

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
COMPANY PETITION NO. IB-2781/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. VORTEX IMPEX PVT. LTD.

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

EMD SCAFFOLDING INDIA PVT. LTD.

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 12.01.2022

 **CORAM:**

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)**

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MEMO OF PARTIES

M/S. VORTEX IMPEX PVT. LTD.
BC-215, 3rd Floor, Mongolpuri
Industrial Area, Phase II
New Delhi North West
DL 110034 IN

Corporate Office at:
UGF 15-16, Durga Tower RDC Raj Nagar
Ghaziabad-201002
Uttar Pradesh


...Applicant/Operational Creditor

Versus

EMD Scaffolding India Pvt. Ltd.
A-230/2, Shaheen Bagh, Gali No.7,
Jamia Nagar, Okhla
New Delhi South Delhi 110025 IN

Site Office at:
E-120 EPIP Site-V
Kasna, Greater Noida
District Gautam Budh Nagar -201306

...Respondent/ Corporate Debtor


FOR THE APPLICANT : Mr. Kisalaya Shukla , Adv.
FOR THE RESPONDENT :

ORDER

Per-Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by Mr. Kamal Jit Singh being the Director of M/S. Vortex Impex Pvt. Ltd. (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against EMD Scaffolding Pvt. Ltd. (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated on 27.10.2003 under the provision of Companies Act, 1956 having CIN:U51909DL2003PTC122830. The applicant has its registered office at BC-215, 3rd Floor, Mangolpuri Industrial Area Phase II New Delhi, Delhi 110034 UP. The applicant is engaged in the business of supplying galvanized stainless steel flexible hoses, scaffoldings fitting, stainless steel coils and stripes and tube mills tubes etc. to various business houses.
3. The Corporate Debtor is a private limited company incorporated on 21.08.2007, under the provisions of Companies Act, 1956 bearing CIN-

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U27310DL2007PTC157262 with its registered office at A-230/2, Shaheen Bagh, Gali No.7, Jamia Nagar, Okhla, New Delhi South Delhi DL 110025 IN. The corporate debtor is engaged in the business of manufacturing of scaffolding.

4. The applicant submits that they supplied galvanized steel tubes to the corporate debtor as per the terms and conditions agreed between the parties. Further it is submitted that the letter of Intent and related correspondence with respect to the LOI were exchanged between the parties. The LOI exchanged between the parties have been annexed.
5. The corporate debtor received goods worth Rs.41, 20,826/- from the applicant against two purchase orders dated 13.10.2017 and 25.11.2017 and invoices were raised. The applicant requested the corporate debtor to clear dues as per the agreed terms and conditions. However, the corporate debtor failed to make payments for the month of November and December 2017 despite repeated reminders.
6. The applicant further submits that the corporate debtor has acknowledged the invoices and defaulted in making payments which has never been disputed till date.

7. The applicant issued demand notice under Section 8 of the code on 16.05.2019 and 20.09.2019, calling upon the corporate debtor to pay the total amount of Rs.35,57,627/- including interest. The applicant submits that the said notices had been duly served upon at the registered office of the corporate debtor. The corporate debtor replied to the said notice on 05.10.2019 and raised dispute with regards the delay in delivery of goods and poor quality of material supplied.


The corporate debtor also stated that he made a payment of Rs17,20,275/- against the invoices raised by the applicant. Further submitted that the applicant has sent an erroneous demand notice dated 20.09.2019, demanding an outstanding amount of Rs.35,57,627/- .The corporate debtor has also admitted to pay a sum of Rs. 7,89,863/- against of purchase order no.810/17-18 dated 25.11.2017.

8. Therefore, the Applicant filed the present Application under section 9 of IBC, 2016 and served a copy of this application upon the corporate debtor which was duly delivered as per service affidavit through speed post and email. As per Form V, the total debt outstanding is 35,57,627/- which includes a principal amount of Rs.23,69,093/- along with interest of Rs.11,88,534/- charged on the respective purchase order till date of filling of application which is due and payable by the corporate debtor to the applicant.

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9. On perusal of records, it is seen that the corporate debtor was given several opportunities to file reply, which was not filed. Thereafter, the corporate debtor was proceeded ex-parte vide order dated 17.02.2020. Thereafter the corporate debtor orally requested time to file appropriate application for setting aside the ex-parte but no such application was filed inspite of giving liberty for the same. Hence the corporate debtor was again proceeded ex-parte vide order dated 23.12.2020.
10. That the applicant filed written submission and reiterated the contentions raised in the application.
11. Considering the documents on records and submissions of counsels, it is clearly established that there exists an operational debt which is due and payable by the corporate debtor. Further the operational debt has also been admitted by the corporate debtor vide reply dated 05.10.2019 and is reiterated as under:

 *"That my client is ready and willing to pay the amount leveled against the second purchase order vide P.O. No. 810/17-18 dated 25.11.2017 amounting to Rs.7,89,863/- but in the compelling circumstances as mentioned above, my client company has undergone paucity of funds and in furtherance of the same, the concerned officials of my client company has come to a conclusion*

that they would be complying with the payment of the said amount of Rs.7,89,863/- in five short term installments”

In the context, we are further strengthened by the law laid down by the Hon'ble Supreme Court in the matter of **“Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407”**, whereby it is held that:

“The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an installment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.”

(Emphasis supplied)

Further the corporate debtor in reply to the demand notice has tried to create a dispute of delayed services and substandard quality of product but have failed to support its contention and placed on record any document

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which exhibits the plausible dispute between the parties. The corporate debtor also failed to appear, contest the present case and file its defense to establish any pre-existing dispute of genuine nature. Hence was proceeded ex-parte.

12.The date of default is 03.11.2017 and the present application is filed on 23.10.2019. Hence the application is not time barred and filed within the period of limitation.

13.The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.


14.The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete. The applicant is entitled to claim its dues, establishing the default in payment of the operational debt. Hence, the application is admitted.

15.The Applicant has not proposed the name of IRP. Hence this bench appoints Mr. Krit Narayan Mishra having registration IBBI/IPA-001/IP-P0441/2017-18/10784 and email id kritmassociate@gmail.com, as an IRP

of the corporate debtor, 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. The IRP is directed to file the specific consent form in the prescribed format of Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been made.

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. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Krit Narayan Mishra to meet out the expenses and 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 applicant. The amount however be subject to adjustment by the Committee


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of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the applicant.

18.A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

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SUMITA PURKAYASTHA
MEMBER (T)

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DR. DEEPTI MUKESH
MEMBER (J)