



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III (SPECIAL BENCH)
IB-73(ND)/2024**

Order 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. Om Shiv Enterprises

... Operational Creditor

Versus

M/s. Implex Infrastructure Private Limited

... Corporate Debtor

Order Pronounced On: 31.05.2024

CORAM:

**SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR
HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For the Applicant : Mr. Mohak Sharma, Adv.

For the Respondent : *ex-parte*

ORDER


PER ORAL: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed under Section 9 of the IBC, 2016 seeking to initiate CIRP against the Corporate Debtor viz, M/s. Implex Infrastructure Private Limited, declare Moratorium and to appoint an Interim Resolution Professional.
2. The Corporate Debtor is engaged in providing the construction material of a residential project named "The Golf Address" at Sector-150 Noida. The Operational Creditor supplied construction



material to the Corporate Debtor commencing from 30.04.2018. The Operational Creditor raised various invoices on the Corporate Debtor on 25.09.2023, 27.03.2023 and 28.09.2023 for an amount of Rs. 8,827,656.26/-. The total amount towards the said bills is Rs. 11, 203,201.52/- out of which Rs. 174,524.54/- has been paid and the remaining balance amount is Rs. 11,028,676.98/-. The Operational Creditor also raised delivery challans for the material supplied to the Corporate Debtor for the period 25.09.2023 to 28.09.2023 as per the following table as mentioned in part IV of the application:-

Bill No.	Dated	Bill amount	Paid amount	Business amount	Remarks
372	09.11.2019	572,591.26	174,524.24	398,066.72	
403	09.12.2019	505,601.00	-	505,601.00	
440	06.01.2020	517,672.00		517,672.00	
441	06.01.2020	23,619.00		23,619.00	
497	11.02.2020	355,797.00		355,797.00	
521	07.03.2020	400,265.00		400,265.00	
1	25.09.2023	637,318.50		637,318.50	To be paid
2	25.09.2023	687,141.00		687,141.00	To be paid
3	25.09.2023	638,274.00		638,274.00	To be paid
4	25.09.2023	622,030.50		622,030.50	To be paid
5	25.09.2023	489,284.26		489,284.26	To be paid

	25.09.2023	1,163,376.00		1,163,376.00	To be paid
7	27.09.2023	1,267,786.00		1,267,786.00	To be paid
8	27.09.2023	761,305.00		761,305.00	To be paid
9	28.09.2023	867,535.00		867,535.00	To be paid
10	28.09.2023	1,063,522.00		1,063,522.00	To be paid
11	28.09.2023	630,084.00		630,084.00	To be paid
	Total	11,203,201.52	174,524.54	11,028,676.98	

3. The Corporate Debtor failed to pay the amount due and therefore the Operational Creditor issued a demand notice under Section 8 of IBC, 2016 on 21.12.2023 calling upon the Corporate Debtor to pay an amount of Rs. 11,028,676.98/- which was served on the Corporate Debtor by email. However, the Corporate Debtor did not give any reply to the demand notice under Section 8 of the Code.
4. Hence, the present application under Section 9 of IBC, 2016.
5. The Corporate Debtor has been set ex parte vide order dated 07.05.2024, since, no one has appeared on behalf of the Corporate Debtor despite proper service and by publication in two local newspapers.
6. We have heard the submissions made by the Learned Counsel appearing for the Operational Creditor and perused the records.
7. The Operational Creditor has placed on record the invoices which have been duly acknowledged by the Corporate Debtor and the



delivery challans. The Operational Creditor has also placed on record the Bank Statement and a letter dated 10.01.2024 issued by Canara Bank which shows that certain payments have been received from the Corporate Debtor and the last payment being made on 01.12.2023 for an amount of Rs. 1,13,965/- and thus an unpaid amount of Rupees in respect of the invoices is Rs. 1,10,28,676.98/-.

8. This Adjudicating Authority vide order dated 07.05.2024 directed the Applicant to file an affidavit stating that the present application is not a collusive one. In Compliance with the order dated 07.05.2024, the Applicant has filed an Affidavit on 17.05.2024 stating that the present Application is not a Collusive Application.
9. Having regard to the facts and circumstances of the case, we are satisfied that the Applicant has made out a case under Section 9 and he has been able to establish that there is debt and default.
10. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present application fulfills the criteria laid down under Section 9 of the Code. It is accordingly, ordered as follows: -
 - a) The Application bearing **IB-73(ND)/2024** filed by the Applicant under Section 9 of the Code read with Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **admitted.**
 - b) We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
 - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- 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.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- c)** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be



terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.

- d)** The Operational Creditor has proposed the name of Mr. Mukesh Gupta (having IBBI Reg. No.: IBBI/IPA-001/IP- P-01494/2018-2019/12254) to be appointed as Interim Resolution Professional (“IRP”). However, we deem it appropriate to appoint an IRP from the panel of IBBI. We, therefore appoint Mr. Devvart Rana as the IRP, because Section 9(4) of the Code does not make it mandatory for the Operational Creditor to propose the name of the Interim Resolution Professional. The Address of the IRP is Apt. No. 684, Sector-A, Block - B & C, Vasant Kunj, New Delhi-110070. His Email id is devvartrana@gmail.com. His registration number is IBBI/IPA-002/IP-N00680/2018-2019/12025.

The IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

- e)** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



- f)** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- g)** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h)** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i)** The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- j)** In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.



k) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record. No order as to costs.

Sd/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)