

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)

CP No. IB- 1835/ND/2019

[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:

Bindals Merchandise

.....Operational Creditor

Versus

Divyam Developers Private Limited

.....Corporate Debtor

MEMO OF PARTIES:

Bindals Merchandise
Having its Registered Office at
6th K.M., Bhopa Road,
Muzaffarnagar, Uttar Pradesh.

... APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/s Divyam Developers Private Limited
Having Registered Office at:
First Room Portion 9-10/3, 3rd Floor
Laxman House, Asaf Ali Road, New Delhi -110002

...RESPONDENT/ CORPORATE DEBTOR

IB- 1835/ (ND)/2019


28/3/22

ORDER PRONOUNCED ON: 25.03.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SMT. SUMITA PURKAYASTHA, HON'BLE MEMBER(TECHNICAL)

ORDER

Per- Sumita Purkasathya, Member-Technical

1. This is an application filed by Bindals Merchandise, the applicant/operational creditor ^{7-DL} seeking (for brevity Operational Creditor) to initiate CIRP against the Respondent company/Corporate Debtor (for brevity Corporate Debtor) M/s Divyam Developers Private Limited., under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 68,29,866/- on account of supplying Iron & Steel, Agro Products, Chemicals, fuel and Lubricants, Machinery Part and their accessories to the corporate debtor. The details of transactions leading to the filing of this petition as averred by the applicant are as follows:-
- a. The operational creditor is the authorized dealer of various T.M.T & Structural Steel bars and other steel components and engaged in the business of supplying T.M.T & Structural Steel and other steel components to real estate companies.
 - b. The operational creditor during the period 30.04.2014 to 10.06.2018 supplied the goods called M.S. TMT Bars as ordered by Corporate Debtor for their site situated at Noida and issued invoices from time to time in respect of the supplied goods.

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- c. It is stated that upon receipt of the goods supplied under the issued invoices, the corporate debtor has not raised any dispute nor any objection with regard to the to the quality of the supplied goods and further has used the same for their business purposes.
- d. It is submitted that during the financial year 01.05.2015 to 31.03.2016, the operational Creditor supplied the goods to the corporate debtor total amounting to Rs. 6,53,74,4371- against which corporate debtor made a part payment of Rs. 3,62,74,4191- only which has been duly accounted for in the ledger account and after adjusting the above amount along with an amount of Rs. 29,41,8821- accounted for as debit note on account of weight shortage, an amount of Rs. 2,61,58,136/- was outstanding during said financial year.
- e. It is submitted that the operational creditor has recorded all transactions entered with the corporate debtor as running account and further maintained a ledger account.
- f. The corporate debtor regarding payments against previous supplies, during the period 01.04.2015 to 31.03.2016, the operational creditor upon receipt of further orders for purchase written verbally, with an opening balance of Rs. 2,61,58,136/-, further supplied the goods for a total amounting to Rs. 13,40,37,2971- and against aforesaid balances and new supplies, the



corporate debtor made a part payment amounting to Rs. 10,24,83,896/- only which has been duly accounted for in the ledger account maintained by the operational creditor. Hence, after adjusting the above received amount against the running account along with an amount of Rs. 20,47,759/- accounted for as debit note on account of weight shortage, the closing balance amount of Rs. 5,56,63,7781 was outstanding during such financial year.

- g. Thereafter, during the period 01.04.2016 to 31.03.2017, the operational creditor upon receipt of further orders for purchase written/ verbally, further supplied the goods for a total amounting to Rs. 6,09,59,4241- and against aforesaid balances and new supplies, the corporate debtor made a part payment amounting to Rs. 7,24,50,0001/- only. During the period from 01.04.2017 to 31.03.2018, the operational creditor upon receipt of further orders for purchase written/ verbally, further supplied the goods for a total amounting to Rs. 2,24,10,0721- and against aforesaid balances and new supplies, the corporate debtor made a part payment amounting to Rs. 2,02,00,0001 only. Further, during the period from 01.04.2018 to 31.03.2019, the operational creditor upon receipt of further orders for purchase written/ verbally, again supplied the goods for a total amounting to Rs. 1,00,12,7851- and against



aforesaid balances and new supplies, the corporate debtor made a part payment amounting to Rs. 93,50,9831 only.

- h. It is further submitted that the corporate debtor has transferred 12 flats located in SG Oasis and the cost of the flat as agreed has been duly reduced as receipt of payment by the corporate debtor in the ledgers maintained by operational creditor. It is submitted that cumulative cost of 12 flats was agreed to Rs. 3,42,15,2101/- and after adjusting the agreed price, Corporate debtor is liable to pay remaining amount of Rs. 68,29,865/- which is still lying outstanding which has not been paid till date by the corporate debtor.
- i. As per part-IV of the application an amount of Rs.68,29,866/- is still due and outstanding to be paid by the corporate debtor. The debt become due on 31.08.2018, i.e. the last payment made by corporate debtor.
- j. The applicant issued Demand Notice u/s 8 of the Code on 31.05.2019 duly served at the registered office of the corporate debtor. The postal receipts and tracking report has been placed on record. The applicant has filed an affidavit under Section 9 (3) (b) stating that no payment or notice of dispute has been received by applicant after service of demand Notice.



2. Despite opportunities provided to the Respondent, non-appeared on behalf of the corporate debtor nor reply has been filed and as a result the Respondent was proceeded ex-parte.
3. We have heard the matter and perused the case records. Apparently, the applicant has supplied goods/materials to the corporate debtor and raised invoices accordingly. The copies of invoices alongwith delivery challans have been placed on record. The corporate debtor has made part payments towards goods supplied by the applicant the last payment was made on 31.08.2018. The applicant has filed its ledger statement showing outstanding balance payable by the corporate debtor. The corporate debtor has also transferred 12 flats as payment towards its unpaid operational debt. The receipt of Transfer of aforesaid flats alongwith affidavits have been placed on record. This leaves no doubt that the default has occurred for the payment of the operational debt to the applicant. It is reiterated that despite due service of notice the corporate debtor has choose not to raise any objection before this tribunal.
4. Therefore, in the given facts and circumstances, it can be concluded that the applicant has established its claim which is due and payable by the corporate debtor. The present application is admitted.
5. The applicant has not proposed the name of an IRP, therefore, this bench appoints Ms. Rukhsana Choudhary, as the Insolvency Resolution Professional of the corporate debtor. The registration



number of the IRP being IBBI/IPA-002/IP-N00761/2018-19/12374 and email id. rukhsanac@gmail.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against her. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

6. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Ms. Rukhsana Choudhary to meet out the expense to perform the functions assigned to her in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
7. 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 corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the



pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

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

-Sd-

Sumita Purkayastha

Member(T)

-Sd-

Dharminder Singh

Member(J)