

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI (COURT NO. IV)  
Company Petition No. IB-664/ND/2020**

*[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:**

**Anil Sharma**

**...APPLICANT/OPERATIONAL CREDITOR**

**VERSUS**

**Aaradhyam Developers Private Limited**

**...RESPONDENT/ CORPORATE DEBTOR**

*ORDER PRONOUNCED ON:10.09.2021*

**CORAM:**

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

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

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**MEMO OF PARTIES**

**ANIL SHARMA**

PROPRIETOR OF M/S LAKSHMI STEELS

Having office at:

126, Loha Mandi, B.S Road

Indl. Area, Ghaziabad, U.P-201009

**...Applicant/Operational Creditor**

**Versus**

**AARADHYAM DEVELOPERS PRIVATE LIMITED**

Through its Director

Having its registered office:

Flat No. B/85m Pocket-B, LIG Flats

Nand Nagri, Delhi - 110093

**...Respondent/ Corporate Debtor**

**FOR THE APPLICANT**

: Ms. Gunjan Mittal, Adv.,

Mr. Anurag Sharma, Adv.

**FOR THE RESPONDENT :**

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

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. Anil Sharma being the proprietor of M/s Lakshmi Steels (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/s Aaradhyam Developers Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a proprietor, running business under the name and style of M/s Lakshmi Steels, which is proprietorship concern, having its place of business at 126, Loha Mandi, B.S. Road, Industrial Are, Ghaziabad and Uttar Pradesh – 201009, being an authorized dealer of various T.M.T & structural Steel engaged in the business of supplying T.M.T. & structural steel to real estate companies.
3. The Corporate Debtor is a private limited company incorporated on 24.11.2015, under the provisions of Companies Act, 2013 bearing CIN No.U70102DL2015PTC287782 having its registered office at Flat No. B-85, Pocket –B, LIG Flats Nand Nagri, New Delhi, as per the records maintained with ROC. The corporate debtor is a real estate firm engaged in the business of construction.
4. The applicant states that the corporate debtor approached them in the year 2018, for its housing project. After various discussions with regards the price and quality of goods, placed an order for purchase of TMT bars. The applicant supplied the goods of total amount of Rs. 21,64,942/- at the site of the corporate debtor situated at Janhit Awaz Yojna, NH-91, Chaprolla, Near  
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Lal Kaun, and Ghaziabad – 201009 as per written purchase orders placed during the 01.04.2018 to 31.01.2019. That out of the total amount of invoices the corporate debtor made a part payment of Rs.17,62,972/- which was duly accounted in the running ledger account maintained by the applicant and a balance of Rs. 4,01,970/- was outstanding and has remained unpaid till date. The corporate debtor during the course of business also issued post dated cheque bearing no. 464373 dated 07.06.2019, for an amount of Rs. 5,20,000/- as part payment against the balance due amount. The said cheque on being presented to the bank for payment was dishonored and returned with the remark “insufficient balance.” The copy of cheque along with bank memo is annexed.

5. It is submitted by the applicant that since the time of receipt of goods supplied the corporate debtor raised no dispute with regards the quality and specifications of the goods and has also utilized the said goods for business. Furthermore, no dispute has been raised with regards the unpaid balance principal amount of Rs. 4,01,970/- to be paid to applicant. However, in spite of repeated requests and communication the corporate debtor failed to pay the admitted outstanding dues.

6. The corporate debtor served a demand notice under Section 8 Form 3 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 dated 01.02.2020 demanding the outstanding dues along with interest @ 24% per annum, agreed as per the terms of invoices. The said notice was served at the registered office, delivery site of the corporate debtor as well as at the address of the directors of the corporate debtor. The notice sent at the registered office and at the site address of the corporate debtor was returned with the remarks “Door closed”. Among the notices sent to the directors, two of notice were returned un-served and one was duly received by one director namely Mr. Bhupendra Tyagi on 05.02.2020. The applicant

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states that the notices has also been served upon the corporate debtor vide email dated 10.02.2020 at the registered email address of the corporate debtor as per master data. The copy of tracking reports for delivery has been annexed and email services are also annexed. The corporate debtor never replied to the said notice, raising any dispute.

Therefore, the Applicant filed the present Application under section 9 of IBC, 2016 and served the copy of this application via speed post to the registered office, site office and the addresses of directors of corporate debtor which was returned undelivered. The petition was also served at the registered email address of the corporate debtor as per the master data which was duly delivered to the corporate debtor as it dint bounce back. The service affidavits have been duly filed. Considering that notice was sent at the registered address of the company as reflected on the MCA website and the same was returned with the remark "Addressee left without instructions", shall be considered served, because the same can be manipulated by the corporate debtor, as observed by the Hon'ble Apex Court in case of :

*"Madan And Co. V. Wazir Jaivir Chand" 1989 SCC 264. The extracts from the said order is reproduced herein:*

*"We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to (i) of section 11(1) and the proviso to section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under s. 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for*

*the acceptance or refusal can be treated as a service on, and receipt by, the addressee.*

*.... "He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."*

Hence, it can be inferred that the service of Section 9 is complete. Moreover, the email service is complete. The corporate debtor in spite of service did not appear, neither any reply filed. Hence, the corporate debtor has been proceeded ex-parte vide order dated 19.01.2020 of the Hon'ble Bench, NCLT.

7. As per Form V, the total debt outstanding is Rs.4,66,285 /- (Rupees Four, Sixty Six Thousand, Two Hundred and eighty Five only), which includes the principal amount of Rs. 4,01,970/- along with interest @ 24% per annum of Rs.64,315/- till date of filling of application which is due and payable by the corporate debtor to the applicant.

8. The date of default is 12.09.2019 and the present application is filed on 28.02.2020. Hence the application is not time barred and filed within the period of limitation.
9. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
10. The Applicant has filed an affidavit in compliance of section 9(3)(b). 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.
11. Considering the submission and documents on record the applicant is entitled to claim its dues, establishing the default in payment of the operational debt. Moreover, the contentions of the applicant have remained uncontroverted and undisputed by the corporate debtor proving the debt becoming due. Hence, the application is admitted.
12. The applicant has not proposed the name of IRP, therefore, this Bench appoints, Ms. Archana Singhal having email id: [archanafca@gmail.com](mailto:archanafca@gmail.com) and registration no. IBBI/IPA-001/IP-P02036/2020-21/13116 as the Interim Resolution Professional, subject to the condition that no disciplinary proceedings are pending against him. The IRP is required to file consent Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, within a period of one week from this order.

13. 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.
14. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Ms. Archana Singhal 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 of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the applicant.
15. 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 intimation of the said appointment be made by the Registry to the parties. 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.

SD/-

**SUMITA PURKAYASTHA**  
**MEMBER (T)**

SD/-

**DR. DEEPTI MUKESH**  
**MEMBER (J)**