

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB 1635/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:

AF Consult India Pvt. Ltd.

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

Sikkim Hydro Venture Limited

...RESPONDENT/ CORPORATE DEBTOR

JUDGMENT PRONOUNCED ON: 30.07.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

SHRI. HEMANT KUMAR SARANGI

HON'BLE MEMBER (TECHNICAL)

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MEMO OF PARTIES**IN THE MATTER OF:****AF Consult India Pvt. Ltd.**Registered Office:

C-240, Flat No. – 107,
Pandav Nagar Delhi (EastDelhi) 110092

Corporate office at:

Office No. 2-5 G.F. Tower -1 Stellar IT Park,
C-25, Sector-62, Noida 202302,
Uttar Pradesh

...APPLICANT/OPERATIONAL CREDITOR**VERSUS****Sikkim Hydro Venture Limited**Registered office

Second Floor, Plot No. 360, Block – B,
Sector 19, Dwarka
New Delhi (South West Delhi) – 110075

...RESPONDENT/ CORPORATE DEBTOR

FOR THE APPLICANT : Ms. Sanjana Saddy, Adv, Ms. Shikha Raniwala, Adv.

Ms. Aakanksha Tiwari, Adv.

FOR THE RESPONDENT: Mr. Ashish Verma, Adv

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ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by AF Consult India Pvt. Ltd. (for brevity 'Applicant') through Mr. Sai Krishna Seela, being the Managing Director of the applicant company, duly authorized vide Board Resolution of the applicant dated 25th September 2018, with a prayer to initiate the Corporate Insolvency process against Sikkim Hydro Power Ventures Limited for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated on 31/12/2009 under the provision of Companies Act, 1956 bearing CIN No. U74140DL2009FTC197507 having its registered office at C-240, Flat No.107, Pandav Nagar, Delhi (East Delhi)-110092. The authorized share capital of the company is Rs. 1, 00, 00,000/- and the paid-up capital of the company is Rs.50, 00,000/-. The applicant provides consultancy services for carrying out review, approval of design criterion, design and drawings, project management and supervision of Rangit Stage II Hydro Electric Project in West Sikkim district of Sikkim.
3. The Corporate Debtor is a Private Limited company incorporated on 05/09/2005, under the provisions of Companies Act, 1956 bearing CIN No. U40100DL2005PLC257673 and having its registered office at Second Floor, Plot No. 360, Block - B. Sector 19 Dwarka New Delhi (South west Delhi) - 110075. The Authorized Share Capital of the company is 75,00,00,000/- (Rupees Seventy-Five Crores Only) and the paid-up share capital of Rs 62,



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73,59,000/- (Rupees Sixty-Two Crores Seventy-Three Lacs Fifty-Nine Thousand Only).

4. The applicant submits that the parties entered into a consultancy services Agreement dated 25th October 2012, as per the said agreement the corporate debtor could avail specialized services of the applicant, and the applicant was awarded the work of carrying out review, approval of design criterion design and drawings, project management and supervision. As per the agreement the invoices were to be raised by the applicant as per the work and rates provided and the same were payable by the corporate debtor.
5. The applicant submits that from the execution of agreement till April 2014 work was done and on 5th May 2014, a total of 27 invoices were raised by applicant amounting to a sum of Rs. 1,98,98,394/- (Rupees One Crore Ninety-Eight Lacs Ninety-Eight Thousand Three Hundred Ninety-Four Only)
6. The applicant further submits that on 14th January 2015, the Corporate Debtor made part payment of Rs 6,14,160/-, further also made a further part payment of Rs.1,09,70,818/- (Rupees One Crore Nine Lacs Seventy Thousand Eight Hundred and Eighteen only) including TDS. An amount of Rs 89,27,576/- remained outstanding and payable by the corporate debtor
7. The applicant submits that the corporate debtor had agreed to make payments in accordance with clause 3.3(b) of the Article -3 of the Agreement which clearly stipulates that all payments are to be made by the corporate debtor on or before 35 business days from the date of receipt of the invoices. The applicant sent various reminders to the corporate debtor to pay the outstanding amount. However, the corporate debtor kept avoiding the

payment on pretext or the other. Hence, on 29th November 2016, the applicant issued a notice to the corporate debtor intending to initiate court proceeding against them for the amount due and payable. The applicant further submits that despite service of the said notice the corporate debtor did not make any payment or replied to the said notice. Further on 13th June 2017 the applicant served a legal notice on the corporate debtor as per the postal receipts and tracking report annexed herein.

8. The applicant issued a demand notice dated 20.09.2017 under Section 8 of the code along with invoices and ledger accounts calling upon the corporate debtor to pay the total outstanding amount of Rs.131,45,856/- (including the principal amount of Rs. 89,27,576 along with interest of Rs.42,18,280/- calculated @18 %p.a. up to 31st August 2017) The notice was served upon the registered office of the corporate debtor on 23rd September 2017.
9. Upon receipt of demand notice the corporate debtor replied through email and sent a letter dated 5th October 2017 calling the applicant to visit the corporate office at Mumbai for amicable resolution of dispute. Thereafter several email communications were exchanged between the parties to decide upon a date for the meeting. The applicant submits that the corporate debtor kept delaying the meeting to allow the claim of the applicant to go beyond limitation. The applicant further submits that the same is evident from the emails exchanged. Thereafter a meeting was held on 9th March 2018, after the meeting on 21st March 2018 the applicant giving reference to the said meeting requested the corporate debtor to issue a settlement letter along with postdated cheques. However, no response was ever received from the corporate debtor on the said email nor any dispute has been raised by the corporate debtor.



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10. The Applicant filed the present Application under section 9 of IBC, 2016 and served the copy of this application which was duly delivered to the Corporate Debtor as per service affidavit.
11. As per Form V, the total debt outstanding is Rs.89,27,576/- along with interest of Rs.60,93,072/- calculated @ 18% p.a. from the due date of respective invoices up to 31.10.2018. Hence a total amount of Rs. 1,50,20,648 is due and payable by the corporate debtor to the applicant.
12. The Corporate debtor has filed reply by asserting that there is a pre-existing dispute between the parties and submitted that vide email dated 11-03-2013, the corporate debtor has raised and intimated the accounts office of the applicant regarding the poor quality of work and the same not being as per the agreement signed between the parties. The corporate debtor has further annexed the concerned email highlighting each and every aspect of the default.
13. The applicant filed a rejoinder controverting the averments made in the reply and has submitted that no dispute regarding any invoice or format was raised and assurance for payment against the same was received. The applicant further submits that the corporate debtor is trying to depict and establish that there was a pre-existing dispute between the parties and upon perusal of the said documents it can be merely suggested that PMC required changed in format, the applicant further submitted that the corporate debtor failed to annexed the subsequent trail mails, whereby the communications been made and various queries among the parties were discussed as alleged The applicant further submits that corporate debtor never disputed the debt payable.



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14. Having heard the learned counsels for the applicant and the corporate debtor and having considered the documents on records and submissions of counsels, it is clearly established that the default in payment of the Operational debt has occurred by the corporate debtor further there also exist a pre-existing dispute with regards the payments of invoices on grounds of substandard quality of service and improper execution of the terms of the agreement. The Hon'ble Supreme Court in "**Innovative Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407**" observed and held as follows:-

"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an installment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be. Hence, the present case is fit to be admitted as the dispute raised is with regards substandard quality and improper execution of the agreement. However, the corporate debtor has not disputed the operational debt due and payable, which is more than 1 Lac in the present case.



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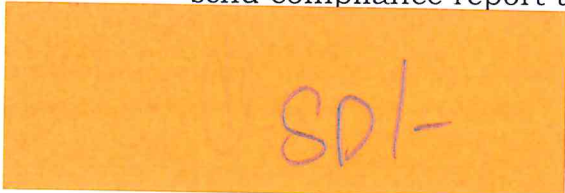
17. Therefore, in the given facts and circumstances, the present application is complete and the Applicant has established its claim which is payable and due by the corporate debtor. In the light of above facts and records, the present application is admitted, in terms of section 9 (5) of IBC, 2016.
18. The Applicant has filed its bank statement from the period 01.02.2013 to 31.08.2018 stating that the amount claimed or any part thereof, has not been received by the applicant nor had any person, on its behalf had received in any manner the amount due to them as required u/s. 9(3)(c) of I & B Code. The Applicant has filed an affidavit under section 9(3)(b) dated 16.11.2018 affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.
19. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
20. The default occurred from 16.01.2018, hence the debt is not time barred and the application is filed within the period of limitation.
21. Since the Applicant has not named the Insolvency Resolution Professional, Mr. Diwan Chand Arya , with registration number IBBI/IPA-001/IP-N00256/2019-20/12925 (email -aumdcarya@gmail.com), is appointed by this Hon'ble Tribunal 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 should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 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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22. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Diwan Chand Arya 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.
23. 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.
24. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is 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)