

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-1205/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:**M/S AZAD IMPEX PRIVATE LIMITED****...Applicant/Operational Creditor****VERSUS****M/S SURYA MANUFACTURING PRIVATE LIMITED****...Respondent/ Corporate Debtor****Judgment Pronounced on:21.11.2019****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****SH. HEMANT KUMAR SARANGI****HON'BLE MEMBER (Technical)***IB-1205/ND/2019**M/S Azad Impex Private Limited vs M/S Surya Manufacturing Private Limited*

MEMO OF PARTIES

M/S AZAD IMPEX PRIVATE LIMITED

Through Its Authorized Signatory Mr. Sumit Goyal

Registered at: Khasra No. 73/19/2 & 22/1,

Village Mundka, New Delhi

...Applicant/ Operational Creditor

VERSUS

M/S SURYA MANUFACTURING PRIVATE LIMITED

Registered office at Room No. 204, 2 Floor, 2603/9

Gali No. 9, Chuna Mandi Paharganj, New Delhi

...Respondent/ Corporate Debtor

For the Applicant: Mr. Neeraj Kumar, Adv.

For the Respondent: -----

IB-1205/ND/2019

M/S Azad Impex Private Limited vs M/S Surya Manufacturing Private Limited

ORDER**Per-Dr. Deepti Mukesh, Member (J)**

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 Azad Impex Private Limited through its authorized signatory Mr. Sumit Goyal who has been authorized vide board resolution dated 05.03.2019 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/S Surya Manufacturing Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is engaged in the business of sawing and trading of timber wood since 2007. The Corporate Debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 04.12.1995 bearing CIN U74899DL1995PTC074305 and having Authorized Share Capital of Rs.35,00,00,000/- and Paid Up Share Capital is Rs. 34,75,83,200/- as per Master Data of the company. The

registered office of the corporate debtor is situated at Room No. 204, 2 Floor, 2603/9, Gali No. 9, Chuna Mandi Paharganj, New Delhi.

3. The Applicant submits that the corporate debtor approached the applicant in the year 2018 and the corporate debtor had placed various sales orders on the applicant and the applicant provided the goods (wooden logs) as per the orders issued by the corporate debtor to the full satisfaction of the corporate debtor. The applicant had raised invoices on the corporate debtor of which certain payments were made to the applicant. The applicant had issued various bills from Bill No. 234 to 279 from 18.08.2018 to 28.08.2018, totaling to Rs. 2,33,93,532/- (Rupees Two Crore Thirty-Three Lakh Ninety-Three Thousand Five Hundred and Thirty-Two Only) inclusive of GST in respect of the goods supplied by the applicant. The Applicant has further submitted that the corporate debtor was fully satisfied with the services of the applicant and did not raise any dispute in respect of the goods supplied by the applicant.
4. It is submitted that the Corporate Debtor had already made the payment of Rs 48,78,000/- (Rupees Forty-Eight Lakh Seventy-Eight Thousand Only) on 25.09.2018 and 27.09.2018 in respect of its liability towards

to the applicant and therefore an amount of Rs. 1,85,15,532 (Rupee One Crore Eighty-Five Lakh Fifteen Thousand Five Hundred and Thirty-Two Only) is still due and payable by the corporate debtor to the applicant.

5. It is submitted by the Applicant that the corporate debtor had made the last payment on 27.09.2018 and no demur or protest was ever raised by the corporate debtor in respect of the amount payable by the corporate debtor to the applicant. The applicant had requested and reminded the corporate debtor to make the remaining payment of Rs. 1,85,15,532 (Rupee One Crore Eighty-Five Lakh Fifteen Thousand Five Hundred and Thirty-Two Only) to the applicant in respect of Bills No. 234 to 279 all dated from 18.08.2018 to 28.08.2018, but the corporate debtor kept on delaying the payment on some pretext or the other.
6. The Applicant issued demand notice dated 11.03.2019 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 in Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor demanding total debt due of Rs 1,85,15,532/-. The said notice was sent by Speed Post at the registered address of the corporate debtor

as reflected in the master data, which was duly delivered on the corporate debtor as per the tracking report. The Corporate Debtor has neither raised any dispute to the aforesaid notice nor made any payment towards the outstanding dues.

7. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application through speed post at its registered address as reflected on the MCA website, which is duly delivered to the Corporate Debtor. The affidavit of service is filed along with tracking report sent at the registered address as per master data.
8. The Corporate Debtor has neither filed any reply nor appeared before the bench. The Applicants further states that none appeared on behalf of the corporate debtor nor any reply is filed and the corporate debtor was proceeded ex-parte on 02.09.2019.
9. The Corporate Debtor is liable to pay a sum of Rs. 1,85,15,532 (Rupee One Crore Eighty-Five Lakh Fifteen Thousand Five Hundred and Thirty-Two Only) along with further interest @18% per annum from the due date of payment, as detailed in Part IV of Form V.

“The Payment received from 25.09.2018 to 27.09.2018 is Rs. 48,78,000/- and the Balance Due is Rs. 1,85,15,532/- which is still due and payable by the corporate debtor.”

10. The Applicant has filed an affidavit under section 9(3)(b) affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.
11. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
12. The date of default as per Form V occurred on 27.09.2018, hence the debt is not time barred and the application is filed within the period of limitation.
13. 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, establishing the default in payment of the operational debt beyond doubt. The present application is admitted, in terms of section 9 (5) of IBC, 2016.
14. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal from the list furnished by Insolvency and

Bankruptcy Board of India, appoints Mr. Manohar Lal Vij, with registration number IBBI/IPA-001/IP-P-01480/2018-19/12269 (email –mlvij1956@gmail.com), 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 Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Respondent and the Operational Creditor herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

15. We direct the Operational Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Manohar Lal Vij to meet out the expense to perform the functions assigned to him 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 one week from the date of receipt of this order by the Operational Creditor. The amount

however 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.

16. 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 Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
17. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

(HEMANT KUMAR SARANGI)

MEMBER (T)

sd/-

(DR. DEEPTI MUKESH)

MEMBER (J)