

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

Company Petition No. IB-488/ND/2019

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

IN THE MATTER OF:

MR. ANAND PRAKASH

...Applicant/Operational Creditor

VERSUS

M/S OMEGA INFRABUILD PRIVATE LIMITED

...Respondent/ Corporate Debtor

Judgment Pronounced on:17.10.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

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Mr. Anand Prakash Vs M/S Omega Infrabuild Pvt Ltd



MEMO OF PARTIES**MR. ANAND PRAKASH**

Registered Office at Flat No. 219, Media Times Aprtments
Abhay Khand-4, Indirapuram
Ghaziabad-201010

...Applicant/Operational Creditor**VERSUS****M/S OMEGA INFRABUILD PRIVATE LIMITED**

Registered office at: C-22, East End Apartments,
Mayur Vihar, Phase-1, Extension
New Delhi-110096

...Respondent/ Corporate Debtor**For the Applicant:** Mr. Abhay Kaushik, Adv.**For the Respondent:** Ms. Richa Bhagat, Adv. Mr. Abhishek Kumar, Adv.*IB-488/ND/2019*

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ORDER

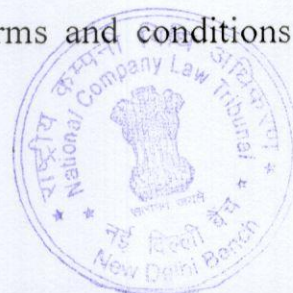
Dr. Deepti Mukesh, Member (J)

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 Code (Application to Adjudicating Authority) Rules, 2016 by Mr. Anand Prakash, (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Omega Infrabuild Private Limited (for brevity 'Corporate Debtor').
2. The Corporate Debtor is a private limited company, company limited by shares, incorporated under the provisions of Companies Act, 1956 on 09.02.2011 as per master data. The company is having its registered office at C-22, East End Apartments, Mayur Vihar, Phase-1, Extension, New Delhi-110096.
3. The Applicant has stated that the applicant got appointed as AGM-Finance in the corporate debtor vide appointment letter dated 13.08.2013. The role of the applicant during his employment was of an accountant and he had the responsibility of managing the accounts, finance and taxation related activities of the corporate debtor as well as the group company of the corporate debtor.

As per the employment criteria and the terms and conditions offered, the

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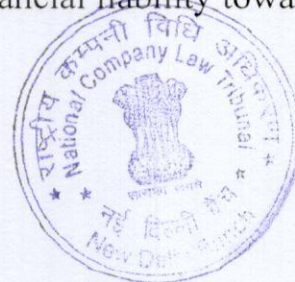


applicant was entitled to the salary of INR 1,00,00/- per month along with reimbursements, perks and benefits as per terms of service. It is stated that after the probation period of 6 months, the applicant's services were confirmed by the corporate debtor and his designation was also changed to GM-Finance.

4. The applicant has submitted that the timely payments towards remuneration from the corporate debtor were cleared up till September 2015. That thereafter on multiple instances, the corporate debtor has been giving assurances and time lines to provide for payment of arrears, and deficit on account of less payment of salary to the applicant. However, from October 2015 onwards, neither the payments were made in a timely manner nor the entire salary amount was paid by the corporate debtor to the applicant.
5. The applicant submitted that the total cumulative payment of INR 13,65,100/- was received on account of salary payable for the period from September 2015 to March 2018. Whereas the corporate debtor has still not paid the outstanding operational debt amount to the tune of Rs 17,34,900/- (Rupee Seventeen Lakh Thirty-Four Thousand and Nine Hundred Only).
6. The applicant has submitted that despite various reminders via letters seeking release of the outstanding amount in terms of the salary, the corporate debtor failed in its obligation of discharging its financial liability towards applicant.

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7. The Applicant issued demand notice dated 11.12.2018 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 as per Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor. The said notice was sent by Speed Post at the registered address of the corporate debtor as reflected in the master data and which was duly delivered on the corporate debtor. The Corporate Debtor has neither replied to the aforesaid notice nor made any payment towards the outstanding dues.
8. As claimed by the applicant, the Corporate Debtor is liable to pay a sum of Rs. 24,10,515/- (Rupees Twenty-Four Lakhs Ten Thousand Five Hundred and Fifteen Only), which is inclusive of the principal amount of Rs 17,34,900 /- along with the reimbursement amount of Rs 20,262/- and the compound interest amounting to Rs 6,55,353/- as per Form 5 under 'Part IV'.
9. The Applicant filed present Application on 21.02.2019 under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per the affidavit of service filed by the applicant.
10. The corporate debtor has asserted that a sum of Rs 1,75,000/- has already been paid to the applicant for the financial year 2017-18, which was duly accepted by the applicant and the corporate debtor was ready and willing to pay another sum of Rs 6,32,000/- to the applicant as salary dues for the financial year

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2017-2018 towards settlement. The corporate debtor has further tried to raise a pre-existing dispute between the parties with respect to the amount of salary.

11. Heard the learned counsels and having perused the documents on record, it manifest that the corporate debtor has tried to create and raise a pre-existing dispute with respect to amount of salary given to the applicant and payable as claimed by the applicant. The so-called dispute was never raised/issued by the corporate debtor to the applicant prior but were raised only after the issuance of the application under Section 9 read with Rule 6 of the Insolvency and Bankruptcy Code, 2016. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor and the default has occurred with respect to the payment of salary dues of the applicant, more so as the amount of Rs 6,32,000/- is admitted by corporate debtor which he is ready and willing to pay.
12. In this regard, the application is complete as per the requirements of section 9 of the code. Further the date of default occurred from 27.08.2018 and hence the debt is not time barred and the application is filed within the period of limitation.

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13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The present application is complete and the Applicant is entitled to claim its dues, and admission on the part of corporate debtor is more than one lakh, establishing the default in payment of the operational debt beyond doubt. In the light of above facts, the present application is admitted.
15. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Rajesh Kumar Gupta, with registration number IBBI/IPA-003/IP-N00198/2018-19/12308 (email – rgadv21@gmail.com) as the Interim Resolution Professional 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 Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Respondent and the Operational Creditor herein 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.

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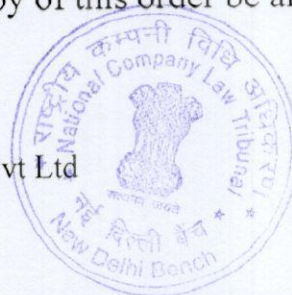
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16. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Rajesh Kumar Gupta to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however 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.
17. 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 Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
18. In terms of the above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named, by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. A copy of this order be also sent to the ROC for

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updating the Master Data. ROC shall send compliance report to the Registrar,
NCLT.

Sd/-


HEMANT KUMAR SARANGI
MEMBER (T)


22/10/19.

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)




22.10.19
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

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