

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT NO. IV)**

**Company Petition No. IB- 893/ND/2018**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

**IN THE MATTER OF:**

**M/S VINAYAK WIRE PRODUCTS PVT. LTD.**

**...Applicant/Operational Creditor**

**VERSUS**

**M/S ABIR INFRASTRUCTURE PVT. LTD.**

**...Respondent/ Corporate Debtor**

**Pronounced on: 30.01.2019**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

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

**For the Respondent: ---**

## **MEMO OF PARTIES**

### **M/S VINAYAK WIRE PRODUCTS PRIVATE LIMITED**

Having its registered office at:

4, Fairlie Place, 1<sup>st</sup> Floor, Room No. 128,  
Kolkata- 700001

**...Applicant/ Operational Creditor**

## **VERSUS**

### **M/S ABIR INFRASTRUCTURE PRIVATE LIMITED**

Having its registered office at:

SF-2, Bhikaji Cama Bhavan,  
Bhikaji Cama Place,  
New Delhi- 110066

**...Respondent/ Corporate Debtor**

## **ORDER**

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Vinayak Wire Products Private

Limited (for brevity 'Applicant') through its director Mr. Deepak Dhanania who is duly authorized vide Board resolution dated 28.03.2018 with a prayer to initiate the Corporate Insolvency process against M/s Abir Infrastructure Private Limited (for brevity 'The Company').

2. The Applicant, the Operational Creditor namely M/s Vinayak Wire Products Private Limited is a company incorporated on 11.04.2007 under the provisions of Companies Act, 1956 having CIN No. U31300WB2007PTC115107.
3. The company is having its registered office at 4, Fairlie Place, 1<sup>st</sup> Floor, Room no. 128, Kolkata- 700001.
4. The Respondent, the Corporate Debtor namely M/s Abir Infrastructure Private Limited is a company incorporated on 16.08.2005 under the provisions of Companies Act, 1956 with CIN No. U45201DL2005PTC139695.
5. The company is having its registered office at SF-2, Bhikaji Cama Bhavan, Bhikaji Cama Place, New Delhi- 110066.
6. The Authorised Share Capital of the respondent company is Rs. 85,00,00,000/- and Paid Up Share Capital of the

company is Rs. 80,05,00,000/- as per Master Data of the company.

7. It is the case of the applicant that applicant company had supplied GI WIRE 85 WG (hereinafter referred to as “goods”) to respondent company at its consignee address situated at Adit-2, Village Theng, P.O. Chungthan, North Sikkim, Sikkim- 734117 as per purchase order dated 26.09.2011 issued by respondent company to the applicant company.
8. It is further submitted by the applicant company that in lieu of the supply of material, the applicant had raised an invoice dated 05.11.2011 bearing no. VWP/2011/248 amounting to Rs. 9,56,377/- as per the goods supplied to which the respondent company had made part payment of Rs. 3,00,000/- on 16.11.2013 on various requests and reminders sent by the applicant. Thereafter there has been a due upon the Respondent company of Rs. 6,56,377/- and the same is evident from the Ledger account maintained by the applicant company as on 01.04.2013 to 31.03.2014 showing debit balance of Rs. 6,56,377/-.

9. In spite of various requests made and reminders sent to the Corporate Debtor by the Applicant by way of e-mails dated 22.06.2012, 04.10.2012, 27.08.2013, the Respondent Company has not paid the due debt. It is pertinent to note that DGM Mechanical of the respondent company vide email dated 04.06.2013 had admitted their liability and stated that the remaining payment will be released soon.
10. It is further submitted by the applicant that the applicant maintains running statement of accounts in respect of the material supplied to the corporate debtor during the normal and regular course of its business and as per the same an amount of Rs. 6,56,377/- is still outstanding and payable by the corporate debtor. The respondent had also issued an account confirmation in favor of the petitioner amounting to Rs. 6,56,377/- vide a letter dated 11.08.2016.
11. On failure of the Corporate debtor to pay the outstanding dues of the Operational creditor, a legal notice dated 04.10.2016 under Section 434 of the Companies Act, 1956 was issued to the corporate debtor demanding the

payment of the unpaid operational debt. After the expiry of the statutory period of 21 days, the operational creditor duly instituted a winding up application before Hon'ble High Court of Delhi under Section 433 (e), 434 (a) and 439 (1)(a) of Companies Act, 1956 against the corporate debtor on ground of inability to pay its debt.

12. Eventually the Companies Act, 1956 is amended and thereafter the operational creditor has issued a demand notice dated 24.03.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016.
13. The applicant has stated that total debt due and payable by the Corporate Debtor to the applicant is Rs. 12,56,937/- which includes a principal amount of Rs. 6,56,377/- and Rs. 2,32,989/- as interest for the period after the supply till 16 November 2013 and Rs. 3,67,571/- of the interest at the rate of 12% per annum on the outstanding dues from 16 November 2013 till March 2018.
14. Despite the demand notice sent under Section 8 of the Code, the Corporate Debtor has failed to pay the amount demanded nor has replied to the demand notice raising

any dispute, hence this application, seeking to unfold the process of CIRP.

15. This Tribunal is constrained to proceed with the matter exparte as per order dated 03.12.2018 in relation to the Corporate Debtor since Corporate Debtor has not appeared though Section 8 notice and the present application were duly served on the Corporate Debtor and proof of service is filed by the applicant. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.
16. The applicant has attached the copy of bank statement of ICICI Bank for the period of 01.11.2015 to 31.01.2018 in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
17. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
18. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the

operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. In addition, the Corporate Debtor has time and again accepted and admitted the operational debt vide its email dated 04.06.2013. Hence, the present application is admitted.

19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 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.

(4)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.

In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.

20. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoint Mr. Alok Kumar Agarwal having registration no. IBBI/IPA-001/IP-P00059/2017-2018/10137 and email address [alok@ascgroup.in](mailto:alok@ascgroup.in) as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, more

specifically in terms of Sections 15,17,18,20 and 21 of the Code.

21. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records.

Sd/-

**(DR. DEEPTI MUKESH)**

**MEMBER (JUDICIAL)**