IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-812/(ND)/2021

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:

Lt. Smt. Sunila Chhabra
(through her legal heir Mr. Gauraav Kumar and Mr. Aditya Kumar)

...Operational Creditor/Applicant

Versus

Metro Concrete Private Limited

...Corporate Debtor/Respondent

Order Delivered on: 22.09.2022

Coram:
SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER- TECHNICAL

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

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2. The applicant, Lt. Smt. Sunila Chhabra, Proprietor of Chhabra Electricals and Electronics was engaged in the business of trading and support services, inter-alia, electricals and electronics like cables, switches, MCBs, etc.
3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

   a. The Operational creditor was introduced to the Corporate Debtor by Shri Jagdish Arora and on assurances given by him that the Corporate Debtor have a sound financial status.

   b. The Operational Creditor on behalf of M/s Chhabra Electricals and Electronics, supplied goods to the Corporate Debtor as per the demand of the Corporate Debtor.

   c. The Operational Creditor further stated that an invoice bearing No. 1643 dated 11.04.2017 for a sum of Rs. 51,79,440/- was raised against the goods supplied by the Operational Creditor. As, per the terms of payment mentioned in the invoices, the payment against the goods supplied to the Corporate Debtor has to be made within 60 days from the date of invoices and the same was duly agreed by the Corporate Debtor. However, no payment was made by the Corporate Debtor in the agreed terms.

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d. The Operational Creditor submits that various reminders were made to the Corporate Debtor to which they assured that the payment would be made by April 2018 and then again in April, 2019 when the Operational Creditor approached the directors of the Corporate Debtor for payment, the Corporate Debtor confirmed the accounts and again assured to make the payment due to the Operational Creditor. However, on non-payment, the Operational Creditor made his next visit in December 2019 to the Corporate Debtor for the due payment, to which the Corporate Debtor showed his unwillingness to make the payment citing the reason of financial constraints.

e. The Operational Creditor further submits that Smt. Sunila Chhabra, the proprietor of M/s Chhabra Electricals and Electronics passed away on 11.12.2020 leaving behind her sons, i.e. her legal heirs.

f. The Corporate Debtor agreed to make due payment to the Operational Creditor and ensured the same to be made in July 2021 in respect of which, a post-dated cheque of Rs. 50,00,000/- was issued by the Corporate Debtor in favour of the Operational Creditor in partial discharge of their

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liability to be drawn on Indraprasth Sehkari Bank Ltd. The said cheque was presented in the bank of Operational Creditor and the same was dishonoured and was returned back via return memo dated 28.07.2021 to the Corporate Debtor with a remark "Account Closed".

g. The Operational Creditor further submits that a legal notice under Section 138 of the Negotiable Instrument Act, 1881 for the dishonour of the cheque was issued against the Corporate Debtor.

h. The Operational Creditor states in his petition that since no payment has been made by the Corporate Debtor, therefore, a total of Rs. 1,07,52,709 inclusive of interest of 18% p.a. calculated from 01.07.2017 till 13.11.2021 is outstanding towards the Corporate Debtor against the material supplied by them.

i. The Operational Creditor sent a Demand Notice dated 18.11.2021 demanding payment of an unpaid operational debt i.e. Rs. 1,07,52,709/- as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. But no reply was received to the said demand notice sent to the Corporate Debtor as the

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demand notice was returned back with remarks "No such Person/Company in this address"

4. Since no one appeared on behalf of the Corporate Debtor on 16.09.2022 accordingly the Corporate Debtor was proceeded ex-parte. Even no reply was filed by the Corporate Debtor despite numerous opportunities being given to them to file the same.
5. Heard. Record has been thoroughly perused. In order to substantiate its case, the applicant placed on record the invoice bearing No. 1643 in respect of goods supplied to the Corporate Debtor worth Rs. 51,79,440/- on 11.04.2017. The account statement was further confirmed by the Corporate Debtor on 01.04.2018 and 01.04.2019. Although, the proprietor of M/s Chabbra Electrical & Electronic was Smt. Sunila Chabbra, but she died on 11.12.2020, hence the present petition has been filed through legal heir Mr. Gaurav Kumar. Even, the post-dated cheque amounting to Rs. 50 lakhs dated 18.07.2021 was issued by the Corporate Debtor in favour of Mr. Gaurav Kumar. However, the same were dis-honoured on 27.07.2021. Thereafter, the legal notice dated 25.08.2021 was given under Section 138 of Negotiable Instruments Act. Subsequent to that, on 18.11.2021, the demand notice was sent under section 8 of the Code, which was not replied at all by the respondent. Apparently, though the invoice pertains to 11.04.2017, the acknowledgment of the debt was made on 01.04.2018 and 01.04.2019 by duly confirming the account statements for FYs 2017-2018 & 2018-2019 respectively. The copy of the confirmation is as under:-

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To : METRO CONCRETE PRIVATE LIMITED
301, 3RD FLOOR, LSC DDA MARKET
H BLOCK, VIKASPURI, NEW DELHI - 110018
MR. SHYAM SEHGAL
REF : MR. JAGDISH ARORA (DELHI JAL BOARD)

From: CHHABRA ELECTRICALS & ELECTRONICS
1609, 2ND FLOOR,
BHAGIRATH PALACE,
CHANDNI CHOWK, DELHI - 110006
9811482265

Date : 1-Apr-2018

Dear Sir/Madam,

Sub: Confirmation of Accounts
1-Apr-2017 to 31-Mar-2018

Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period.

Kindly return 3 copies stating your I.T. Permanent A/c No., duly signed and sealed, in confirmation of the same. Please note that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown below.

Date	Particulars	Debit Amount	Date	Particulars	Credit Amount
11-Apr-2017	Sales - 1543 SALES VAT @ 5% 49,32,800.00 Cr OUTPUT VAT @ 5% 2,46,640.00 Cr	51,79,440.00			
31-Mar-2018	INTEREST RECEIVABLE ON DELAYED PAYMENT INTEREST RECEIVABLE @ 18% PA COMPOUNDED ANUALLY FOR PERIOD 01.08.2017-31.03.2018	6,97,309.00			
				Closing Balance	58,76,749.00
		58,76,749.00			58,76,749.00

We hereby confirm the above

PAN NO. AAFCM6656J

Yours faithfully,

PROPRIETOR

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To : METRO CONCRETE PRIVATE LIMITED
301, 3RD FLOOR, LSC DDA MARKET
H BLOCK, VIKASPURI, NEW DELHI - 110018
MR. SHYAM SEHGAL
REF : MR. JAGDISH ARORA (DELHI JAL BOARD)

From: CHHABRA ELECTRICALS & ELECTRONICS
1809, 2ND FLOOR,
BHAGIRATH PALACE,
CHANDNI CHOWK, DELHI - 110006
9811482255

Date : 1:Apr:2019

Dear Sir/Madam,

Sub: Confirmation of Accounts
1:Apr:2018 to 31:Mar:2019

Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period.

Kindly return 3 copies stating your I.T. Permanent A/c No., duly signed and sealed, in confirmation of the same. Please note that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown below.

Date	Particulars	Debit Amount	Date	Particulars	Credit Amount
1:Apr:2018	Opening Balance	58,76,749.00			
31:Mar:2019	INTEREST RECEIVABLE ON DELAYED PAYMENT *INTEREST RECEIVABLE @ 18% PA COMPOUNDED ANUALLY FOR PERIOD 01.04.2018-31.03.2019*	10,54,917.00			
		69,31,666.00		Closing Balance	69,31,666.00
		69,31,666.00			69,31,666.00

I/We hereby confirm the above

DELHI-18

I.T. PAN No. AAFCM6658J

Yours faithfully,

PROPRIETOR

6. Subsequently, the cheque amounting to Rs. 50 lakh was also issued by the respondent on 28.07.2021, in the name of Mr. Gaurav Kumar

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Sdson of Smt. Sunila Chabbra proprietor of M/s Chabbra Electrical & Electronics. Therefore, the period of limitation stands extended by virtue of confirmation of account on 01.04.2019 and by virtue of issuance of the cheque dated 28.07.2021 in terms of Secrions 18 and 19 of the Limitation Act, 1963. The invoice No. 1643 dated 11.04.2017, clearly proves that the amount has to be paid along with interest at the rate of 18% on delayed payment to be compounded annually. The relevant invoice is as under:-

ANNEXURE – A1 35

TAX INVOICE (Extra Copy)

CHHABRA ELECTRICALS & ELECTRONICS
1809, 2ND FLOOR,
BHAGIRATH PALACE,
CHANDNI CHOWK, DELHI - 110006
9811482255

Invoice No. 1643	Dated 11-Apr-2017
Delivery Note	Mode/Terms of Payment 60 DAYS
Supplier's Ref. 1643	Other Reference(s) MR. ARORA
Buyer's Order No.	Dated
Despatch Document No.	Delivery Note Date
Despatched through BY ROAD	Destination VIKASPURI
Terms of Delivery IMMEDIATE	

Consignee
METRO CONCRETE PRIVATE LIMITED
301, 3RD FLOOR, LSC DDA MARKET, H BLOCK, VIKASPURI, NEW DELHI - 110018,
MR. SHYAM SEHGAL REF : MR. JAGDISH ARORA (DELHI JAL BOARD)
PAN/IT No : AAFCM6658J

Buyer (if other than consignee)
METRO CONCRETE PRIVATE LIMITED
301, 3RD FLOOR, LSC DDA MARKET, H BLOCK, VIKASPURI, NEW DELHI - 110018,
MR. SHYAM SEHGAL REF : MR. JAGDISH ARORA (DELHI JAL BOARD)
PAN/IT No : AAFCM6658J

Description of Goods	Quantity	Rate	per	Amount
MAIN LT PANEL	1.00 NOS	19,00,000.00	NOS	19,00,000.00
CAPACITOR PANEL	4.00 NOS	3,80,000.00	NOS	15,20,000.00
DB PANEL	12.00 NOS	22,000.00	NOS	2,64,000.00
DB PANEL - 2	18.00 NOS	27,000.00	NOS	4,86,000.00
DB PANEL - 3	46.00 NOS	11,800.00	NOS	5,42,800.00
LIFT PANEL	4.00 NOS	55,000.00	NOS	2,20,000.00
				49,32,800.00
OUTPUT VAT @ 5%		5	%	2,46,640.00
Total	85.00 NOS			₹ 51,79,440.00

E. & O.E

Amount Chargeable (in words)
INR Fifty One Lakh Seventy Nine Thousand Four Hundred Forty Only

Company's VAT TIN : 07050146993
Company's CST No. : 07050146993
Buyer's VAT TIN : 07170348172

Declaration
1. We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct. 2. Goods Once Sold will not be taken back. 3. Any quality issue to be reported withing 10 Days. 4. Interest @ 18% will be charged on delayed payments to be compounded anually. 5. Payment to be made vied A/c Payee Cheque only

Customer's Seal and Signature

METRO CONCRETE PRIVATE LIMITED DELHI-18

for CHHABRA ELECTRICALS & ELECTRONICS
Authorised Signatory

SUBJECT TO DELHI JURISDICTION
This is a Computer Generated Invoice

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7. Further, no such notice has ever been given on behalf of the respondent to the effect that the goods were not of the given quality. Even, the respondent failed to put its appearance before this Tribunal and were proceeded ex-parte vide order dated 13.07.2022. Hence, contentions of the applicant remained un-rebutted.
8. In sequel of the abovesaid discussion, this Tribunal is of view that the applicant succeeded in proving the fact that amount of Rs. 1,07,52,709/- is due (i.e. inclusive of principal amount of Rs. 51,79,440/- and interest of Rs. 55,73,269/- at the rate of 18% per annum, which is calculated from 01.07.2017 to 13.11.2021), against the respondent as mentioned in Part-IV of the petition.
9. In view of the foregoing discussion, this Adjudicating Authority is of the considered view that there was default on the part of the respondent in pursuance of invoices raised on behalf of the applicant. Accordingly, the present application stands admitted in terms of Section 9(5) of the Code and CIRP is hereby ordered to be initiated against the respondent Corporate Debtor, forthwith.
10. The operational creditor has not proposed the name of an Interim Resolution Professional therefore this bench appoints Mr. Rakesh Kumar Jindal, as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N01148/2021-2022/13963 with email–id: iprakesh.jindal@gmail.com who has to submit the acceptance of the appointment as the interim resolution professional and signed as a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

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There is a declaration also to be made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by IRP above named as per the requirement of the IBBI Regulations.

11. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Rakesh Kumar Jindal, to meet out the expense to perform the functions assigned to him 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.

12. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, 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:

> *"(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;*

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(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."

(e)The IB Code 2016 also prohibits *Suspension or termination of any 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 other law for the time being in force, 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, concessions, 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 or the supply of the 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, 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

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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 a appropriate orders. 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 its 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.

15. 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.

Let copy of the order be served to the parties.

Consign the file to the record room.

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(DR. BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)