

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB- 1601/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 EMPEROS INFRASTRUCTURE PRIVATE LIMITED

...Applicant/Operational Creditor

VERSUS

M/s EARTHCON INFRACON PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 23.08.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant: Mr. Prakash Priyadarshi, Adv.

For the Respondent: Ms. Shantala Sankrit, Adv.

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MEMO OF PARTIES

M/s EMPEROS INFRASTRUCTURE PRIVATE LIMITED

Having its registered office at:

Elan Press, Top Khana Road, Kat Kuyy A,
Feeder, Rampur, Uttar Pradesh- 244901

...Applicant/ Operational Creditor

VERSUS

M/s EARTHCON INFRACON PRIVATE LIMITED

Having its registered office at:

T-17, DDA Flats, Sector-7,
Jasola Vihar, New Delhi- 110025

Also having office at:

B-11, Sector-1, Noida,
Gautambudh Nagar,
Uttar Pradesh- 201309

...Respondent/ Corporate Debtor

ORDER

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 Emperos Infrastructure Pvt. Ltd. (for brevity 'Applicant') through its director Mr. Munir Ali Khan authorizing him to file present application vide Board resolution dated 25.06.2019, with a prayer to initiate the Corporate Insolvency process against M/s Earthcon Infracon Private Limited (for brevity 'Respondent').

2. The Applicant, the Operational Creditor namely M/s Emperos Infrastructure Private Limited is a company incorporated under the provisions of Companies Act, 1956 with CIN No. U70109UP2017PTC097744, having its registered office at Elan Press, Top Khana Road, Kat Kuyy A, Feeder, Rampur, Uttar Pradesh- 244901.
3. The Respondent, the Corporate Debtor namely M/s Earthcon Infracon Private Limited is a company incorporated on 19.02.2015 under the provisions of Companies Act, 1956 with CIN No. U70100DL2015PTC276925, having its registered office at T-17, DDA Flats, Sector-7, Jasola Vihar, New Delhi- 110025.



4. The Authorised Share Capital of the respondent company is Rs. 5,00,000/- and Paid Up Share Capital of the company is Rs. 1,00,000/- as per Master Data of the company.

5. It is the case of the applicant that Respondent approached the applicant in the month of February 2019 for purchase of hardware products and services related to finishing and furnishing of the flats at one of the project sites. It was specifically agreed that upon procuring the goods by respondent and raising of invoices by applicant, the entire payment for such invoices shall be made within 7 days from issuance of respective invoices. As per this arrangement, the Respondent placed various purchase orders for a supply of hardware products and services related to furnishing of flats. The Applicant supplied the goods as per the orders placed by Respondent and also rendered its services on the site of the Respondent. Thereafter the applicant raised various invoices against the said supply and services on the Corporate Debtor.

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6. The said tax invoices were duly acknowledged by the Respondent, the details of which are as follows:

DATE	AMOUNT TO BE PAID
01.02.2019	Rs. 49,01,720/-
28.02.2019	Rs. 14,96,240/-
30.04.2019	Rs. 50,71,640/-
TOTAL	Rs. 1,14,69,600/-

7. In spite of various requests made and reminders sent by the Applicant, the Respondent never bothered to reply and has miserably failed in discharging the liability of the outstanding payments in favour of the applicant.

8. Subsequently the representatives of applicant met the officials, who assured the applicant for clearing the complete outstanding within seven days and further acknowledged and admitted the liability in respect of the outstanding invoices by the way of signing the Ledger Account of the Applicant thereby confirming the debt payable.

dated 10/05/19

9. Thereafter, on failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 11.06.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent for an outstanding amount of Rs.1,14,69,600/- (Rupees One Crore Fourteen Lakhs Sixty-Nine Thousand and Six Hundred only) within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.
10. Respondent failed to pay the amount demanded, neither raised any notice of dispute nor replied to the said notice, hence this application, seeking to unfold the process of CIRP.
11. On 10.07.2019, Ld. Counsel for the respondent accepted the notice and made a submission that no reply is required to be filed and the said submission is also recorded in the daily order dated 10.07.2019.



12. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from the Respondent is received.
13. The applicant has stated that total debt due and payable is Rs. Rs.1,14,69,600/- (Rupees One Crore Fourteen Lakhs Sixty-Nine Thousand and Six Hundred only).
14. The applicant has attached the copy of Bank statements issued by Axis Bank for relevant period in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
15. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
16. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt which has been admitted by the Corporate Debtor while making submission before the Tribunal. The

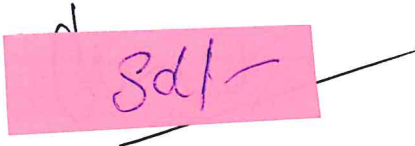
requirements of Section 9(5) of the Code are complied, hence, the present application is admitted.

17. The Applicant has proposed the name of an Interim Resolution Professional. In view of the same, this Bench appoints Ms. Rukhsana Choudhury having registration no. IBBI/IPA-002/IP-N00761/2018-2019/12374 and email address rukhsanac@gmail.com and contact number is 9810437527, as the IRP of the Respondent. 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 Code.

18. 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 Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in vogue.


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19. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.



(SH. HEMANT KUMAR SARANGI)

MEMBER (TECHNICAL)



(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)