therefore, he has expressed no objection for appointing any IRP from the Panel furnished by IBBI.
8. Therefore, for the aforesaid reasons there are no valid grounds warranting the rejection of the above Company Petition as the “debt” and “default” are clearly established and the debt is also within limitation. Thus, the present Company Petition satisfies all the necessary requirements for admission and deserves to be admitted. Accordingly, the same is admitted by passing the following:-

ORDER

- a. The above Company Petition No. (IB) -2480(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. *MPS Car Care & Services Private Limited*.
- b. Since the Operational Creditor has not suggested the name of any Interim Resolution Professional (IRP) in the petition, this Bench is hereby appointing an IRP from the panel of RP's furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Sandeep D. Maheshwari** Email Id: (ayunish@yahoo.com) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00640/2017-



2018/11093 (Mobile No. 9320384156) as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses only and not towards fee till his fees is decided by COC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)