

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-577/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:**UNION ROADWAYS LIMITED****...Applicant/Operational Creditor****VERSUS****FERNAS CONSTRUCTION INDIA PRIVATE LIMITED & ANR****...Respondent/ Corporate Debtor****Judgment Pronounced on: 06.12.2019****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****SH. HEMANT KUMAR SARANGI****HON'BLE MEMBER (Technical)****For the Applicant:** Mr. Sanjeev Kumar, Advocate**For the Respondent:** ---*IB-577/ND/2018**Union Roadways Limited Vs Fernas Construction India Pvt Ltd*

MEMO OF PARTIES**UNION ROADWAYS LIMITED****Registered office at P 9 New CIT Road**

Kolkata, West Bengal-700073

...Applicant/Operational Creditor**VERSUS****FERNAS CONSTRUCTION INDIA PRIVATE LIMITED & ANR****Registered office at S-19, Malhan Falcon Plaza**

Plot No. 4 Pocket 7 Sector 12

Dwarka New Delhi-110076

...Respondent No. 1/ Corporate Debtor**Mr. Rohit Singhal****Resident of 6209, DLF Phase-4, Near Super Mart-I**

Gurugram, Haryana-122002

...Respondent No. 2/ Corporate Debtor**Mr. Manoj Roy****Resident of B-2, 1 Floor, 266 P/2c Ward No. 2**

Master Apartment Mehrauli, Gadaipur

Delhi-110030

...Respondent No. 3/ Corporate Debtor*IB-577/ND/2018**Union Roadways Limited Vs Fernas Construction India Pvt Ltd*

ORDER**Per-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 Union Roadways Limited through Mr. Raj Kumar Yadav who is authorized vide Board Resolution dated 27.06.2016 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Fernas Construction India Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a public limited company incorporated under the provisions of Companies Act, 1956, involved in the business of freight transport, having its registered office at P 9 New CIT Road, Kolkata, West Bengal-700073.
3. The Corporate Debtor is a private limited company incorporated under the provisions of Companies Act, 1956 on 10.08.2010. The authorized share capital of the company is Rs 5,00,000/- and the paid-up share capital is Rs 5,00,000/- and the company is having CIN U454DL2010PTC206910.

4. The Applicant states that the corporate debtor had hired the services of the applicant for transportation of goods from Delhi to various places in India in the year 2011 and accordingly, the applicant rendered services for which the bills were raised on the corporate debtor.
5. The Applicant submits that the goods were regularly consigned by the corporate debtor to various destinations as per requirements and invoices from period 12.03.2014 to 26.09.2014, which have remained outstanding till date.
6. It is submitted by the applicant that various requests were made on telephone as well as during personal meetings but all in vain. In the meetings held between the applicant and the corporate debtor on 15.01.2015 & 20.01.2015, the corporate debtor acknowledged its liability of Rs 33,73,411/- vide letter dated 27.01.2015. The extracts from the letter are reproduced herein as under:

“As discussed during the meeting, we hereby confirm that an amount of Rs 33,73,411/- is lying outstanding with us as on date”.

7. The Applicant has submitted that an amount Rs 15,81,363/- has been received from the corporate debtor and the last payment made by the corporate debtor was on 13.12.2015 of Rs 4,00,000/- to the applicant.

Therefore, an amount of Rs 17,92,048/- is still liable to be paid by the corporate debtor to the applicant. On not receiving the balance amount of dues from the corporate debtor, the Applicant issued a demand notice dated 27.05.2017 in Form 3 under the provisions of section 8 of I&B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the admitted balance outstanding amount of Rs. 17,92,048/-. The said notice was served through speed post and has been delivered to the corporate debtor at its registered address as reflected in master data of MCA website as per the tracking report. The corporate debtor has neither replied to the said notice nor made the payment against the outstanding dues claimed by applicant.

8. Hence, the Applicant filed present Application on 18.03.2018 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 and tracking report filed by the applicant, which has been duly annexed.
9. The Corporate Debtor has neither appeared in the mater nor replied to the application and the matter was proceeded exparte on 10.08.2018.
10. The application is complete as per the requirements of section 9 of the code. The last payment was made on 13.12.2015 and hence the date of

default is considered to be occurred from the specified date and therefore the debt is not time barred and the application is filed within the period of limitation.

11. The Applicant has filed an affidavit under section 9(3)(b) affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.
12. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
13. The present application is complete and perusing the documents on records it goes beyond doubt that the Applicant is entitled to claim its dues, which is admitted by the Corporate Debtor vide its letter dated 27.01.2015, establishing the default in payment of the operational debt. In the light of above facts and records the present application is admitted.
14. Since the Applicant has not named the Insolvency Resolution Professional, based on the list furnished by Insolvency and Bankruptcy Board of India this Tribunal appoints Mr. Vikas Chandra Misra, with registration number IBBI/IPA-001/IP-P-01449/2018-19/12276 (email – cavcmisra@gmail.com), (Mobile No. 9336618600) as the Interim

IB-577/ND/2018

Union Roadways Limited Vs Fernas Construction India Pvt Ltd

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.

15. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Vikas Chandra Misra 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.

16. 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.
17. 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 updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (T)

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)