



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-285/(ND)/2020

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Ashtech Buildpro India Private Limited

Registered Office at: D - 49, Mansarovar Park, Shahdara,
New Delhi - 110032

... OPERATIONAL CREDITOR

Versus

M/s. Sun Ganga Construction Co. Pvt. Ltd.

Registered office at: T-345 IIIrd Floor, Plot No. 3, Pkt-5

Manish Metro Plaza, Sec-12,

Near Ashirwad Chowk, Dwarka, New Delhi - 110075

...CORPORATE DEBTOR

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Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI.RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant: Ms. Chanchal Choudhary

ORDER

Per SH.RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 24.11.2022

1. This is an application filed by the Applicant M/s. Ashtech Buildpro India Private Limited seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s. Sun Ganga Construction Co. Pvt. Ltd. for the alleged default on the part of the Respondent in clearing the debt of Rs. 7,51,844/- (Rupees Seven Lakhs Fifty One Thousand Eight Hundred and Fourty Four), including 21% interest annually, as alleged by the Applicant. The details of transactions leading to the filing of this application as

IB-285/ND/2020

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averred by the Applicant/Operational Creditor are as follows:

- i. That pursuant to various discussions, Sun Ganga Construction Co. Private Limited (hereinafter, referred to as the "Corporate Debtor") placed an order dated 01.06.2016 with Ashtech Buildpro India Private Limited (hereinafter, "Operational Creditor") for supply of Autoclaved Aerated Concrete (AAC) Blocks at the project site of Corporate Debtor.
- ii. That in terms of the Mutual Understanding, the Operational Creditor commenced to supply MC Blocks at the Project Site of Corporate Debtor, receive payments from 14.05.2016 onwards, as reflected in the Ledger maintained by Operational Creditor in respect of accounts of Corporate Debtor.
- iii. That the Operational Creditor was maintaining a running account in respect of the materials supplied to the Corporate Debtor, and was raising invoices upon the Corporate Debtor, on a monthly basis. That between 22.11.2016 and 05.02.2017, the Operational Creditor raised invoices, said invoices



aggregated to Rs. 5,03,306/- which amount was duly reflected in the Ledger Account maintained by the Operational Creditor, in respect of account of Corporate Debtor, for the period 02.06.2016 till 01.04.2018.

- iv. That till 04.02.2017, the Corporate Debtor had made certain ad-hoc payments, in response to the constant communications which were underway between the Corporate Debtor and the Operational Creditor. However, after 04.02.2017, till date, no payments whatsoever, had been credited in favour of the Operational Creditor, thereby resulting in an outstanding operational debt of Rs. 5,03,386/- in favour of the Operational Creditor.
- v. That as per industrial practices, any delay in clearance of invoices is specified to attract interest at 21% per annum. Consequently, as of Ledger Closing for 2018, a total outstanding amount of Rs. 7,51,844/- was due and payable by the Corporate Debtor in favour of the Operational Creditor.

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- vi. That given the fact that the liabilities qua the Corporate Debtor in the books of the Operational Creditor had crossed over Rupees Five Lacs in its books, the Operational Creditor had commenced to issue several emails, engage in telephonic conversations with the Corporate Debtor, with the premise that the outstanding liabilities would stand resolved. However, apart from feeble assurances, and minimal communications, nothing concrete was ever forthcoming from the Corporate Debtor.
- vii. That due to the stoic silence from the Corporate Debtor, since June 2017, the Operational Creditor was forced to issue a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 on 21.11.2019 which was sent via speed-post as well as through e-mail to the registered address and email address mentioned in the MCA-Master Data maintained in respect of the Corporate Debtor on www.mca.gov.in.
- viii. That despite receiving the Demand Notice dated 21.11.2019, there was no response from the



Corporate Debtor. This clearly indicates that the Corporate Debtor was not interested in clearing the outstanding operational debt qua the Operational Creditor.

2. Despite several notices to the Corporate Debtor, no one was present on behalf of the Corporate Debtor on any of the dates of the hearing and hence the Corporate Debtor was set ex-parte vide order dated 11.01.2021. However, the counsel for the Corporate Debtor filed an application bearing number I.A/4201/2021 for setting aside the ex-parte order dated 11.01.2021. The said application was allowed vide order dated 07.10.2021 subject to payment of cost of Rs. 20,000 to the Operational Creditor. The counsel for the Corporate Debtor failed to comply with the order dated 07.10.2021 and therefore, the ex-parte order against the Corporate Debtor was restored vide order dated 27.07.2022.
3. In compliance of Section 9 (3)(b) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has filed affidavit dated 21.12.2019 stating that no notice of any

IB-285/ND/2020

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pre-existing dispute has been received by the Applicant from the Corporate Debtor relating to the dispute of the un-paid Operational Debt.

4. We have gone through the documents filed by the Operational Creditor and heard the arguments made by the counsel of the Operational Creditor. The Applicant has claimed the default on part of the Respondent for amount of Rs. 7,51, 844/- (Rupees Seven Lakhs Fifty One Thousand Eight Hundred and Fourty Four), including 21% interest annually.
5. Vide daily order dated 11.01.2021, it has been noted that the Corporate Debtor has been set ex-parte.
6. The Applicant has proven debt and default by filing the purchase order as well as the Ledger Account maintained by the Operational Creditor, in respect of account of Corporate Debtor, for the period 02.06.2016 till 01.04.2018. Further, in pursuance of Section 9(3)(b), the Operational Creditor has filed a certificate from its banker namely Bank of Baroda dated 17.12.2019 certifying that

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no payment has been credited to the account of the Applicant from the Corporate Debtor since 04.02.2017.

7. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor and upon appreciation of the documents placed on record to substantiate the claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and along with that, in the absence of any preexistence of dispute, this tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect.
8. The name of Insolvency Resolution Professional has not been proposed in the Application filed by the Operational Creditor. This Adjudicating Authority, hereby appoints Mr. Sanjay Gupta, (Email – sanjay@sgaindia.in), Reg. No: IBBI/IPA-002/IP-N00982-C01/2017-2018/10354 to act as Insolvency Resolution Professional from the panel of Insolvency Professionals (IPs) valid from the period 01.07.2022-31.12.2022 issued by IBBI in terms of Section



16(4) of the IBC, 2016. 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.

9. 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.
10. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
11. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

IB-285/ND/2020

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- (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 the possession of the corporate debtor.*

12. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any

IB-285/ND/2020

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other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

13. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

14. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17,

IB-285/ND/2020

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18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

IB-285/ND/2020

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15. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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