

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

(IB)-299(ND)/2019

**In the matter of**

**M/s. Banyan Tree Developers Pvt. Ltd.  
310, 3<sup>rd</sup> Floor, Vardhman Taru Plaza  
LSC Block – CU, Pitampura,  
New Delhi - 110034**

.....Operational Creditor

**V/s**

**M/s. Parivartan Buildtech Pvt. Ltd.  
Plot No. 96, S/Floor, KH No. 13/4  
Village Pochanpur, Sai Enclave  
Sector – 23, Dwarka,  
New Delhi – 110077  
Also At**

**M/s. Parivartan Buildtech Pvt. Ltd.  
Plot No. 902, Sector – 51, Gurgaon,  
Haryana - 122002**

.....Corporate Debtor

**SECTION: 9 of IBC, 2016**

**Order delivered on: 14.05.2019**

**Coram:**

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)  
SH. V.K. SUBBURAJ, HON'BLE MEMBER (T)**

**Present for the Petitioner.: Mr. Arjun Agarwal and  
Mr. Rajiv Virmani, Advocate**

**Present for the Respondent: Mr. Nadeem, Advocate**

**ORDER**

**PER SMT. INA MALHOTRA, MEMBER (J)**

This petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 on grounds of an outstanding operational debt, which despite demands, has not been liquidated by the Corporate Debtor.

2. As per averments, the Operational Creditor, is engaged in the business of supplying construction material. At request of the Corporate Debtor they had supplied sand at its three projects located at Khimlasa Kanjiya Road, Hefa Kheri Road and Ashok Nagar in Madhya Pradesh. 15 invoices were raised for the material supplied between May, 2018 to October, 2018 for which a running account was maintained. Partial payment was received. As per the ledger account, a total of Rs. 73,77,664/- is still outstanding for payment. It is submitted that the Corporate Debtor last made a payment of Rs. 10 Lakhs and Rs. 1,18,672/- on 14.11.2018. Details of the amounts outstanding against each invoice are as under:

S. No.	Invoice No.	Date of Invoice	Remaining Amount (including GST)
1.	BT-19/PB/003	16.05.2018	Rs. 1,51,939/-
2.	BT-19/PB/006	25.06.2018	Rs. 40,777/- (Partially left out of total invoice amount of Rs. 66,28,886/-)

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3.	BT-19/PB/008	30.06.2018	Rs. 47,505/- (Partially left out of total invoice amount of Rs. 10,47,505/-)
4.	BT-19/PB/010	15.07.2018	Rs. 30,00,360/-
5.	BT-19/PB/011	31.07.2018	Rs. 12,31,386/-
6.	BT-19/PB/013	16.08.2018	Rs. 2,46,594/-
7.	BT-19/PB/014	16.08.2018	Rs. 6,51,594/-
8.	BT-19/PB/015	16.10.2018	Rs.20,07,508/-
	<b>TOTAL</b>		Rs. 73,77,664/-

The Operational Creditor submits that a demand notice dated 03.12.2018 under Section 8 of the IBC was sent to which the Corporate Debtor has neither replied to, nor taken steps to liquidate/reduce its liability. The petitioner has therefore filed the present petition under the Code and has complied with the requirements under sections 9(3)(b) and 9(3)(c).

3. On notice being issued to the Corporate Debtor, they had entered appearance and filed their reply. They seek to resist the present proceedings on ground that the notice under Section 8 of the Code had not been delivered to them. The claim towards the outstanding payment however has not been denied. The defense sought to be raised by the Corporate Debtor is repudiated by the Id. counsel for the Operational Creditor. He has placed reliance on the postal receipt and the tracking report which confirms the delivery on the Corporate Debtor. Moreover, the demand notice was also sent by email on 12.12.2018 at the email id registered with the MCA.



4. In view of the facts and circumstances of the case, where the claim made by the Operational Creditor is neither denied nor disputed, the prayer of the petitioner merits consideration. A weak and a sham defense is sought to be raised to scuttle the proceedings. There is no denial that the email id was not received at the registered email id. In view of the facts, this petition is Admitted. A moratorium in terms of Section 14 of the Code comes into effect forthwith,

staying:

- “(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.*

Further,

(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.*

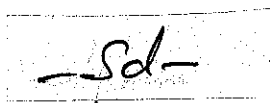
(3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

(4) *Further, the order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

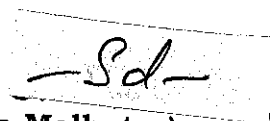
*“Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”*

5. The Operational Creditor has not proposed the name of the Interim Resolution Professional. Accordingly, Ms. Anjali Sharma, Registration No. IBBI/IPA-002/IP-N00400/2017-2018/11278, E-mail Id: anjalisharma@integrallawoffices.org Mobile No: 09810011235 duly emplaned with the IBBI is appointed as the IRP in this case. She is directed to take all such steps as are mandated under the Insolvency and Bankruptcy Code, 2016 and file her report as per statutory requirements.

6. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- to meet the immediate cost of CIR process with the RP who shall fully account for the same. This amount shall be reimbursed to the Operational Creditor by the COC to be recovered as CIR cost.
7. Copy of the order be communicated to both the parties as well as to the IRP.
8. To come up on 2<sup>nd</sup> July, 2019 for further consideration.



**(V.K. Subburaj)**  
**Member (T)**



**(Ina Malhotra)**  
**Member (J)**