

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT-V AT NEW DELHI**

**Company Petition No. IB-2642/PB/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. VIKAS SCAFFOLDING SYSTEMS  
THROUGH ITS SOLE PROPRIETOR  
MRS. SEEMA SAINI**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s. COMPETENT VIDYUT  
TOWERS PVT. LTD.**

**...Respondent/ Corporate Debtor**

**Pronounced on: 18.04.2022**

**CORAM:**

**SH. ABNI RANJAN KUMAR SINHA  
HON'BLE MEMBER (JUDICIAL)  
SH. HEMANT KUMAR SARANGI  
HON'BLE MEMBER (Technical)**

For the Applicant : Mr. Gursat Singh Vachher, Advocate

For the Respondent : Mr. M. K. Jha, Advocate

## MEMO OF PARTIES

### **M/s. VIKAS SCAFFOLDING SYSTEMS**

Through its Sole Proprietor

Mr. Seema Saini

Having its registered office at:

Sector-74, Behrampur Road,

Opp. Kumar Automobiles,

Near Sandhar Components,

Gurgaon 122001, Haryana

**...Applicant/Operational Creditor**

**VERSUS**

### **M/s. COMPETENT VIDYUT TOWERS PVT. LTD.**

Having its registered office at:

610/2 Chhatarur

New Delhi 110030

**...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'),

Page | 2

IB-2642/(PB)/2019

M/s. VIKAS SCAFFOLDING SYSTEMS VS. M/s. CONCEPT VIDYUT TOWERS PVT. LTD.

by M/s. Vikas Scaffolding Systems (for brevity 'Applicant'), through its Sole Proprietor Mrs. Seema Saini, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP), against M/s. Competent Vidyut Towers Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, is a Sole Proprietorship, whose proprietor is Mrs. Seema Saini, having its address at P-65, L.G.F. South Extension, Part-II, New Delhi 110049.
3. The Respondent, the Corporate Debtor, namely M/s. Competent Vidyut Towers Private Limited, is a company incorporated on 24.03.2003, under the provisions of Companies Act, 1956, with CIN No. U40101DL2003PTC119507, having its registered office at 610/2, Chhatarur, New Delhi-110030. The Authorised Share Capital of the respondent company is Rs.5,00,000/- and Paid Up Share Capital of the company is Rs.5,00,000/- as per Master Data of the company.
4. That the Operational Creditor is engaged in the business of providing shuttering and scaffolding equipment at various



construction sites throughout the territory of India and has regular contracts with several construction companies in furtherance of its business mandate.

5. The Applicant states that pursuant to various discussions, the Corporate Debtor entered into a contract with Operational Creditor, for provision of shuttering/ scaffolding material at the project sites of the Corporate Debtor i.e., (i) Agucha Mines Hindustan Zinc Ltd., Vijay Nagar Bhilwara (Rajasthan), (ii) ACC Janul execution Project Bhilai District, Dhurg, Chhattisgarh, (iii) Bhav Nagar Energy Co. Ltd., Village Padua district Bhav Nagar Gujarat and others. Accordingly, the Operational Creditor commenced the supply of scaffolding materials as agreed upon. Moreover, certain payments were also made by the Corporate Debtor from 11.05.2012 onwards, as reflected in the Ledger maintained by Operational Creditor in respect of accounts of Corporate Debtor.
6. The Applicant further states that it was maintaining a running account, in respect of the scaffolding material, supplied to the Corporate Debtor and was raising invoices

upon the Corporate Debtor, on a monthly basis. That between 31.06.2016 and 01.09.2017, the Operational Creditor continued to raise invoices for goods supplied and the said invoices aggregated to Rs.8,07,752/-, which amount is duly reflected in the Ledger Account, maintained by the Operational Creditor, in respect of account of Corporate Debtor, for the period 01.04.2012 till 30.06.2019.

7. That between 10.08.2016 and 15.08.2018, the Corporate Debtor had made certain ad-hoc payments, in response to the constant communications, which were underway between the Corporate Debtor and the Operational Creditor. However, after 15.08.2018, till date, no payments whatsoever, had been credited in favour of the Operational Creditor, thereby resulting in an outstanding operational debt of Rs.8,07,752/- in favour of the Operational Creditor. That as provided in the respective invoices, any delay in clearance of invoices, was specified to attract interest at 18% per annum. Consequently, as of Ledger Closing for 2019, a total outstanding amount of Rs.11,75,995.96/- (including principal amount + interest) was



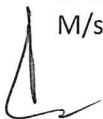
due and payable by the Corporate Debtor in favour of the Operational Creditor.

8. The Applicant further states that given the fact that the liabilities qua the Corporate Debtor in the books of the Operational Creditor, had amounted to unpaid operational debt, in the books and were mounting, on account of interest component, the Operational Creditor had sent several messages, engaged in telephonic conversations and oral reminders etc. between 18.04.2019 and 15.07.2019 with the Corporate Debtor, in the belief that the outstanding liabilities, qua the Corporate Debtor, would stand resolved. However, apart from feeble assurances and minimal communications, nothing concrete was ever forthcoming from the Corporate Debtor.

9. In spite of various requests made and reminders sent by the Operational Creditor, the Corporate Debtor did not reply. On failure to pay the outstanding dues by the Corporate Debtor, the Operational Creditor sent a demand notice dated 25.08.2019, under Section 8 of the Insolvency and

Bankruptcy Code, 2016, to the Corporate Debtor, asking them to make the entire payment of Rs.11,75,995.96/- (Rupees Eleven Lakhs Seventy Five Thousand Nine Hundred and Ninety Five and Ninety Six Paise) inclusive of interest, within 10 days from receipt of the notice, failing which the Operational Creditor shall initiate the Corporate Insolvency Resolution process against the Corporate Debtor.

10. The applicant has annexed postal receipt, for the delivery of the said demand notice at the registered office of the Corporate Debtor.
11. After the delivery of demand notice, sent under Section 8 of the Code, the Corporate Debtor has not sent its reply to the said notice, nor raised any dispute in response to the notice. As no payment was coming, hence this application, seeking to unfold the process of CIRP.
12. The Operational Creditor, in Part-IV of the Application, has stated that total debt due and payable is, Rs.11,75,995.96/- (Rupees Eleven Lakhs Seventy Five Thousand Nine Hundred and Ninety Five and Ninety Six Paise), inclusive of interest. The date of default is 15.08.2018.



13. Hence, the current application, under section 9 of the IBC, 2016 was filed by the Operational Creditor to initiate CIRP. The Operational Creditor has also filed an affidavit of service wherein, it states that the Corporate Debtor has been served through speed post on 30.10.2019 and through email on 13.11.2019. The postal receipt along with the tracking report and the copy of email, in this regard have also been annexed along with the affidavit.

14. After the service of said notice, the Corporate Debtor has caused an appearance in the matter and filed its reply. In its reply the Corporate Debtor states that;

*“(i)The operational creditor has deliberately concealed the receipts of payment on 25.01.2017 and 06.05.2017 of Rs.2,00,000/- and Rs. 1,50,000/- respectively thereby totaling to Rs.3,50,000/-.*

*(ii)As per the statement of account maintained by the corporate debtor, only an amount of Rs. 2,57,752/- is due and not Rs.8,07,752/- as pleaded in the petition by the operational creditor. Furthermore, even this amount of Rs. 2,57,572/- is highly disputed as there are issues*



*between the corporate debtor and the operational creditor w.r.t. materials and / or scaffoldings provided. The ultimate employer of the corporate debtor, owing to the faulty materials and scaffoldings provided by the operational creditor, has blocked the payment w.r.t. the same.*

*(vii) The corporate debtor always was ready and willing to tender the legal amount of Rs.2,57,752/-, however, the operational creditor has denied the same on the pretext of extracting illegal money. Thus on this ground alone the instant petition is liable to be rejected.”*

15. In **“Innoventive Industries Ltd.(Supra)”**, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.

16. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC OnLine SC 1154”**, Hon’ble Supreme Court held:

*“40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

17. It is pertinent to note that the Operational Creditor has placed on record the demand notice along with invoices, ledger



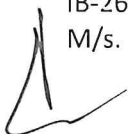
account, bank statements with its Application, stating that the Corporate Debtor itself had acknowledged the said invoices. Once the debt is shown as due, it is for the Corporate Debtor to prove that there are no outstanding dues to be paid to the Operational Creditor. The Corporate Debtor has in its reply acknowledged its liability to pay Rs. 2,57,572/-, being a part of the debt. However, no such payment has been made by the Corporate Debtor. Further, the corporate debtor has stated about the existence of some dispute with regards to the material supplied. However, no documents/ communication has been annexed to prove the existence of any dispute. Hence, it appears to be an illusionary dispute.

18. The Operational Creditor has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.
19. 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.

20. The registered office of Corporate Debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
21. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints **Mr.Satya Prakash**, having registration no. **IBBI/IPA-002/IP-N00906/2019-20/12920**, email address is **cs@satyaprakash@gmail.com**, as the IRP of the Corporate Debtor. 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, as per the following directions:-

- a. The Moratorium is hereby declared prohibiting all of the following actions, namely,
- i. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any



judgment, decree or order in any court of law, Tribunal, Arbitration panel or other Authority.

- ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- iii. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

22. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



23. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator
24. That the order of moratorium shall have effect from the date of this Order, till the completion of the corporate insolvency resolution process or until this Bench approves the Resolution Plan under Sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
25. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.
26. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned 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

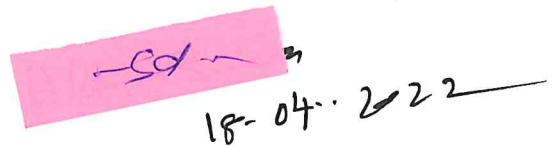


the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

27. 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.



**(HEMANT KUMAR SARANGI)**  
**MEMBER (TECHNICAL)**



**(ABNI RANJAN KUMAR SINHA)**  
**MEMBER(JUDICIAL)**