

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-788/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 SUNTECH INFRA SOLUTIONS PVT. LTD.

...Applicant/Operational Creditor

VERSUS

M/S CINDA ENGINEERING & CONSTRUCTION PVT. LTD.

...Respondent/ Corporate Debtor

Pronounced on: 14.11.2018

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

For the Applicant : Mr. Saurabh Seth, Advocate

For the Respondent : ---

MEMO OF PARTIES

M/S SUNTECH INFRA SOLUTIONS PVT. LTD.

Having its registered office at:

F- 56, Ground Floor, Green Park,

New Delhi- 110016

Having its Corporate Office at:

601 Gopal Heights (D-9), Netaji Subhash Place,

Pitampura, New Delhi- 110034

...Applicant/ Operational Creditor

VERSUS

M/S CINDA ENGINEERING & CONSTRUCTION PVT. LTD.

Having its registered office at:

B- 92, 9th Floor, Himalaya House 23,

Kasturba Gandhi Marg,

New Delhi-110001

...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 Suntech Infra Solutions Pvt. Ltd. (for brevity 'Applicant') through its Director Mr. Gaurav Gupta with a prayer to initiate the Corporate Insolvency process against M/s CINDA Engineering & Construction Private Limited (for brevity 'The Company').
2. The Applicant, the Operational Creditor namely M/s Suntech Infra Solutions Private Limited is a company incorporated under the provisions of Companies Act, 1956 having CIN No. U45400DL2009PTC189765.
3. The company is having its registered office at F- 56, Ground Floor, Green Park, New Delhi-110016.
4. The Respondent, the Corporate Debtor namely M/s CINDA Engineering & Construction Private Limited is a company incorporated on 08.08.2008 under the provisions of

Companies Act, 1956 with CIN No. U45208DL2008FTC181860.

5. The company is having its registered office at B- 92, 9th Floor, Himalaya House 23, Kasturba Gandhi Marg, New Delhi-110001.
6. The Authorised Share Capital of the respondent company is Rs. 8,00,00,000/- and Paid Up Share Capital of the company is Rs. 8,00,00,000/- as per Master Data of the company.
7. It is the case of the Applicant that respondent company approached the applicant company and executed an agreement dated 06.12.2016 bearing reference number 16C2500B-S0010 for Piling work and other activities at the project site in Dahej, Gujarat.
8. The applicant has submitted that aforesaid work order/ 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.)
01.02.2017	RA 01	12,90,498/-
01.03.2017	RA 02	49,20,042/-
31.03.2017	RA 03	1,23,68,593/-
02.06.2017	RA 04	36,12,258/-
29.06.2017	RA 05	6,77,512/-
29.06.2017	RA 06	45,52,527/-

9. The applicant has stated that total debt due and payable by the Corporate Debtor to the applicant is Rs. 89,89,609/- inclusive of interest at the rate 18% per annum as on 11.06.2018.
10. Inspite 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.
11. The Applicant from time to time 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 21.05.2018 to the Corporate Debtor.

12. The Corporate Debtor has duly deposited TDS on the said outstanding bills, which in itself shows that the Corporate Debtor acknowledges and admits the debt.
13. 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.
14. 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 duly served on the Corporate Debtor and proof of service along with service affidavit is filed by the applicant making the service complete.

15. The applicant has attached the copy of bank statement of HDFC bank in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
16. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. 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.
18. 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.

19. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoint Mr. Vijender Sharma having registration no. IBBI/IPA-003/IP-N00003/2016-17/10022 having email address vijender@vsa.net.in 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.
20. 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)

