

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

Company Application No. IB-201(PB)/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:

VINOD KUMAR

...Applicant/ Operational Creditor

VERSUS

M/S NOESIS INDUSTRIES LIMITED

...Respondent/ Corporate Debtor

Judgment Pronounced on: 28.09.2018

CORAM:

DR. DEEPTI MUKESH

MEMBER (Judicial)

For the Applicant: Mr. Deepak Diwan, Advocate

For the Respondent: Mr. Tarun Vaid, Advocate

MEMO OF PARTIES**VINOD KUMAR****S/o Lt. Shri Hari Chandra,****Resident of - A-103, Silver Nest Apartment Plot-189,****Kakrola, Sector-16, Dwarka,****New Delhi-110078****...Applicant/Operational Creditor****VERSUS****M/S NOESIS INDUSTRIES LTD.,****Registered Office At- 1201 B,****12th Floor Hemkunt Chamber,****89 Nehru Place,****New Delhi- 110019****...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. Vinod Kumar, (for brevity

‘Applicant’) with a prayer to initiate the Corporate Insolvency process against M/s Noesis Industries Limited (for brevity ‘Corporate Debtor’).

2. The applicant is an advocate and retired at the age of 62 years after providing continuous professional services to various Companies in the Company Secretariat Department for a period of around 20 years and thereafter have been engaged in providing consulting services to the companies for their company law compliances.
3. The Applicant is residing at A-103, Silver Nest Apartment Plot-189, Kakrola, Sector-16, Dwarka, New Delhi-110078.
4. The corporate debtor is a company limited by shares incorporated under the provisions of the Companies Act, 1956 on 03.12.1986 having CIN L32109DL186PLC026273 as per Master Data.
5. The Authorised Share Capital of the Corporate Debtor is Rs. 36,73,53,510/- and Paid Up Share Capital is Rs. 26,32,90,910/- as per Master Data of the company at Annexure –I.

6. The corporate debtor is having its registered office at 1201 B, 12th Floor Hemkunt Chamber, 89 Nehru Place, New Delhi- 110019.
7. The Applicant has stated that M/s Noesis Industries Limited approached the applicant for providing the consulting services pertaining to the matters pending before the Debt Recovery Tribunal and had entered into a Retainership Agreement dated 28.01.2017.
8. The applicant further stated that pursuant to the said consulting services rendered to the corporate debtor, he had raised various invoices from 07.03.2017 onwards. The Applicant requested the Corporate Debtor to remit payment and clear all the outstanding debts vide notice dated 17.07.2017. The Corporate Debtor replied the said notice dated 25.08.2017 and assured the payment.
9. The applicant has again sent a final notice dated 27.10.2017 thereby requesting the corporate debtor to clear the outstanding dues but no response was received. Thereafter the applicant was constrained to stop the

services after providing the continuous services of 9 complete months and the same was communicated to the corporate debtor vide notice dated 15.12.2017.

10. The applicant has further stated that despite several repeated reminders, the payments are not made by the corporate debtor and hence failed to clear the outstanding dues amounting of Rs. 4,50,000/-
11. The Applicant issued a Demand Notice under section 8 of the Insolvency and Bankruptcy Code, 2016 dated 22.01.2018 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).
12. The applicant further states that neither the payment nor any notice of dispute was raised by the corporate debtor and hence present application is filed under section 9 of IBC, 2016 which is duly served on corporate debtor.
13. 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) supported by the affidavit dated 19.02.2018 and 9(3)(c) of the IBC, 2016 supported by the copy of bank account of ICICI Bank for the period 01.03.2017 to 31.01.2018.

14. The learned counsel for the corporate debtor vide order dated 11.09.2018, has stated that they does not wish to file the reply and further made a statement that the company is not in business since last few years and are not in a position to pay the outstanding debt.
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 amount of debt claimed is Rs. 4,50,000/- which 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.

17. The default in payment of operational debt became due and payable from the date 14.03.2017 raised by the Applicant and hence the debt is not time barred.
18. 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.
19. The Applicant has named the Interim Resolution Professional (IRP), to be appointed by the order of Tribunal, as Mr. Yogesh Kumar Gupta having registration number IBBI/IPA-003/IP-N00078/2017-18/10701, duly registered with Insolvency and Bankruptcy Board of India, as the Interim Resolution Professional, whose specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 making all

disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. 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.

21. 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.

22. 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.



(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)