

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI (COURT NO. IV)**

**Company Petition No. IB-457/ND/2018**

(Under Section 9 read with section 8 and other applicable provisions  
of the Insolvency and Bankruptcy Code, 2016)

**IN THE MATTER OF:**

**M/s Ashtech Buildpro India Private Limited  
...Applicant/Operational Creditor**

**VERSUS**

**M/s Ambience Projects and Infrastructure Private Limited  
...Respondent/ Corporate Debtor**

**Judgment Pronounced on: 12.02.2019**

**CORAM:**

**DR. DEEPTI MUKESH  
MEMBER (Judicial)**

**For the Applicant:** Mr. Achin Goel, Advocate

**For the Respondent:** Mr. Upasna Chandrashekharan, Advocate

## **MEMO OF PARTIES**

**M/s Ashtech Buildpro India Private Limited**  
**Resident of** D-49 Mansarovar Park, Shahdara,  
New Delhi-110032

**...Applicant/Operational Creditor**

## **VERSUS**

**M/s Ambience Projeccts and Infrastructure Private Limited**  
**Registered office at:** L-4, Green park Extension,  
New Delhi-110016

**...Respondent/ Corporate Debtor**

## **JUDGEMENT**

1. The present application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with section 8 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 on behalf of M/s Ashtech Buildpro India Private Limited, (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Ambience

Projects and Infrastructure Private Limited (for brevity 'Corporate Debtor').

2. The Applicant is a company M/s Ashtech Buildpro India Private Limited, who had in turn authorized Mr. Harshit Kumar vide Board of Directors resolution dated 30.05.2017 to file present application for initiating CIRP under I & B Code. The applicant is having its registered office at D-49, Mansarovar Park, Shahdara, Delhi - 110032.
3. The Corporate Debtor is a private limited company, company limited by shares, incorporated under the provisions of Companies Act, 1956 on 05.10.2010 bearing CIN U70101DL2010PTC209128 as per master data.
4. The Authorised Share Capital of the Corporate Debtor is Rs.10,00,000/- and Paid Up Share Capital is Rs. 4,00,000/- as per Master Data of the company, and having its registered office at L-4, Green Park Extension, New Delhi-110016.
5. The Applicant has stated that during the course of business, M/s Ambience Projects & Infrasrtucture Private

Limited, the Corporate Debtor approached the applicant and purchased several trucks of AAC blocks from September, 2016 onwards. The operational creditor supplied the same from time to time as per the orders placed by the corporate debtor. Accordingly, the Operational Creditor raised various invoices total to the tune of Rs. 9,26,040/- out of which the Corporate debtor made the payments of Rs. 4,45,162/-. However, despite supplying such material/goods, the corporate debtor omitted to pay the total due amounts towards the invoices raised by operational creditor in this regard.

6. However, a total balance of Rs. 4,80,878/- still is due and recoverable from the Corporate Debtor along with the interest @ 18% p.a.
7. The Applicant raised its bill on time to time and placed it upon the corporate debtor. Despite of repeated reminders for the balance payment, the corporate debtor failed to make any such payment in this regard. Whenever the applicant demanded payment the Corporate Debtor

always denied it on the basis of excuses such as internal management approval, etc.

8. The Applicant has issued a demand notice dated 19.07.2017 under section 8 of the Insolvency and Bankruptcy Code, 2016 as per Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor to pay the unpaid operational debt within 10 (ten) days of receipt of the notice. Demand Notice has been sent to corporate debtor vide dated 22.07.2017 through Speed Post which was duly delivered on July 22, 2017. The Corporate Debtor has neither submitted a reply to the aforesaid notice till date nor made any payment towards the outstanding dues.
9. As on date, a total sum of Rs. 4,80,878 as principal amount and interest charged @ 18% p.a. from 3<sup>rd</sup> August, 2017 to till date is due from the Corporate Debtor.
10. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application which is

duly received by the Corporate Debtor as per the affidavit of service filed by the applicant.

11. The Applicant has filed an affidavit affirming that in respect of the amount claimed or any part thereof, the Applicant has not received nor had any person, on its behalf had received in any manner the amount due to them nor has received any notice of dispute raised by the corporate debtor under section 9(3)(b) of the IBC, 2016.
12. The Applicant has filed the copy of bank statement of Baroda Bank for the period 1<sup>st</sup> January 2017 to 17<sup>th</sup> January 2018, under section 9(3)(C) of the IBC, 2016.
13. The Corporate Debtor has filed a reply stating that the demand notice under section 8 of Insolvency and Bankruptcy Code, 2016 was not received by the corporate debtor either by hand or by registered post and the same was sent through e-mail, to the purchase department of the corporate debtor which dose not have the requisite expertise to comprehend the significance of demand notice.

14. The Applicant has filed a rejoinder by contending that the notice dated 19.07.2017 issued under section 8 of the code was served upon the corporate debtor on 24.07.2017 while the Corporate debtor failed to serve any reply to the same within a period of 10 days from the date of service. Track report of postal department in this regard is already annexed along with the main application filed by the operational creditor.
15. The registered office of the corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
16. The default occurred on 19.11.2016, hence the debt is not time barred and the application is filed within the period of limitation.
17. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, that the Section 8 demand notice under Insolvency And Bankruptcy Code, 2016 was duly received by the corporate debtor and that the default in payment of

the operational debt has occurred and is beyond doubt. In the light of above facts and records, the present application is admitted.

18. The Applicant has named the Interim Resolution Professional (IRP), to be appointed by the order of Tribunal, as Mr. Alok Kumar Agarwal having registration number IBBI/IPA-001/IP-P00059/2017-18/10137, (Email Id-alok@ascgroup.in, Mobile No. 9811155292) duly registered with Insolvency and Bankruptcy Board of India, as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate Debtor.
19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following:
  - 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 Financial 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 the possession of the corporate debtor.*

*However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:*

- (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*
- (3) The provisions of sub-section (1) shall not apply to—*

*a. such transaction as may be notified by the Central Government in consultation with any financial sector regulator.*

*b. a surety in contract of guarantee to a Corporate Debtor.*

20. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process, provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
21. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI

for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

**Sd/-**  
**(DR. DEEPTI MUKESH)**  
**MEMBER (JUDICIAL)**