

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB- 1263/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 ARVIND ENVISOL LTD.

...Applicant/Operational Creditor

VERSUS

M/S EARTH WATER LTD.

...Respondent/ Corporate Debtor

Pronounced on: 15.01.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

For the Applicant : Mr. Mangesh Krishna, Advocate

For the Respondent: ---

MEMO OF PARTIES

M/S ARVIND ENVISOL LIMITED

Having its registered office at:

Arvind Mills Premises,

Naroda Road, Naroda,

Ahmedabad – 380025

...Applicant/ Operational Creditor

VERSUS

M/S EARTH WATER LIMITED

(Formerly known as 'Fontus Water Private Ltd.')

Having its registered office at:

A-1/152, IGNOU Road,

New Delhi- 110068

...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 Arvind Envisol Ltd. (for brevity 'Applicant') through its authorized representative Mr.

Krunal Kshatriya who is duly authorized vide Board resolution dated 03.05.2017 with a prayer to initiate the Corporate Insolvency process against M/s Earth Water Limited (for brevity 'The Company').

2. The Applicant, the Operational Creditor namely M/s Arvind Envisol Limited is a company incorporated on 12.03.2008 under the provisions of Companies Act, 1956 having CIN No. U29100GJ2008PLC053226.
3. The company is having its registered office at Arvind Mills Premises, Naroda Road, Naroda, Ahmedabad- 380025.
4. The Respondent, the Corporate Debtor namely M/s Earth Water Limited is a company incorporated on 21.06.2001 under the provisions of Companies Act, 1956 with CIN No. U74899DL2001PLC111383.
5. The company is having its registered office at A-1/152 IGNOU Road, NEB SARAI, New Delhi- 110068.
6. The Authorised Share Capital of the respondent company is Rs. 6,70,20,000/- and Paid Up Share Capital of the company is Rs. 6,19,07,271/- as per Master Data of the company.

7. It is the case of the applicant that Respondent company had approached the applicant company for supply of 200 units of RO Membrane 8” of Hydronotics Make (Model: SWC 5 LD 8040), for the total amount of Rs. 74,23,500/-.
8. It is further submitted by the applicant company that respondent company placed an order dated 25.01.2017 vide Purchase order no. (PO No: FWPL/GUJ/PO/16-17/090) to the applicant company for supply of 200 units of RO Membrane 8” of Hydronotics Make (Model: SWC 5 LD 8040), for the total amount of Rs. 74,23,500/-. As per the said agreement, 200 units of RO Membrane 8” of Hydronotics Make were dispatched to the Corporate Debtor on 31.01.2017 by the Operational Creditor and an invoice dated 31.01.2017 was raised by the Operational Creditor against the Corporate debtor and also delivery note dated 01.02.2017 was received by the Corporate Debtor on delivery of the goods, which is annexed with the application.
9. It is further submitted by the applicant that initially mode of payment agreed between the parties was by way of a

Letter of Credit (LC). However, the Letter of Credit expired before the Operational Creditor received any payments due from the Corporate Debtor. The Corporate Debtor by email dated 31.03.2017 assured that the payments will be released in a timely manner.

10. It is further submitted by the applicant that aforesaid agreement was duly executed to the satisfaction of the Corporate Debtor, and part payments were made by the Corporate Debtor, details of which are as follows:

Date	Payment Received amount (in Rs.)	Balance amount unpaid (in Rs.)
07.10.2017	5,00,000/-	69,23,500/-
16.12.2017	5,00,000/-	64,23,500/-
05.03.2018	7,00,000/-	57,23,500/-

11. It is further stated that when applicant objected to the continuing default in making payments, the Corporate Debtor by an email dated 27.03.2018 proposed a payment schedule, which came to be accepted by the Operational Creditor and the acceptance was given by the email dated

28.03.2018, copy the said email conversation is annexed with the application.

12. The applicant has stated that as per the payment schedule proposed by the Corporate Debtor, the Operational Creditor was to receive a payment of Rs. 6,00,000/- on 30.04.2018. However, the Corporate Debtor defaulted in making this payment. Further, the Corporate Debtor defaulted in making another payment due on 15.05.2018 of Rs. 6,00,000/- to the Operational Creditor as per the payment schedule. The Corporate Debtor made a payment of Rs. 5,00,000/- on 19.05.2018. On 30.05.2018, the Corporate Debtor again defaulted in making payment in accordance with the payment schedule.
13. The applicant has stated that total debt due and payable by the Corporate Debtor to the applicant is Rs. 62,42,083/- inclusive of interest at the rate 18% per annum as calculated to be Rs. 10,18,583/-.
14. In spite of various requests made and reminders sent to the Corporate Debtor by the Applicant, the Company has neither paid nor responded to the applicant.

15. Since no payment was forthcoming hence a notice under Section 8 of the Insolvency and Bankruptcy Code was issued on 08.06.2018 to the Corporate Debtor.
16. 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.
17. This Tribunal is constrained to proceed with the matter exparte as per order dated 01.11.2018 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.
18. The applicant has attached the copy of bank certificate dated 28.08.2018 and also copy of bank statement of IndusInd Bank for the period of 07.06.2018 to 24.08.2018

in compliance with the requirement of Section 9(3)(c) of the IBC 2016.

19. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
20. 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 27.03.2018. Hence, the present application is admitted.
21. 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.

22. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoint Mr. Shakun Gupta having registration no. IBBI/IPA-001/IP-P01218/2018-2019/12090 having email address shakun.guptas@gmail.com and contact number is 9818370187 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.
23. 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)