

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB- 1059/ND/2018

(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 CONCORD INFRASTRUCTURE PVT. LTD.

...Applicant/Operational Creditor

VERSUS

M/S SHUBHKAMNA BUILDTECH PVT. LTD.

...Respondent/ Corporate Debtor

Pronounced on: 26.11.2018

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

For the Applicant : Mr. Arun Batra, Advocate

Ms. Neha, Advocate

For the Respondent : ---

MEMO OF PARTIES

M/S CONCORD INFRASTRUCTURE PVT. LTD.

Having its registered office at:

184, Saini Enclave,

East Delhi- 110092

Through its Authorized Representative /Director

Shri. Pankaj Agarwal

...Applicant/ Operational Creditor

VERSUS

M/S SHUBHKAMNA BUILDTECH PVT. LTD.

Having its registered office at:

197-E, Pocket- IV, Mayur Vihar,

Phase- I, Delhi- 110091

Also at:

Plot No. GH-02/A,

Sector-1, Greater Noida (West)

U.P. 201301

...Respondent/ Corporate Debtor

ORDER

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Concord Infrastructure Pvt. Ltd. (for brevity 'Applicant') through its Director Sh. Pankaj Agarwal who is duly authorized vide Board resolution dated 15.07.2018 with a prayer to initiate the Corporate Insolvency process against M/s Shubhkamna Buildtech Private Limited (for brevity 'The Company').
2. The Applicant, the Operational Creditor namely M/s Concord Infrastructure Private Limited is a company incorporated under the provisions of Companies Act, 1956 having CIN No. U70109DL2006PTC152533.
3. The company is having its registered office at 184, Saini Enclave, East Delhi- 110092.
4. The Respondent, the Corporate Debtor namely M/s Shubhkamna Buildtech Private Limited is a company incorporated on 08.12.2006 under the provisions of

Companies Act, 1956 with CIN No. U45200DL2006PTC156384.

5. The company is having its registered office at 197-E, Pocket- IV, Mayur Vihar, Phase- I, Delhi- 110091.
6. The Authorised Share Capital of the respondent company is Rs. 5,00,00,000/- and Paid Up Share Capital of the company is Rs. 1,00,00,000/- as per Master Data of the company.
7. It is the case of the Applicant that respondent company launched a Residential Project “Shubhkamna City” for construction of approx. 1300 dwelling units in the Multi-Storeyed Group Housing on plot no. GH-02/A, Sector-1, Greater Noida.
8. It is further submitted by the applicant company that the respondent company engaged/appointed the applicant company as the contractor for carrying out Civil work with respect to the Multi- Storeyed buildings and executed an agreement dated 07.11.2014 for said project.

9. It is claimed by the applicant that aforesaid construction/ agreement was duly executed to the satisfaction of the Corporate Debtor, and pursuant thereto various invoices were raised by the Operational Creditor, details of which are as follows:

DATE	INVOICE NO.	AMOUNT (Rs.)
31.03.2015	RA 01	4,69,02,036/-
07.05.2015	RA 02	1,25,08,823/-
08.07.2015	RA 03	60,56,438/-
23.05.2016	RA 04	1,44,11,174/-
18.07.2016	RA 05	1,00,34,086/-
12.09.2016	RA 06	1,00,63,297/-
12.12.2016	RA 07	1,34,49,016/-
28.02.2018	RA 08	3,20,00,000/-
10.04.2018	RA 09	23,10,456/-

10. The applicant has stated that total debt due and payable by the Corporate Debtor to the applicant is Rs. 2,71,71,296/- exclusive of interest at the rate 18% per annum as on 11.06.2018.

11. In spite of various requests made and reminders sent to the Corporate Debtor by the Applicant vide letters dated 01.02.2017, 01.03.2017, 12.04.2017, 02.06.2017, 29.06.2017, the Company has neither paid nor responded to the applicant.
12. It is further submitted by the applicant that respondent company did not pay the above raised bills due to which applicant was forced to stop the work. After stoppage of the work at site, respondent company approached the applicant and gave assurance that they will pay the outstanding dues by way of regular installments. Thus, the applicant and the respondent company entered into an agreement dated 28.02.2018 whereby the respondent company admitted that as on 28.02.2018, they are liable to pay Rs. 2,70,00,000/- plus retention money amounting to Rs. 50,00,000/- to the applicant company. The copy of the said agreement is annexed with the appeal.

13. The Applicant thereafter requested the Corporate Debtor to clear the outstanding amount, however, Corporate Debtor neglected and failed to pay the unpaid debt of the Applicant. Since no payment was forthcoming hence a notice under Section 8 of the Insolvency and Bankruptcy Code was issued on 16.07.2018 to the Corporate Debtor.
14. Despite the demand notice sent under Section 8 of the Code, the Corporate Debtor has failed to pay the amount demanded nor has replied to the demand notice raising any dispute, hence this application, seeking to unfold the process of CIRP.
15. This Tribunal is constrained to proceed with the matter exparte in relation to the Corporate Debtor since Corporate Debtor has not appeared though Section 8 notice and the present application were duly served on the Corporate Debtor and proof of service is filed by the applicant.
16. The applicant has attached the copy of bank statement of YES Bank Limited for the period of 28.07.2014 to 03.08.2018 in compliance with the requirement of Section 9(3)(c) of the IBC 2016.

17. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
18. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
19. 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) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following:
 - 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.

However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(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—

a. such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

b. a surety in contract of guarantee to a Corporate Debtor.

(4) The order of moratorium shall have effect from the date of this 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.

In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.

20. The Operational Creditor has proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoint Ms. Gurkamal Hora Arora having

registrationno. IBBI/IPA-001/IP-P00588/2017-18/11958
having email address gurkamal.hora@gmail.com as the
IRP of the Corporate Debtor. The IRP is directed to take all
such steps as are required under the statute, more
specifically in terms of Sections 15,17,18,20 and 21 of the
Code.

21. A copy of the order shall be communicated to the Applicant
as well as to the Corporate Debtor above named by the
Registry. Further the IRP above named be also furnished
with copy of this order forthwith by the Registry. In
addition, a copy of the order shall also be forwarded to IBBI
for its records.

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)