

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. IV, NEW DELHI**

IB-18/(ND)/2018

In the matter of:

M/s Jindal Diamonds Pvt. Ltd. ...Applicant/ Operational Creditor

Vs.

M/s Aarush Gems Pvt. Ltd. ...Respondent/Corporate Debtor

SECTION: Under Section 9 of IBC.

Judgement pronounced on 14.06.2018

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**DR. DEEPTI MUKESH,
MEMBER (JUDICIAL)**

For the Applicant: Mr. Siddharth Verma Adv.

For the Respondent: -



MEMOS OF PARTIES**M/s Jindal Diamonds Pvt. Ltd.**

Having Regd. Office At A-89,
Third Floor, Lajpat Nagar-2,
New Delhi- 110024

...Applicant/Operational Creditor

Vs.

M/s Aarush Gems Pvt. Ltd.,

Having Regd Office At- C-52,
L.G.F., Central Market,
Lajpat Nagar-2,
New Delhi- 110024

...Respondent/ Corporate Debtor

JUDGMENT

1. The instant application has been filed by M/s Jindal Diamonds Pvt. Ltd. (for brevity 'The Applicant') under the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) of M/s Aarush Gems Pvt. Ltd. (for brevity 'Corporate Debtor').

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2. The applicant is a company incorporated under the provisions of Companies Act, 1956 with CIN U52300DL2011PTC224270, having its registered office at A-89, Third Floor, Lajpat Nagar-2, New Delhi- 110024. The Applicant has authorized Mr. Siddhartha Jindal, Flat No.- 63, Delhi Govt. Officers Flats, Greater Kailash-I, New Delhi-110048 via Board Resolution 24.11.2017, to file this applicant on behalf of the Applicant. The applicant is involved in the business of trading and supply of jewels and precious stones, diamonds, gold items, etc.
3. The Corporate Debtor is the company incorporated on 29.08.2011 under the provisions of Companies Act, 1956 with CIN U52300DL2011PTC224270, having registered office at C-52, L.G.F., Central Market, Lajpat Nagar-2, New Delhi-110024. The Corporate Debtor deals in the jewellery items of gold, diamond and other precious stones.
4. It is the case of the Applicant that the Applicant had supplied gold and other precious stones to Corporate Debtor and raised the invoice of Rs. 4,87,749/- against the said supplied goods on 01.06.2017.

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5. It is further stated that the Corporate Debtor had made part payment of Rs. 1,50,000/- vide Cheque No. 001440 dated 02.08.2017 which is duly received by the Applicant, out the total amount of Rs. 4,87,749/-, leaving balance of Rs. 3,37,749/- as unpaid.
6. The Applicant further submits that in reference to the outstanding balance of Rs. 3,37,749/-, the Corporate Debtor had signed the confirmation of accounts on 15.06.2017, duly affirming and signed by the director of Corporate Debtor that the said amount remains outstanding towards Applicant.
7. It is the case of the Applicant that the payment of Rs. 3,37,749/- was not made as per the agreed terms and in spite of various verbal reminder made by the Applicant no payment was made by Corporate Debtor, for the balance due of Rs. 3,37,749/-.
8. 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

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under Section 8 of the Insolvency and Bankruptcy Code was issued on 14.11.2017 to the Corporate Debtor.

9. Despite the demand notice sent u/s 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. An affidavit u/s 9(3)(b) is also filed by the Applicant to that extent.
10. The applicant has not filed the bank certificate as required u/s. 9(3)(c) of I&B Code but has attached the bank statement copy of its HDFC Bank account. Relying on the order dated 15.12.2017 passed by Hon'ble Supreme Court in the matter of Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd. the requirement of Section 9(3)(c) can be dispensed with.
11. As per the records the applicant has served the copy of this application on the Corporate Debtor by post as well as through email and affidavit is filed by the Applicant on 06.02.2018 and 07.06.2018 to that effect. Hence service is deemed to be complete. None appeared for the 'Corporate Debtor'.

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12. The amount of debt claimed is Rs. 3,37,749 /- which is above Rs.1 lakh.
13. The default occurred on 15.06.2017, hence cause of action with respect to the debt is not time barred and application is filed accordingly.
14. The registered office of the Corporate Debtor is situated at Delhi and is within the territorial jurisdiction of this Tribunal.
15. In the circumstances mentioned above Corporate Debtor despite repeated service has not appeared before this Tribunal and existence of a default of debt due to the Applicant is established. The Tribunal is of the considered view that this application requires to be admitted and that CIRP process is required to be initiated against the Corporate Debtor.
16. The Applicant has not proposed the name of any IRP and requested the Tribunal to appoint any IRP, hence Mr. Navneet Kumar Arora having mail id- info@navneetaroracs.com, Mobile 9810328141 is duly registered with Insolvency and Bankruptcy Board of India and having registration No.



IBBI/IPA-002/IP-N00128/2017-18/10345 is be and hereby appointed as an Interim Resolution Professional.

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

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows: -

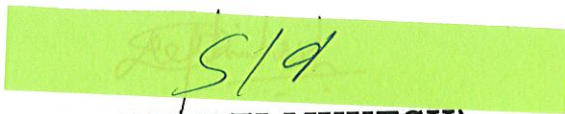
4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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 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.

18. 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.
19. 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.
20. The application stands disposed of in terms of the above order.



(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

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