

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH-III**

**C.P. No. IB-246/ (ND)/2019**

**Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.**

**In the matter of:**

M/S. ANANT ASSOCIATES PVT. LTD  
E-2/112, FIRST FLOOR, SECTOR-11  
ROHINI,  
DELHI 110085

..OPERATIONAL CREDITOR / APPLICANT

VERSUS

ARHAN INFRATECH PVT. LTD.  
REGD. OFFICE R-289-C, GREATER KAILASH-I  
NEW DELHI-110048

**Also at**

D-212-215, EPIP, SITE-5,



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SURAJPUR INDUSTRIAL AREA,  
KASNA, GREATER NOIDA-201306

..CORPORATE DEBTOR

**Coram:**

**R.VARADHARAJAN,**  
**Hon'ble Member (Judicial)**

**K.K. VOHRA**  
**Hon'ble Member (Technical)**

Counsel for the Applicant: Mr. Deepak Tyagi, K.K. Gautam  
(Advocates)

Counsel for the Respondent: Taru Gupta, Ramnesh Jerath  
(Advocates)

**ORDER**

**Date: 06.09.2019**

1.The above petition has been filed under the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity IBC, 2016) by M/S. Anant Associates Pvt. Ltd (for brevity "Operational Creditor/ Applicant"), against Arhan Infratech Pvt. Ltd (for brevity "Corporate Debtor").



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2. It is submitted by the Operational Creditor (OC) that the Corporate Debtor (CD) approached him for supplying ready mix cement concrete (RMC) at specified locations of the CD. And after execution of the said purchase on 13.11.2014, the OC started supplying the RMC to M/s. KV Developers Pvt. Ltd. of which CD is a group company.
3. As per the said order the OC was required to supply RMC of grade M-25 as per the designed mix and manufactured in fully automatic batching plant and transported to the site of work in transmit mixture having continuous agitated mixture, manufactured as per design of specified grade.
4. The quantity vide the said purchase order in question was 3000 at the rate of Rs. 4,600 and the total value of the purchase order was Rs. 1,38,00,000.
5. As per the payment terms the OC was required to raise consolidated bill for RMC supplies at an interval of 15 days and the payments were to be released within 15 working days from the date of the receipt of the bill. However a limit of Rs. 40 Lakhs was to be fixed and in case the amount of RMC supply reached 40 Lakhs in less than 15 days then the proportionate excess was to be paid off.

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6. It was further stipulated in the said purchase order that if the supply of RMC is/was not satisfactory due to reasons of quality or quantity or any other reason K V Developers is/ was free to cancel/ terminate the supply order at any time and without any compensation.
7. The initial invoices had K V Developers as the consignee and Arhan Infratech as the buyer and the said agreement was as per the instructions of the CD. Further, upon the verbal instructions of KV Developers the details of consignee and buyer in the invoices were changed to one i.e. M/s. Arhan Infratech Pvt. Ltd.
8. The Directors of KV Developers were also the Directors of Arhan Infratech and the OC had no qualms in respect of the identity of KV Developers and its group company Arhan Infratech being one and the same.
9. During the last financial year i.e. 01.04.2018 the payment situation started becoming grim. On 01.04.2018 the opening balance of the CD was Rs. 41, 34,222 apart from the interest @18% in terms of the invoice.
10. The CD made the last payment on 20.04.2018 of Rs. 7, 50,000 and thereafter no payments were made by him despite repeated demands, emails, phone calls etc. Since 24.04.2018 an amount of Rs. 37, 64,506 along with 18% interest is unpaid by the CD.

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11.The demand notice dated 12.11.2018 was issued by the Applicant upon the CD, however, the CD issued a reply dated 5.12.2018 thereby trying to dispute the debt albeit in vain. The OC further stated that prior to issuance of demand notice under the Insolvency and Bankruptcy Code, 2016, neither any issue was raised by the CD regarding any short supply nor any dispute for the amount.

12.The statement of the CD themselves sent an email dated 05.07.2018 from email address accounts@kvdevelopers.com confirmed an outstanding amount of Rs. 33, 34,426.25 as debt on account of the RMC supplies to the company qua the invoices raised by creditor from time to time out of which Rs. 3, 00,000 were not properly accounted for by the CD as the said amount was never received by the OC.

13.Thus, from a total outstanding debt of Rs. 37, 64,506 an amount of Rs. 36,34,426.25 stands admitted and if the said unaccounted invoices are added the amount is complete and crystallized.

14.The CD on 05.03.2019 filed a counter to the application filed by M/s Anant Associates Pvt. Ltd. and upon perusal of the same it can be seen that there was no preexisting dispute and the defense of short supply of RMC was taken and the two debit notes dated 13.12.2018 and 05.02.2019 were sent to the OC

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after a Demand Notice dated 12.11.2018 under Section 8 was sent by the OC.

15. Considering the above circumstances this Tribunal is of the view that this Petition requires to be admitted and that CIRP process is required to be initiated against the CD.

16. Since the Petitioner has not named the Insolvency Resolution Professional (IRP), this Tribunal, based on the list furnished by Insolvency and Bankruptcy Board of India, appoints, Mr. Roshan Lal Jain, having Registration Number: IBBI/IPA-001/IP/Poo966/2017-2018/11587, Mobile Number: 9818398895, email: [roshanljain@gmail.com](mailto:roshanljain@gmail.com), as the IRP 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 CD 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. 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) and as extracted hereunder shall follow in relation to the CD:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any

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judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

17. However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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18. The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

19. The Petitioner is directed to pay a sum of rupees two lakhs to the Interim Resolution Professional upon the IRP filing the necessary declaration form as required under the provisions of IBC, 2016 to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. Based on the above terms, the Application/Petition stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this order forthwith by the Registry. Let a copy of this order be also communicated by the IRP under his hand to the Registrar of Companies, NCT of Delhi & Haryana.

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**(K.K. VOHRA)**  
**MEMBER (TECHNICAL)**

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06/09/2019  
**(R. VARADHARAJAN)**  
**MEMBER (JUDICIAL)**