

**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH**

**(IB) 1028(ND)/2018**

**In the matter of:**

**ESSPEE HITECH PRIVATE LIMITED**

**..... Petitioner**

**V/s**

**ABLAZE INFO SOLUTIONS PRIVATE LIMITED**

**.... Respondents**

**SECTION: U/s 9 of IBC, 2016**

**Order delivered on :30.11. 2018**

**Coram:**

**SMT. INA MALHOTRA, HON'BLE MEMBER (JUDICIAL)**


**MS. DEEPA KRISHAN, MEMBER (TECHNICAL)**

For the Petitioner: Mr. Ashutosh Sharma & Mr. Manish Paliwal.

For the Respondent: Mr. Aditya Mohan, Advocate.

**ORDER**

**PER: DEEPA KRISHAN, MEMBER (T)**

- 
1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)

- Rule, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency process in respect of Respondent corporate debtor.
2. The Applicant Esspee Hitech Private Limited is engaged in the business of real estate.
  3. The Respondent company against whom initiation of Corporate Insolvency resolution process has been sought for, has its registered office at Shop no. 107 First Floor Rishab IPEX Mall IP Extension, Delhi 110092 IN. Since the registered office of the Respondent Company is in Delhi, this Tribunal is having territorial jurisdiction over the matter.
  4. It is the case of Applicant that on 07.12.2016 the respondent and the applicant executed a lease agreement for the property bearing number A-22, sector 64, Noida, District, Gautam Budh Nagar, UP.
  5. The applicant has further submitted that the aforesaid lease agreement was executed for a term of a period of 5 years while minimum lock in period was 36 month. The same lease agreement was registered with the office of Sub Registrar Noida 3, District Gautam Budh Nagar, UP.
  6. The applicant has further contended that rent for the December 2016 and January 2017 was duly paid by the Respondent, however Security, Electricity Expenses and Service Tax for the period remained unpaid.

7. The applicant has further submitted that starting Feb 2017 onwards the Corporate Debtor failed to pay rent, security, Electricity Expenses and Service Tax/ GST to the Operational Creditor.
8. The applicant has also submitted that since the Corporate Debtor continued to default on the agreed payments hence the applicant has filed the present application based upon the terms of the aforesaid lease agreement.
9. The applicant has also submitted that the respondent vacated the premises in parts which were rented out subsequently to other parties. The rent for that period has not been claimed from the Corporate Debtor.
10. The Applicant further stated that since full payments were not made, the applicant issued demand notice under Section 8 of the Code on 13.07.2018 in which Rs. 1, 75, 95,229/- are due and payable on the outstanding debt was claimed as on 13.07.2018.
11. The Respondent/Corporate Debtor, despite being served vide various modes, failed to put in any appearance to resist the Petitioner's prayer for initiating the insolvency resolution Process. They were accordingly proceeded ex parte as per the order dated 25.09.2018 by this tribunal.
12. Heard the Applicant and perused the record.

“Operational debt” has been defined under Section 5 (21) of the Code as follows:

*“Operational Debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*

Operational creditor has also been defined at section 5(20) as follows:

*“Operation Creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”.*

13. From the definition of “Operational creditor” and “Operational Debt”, it can be seen that the applicant has provided the services i.e. executed a lease agreement for the property to the respondent company clearly comes within the definition of Operational Creditor. Similarly the claim of outstanding payments to applicant comes within the definition of Operational Debt. There being default in payment of claimed amount, and the respondent failed to establish the fact that there is pending dispute between the parties. Such application deserves to be

admitted for triggering Corporate Insolvency Resolution Process against the respondent corporate debtor.

14. In the aforesaid background we are satisfied that the present application is complete and there has been in payment of dues default by the respondent. Therefore, on fulfilment of the requirements of section 9 (5) (i) (a) to (d) of the Code, the present application is admitted.

15. In pursuance of Section 13 (2) of the Code we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Regulations) with regard to admission of this application under Section 7 of the Code.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d). Thus, the following prohibitions are imposed:

*“(a) 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;*

*(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 Securitisation 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. 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 and 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) Ordinance, 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.

18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the ‘Code’, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate



Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.


19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest possible but not later than seven days from today.

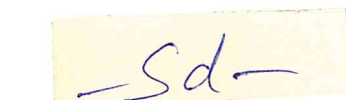
20. The applicant has not proposed the name of the IRP in the application. The Insolvency and Bankruptcy Board of India vide its letter dated 01.01.2018 has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional in compliance with Section 16 (3) (a) of the Code in order to cut delay. Accordingly, we

appoint Mr. Subramanian Dorairajan (Mobile:9811210843) email id dsubramanian@hotmail.com as an Interim Resolution Professional. His registration number is IBBI/IPA-001/IP-P00399//2017-18/10717. The aforesaid Interim Resolution Professional has no disciplinary proceeding pending against him nor has anything else been pointed out with regard to his antecedents. The Interim Resolution Professional has filed necessary declaration in accordance with the IBBI Regulations and the provisions of the Code.

21. The petitioner is directed to pay a sum of Rupees two lakhs to the Interim Resolution Professional to meet out the expenses 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. This shall however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

Let the copy of the order be supplied to the parties including the Board.

  
(Deepa Krishan)  
Member Technical

  
(Ina Malhotra)  
Member Judicial