

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH- III

IB-944/ND/2018

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

Shikha,

Proprietor,

M/s Shree Shyam Enterprises,

B-11, Shreeji Mall, 2190/62,

Gurudwara Road, Karol Bagh,

New Delhi-110005

...Applicant

Versus

M/s JNS Infratech Private Limited,

Through its Directors,

B-92, Budh Vihar Colony,

Badarpur, New Delhi-110044

Also at:
A-124, First Floor, DDA Shed,
Okhla Industrial Area, Phase-II,
New Delhi-110020

Also at:
A-76/1, Budh vihar Colony,
Badarpur, New Delhi- 110044

Also at:
29B, Fourth Floor, Gali Number 6,
Ram Nagar, Paharganj,
New Delhi-110055

...Corporate Debtor

Coram:

**R,VARADHARAJAN,
Hon'ble Member (JUDICAL)**

**K.K. VOHRA,
Hon'ble Member (Technical)**

Counsel for the Petitioner : Mr. Ankit Gupta (Advocate)

Counsel for the Respondent :Mr. Vibhan Singh, Mr. Manoj Kumar(Advocates)

ORDER

Delivered on:13.09.2019

1. This is a petition filed by Ms. Shikha, Proprietor of M/s Shree Shyam Enterprise invoking the provision of Section 9 of Insolvency and Bankruptcy Code, 2016 (“the Code”) against the Respondent (JNS Infratech Private Limited) for initiating Corporate Insolvency Resolution Process (“CIRP”) against the Respondent.

2. The Applicant has averred as follows:
 - a. On 08.1.2017 Respondent had issued purchase order No. JNS/NWS/AGG Supply dated 08.1.2017 upon the Operational Creditor for the purchase of 10 mm & 20 mm aggregate, the same having been sent to the Operational Creditor vide email dated 8.1.2017 from email projectjns@gmail.com.
 - b. From 30.12.2016 to 15.01.2017 the Operational Creditor had supplied goods to the Corporate debtor at its site at Mundka Machchi Talab Road, near Indus Factory, New Delhi and in that behalf raised invoice No. 37 and 38 upon the Corporate Debtor.

- c. On 31.01.2017, the Operational Creditor had further supplied goods to the Corporate debtor at its site Mundka Machchi Talab Road, near Indus Factory and in that behalf raised invoice No. 39 and 40 upon the Respondent.
 - d. On 18.12.17, Operational Creditor had issued letter dated 18.2.2017 upon Corporate Debtor for payments of Rs 8,37,858/-.
 - e. On 17.4.17, the Operational Creditor had sent invoice No. 37, 38, 39 and 40 to the Corporate Debtor through email dated 17.4.2017 at email projectsjns@gmail.com and md@jnsipl.com.
 - f. On 3.5.2018, the Corporate Debtor had failed to clear the payments despite reminders and follow ups made by the Operational Creditor.
 - g. On 31.5.18, legal notice i.e. Demand Notice dated 3.5.18 has also been sent to the Corporate Debtor through email.
 - h. In June 2018 the Corporate Debtor received legal notice dated 3.5.2018 through speed post and email, but failed to clear the outstanding dues towards the Operational Creditor.
1. Upon notice to the Corporate Debtor, the Corporate debtor entered appearance on 16.11.2018 and filed an application (CA No. 342/C-III/ND/18) under main petition for recalling the order dated 5.9.2018



passed by this Tribunal wherein the Corporate Debtor was set ex-parte and this application was allowed based on the reasons stated in the application as well as in the interest of justice. Further opportunity was provided to the Corporate Debtor to file its reply within 7 days, failing which the right to reply will be closed and also directed the Corporate Debtor, that the acceptance of the reply is subject to the payment of cost of Rs 5000/- to be paid to the Ld. Counsel for the Petitioner within the said period of 7 days from the said order.

2. Vide order dated 20.5.2019, it is seen that Ld. Counsel for the Corporate Debtor represented that the above said order was complied with some delay and application has been filed for condonation of delay, but the said application stood refused by this Tribunal in view of the fact that as per order dated 6.5.2019 reply should have been filed on or before the stipulated period and payment of cost of Rs5000/- should have also been paid within the said period but since the reply was filed beyond the time limit and hence this tribunal was not in a position to consider the said reply as filed by the Corporate Debtor and the application for condonation of delay stood dismissed accordingly.

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Upon submissions made by the Operational creditor and Corporate Debtor and perusal of the documents ~~including~~ ^{including} ~~in~~ ^{including} copies of unpaid invoices raised by the Petitioner being invoice No. 37, 38, 39 and 40 from 30 December 2016 to 31 January 2017 amounting to a debt of Rs 9,55,158/- (Rupees Nine Lakhs Fifty Five Thousand One Hundred Fifty-Eight Only), there is a default on the part of the Corporate Debtor. Further Demand notice had also been sent to the Corporate Debtor on 3.5.2018 under Form 3 clause (a) of sub rule (1) of Rule 5 under the Insolvency and Bankruptcy Code 2016 which was duly delivered to the Corporate debtor. But there was no reply to the demand notice by the Corporate Debtor. R

Thus, while going through all the documents filed by the Petitioner, the Operational Creditor has established the existence of Operational debt and default by the Corporate Debtor Company. This petition requires hence to be admitted in view of the default and the CIRP process is required to be initiated against the Corporate Debtor.

Since the Applicant has not named the insolvency resolution professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Naresh Kumar Bhutani, with registration number IBBI/IPA-002/IP-N00547/2017-18/11673 (email- naresh101@gmail.com) (Mobile Number- 9910204443) as the Interim Resolution Professional (“IRP”) subject to the

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condition that no disciplinary proceedings are pending against such an IRP named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the application being admitted in terms of Section 9(5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Respondent:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.
3. 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 respondent 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
4. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

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(4) The order of moratorium shall have effect from the date of such 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 respondent under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

5. The Applicant is directed to pay a sum of Rs2,00,000/- to the Interim Resolution Professional ("IRP") upon the IRP filing the necessary declaration form as required under the provisions of the Code to meet out the expenses and fees on a count to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



6. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Applicant as well as to the Respondent 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 who is figuring in the list of resolution professionals forwarded by IBBI be also furnished with copy of this order forthwith by the registry.

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(K.K. VOHRA)
MEMBER (TECHNICAL)

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13/09/2019
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta/D