

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-1489/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:**MR. ANUJ KUMAR TIWARI****...Applicant/Operational Creditor****VERSUS****ADHARSHILA COUNTRY HOMES PRIVATE LIMITED****...Respondent/ Corporate Debtor****Judgment Pronounced on: 19.03.2019****CORAM:****DR. DEEPTI MUKESH****MEMBER (Judicial)****For the Applicant:** Mr. Jeewesh Prakash, Adv.**For the Respondent: ---**

MEMO OF PARTIES**Mr. Anuj Kumar Tiwari****Resident of House No. A-53,**

Rajeev Nagar, Phase I

Delhi-110086

...Applicant/Operational Creditor**VERSUS****Adharshila Country Homes Private Limited****Registered office at:** Plot No. 3142/A

KH No. 74/7/1 Ground Floor

Kashmiri Block Street No. 6

Jain Nagar Tiranthak Nagar

Karala New Delhi-110082

...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 Mr. Anuj Kumar Tiwari (for brevity 'Applicant') with a prayer to initiate the Corporate

Insolvency process against Adharshila Country Homes Private Limited (for brevity 'Corporate Debtor').

2. The Applicant is a broker having a vast experience and connection in the field real estate, and is having its residence at House No. A-53, Rajeev Nagar, Phase I, Delhi-11008
3. The Corporate Debtor is a private limited company, company limited by shares, incorporated under the provisions of Companies Act, 1956 on 03.12.2012 bearing CIN U70102DL2012PTC245588 as per master data.
4. The Authorised Share Capital of the Corporate Debtor is Rs.10,00,000/- and Paid Up Share Capital is Rs. 1,00,000/- as per Master Data of the company and is having its registered office at Plot No. 3142/A, KH No. 74/7/1 Ground Floor, Kashmiri Block Street No. 6, Jain Nagar Tiranthak Nagar, Karala New Delhi-110082
5. The Applicant has stated that during the course of business, Adharshila Country Homes Private Limited, the Corporate Debtor entered into a Brokerage Agreement dated 09.08.2017 with the operational creditor in order to expand its reach in the filed of real estate and to earn revenue. It was submitted by the applicant that as per clause 5.1 of the Brokerage Agreement, it was clearly mentioned that the profit earned by the

corporate debtor from the leads shall be shared on 50% ratio and the corporate debtor shall give a minimum Rs. 3,60,000/- per annum for the services rendered by the operational creditor.

6. That during the tenure of the agreement the operational creditor gave a lead to the corporate debtor due to which the corporate debtor earned Rs.40,500/-, out of which Rs.20,250/- was given to the operational creditor as 50% of the revenue generated by the operational creditor as agrees under the Brokerage Agreement. Thereafter, at the end of the tenure of the agreement the corporate debtor did not renew the same even after several discussion and the amount became due to the operational creditor amounting to Rs.3,60,000/- after deducting Rs.20,250/- which was already been paid.
7. The Operational Creditor made several requests upon the corporate debtor to pay the outstanding amount but the corporate debtor kept on giving false hopes with respect to clear the outstanding dues. Thereafter, the operational creditor issued legal notice dated 06.09.2018 demanding the outstanding dues.
8. The Corporate Debtor has replied to the said legal notice vide letter dated 14.09.2018 and has admitted its liability to pay a sum of Rs. 3,39,750/- which remains to be an outstanding amount and has further

stated that because of the financial stress and slowdown in the market, the company could not pay off the dues to the operational creditor.

9. The Operational Creditor has issued a demand notice dated 11.10.2018 under section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor to pay the unpaid operational debt at the registered office of corporate debtor which was duly served on 03.11.2018 as per track report filed by the applicant.
10. The Corporate Debtor has neither submitted a reply to the aforesaid notice till date nor made any payment towards the outstanding dues.
11. 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.
12. 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 as required u/s. 9(3)(c) of I&B Code nor has received any notice of dispute raised by the corporate debtor under section 9(3)(b) of the IBC, 2016.
13. As on date, a total sum of Rs. 3,39,750/- (Rupees Three Lakh Thirty-Nine Thousand Seven Hundred Fifty) along with 18% interest is due

from the Corporate Debtor. The debt occurred on account of services provided by the operational creditor under the Brokerage Agreement.

14. 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 heard exparte.
15. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
16. The default occurred from 09.08.2018, hence the debt is not time barred and the application is filed within the period of limitation.
17. 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.
18. The Applicant has named the Interim Resolution Professional (IRP), to be appointed by the order of Tribunal, as Mr. Sanjay Sahni having registration number IBBI/IPA-001/IP-P00341/2017-18/10642, ([email-casanjaysahni@gmail.com](mailto:casanjaysahni@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 to be 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.

19. 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) shall follow in relation to the Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in vogue.
20. 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)