

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-415/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 AGRAWAL SANITATIONS****Through its Proprietor Mr. N.K. Agrawal****...Applicant/ Operational Creditor****VERSUS****M/S PROVIEW INFRASTRUCTURE PRIVATE LIMITED****...Respondent/ Corporate Debtor****Judgement Pronounced on: 11.09.2018****CORAM:****DR. DEEPTI MUKESH****MEMBER (Judicial)****For the Applicant:** Mr. B. Patnaik, Adv.**For the Respondent: ---**

MEMO OF PARTIES

M/S AGRAWAL SANITATIONS

Through its Sole Proprietor Mr. N.K Agrawal

Registered office at: R-4/133 Raj Nagar,

Ghaziabad – 201002

...Applicant/Operational Creditor

VERSUS

M/S PROVIEW INFRASTRUCTURE PRIVATE LIMITED

Registered office at: 220,

Opposite Veternity Hospital Village, Burari,

Delhi-110084

...Respondent/ Corporate Debtor

JUDGEMENT

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 Agrawal Sanitations, through its Proprietor Mr. N.K. Agrawal, (for

brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/s Proview Infrastructure Private Limited (for brevity 'Corporate Debtor').

2. The applicant M/s Agrawal Sanitations is a proprietorship concern, of Mr. N.K. Agrawal, as a Proprietor.
3. The Applicant is having its office at R-4/133 Raj Nagar, Ghaziabad – 201002.
4. The Applicant is carrying on the business of supplying and installing all types of the firefighting materials/equipments.
5. The corporate debtor is a private limited company incorporated under the provisions of the Companies Act, 1956 on 04.07.2008 having CIN U452OODL2008PTC180512 as per Master Data of the company.
6. The Authorised Share Capital of the Corporate Debtor is Rs. 1,00,00,000/- and Paid Up Share Capital is Rs. 8,84,600/-.

7. The corporate debtor is having its registered office at 220, Opposite Veternity Hospital Village, Burari, Delhi-110084 as per the master data.
8. It is stated that during the course of business M/s Proview Infrastructure Private Limited approached the applicant for the supply of various firefighting materials/equipments and issued a work order vide No. 72 dated 21.06.2014. Pursuant to the said work order, the Applicant started procuring and installing the firefighting equipments/materials of approved make and put in all his hard efforts, experience, expertise, technical skills, man power, machineries, etc. for the execution of the said work order of the corporate debtor. It is further stated that the corporate debtor failed to provide adequate work front to the Applicant, within the stipulated time, causing indefinite delay in the progress of work amounting to a huge financial loss/burden on the Applicant. Ultimately, the applicant could complete the fire fighting work for Towers A,B,C and some portion

of Tower G and H by four years, due to delay on the part of the corporate debtor.

9. The applicant has stated that the payment schedule of the corporate debtor was very irregular and was releasing very nominal amount to the applicant against his work performed and manpower machinery used for the said work, which caused lot of hardship to the applicant who had to arrange the funds.
10. The applicant submits that the corporate debtor stopped paying to the applicant since 19.07.2017. The copy of the bank statement of the applicant shows the last payment made by the corporate debtor to the applicant on 19.07.2017.
11. The applicant had raised various bills all dated 03.01.2018 total amounting to Rs. 24,37,712/- towards supply, installation, testing & commissioning of mild steel pipe heavy class including cutting, reading, welding, bends, elbows, reducers, clamps etc. and making of the same, including the cost of structural work for supports fabricated from standard sections of

required sizes and thickness and all the bills were duly received by corporate debtor. The applicant further claims that he had further raised bills for the retention money of Rs. 3,15,200/- (S.D.) and Rs. 3,00,000/-(EMD) towards the work done by him as per the said work order after all deduction and adjustment of mobilization advance.

12. The applicant has submitted that despite several verbal requests, emails and correspondence made through speed post, reminding the corporate debtor to clear the legally admitted operational debt, the corporate debtor did not pay the dues, nor disputed the same.
13. The applicant has stated that on several occasions the applicant called upon the corporate debtor to discharge its operational debt however, the corporate debtor has declined to discharge its admitted operational debt on one pretext or the other, leaving no option to the applicant but to proceed legally.
14. The applicant has stated that total debt due and payable by the Corporate Debtor to the applicant is Rs.

32,01,459/- with interest at the rate 24 % per annum as agreed and described in works contract term is payable to the applicant.

15. The Applicant issued a Demand Notice under section 8 of the Code, 2016 dated 17.03.2018 in Form 4 as per the I & B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016). The corporate debtor has neither paid the money nor raised any dispute towards the liability of Rs. 32,01,459/- as claimed by the Applicant in notice under section 8 of IBC, 2016.
16. The Applicant has filed an affidavit dated 11.04.2018 affirming that in respect of the amount claimed or any part thereof, the Applicant has not received nor had any person, on its behalf had received in any manner the amount due to them nor received any notice raising dispute to the said claim of the applicant under section 9(3)(b) of the IBC, 2016.
17. Neither notice of dispute was raised by corporate debtor nor money was paid, hence the applicant has filed

present Application under section 9 of IBC, 2016 and served the copy as per the directions and order of this Hon'ble Bench, which is duly received by the Corporate Debtor and the affidavit of service to that effect is filed by the applicant.

18. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
19. The amount of default exceeds Rs. 1,00,000/- as per the requirement under section 4 of the Code, 2016, and this application is within the purview of section 9 of the IBC, 2016.
20. The default in payment of operational debt owned and debt became payable from the date of the invoice dated 03/01/2018 raised by the Applicant. Hence, the claim of the applicant is within limitation and the debt is not time barred.
21. In spite of several opportunities given to the Corporate Debtor none appeared for the Corporate Debtor and the matter was heard ex-parte.

22. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues which are un-controverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. Hence, the present application deserves to be admitted.
23. Applicant has named the Interim Resolution Professional (IRP), as Mr. Nirmal Kumar Bhesoni having registration number IBBI/IPA-001/IP-P00010/2016-17/10016 and E-Mail ID nkbhesoni@gmail.com, duly registered with Insolvency and Bankruptcy Board of India, as the Interim Resolution Professional, whose certificate of registration is also annexed with specific consent filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 making all disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
24. As a sequel to above, the application is admitted in terms of Section 9(5) of IBC, 2016 and moratorium as

envisaged under the provisions of Section 14(1) 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.

25. 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.

26. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)