

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

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

**Company Petition No. IB-1604/ND/2019**

**08.09.2020**

**IN THE MATTER OF:**

**ARINJAYA KUMAR JAIN**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s. ONKAR ELECTRONICS**

**PRIVATE LIMITED**

**...Respondent/ Corporate Debtor**

**CORAM:**

**Dr. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SHRI HEMANT KUMAR SARANGI**

**HON'BLE MEMBER (Technical)**

**CORRIGENDUM**

It has come to the notice of this bench, that in the admission order dated 27.07.2020, the name of the IRP in Para 18, due to typographical error was typed as Ms. Sunita Umesh. However, the same is hereby corrected and shall be read as Mr. Rajbir Singh Khatak. This order shall be read along with the admission order dated 27.07.2020 for all purposes.



**(HEMANT KUMAR SARANGI)**

**MEMBER (Technical)**



**(DR. DEEPTI MUKESH)**

**MEMBER (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**DELHI BENCH, COURT NO. IV**

**Company Petition No. IB-1604/ND/2019**

*(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:**

**ARINJAYA KUMAR JAIN**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s. ONKAR ELECTRONICS**

**PRIVATE LIMITED**

**...Respondent/ Corporate Debtor**

**Pronounced on: 27.07.2020**

**CORAM:**

**Dr. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SHRI HEMANT KUMAR SARANGI**

**HON'BLE MEMBER (Technical)**

For the Applicant : Mr. Naveen Shree Pandey, CS.

For the Respondent : Ex-parte

## **MEMO OF PARTIES**

### **ARINJAYA KUMAR JAIN**

Having its office at:

221, ST-14,

Balbir Nagar Extn.,

Delhi-110032

**...Applicant/Operational Creditor**

**VERSUS**

### **M/s. ONKAR ELECTRONICS PRIVATE LIMITED**

Having its registered office at:

House No. 1251, Ground Floor B-1,

Vasant Kunj, New Delhi- 110070

**...Respondent/Corporate Debtor**

**ORDER**

**PER- HEMANT KUMAR SARANGI, MEMBER (T)**

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

Mr. Arinjaya Kumar Jain (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP), against M/s. Onkar Electronics Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Applicant, the Operational Creditor, is an employee of the Corporate Debtor, having its residence at 221, ST-14, Balbir Nagar Extn, Delhi-110032.
3. The Respondent, the Corporate Debtor, namely M/s. Onkar Electronics Private Limited, is a company incorporated on 23.08.2013, under the provisions of Companies Act, 2013 with CIN No. U52100DL2013PTC259492, having its registered office at B-1/1251, Vasant Kunj, New Delhi-110070. The Authorised Share Capital of the respondent company is Rs.5,00,000/- and Paid Up Share Capital of the company is Rs.1,00,000/- as per Master Data of the company.
4. It is the case of the Operational Creditor, that he was appointed as Manager- Finance and has worked with Onkar Electronics Private Limited (hereinafter referred to as the 'CD'), he was eligible for a salary of Rs. 50,000/- per month,

along with other allowance and Perquisites. The copy of salary slip issued by CD has been attached along with the application.

5. It is further stated that, the CD has not made any payment for the salary to the Operational Creditor since September, 2018. The OC was continuously in employment till December, 2018 and thereafter the Company terminated the services of the Operational Creditor. Out of the total claim of the aforesaid amount, the CD has not paid any amount to the OC. The amount of Rs. 2,00,000/- is still pending to be paid from the side of CD. The same has been duly acknowledged by the CD.
6. In spite of various requests made and reminders sent by the Applicant, the Respondent did not reply. On failure to pay the outstanding dues by the Respondent, the Applicant sent a demand notice dated 05.06.2019, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Respondent asking them to make the entire payment of unpaid debt to the

tune of Rs. 2,00,000/- (Rupees Two Lakhs), within 10 days from receipt of the notice, failing which the Applicant shall initiate the Corporate Insolvency Resolution process against the CD.

7. The Applicant has annexed the tracking report, showing the delivery of the said demand notice at the registered office of the Corporate Debtor.
8. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has filed its reply to the said notice, in its reply the CD has acknowledged its liability towards the OC. As no payment was coming, hence this application, seeking to unfold the process of CIRP.
9. The Applicant has stated that total debt due and payable is Rs.2,00,000/- (Rupees Two Lakhs). The date on which the debt became due as claimed by the Applicant is September, 2018.
10. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The Applicant has also filed affidavit of service wherein he states that the CD has

been served through DTDC courier service on 05.07.2019 on the address of the Corporate Debtor. Further, the delivery of the order dated 10.07.2019, issued by this bench, has also been done through email on the email id of the Corporate Debtor on 28.08.2019. The relevant documents in this regard have been annexed along with the affidavit.

11. This Tribunal was constrained to proceed with the matter ex-parte against the Corporate Debtor as per order dated 22.11.2019, since the Corporate Debtor has not appeared, though Section 9 notice and the present application were duly served on the Respondent and proof of service is filed by the applicant.
12. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received. The Corporate Debtor has acknowledged its liability towards the operational creditor.
13. It is pertinent to note that the Applicant has placed on record all the invoices, stating that the Respondent itself had acknowledged the said invoices. Once the debt is shown as

due, it is for CD to prove that there are no outstanding dues to be paid to the Applicant.

14. The applicant has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.
15. The registered office of the respondent is situated in New Delhi and therefore this tribunal has jurisdiction to entertain and try this application.
16. In view of above, we are satisfied that the present application is complete and the Operational Creditor 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. Hence, the present application is admitted.
17. The Applicant had on 25.02.2020 mentioned and requested to file fresh Form 2, the same was allowed, and a time of 5 days was granted to the applicant for compliance. However, the same has not been done. In light of given circumstances this Bench appoints ~~Mr.~~ Rajbir Singh Khatak, as Interim

Resolution Professional, having registration no. IBBI/IPA-001/IP-P01351/2018-2019/12017, email address is rajbirsinghkhatak@gmail.com, as the IRP of the Respondent. 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 I & B Code.

18. We direct the Operational Creditor to deposit a sum of Rs.1 lacs with the Interim Resolution Professional Ms. Sunita Umesh to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

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) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

20. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

Handwritten signature of Hemant Kumar Sarangi

**(HEMANT KUMAR SARANGI)**  
**MEMBER (Technical)**

Handwritten signature of Dr. Deepti Mukesh

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

Handwritten mark or signature