

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DELHI BENCH (COURT NO. IV)**

Company Petition No. IB-1583/ND/2018

(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:

Mr. RAHUL MITTAL

PROPRIETOR OF M/s. OPKK & COMPANY

...Applicant/Operational Creditor

VERSUS

M/s BR KOHLI BUILDTECH PVT LTD

...Respondent/Corporate Debtor

Pronounced on: 14.01.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Mr. Achal Gupta, Adv., Ms. Annie Rais, Adv.

Ms. Mansi Khurana, Adv.

For the Respondent:

(IB)-1583/(ND)/2018

Mr. RAHUL MITTAL VS. M/s. BR KOHLI BUILDTECH PVT. LTD.

MEMO OF PARTIES

Mr. RAHUL MITTAL

Proprietor M/s. OPKK & COMPANY

HAVING ITS OFFICE AT:

24, Miles Stone,

Vill-Baliawas, Bhiwadi,

Alwar Road, Rajasthan-301019

Also at:

2893, Arya Samaj Road,

Karol Bagh, New Delhi-110005

...Applicant/Operational Creditor

VERSUS

M/s BR KOHLI BUILDTECH PVT LTD

Having its registered office at:

T-5, Kohli Plaza, Plot No. 5

LSC CU Block, Pitampura Delhi

Also At:

Avalon Rangoli Bhiwadi,

Alwar Bypass Road, Bhiwadi,

...Respondent/ Corporate Debtor

ORDER

PER-SHRI 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') by Mr. Rahul Mittal (for brevity 'Applicant'), proprietor of M/s. OPKK & Company, with a prayer to initiate the Corporate Insolvency process against M/s. BR Kohli Buildtech Private Limited (for brevity 'Respondent').
2. The Applicant, the Operational Creditor is a sole proprietorship concern, having its office at 2893, Arya Samaj Road, Karol Bagh, New Delhi-110005.
3. The Respondent, namely M/s. BR Kohli Buildtech Private Limited is a company incorporated on 18.01.2002 under the provisions of Companies Act, 1956 with CIN No. U45201DL2002PTC113868, having its registered office at T-5, Kohli Plaza, Plot No. 5, LSC CU Block, Pitampura, Delhi-110088. The Authorized Share Capital of the respondent

company is Rs. 20,00,000/- and Paid Up Share Capital of the company is Rs. 8,50,000/- as per Master Data of the company.

4. It is the case of the applicant that, the Corporate Debtor placed purchase order for various goods upon the Operational Creditor on various dates, the goods were supplied by the Operational Creditor to the Corporate Debtor via invoice bearing no. 543, dated 22.03.2016, amounting to Rs. 1,71,574/- (Rupees One Lakh Seventy One Thousand Five Hundred Seventy Four) and invoice bearing no. 1, dated 01.04.2016, amounting to Rs.5,31,068/- (Rupees Five Lakh Thirty One Thousand Sixty Eight). The copies of said invoices have been annexed by the Applicant along with the application. The said invoices remained unpaid, various emails were also sent from the period 03.03.2017 to 07.07.2018 by the Operational Creditor to the Corporate Debtor, however, no payment was made.

5. The Applicant further states that, the Corporate Debtor has failed to clear the aforesaid two invoices. Thus, there is an outstanding legally recoverable debt amounting to

Rs.7,02,642/- (Rupees Seven Lakhs Two Thousand Six Hundred Forty Two) as on date, along with interest @ 24% per annum, which amounts to Rs.4,02,612,87/- (Rupees Four Lakhs Two Thousand Six Hundred Twelve and Eighty Seven Paisa). Thus, the amount which is due, payable and claimed to be under default by the Corporate Debtor is Rs. 11,05,257.87/- (Rupees Eleven Lakhs Five Thousand Two Hundred Fifty Seven and Eighty Seven Paisa).

6. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 05.09.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire outstanding payment of Rs.7,02,642/- (Rupees Seven Lakhs Two Thousand Six Hundred Forty Two), along with interest to be calculated @ 24% per annum from 7 days after the due date of supply of goods amounting to Rs. 4,02,615.87/- (Rupees Four Lakhs Two Thousand Six Hundred Fifteen and Eighty Seven Paisa), total amount of default is Rs. 11,05,257.87/- (Rupees Eleven Lakhs Five Thousand Two Hundred Fifty Seven and Eighty Seven Paisa), within 10 days from receipt of

the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution Process against the Respondent.

7. The present application was dismissed vide order dated 22.02.2019, due to the failure on the part of Applicant to prove the successful service of section 8 notice on the Corporate Debtor, with liberty to the Applicant to file appropriate application. In furtherance of which the Applicant filed CA No. 125/2019, for restoration of the application as the delivery report of service of Section 8 notice on the Corporate Debtor was received by him through RTI, the same was decided and application was restored vide order dated 04.06.2019, as in its application the Applicant clearly states that the service has been effected on the addresses of Corporate Debtor and its Directors.
8. Despite the demand notice sent under Section 8 of the Code, the Respondent has failed to pay the amount demanded and has neither raised any notice of dispute nor replied to the said notice.

9. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The applicant has also filed affidavit of service wherein he states that service to the Corporate Debtor has been done through speed post, the postal receipts along with tracking report have been annexed by the applicant along with the affidavit.
10. In spite of service of application under section 9, the corporate debtor has not filed any reply.
11. This Tribunal proceed ex-parte against the Corporate Debtor as per order dated 27.02.2019.
12. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.
13. The applicant has attached the certificate issued by the State Bank of India in compliance with the requirement of Section 9(3)(C) of the IBC 2016.
14. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

15. On perusal of the record it is clear that the default has occurred on 08.04.2016 when the last invoice fell due. Hence, the claim is not time barred. And the present application is well within the limitation period.
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, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
17. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints the Mr. Jyoti Ranjan Tarafdar, having registration no. IBBI/IPA-001/IP-P-01000/2017-2018/11647, email address is ip.jyotiranjana@gmail.com, 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 the respondent as per proviso (a) to (d) of section 14(1) 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 force.

19. 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.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (TECHNICAL)

Sd/-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. IV, NEW DELHI**

Item No. 4

CA. 583/ND/2020, (IB)-1583/ND/2019

Under Section: 9 of IBC.

In the matter of:

Jyoti Ranjan Tarafdar	...	Applicant
Vs		
M/s. B.R Kohli Build Tech Pvt. Ltd.	...	Respondent

Order delivered on 03.02.2020

CORAM

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (J)**

**SHRI HEMANT KUMAR SARANGI,
HON'BLE MEMBER (T)**

For the Applicant :
For the Respondent :

ORDER

CA No. 583/ND/2020: Application is filed by the IRP. The learned counsel states that vide order dated 14th January 2020, the application filed by Mr. Rahul Mittal, Proprietor M/s OPKK & Company, under Section 9 of the Code, was admitted and CIRP was initiated against M/s B.R. Kohli Build Tech Pvt. Ltd. Learned counsel further states that inadvertently, there is no mention about the deposit of Rs. 2,00,000/- towards the expenses and fees of IRP which is to be paid by the applicant to IRP which has not been directed in the order. In view of the same, IRP requests

that applicant be directed to deposit an amount of Rs. 2,00,000/- or such other amount as the Hon'ble Court deems fit to enable the IRP to proceed with the CIRP. The IRP is directed to take appropriate steps as required under the Code and Rules. We hereby direct the applicant Mr. Rahul Mittal to deposit an amount of Rs. 2,00,000/- with IRP appointed by the Court Ms. Jyoti Ranjan Tarafdar within three days. Application is allowed and disposed of in terms of above order.

Sd/-
(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

Vaishali