

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-254/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 RMC READY MIX (INDIA)

Through its Deputy General Manager Mr. Ashok Agarwal

...Applicant/ Operational Creditor

VERSUS

M/S NEWCON ENGINEERS PRIVATE LIMITED

...Respondent/ Corporate Debtor

Judgment Pronounced on:12.09.2018

CORAM:

DR. DEEPTI MUKESH

MEMBER (Judicial)

For the Applicant: Mr. V. K. Monga, Advocate

For the Respondent: ---

MEMO OF PARTIES

M/S RMC READY MIX (INDIA)

Through its Deputy General Manger Mr. Ashok Agarwal

Registered office at: FEMC-Pratibha Plant,

Opposite Sarai Kale Kha ISBT

New Delhi-110013

...Applicant/Operational Creditor

VERSUS

M/S NEWCON ENGINEERS PRIVATE LIMITED

Registered office at: S-136,

LGF, Greater Kailash-II

New Delhi-110048

...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 RMC Ready Mix (India), through its Deputy General Manager-Accounts Mr. Ashok Agarwal, (for brevity 'Applicant') with a prayer to initiate the

Corporate Insolvency process against M/s Newcon Engineers Private Limited (for brevity 'Corporate Debtor').

2. The M/s RMC Ready Mix (India) is a division of Prism Cement Limited, which is a limited company who had in turn authorized Mr. Ashok Agarwal vide resolution of Board of Directors dated 09.12.2017 to initiate prosecution under I & B Code.
3. The Applicant is having registered office at FEMC-Pratibha Plant, Opposite Sarai Kale Kha ISBT, New Delhi-110013 and the registered office of Prim Cement Limited is situated at Rahejas, Main Avenue, V.P. Road, Santacruz(W), Mumbai-400054 having CINL26942TGI992PLC014033.
4. The Applicant is carrying on the business of supplying Ready Mix Concrete.
5. The corporate debtor is a private limited company incorporated under the provisions of the Companies Act, 1956 on 08.08.2012 having CIN U70102DL2012PTC239965 per Master Data.

6. The Authorised Share Capital of the Corporate Debtor is Rs. 2,00,00,000/- and Paid Up Share Capital is Rs. 1,71,18,460/- as per Master Data of the company at Annexure P-12.
7. The corporate debtor is having its registered office at S-136, LGF, Greater Kailash-II, New Delhi-110048.
8. The Applicant has stated that during the course of business, M/s Newcon Engineers Private Limited the corporate debtor placed orders with the applicant for the supply of Ready Mix Concrete against various purchase orders dated 24.08.2013 for Rs. 7,65,000/-, 03.09.2013 for Rs. 3,49,000/- and 05.09.2013 for Rs. 1,47,000/- for their site at J-51 & 52 Sector-63, Noida with payment terms as prescribed in the said purchase order. Pursuant to the said purchase order, the Applicant supplied ready mix concrete at the site as directed by the corporate debtor.
9. The applicant has further stated that against the aforesaid purchase orders, a balance of Rs.3,74,700/- remained

unpaid and due on 14.03.2014. Against the said dues, the corporate debtor issued cheque, dated 14.04.2014 bearing No. 030691 for Rs. 3,74,700/- drawn on SBI, Kalkaji, New Delhi-110019 branch in favour of the applicant to clear its liability against supply of Ready Mix Concrete as per the statement of account.

10. The applicant thereafter presented the aforesaid cheque, dated 15.05.2014 with their bankers for realization of the amount but the cheque was returned by the bankers unpaid on 16.05.2014 with the remark “insufficient funds”. The applicant issued demand notices to the corporate debtor and to all its directors under section 138 of the Negotiable Instrument Act, 1881, and since no payment was received, a complaint is filed before the Chief Metropolitan Magistrate Court at Saket, New Delhi on 26.07.2014 bearing C.C.No.3694, under section 138 read with section 142 of the Negotiable Instrument Act, 1881 and under section 417,420 and 422 of Indian Penal Code, where the applicant stated that the cheque, dated

14.04.2014 was fraudulently issued in favour of the applicant with dishonest intention of not honoring the due/outstanding payment. Thereafter, the corporate debtor appeared through its counsel and promised to clear the liability but failed to do so. During the said period as claimed by the applicant, the case was transferred to Ghaziabad and is pending trial.

11. The applicant submits a statutory notice dated 25.01.2016 under section 434 of the Companies Act, 1956 was issued upon the corporate debtor to pay the entire outstanding dues with 18% interest. The corporate debtor after receiving the notices promised to pay the dues within a month, but failed to disburse the same. The applicant has further sent a final notice, dated 02.08.2016 under section 434 of the Companies Act, 1956 to the corporate debtor to discharge its liability but again failed to comply the same.
12. On this, the applicant filed a company petition No. 1005/2016, before the Hon'ble High Court of Delhi, under

section 433(e), 434 and 439 of the Companies Act, 1956 seeking winding up of the corporate debtor on the ground of non-payment and inability to discharge the liability of an amount of Rs. 3,74,700/-. During this period and in terms of the Notification dated 07.12.2016, issued by the Ministry of Corporate Affairs, the said company petition was transferred to National Company Law Tribunal, New Delhi.

13. The Applicant issued a Demand Notice under section 8 of the Insolvency and Bankruptcy Code, 2016 dated 19.12.2017 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).
14. Since neither notice of dispute was raised by Corporate Debtor nor money was paid, the applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application which is duly received by the Corporate Debtor as per the affidavit of service filed by the applicant.

15. The Applicant has filed an affidavit 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 under section 9(3)(b) and 9(3)(c) of the IBC, 2016.
16. The applicant further states that in spite of several opportunities given none appeared on behalf of the corporate debtor nor any reply is filed and the matter was listed to be heard exparte on 27.08.2018.
17. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
18. The amount of default exceeds Rs. 1,00,000/- as per the requirement under section 4 of the Code, 2016, and application is within the purview of section 9 of the IBC, 2016.
19. The default in payment of balance operational debt became due and payable from the date of the supply dated 14.03.2014 raised by the Applicant and winding up

petition was filed in and around January 2016 and subsequently this petition was filed hence the debt is not time barred and application is within limitation period.

20. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. In the light of above facts and records the present application is admitted before bench.
21. The Applicant has named the Interim Resolution Professional (IRP), to be appointed by the order of Tribunal, as Mr. Ashok Kumar Juneja having registration number IBBI/IPA-002/IP-N00117/2017-18/10286 and E-Mail ID ashokjuneja@gmail.com, duly registered with Insolvency and Bankruptcy Board of India, as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of

the Corporate Debtor and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Corporate Debtor and the Applicant herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

22. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 and 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.*

23. 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.
24. 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)**