NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 618 (ND)/2020
IA – 3840/2021

IN THE MATTER OF:

VIKAS SHUTTERING STORE PVT. LTD.
PILOT NO. 1605, SECTOR-15, PART-IL
GURGAON HR 122001

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

BHAVAYTECH INFRA PROJECT PVT. LTD.
PLOT NO. 36-37 KH.NO. 89/15,
GROUND FLOOR BLK-D VIJAY VIHAR ROHINI
PH-2 LAND MARK NEAR MALIK TENT
NORTH WEST DELHI-110085

....RESPONDENT/CORPORATE DEBTOR

SECTION: U/S 9 of IBC, 2016

Order delivered on: 08.10.2021

CORAM:
MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
MR. K.K. VOHRA, MEMBER (TECHNICAL)

For the Applicant/Operational Creditor: Adv. Nikunj Hurria
For the Respondent/Corporate Debtor: Adv. Dhruv Gupta

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The present petition is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the

Respondent/Corporate Debtor on grounds of its inability to liquidate its operational debt.

2. The facts mentioned in the application in brief are as follows:

   i. That the Operational Creditor is engaged in the business of supplying scaffolding/shuttering materials on rental basis.

   ii. That the Corporate Debtor approached the Operational Creditor for supply of shuttering and scaffolding materials at the following sites:

      a) Pen Company, Near City Metro Station, Sector-70, Noida;

      b) Bhopal, Madhya Pradesh; and

      c) Dhankaur City, Noida, Uttar Pradesh.

   iii. That the Operational Creditor, at the request of the Corporate Debtor agreed to supply the requisite goods and materials at such rates that were agreed between the parties.

   iv. That the payment of rents was to be made within 15 days from the presentation of the supporting invoices by the Operational Creditor.

   v. That pursuant to the assurances of payment, the Operational Creditors had supplied the specified goods and materials ordered by the Corporate Debtor.

   vi. That the Corporate Debtor accepted the supply without raising doubts/issues about the quality and quantity.

   vii. That the Operational Creditor has thereafter raised invoices against such supply and services rendered to the Corporate Debtor.

   viii. That from 2014-2019, the Operational Creditor raised various invoices on the Corporate Debtor and although the Corporate Debtor made some payments in respect of those invoices, failed to honor its full financial obligation towards the Operational Creditor.

Year	Total amount Raised (in Rs.)	Amount received by Corporate Debtor (in Rs.)	Outstanding Amount (in Rs.)
2014-15	14,48,755/-	3,16,898/-	**11,31,857/-**
2015-16	18,38,410/-	7,25,000/-	**22,45,267/-** (11,13,410+ 11,31,857)
2016-17	15,11,681/-	3,00,000/-	**34,56,948/-** (12,11,681+ 22,45,267)
2017-18	12,46,349/-	0	**47,03,297/-** (12,46,349+ 34,56,948)
2018-19	10,39,710/-	75,000/-	**56,68,007/-** (9,64,710+ 47,03,297)
2019-20	6,09,585/-	1,50,000/-	**61,27,592/-** (4,59,585 + 56,68,007)
Total Amount Outstanding - Rs. 61,27,592/-			

ix. That an amount of Rs. 61,27,592/- has become due and payable from the Corporate Debtor to the Operational Creditor.

x. That the goods which were supplied were given on rental basis and the Corporate Debtor till date has not given back the said supplies back to the Operational Creditor and therefore, the Corporate Debtor is also liable to pay Rs.33,85,774/- on the 'account of rental scaffolding material pending return/remaining with it.

xi. That over a period of preceding 6 years, the Operational Creditor raised a number of invoices and and the Corporate Debtor paid Rs.15,66,898/- against the total debt of Rs. 76,94,490/- over the said period.

xii. That the last payment of Rs.1,00,000/- was made on 06/11/2019, towards part of the total debt due

xiii. That Rs. 95,13,366/- along with 18 % p.a interest till realisation, is the total amount that is claimed to be in default.

xiv. That the Operational Creditor had sent a demand notice under Section 8 of the Code on 18.11.2019 and the said notice was duly received by the Corporate Debtor on 20.11.2019.

xv. That no reply has been received till date in regards to the Demand Notice.

3. That vide order dt. 18.02.2021, when none appeared on behalf of the Corporate Debtor, despite service of notice then the case was fixed for ex-parte hearing against the Corporate Debtor.

4. We have heard the Learned Counsel appearing for the applicant and perused the averments made in the application. The Learned Counsel appearing for the applicant submits that the demand notice was duly delivered but the corporate debtor has not replied to the demand notice. He further submitted that even after the service of notice, none appeared for the corporate debtor then vide order dated 18.02.2021, the proceedings against the corporate debtor is fixed for ex-parte hearing. He further submitted that during the pendency of this application, the applicant has filed an Interlocutory Application being application number IA-3840/2021 stating therein that the Applicant/Operational Creditor may be permitted to amend Part IV of his Form 5 and further be permitted to change the name of the IRP i.e. **Mr. Anil Tayal having registration number IBBI/IPA-001/IP-P01118/2018-19/11818**.

5. In the light of the submissions, we perused the averments made in the application and it is seen that when none appeared for the corporate debtor then the proceedings against the corporate debtor was fixed for ex-parte hearing wide order dated 18.02.2021. It is further seen that the demand notice was duly delivered upon the corporate debtor, which is evident from the supplementary affidavit filed by the applicant on 12.3.2020. It is further seen that the applicant has also enclosed an

affidavit under section 9(3)(b) of the IBC 2016, which is at page 245 of the paper book. On perusal of that, we notice that no reply to the demand notice was given by the corporate debtor. We further notice that in Part IV of the application, the defaulted amount shown by the applicant is of Rs. 95,13,366/- and it is further seen that on 06.11.2019, the last payment of Rs. 1,00,000/- was made by the corporate debtor.

6. In view of the discussion made above, we are of the considered view that neither the reply to the demand notice is given by the corporate debtor nor the corporate debtor on summons has appeared and filed reply to the application filed under section 9 of the IBC. We further observed that the applicant has succeeded to establish that there is a operational debt, which is due and payable by the corporate debtor and it also fulfil the minimum threshold amount as required under Section 4 of the IBC. Earlier the applicant has not proposed the name of the IRP but by filing an interlocutory application the applicant has proposed the name of the IRP and the application is complete, hence, in view of Section 9(5)(1) of IBC, we hereby **Admit** the application. **Mr. Mr. Anil Tayal having registration number IBBI/IPA-001/IP-P01118/2018-19/11818 is appointed as IRP.**

7. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

> **1. effect forthwith staying:-**
>
> ***(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 debt or 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 Securitisation 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 corporate debtor.

Further:

(2) The supply of essential goods or services to the corporate debtor 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:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

8. Operational Creditor is directed to deposit the fee of Rs. 2,00,000/- to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs and

IRP is directed to follow the rules and regulations as per Section 15, 16, 17 & 18 of IBC.

9. **With the aforesaid order, IA stands disposed off.**

10. Registry is directed to communicate the order with the IRP as well both the parties.

Sd/-	Sd/-
K. K. VOHRA	**ABNI RANJAN KUMAR SINHA**
Member (T)	**Member (J)**