

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
Company Petition (IB)No.450/ALD/2019

In the matter of:
The Insolvency and Bankruptcy Code,2016

AND

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

AND

In the matter of :

Anil Patel

.....Operational Creditor/ Applicant.

VERSUS

Diamond Infraland Developers India Ltd.

.....Corporate Debtor/Respondent.

ORDER RESERVED ON : 26.11.2019
ORDER DELIVERED ON : 16.12.2019

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant/ Operational Creditor: Sh. Abhishek Mishra,PCS
For the Respondent/ Corporate Debtor: Sh. Ayush Sinha, PCS

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code,2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the Applicant/ operational creditor, i.e. "**Anil Patel**" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company i.e "**Diamond Infraland Developers India Ltd.**".
2. As per averments made in the petition , the operational creditor is an employee of the company and has worked from 01st October,2019 to 31st August, 2019 on remuneration of Rs. 25,000 per month and during the employment he has not received any payment whatsoever from the corporate debtor, either through cash or through bank.

— Sd —

3. Subsequently, operational creditor issued various notices to the corporate debtor but corporate debtor neither paid the amount nor gave any reason to hold his payment. Thereafter, the operational creditor issued demand notice as required under Section 8 of the IBC, 2016 dated 25.09.2019, demanding a total sum of Rs.2,50,000/- which was duly received by the respondent and despite demand notice being delivered to the Corporate debtor, no reply has been received nor any payment of the due amount has been made till the date of application. The respondent has therefore filed this petition as an operational creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate the claim.
4. It was submitted by the learned PCS of the operational creditor that the corporate debtor in his reply to the notice under Sec 8 IBC has accepted and admitted the default of debt on its part stating that the respondent company is suffering from financial losses for the last two years and thus they are unable to pay off the liabilities during the current year; therefore, in view of the deemed admission & acceptance of the default, the application of the operational creditor should be allowed and CIRP process should be initiated against the Corporate Debtor.
5. Pursuant to the court notice issued to the Corporate Debtor, reply was filed and it was submitted by the corporate debtor that the respondent is suffering from financial losses and due to this financial loss and liquidity constraint they are unable to pay off the debts and want some time to pay off the liabilities.
6. It is a matter of record vide order dated 26.11.2019 that the learned PCS appearing for the Corporate Debtor submitted that they have admitted the

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liability dues of Rs.2,50,000/- but they are unable to pay the same. Thus, oral arguments were heard and order was reserved.

7. I have gone through the documents filed by the parties and heard the arguments by both the counsels. This Adjudicating Authority has observed that:

- i. The operational creditor has provided all the necessary documents required for proving that the debt has been defaulted. While going through appointment letter & contract of employment and the bank account statement of the operational creditor, it was observed that it is an admitted fact that there is work relation between the Operational Creditor and the Corporate Debtor whereby operational creditor provided service to the corporate debtor and no payment was made for the same. The Corporate Debtor has not disputed or denied the fact that there was a work relation between the parties.
- ii. Further the default of the debt has been admitted by the corporate debtor in the reply filed by them. It is settled proposition of law that express admission of a party to the suit or admission implied from his conduct are strong evidence against him and the amount claimed in default is Rs. 2,50,000/- which is more than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor.
- iii. A perusal of the documents shows that the application is filed well within limitation to trigger the CIRP in respect of corporate debtor. Therefore, the Petitioner succeeded in proving its debt and the Corporate Debtor failed to discharge its payment liability towards services provided to the corporate debtor as per its appointment order. The Corporate Debtor has not paid the outstanding debt owed to operational creditor despite demand notice delivered upon him under Sec 8 of the Code. Therefore, the amount and default on the side of the Operational Creditor stand proved in the present case.

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Therefore, petitioner is found entitled to initiate corporate insolvency resolution process as against the Corporate Debtor.

8. The Petitioner, in the present IB petition, has complied with Section 9 (3) (b) and 9(3) (c) by filing supporting affidavit. As the petitioner fulfils the requirement for invoking CIRP in terms of Section 9 of the Code, the present application is found complete and the default of debts is established. Hence, the present petition deserves admission.

9. Considering the facts and circumstances of this case, this Adjudicating Authority is inclined to admit this petition and initiate CIRP of the respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

(i) Subject to provisions of sub-sections (2) and (3), on the insolvency Commencement date, the Adjudicating Authority shall by order declare a moratorium on prohibiting all of the following, namely: —

(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 Securitization 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 possession of the corporate debtor.

Further:

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(ii) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*

(iii) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

(iv) *The order of moratorium shall have effect from the date of such order till the completion of the corporate Insolvency Resolution Process*

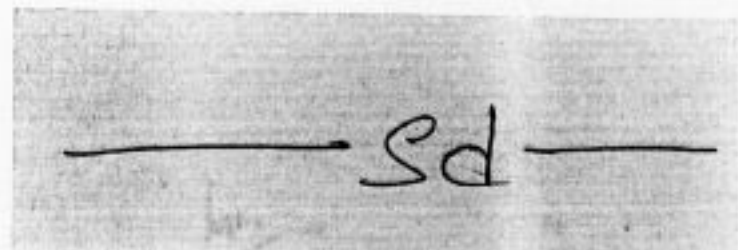
12. The Operational Creditor has proposed the name of **Mr. Anuj Kumar Tiwari, Registration Number IBBI/IPA-002/IP-N00811/2019-20/12555** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

17. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and to IRP.

18. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

13. List on 03.01.2020 for the filing of the progress report.

Date: 16.12.2019



JUSTICE RAJESH DAYAL KHARE

MEMBER (J)