

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT NO. IV)**

**Company Petition No. IB- 1058/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:**

**M/s GAGAN FERROTECH LIMITED**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s MANJU J HOMES INDIA LIMITED**

**...Respondent/ Corporate Debtor**

**Pronounced on: 02.09.2019**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SH. HEMANT KUMAR SARANGI**

**HON'BLE MEMBER (Technical)**

**For the Applicant:** Mr. Soumya Dutta, Adv.

**For the Respondent:**

## **MEMO OF PARTIES**

### **M/s GAGAN FERROTECH LIMITED**

Having its registered office at:

113/1B, Chittaranjan Avenue, 7<sup>th</sup> Floor,

Room No.7C, Kolkata- 700073

**...Applicant/ Operational Creditor**

## **VERSUS**

### **M/s MANJU J HOMES INDIA LIMITED**

Having its registered office at:

C-294, Vivek Vihar,

Delhi-110095

**...Respondent/ Corporate Debtor**

## **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 (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Gagan Ferrotech Ltd. (for brevity 'Applicant') through its director Mr. Vinay Kumar Agarwal authorizing him to file present application vide Board resolution dated 12.06.2018,

with a prayer to initiate the Corporate Insolvency process against M/s Manju J Homes India Limited (for brevity 'Respondent').

2. The Applicant, the Operational Creditor namely M/s Gagan Ferrotech Limited is a company incorporated on 24.03.1993 under the provisions of Companies Act, 1956 with CIN No. U51109WB1993PLC058238, having its registered office at 113/1B, Chittaranjan Avenue, 7<sup>th</sup> Floor, Room No. 7C, Kolkata- 700073.
3. The Respondent, the Corporate Debtor namely M/s Manju J Homes India Limited is a company incorporated on 15.06.2012 under the provisions of Companies Act, 1956 with CIN No. U45204DL2012PLC237591, having its registered office at C-294, Vivek Vihar, Delhi- 110095.
4. The Authorized Share Capital of the respondent is Rs. 5,00,00,000/- and Paid Up Share Capital of the company is Rs. 4,98,11,910/- as per Master Data of the company.
5. It is the case of the applicant that Respondent approached the applicant for purchase of Steel TMT Bars. It was specifically agreed that upon procuring the goods by respondent and

raising of invoices by applicant, the entire payment for such invoices shall be made in a timely manner. As per this arrangement, the Respondent placed various purchase orders for a supply of Steel TMT Bars. The Applicant supplied the goods as per the orders placed by Respondent and raised invoices against the said supply. The said tax invoices were duly acknowledged by the Respondent and the part payments were made by the Respondent. Various invoices from August 2016 onwards till December 2016 remained unpaid, which are annexed along with the application.

6. In spite of various requests made and reminders sent by the Applicant, the Respondent never bothered to reply and neither paid the outstanding amount.
7. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 22.06.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire outstanding payments of Rs. 66,03,856.78/- (Rupees Sixty-Six Lakhs Three Thousand Eight Hundred Fifty- Six and Seventy- Eight paise only) alongwith an interest @ 18% p.a., failing which the

applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

8. As per the delivery status report, an attempt was made on 27.06.2018 to deliver the said notice to the Respondent at its registered address, but it remained unserved as the 'addressee moved'. Again, on the very date, an attempt was made to serve on the Respondent at its another address but the same remained "unclaimed". A demand notice demanding payment in respect of unpaid operational debt as required under Section 8 of IBC Code is duly served on the respondent on 27.06.2018 as evident from the service affidavit containing receipt of speed post and the tracking report, however, despite the same, the Corporate Debtor has failed to pay the amount demanded nor has replied to the demand notice raising any dispute, hence this application, seeking to unfold the process of CIRP.
9. As per Part IV of Form 5, the applicant has stated that total debt due and payable is Rs. 84,47,147/- (Rupees Eighty-Four Lakhs Forty- Seven Thousand One Hundred and Forty- Seven only) which includes Principal amount of Rs. 66,03,856.78/- and interest of Rs. 18,43,290.22/- @18% p.a. till 20.06.2018.

The applicant has mentioned that default occurred on 02.12.2016.

10. The Respondent did not appear though Section 8 notice and the present application were duly served on the Respondent and proof of service filed by the applicant. This Tribunal is constrained to proceed with the matter *exparte* against the Respondent as per order dated 18.07.2019.
11. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.
12. The applicant has attached the copy of Bank certificated issued by UCO Bank dated 27.07.2018 and also the copy of bank statement for relevant period in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
13. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The present application is filed on 21.08.2018 which is within the period of limitation.
15. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues,

establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.

16. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Harish Goyal having registration no. IBBI/IPA-001/IP-P-01459/2018-2019/12244 and email address [harish\\_goyal77@hotmail.com](mailto:harish_goyal77@hotmail.com) and contact number is 9810781799, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
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 Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in vogue.
18. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.

19. The applicant/Operational Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses to be incurred and accounted for by the IRP. The amount shall be reimbursed to Operational Creditor after the COC has approved the expenses of the IRP before appointing Resolution Professional.
20. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

**Sd/-**

**(SH. HEMANT KUMAR SARANGI)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(DR. DEEPTI MUKESH)**  
**MEMBER (JUDICIAL)**