

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB-2408/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 CONCREK ADDITIVES & CHEMICALS PRIVATE LIMITED

...Applicant/Operational Creditor

VERSUS

M/S RED BRICK CONSULTING PRIVATE LIMITED

...Respondent/ Corporate Debtor

Judgment Pronounced on: 06.02.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

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M/S Red Brick Consulting Pvt. Ltd.

MEMO OF PARTIES**M/S CONCREK ADDITIVES & CHEMICALS PRIVATE LIMITED****REGISTERED OFFICE:**

PLOT NO.W/ 11,TTC INDUSTRIAL AREA,
MIDC PAWANE, NAVI MUMBAI- 400705

...APPLICANT/OPERATIONAL CREDITOR**VERSUS****M/S RED BRICK CONSULTING PRIVATE LIMITED**

THROUGH ITS DIRECTOR

GNYANDEEP KANTIPUDI

H-3/79B, PVT FLAT NO.301 –THIRD FLOOR,

KH. NO. 79/18, MAHAVIR ENCLAVE,

NEW DELHI - 110045

...RESPONDENT/ CORPORATE DEBTOR

For the Applicant : Mr. Ayush Negi, Adv.
Ms. Manini Roy, Adv.

For the Respondent :

*IB-2408/ND/2019**M/S Concrete Additives & Chemicals Pvt. Ltd. Vs.**M/S Red Brick Consulting Pvt. Ltd.*

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 Concrete Additives & Chemicals Pvt. Ltd. (for brevity 'Applicant') through Mr. Varun Malhotra, the authorized representative who has been authorized vide Board Resolution dated 04.04.2019 with a prayer to initiate the Corporate Insolvency process against M/s. Red Brick Consulting Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Applicant is a private limited company incorporated on 22/08/2008 under the provisions of Companies Act, 1956, bearing CIN U51496MH2008PTC186073, and having its registered office at Plot No. W/11, TTC industrial Area, MIDC Pawane, Navi Mumbai -400705.

3. The Corporate Debtor is private limited company incorporated on 10.03.2006 under the provisions of Companies Act, 1956, bearing CIN U74210DL2006PTC147313 and having its registered office at H-3/79B, PVT Flat No. 301- Third Floor, KH. No. 79/18, Mahavir Enclave, New Delhi- 110045. The authorized share capital is Rs 1,00,000/- and Paid up Capital is Rs. 1,00,000/-

4. The Applicant submits that the corporate debtor approached them for Supply of 48 Drums CAC-Shortcrete AFA (Alkalifree Accelerator) and 10 Drums CAC- Super Flow SF (Plasticizer) vide email dated 28.01.2017, the

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said goods were supplied by the applicant. Subsequently, the applicant raised a tax invoice for Rs.4,64,709/- and, the Corporate debtor wrote a letter dated 30.01.2017 to the applicant stating that the goods have been received. Thereafter vide purchase order dated 21.02.2017 another demand of 16,000 Kg Alkalifree Accelerator and 3,250 Kg of Plasticizer were placed with applicant. Accordingly, applicant supplied sand materials and raised invoice dated 01.03.2017 for Rs.3,70,780/-. Thus a total sum of Rs.8.35,489/- was due and payable to the applicant by the corporate debtor.

5. On 27.11.2018, the Corporate Debtor paid an amount of Rs.4,62,454.72/- to the applicant, leaving the balance amount of Rs. 3,73,034.28/-, together with Rs. 2,01,424.62/- towards interest calculated @ 24% p.a. as per the terms of the invoice, from the date of default calculated upto 31/01/2019 and future interest till realization.
6. The Applicant issued a demand notice dated 15.07.2019, in Form 3 and in Form 4 under the provisions of section 8 of Insolvency and Bankruptcy Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the total outstanding amount of Rs. 3,73,034.28/- together with Rs. 2,01,424.62/- towards interest calculated @ 24% p.a.. The said notice was served through speed post at the registered address as reflected on MCA website which was received by the corporate debtor on 17.10.2019 and email dated 18.10.2019. The tracking report for the speed post reflecting 'Item Delivered' has been annexed along with the application. The corporate debtor vide letter dated 14.08.2019 stated that a payment of Rs.8,35,489/-

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was made vide cheques dated 27/10/2017 and 20/06/2018 and asked the applicant to withdraw the notice.

7. The Applicant filed the present Application under section 9 of IBC, 2016 and the application was duly served to the corporate debtor on the registered address as well as the email address as reflected on MCA website and proof of service has been duly filed by the applicant. However, none appeared for the corporate debtor hence, was proceeded ex-parte vide order dated 22.11.2019.
8. As per Form V, the total debt outstanding is Rs 3,73,034.28/- together with Rs.2,01,424.62/- towards interest calculated @ 24% p.a. as per the terms of the invoice from the date of default calculated upto 31/01/2019 and further interest till realization.
9. As per the letter dated 14.08.2019, it manifests that the corporate debtor has admitted that a liability existed and contended that the payment had been made. However, not raised any dispute with respect non receipt of goods or invoice amount payable before the issue of demand notice and the corporate debtor has also not raised any dispute even after filing of the present application.
10. The date of default occurred from 28.11.2018 and the present application is filed on 23.09.2019.Hence, the application is filed within time and is not barred by limitation.

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11. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
12. In absence of any defence or contest from the corporate debtor, it leaves no doubt that the default has occurred with respect to the payment of the operational debt of the applicant. We are of view that the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt. The application is complete as per the requirements of section 9 of the code. In light of above facts and records the present application is admitted.
13. In view of the application being admitted, Mr. Kawal Krishna Khurana having email id: khurana.mantrah@gmail.com and registration no. IBBI/PA-003/IP-N00239/2019-2020/12746 is appointed as Interim Resolution Professional. 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.
14. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Kawal Krishna Khurana 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 applicant. The amount however be subject to adjustment by the

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

15. 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.
16. A copy of the order shall be communicated to the Applicant, the Corporate Debtor as well as IRP above named, 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 the order shall also be forwarded to IBBI for its records and to ROC for updating master data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (T)

sd/-

DR. DEEPTI MUKESH
MEMBER (J)

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