

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB-251/ND/2020**

(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 INDSAO INFRATECH
THROUGH
MR. RAJESH BHARDWAJ**

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S MARS BUILDMART PRIVATE LIMITED

...RESPONDENT/ CORPORATE DEBTOR

ORDER DELIVERED ON: 16.12.2020

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)
MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Harshal Kumar, Adv.

For the Respondent :

MEMO OF PARTIES

**M/S INDSAO INFRATECH
THROUGH
MR. RAJESH BHARDWAJ
KOTHI NO. 57. SECTOR 10
DWARKA, NEW DELHI, 110075**

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

**M/S MARS BUILDMART PRIVATE LIMITED
3562/9, IInd FLOOR,
GALI THAN SINGH
SITA RAM BAZAR,
DELHI, CENTRAL DELHI 10006**

...RESPONDENT/ CORPORATE DEBTOR

ORDER**AS PER SUMITA PURKAYASTHA (MEMBER TECHNICAL)**

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 M/S INDSAO INFRATECH (for brevity 'Applicant') through Mr. Rajesh Bhardwaj (Owner of the Applicant Company) with a prayer to initiate the Corporate Insolvency process against. M/s. Mars Buildmart Private Limited (for brevity 'Corporate Debtor').
2. The Applicant M/s. Indsao Infratech, claimed to be the operational creditor, is a proprietorship having its registered office at Kothi No. 57, Sector 10, Dwarka New Delhi-110075 and is involved in the business of Building completion which includes activities that contribute to the completion or finishing of a construction. Repairs of the same type are also included in the corresponding sub-classes.
3. The Respondent M/s. Mars Buildmart Private Limited is a company incorporated on 09.06.2006 under the Companies Act, 1956 having its

registered office at 3562/9, IInd Floor Gali Than Singh Sita Ram Bazar, Delhi, Central Delhi-110006 and CIN U701109DL2006PTC149573 is engaged in buying, selling, renting and operating of self-owned or leased real estate such as apartment building and dwellings, non-residential buildings, developing and subdividing real estate into lots etc. Also included are development and sale of land and cemetery lots, operating of apartment hotels and residential mobile home sites.

4. It is the case of the Applicant that during the course of business two Agreement dated 24.11.2016 and 15.03.2017 were executed between the Applicant Company and the Corporate Debtor for execution of Internal Plumbing and Internal Electrical Work respectively at Sector-68, Gurgaon for construction. Applicant carried out the entire work as per the specifications and instructions issued by Corporate Debtor. No issues related to defect, quality of work were raised by the Corporate Debtor related to work carried out Applicant at the said Project.

5. It is submitted that settlement agreement had been signed between the Applicant and Corporate Debtor. The 1st Settlement Agreement was executed between the parties towards the full and final settlement of all claims under the Agreement dated 24.11.2016 wherein the Corporate Debtor agreed to pay a sum of Rs.98,71,429/- (Rupees Ninety Eight Lacs Seventy One Thousand Four Hundred Twenty Nine Only) and accordingly issued two post dated cheque No. 00134 dated 28.05.2019 and cheque No. 00139 dated 28.06.2019 in the name of the Operational Creditor. Further the 2nd Settlement Agreement dated 01.02.2019 was executed

between the parties towards the full and final settlement of all claims under the Agreement dated 15.03.2017, the Corporate Debtor Company agreed to pay a sum of Rs. 1,02,34,337/- and accordingly issued two post dated cheque No.000137 dated 15.07.2019 and cheque No. 00138 dated 28.07.2019 in the name of Operational Creditor. It is further submitted that all the four aforesaid post dated cheques got dishonored due to insufficiency of funds and were returned back by the bank.

6. The Applicant on 23.10.2019 sent a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Applications to Adjudicating Authority) Rules, 2016 for the unpaid operational debt to the Corporate Debtor and no reply has been sent by the Corporate Debtor. The provision of Section 9(3)(b) of the code has also been complied with.
7. The Applicant 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 their claim of Rs. 2,02,05,776/- including interest charged at 18%.
8. Notice was issued however, the Corporate Debtor did not appear before the Adjudicating Authority and the order was reserved on 13.11.2020. It is observed that the Applicant has clearly established the existence of debt. In the above circumstances this Tribunal initiates CIRP of the Respondent company.

A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 the possession of the Respondent.

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

(3) 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.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

10. The interim resolution professional (“IRP”), named in the list provided by the IBBI, is Mr. Umesh Gupta, email id: umesh@vamindia.in being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

11. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

12. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
Sumita Purkayastha
Member (T)

Sd/-
Dr. Deepti Mukesh
Member (J)