

INDRAPRASTHA GAS LIMITED

(A Joint Venture of GAIL (India) Ltd. BPCL & Govt. of NCT of Delhi)

Ref. No.: IGL/CS/2021

October 1, 2021

The Manager
Dept. of Corporate Services
Bombay Stock Exchange Ltd.
Rotunda Building, 1st Floor
Dalal Street
Mumbai – 400 001

Listing Department
National Stock Exchange of India Ltd.
Exchange Plaza, Bandra Kurla Complex
Bandra (E)
Mumbai – 400 051

Security Code: 532514

Trading Symbol: IGL

Sub: Disclosure of material event/information under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations, 2015)

Dear Sir/Madam,

This has reference to our communication dated 20.09.2021, regarding order of Hon'ble National Company Law Tribunal (NCLT) and subsequent stay of the order by the Hon'ble National Company Law Appellate Tribunal (NCLAT) on 20.09.2021, in the matter of Shanvi Construction Pvt. Ltd. versus IGL.

The copy of NCLAT order was sent vide our letter dated 21.09.2021.

Now, we have received the certified true copy of NCLT order which is stayed by NCLAT.

This is for your information and record.

Thanking you,

Yours sincerely,

for Indraprastha Gas Limited,

(S.K. Jain)

Company Secretary

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

Company Petition No. IB-1487/ND/2018

[Under Section 9 read with Section 13, 14 & 33 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

M/s Shanvi Construction Private Limited

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/s Indraprastha Gas Limited

...RESPONDENT/ CORPORATE DEBTOR

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No.	of Pages_			

ORDER PRONOUNCED ON:, 15.09.20

Registration : Total 7... 5.00

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DD/DR/AR/Court Officer National Company Law Tribunal New Delhi

CORAM:

DR. DEEPTI MUKESH HON'BLE MEMBER (JUDICIAL)

MS. SUMITAPURKAYASTHA HON'BLE MEMBER (TECHNICAL

IB/1487/ND/2018 M/s Shanvi Construction Pvt. Ltd.



MEMO OF PARTIES

IN THE MATTER OF:

M/s SHANVI CONSTRUCTION PVT. LTD.

Having its registered office at: 306, S.G.L. PLAZA D.C. Chowk Shopping Complex, Sector -9, Rohini, New Delhi -1100785.

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/s INDRAPRASTHA GASLIMITED

Having its registered office at: IGL Bhawan, Sector-09, R.K. Puram. New Delhi-110022.

...RESPONDENT/ CORPORATE DEBTOR

FOR THE APPLICANT

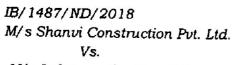
: Mr. Sameer Rastogi, Ms. Megha Purohit

Mr. Dhrubajit Saikia, Advs.

FOR THE RESPONDENT : Mr. Saurav Agrawal,

Mr. Sai Abhishek Manthena, Adv.







ORDER Per-Dr. Deepti Mukesh, Member (Judicial)

- 1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by M/s.Shanvi Construction Pvt. Ltd. (for brevity 'Applicant') through Mr. Gagan Parasher, the Director, authorized vide board resolution dated 22.09.2018, which has been annexed with the application, with a prayer to initiate the Corporate Insolvency process against M/s Indraprastha Gas Ltd. (for brevity 'Corporate Debtor').
- 2. The Applicant is company limited by shares incorporated on 06.06.2003 bearing CIN No. U45202DL2003PTC120775 under the provision of Companies Act 1956 and is also registered under the micro, Small and Medium Enterprise Development Act, 2006, having its registered office at 306, SGL Plaza, Plot No.10, Sector-09, Rohini, Delhi- 110085. The applicant is engaged in Construction business and civil engineering.
- 3. The Corporate Debtor is company limited by shares incorporated on 23.12.1998bearingCIN No. L23201DL1998PLC097614under the provision of Companies Act 1956 and having its registered office at IGL Bhawan Plot No.4, Community Centre Sector-9, R.K. Puram New Delhi DL-110022 IN. The corporate debtor is engaged in the business of distribution of natural gas.
- 4. The applicant submits that corporate debtor invited tenders for operation and maintenance works for its already existing infrastructure. The applicant was one of the bidders in the tender for annual maintenance at city gas distribution services network in Delhi Rie parties entered into a contract bearing

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no.7700000746 dated 03.02.2012 and corporate debtor issued purchase order dated 07.02.2012 for an amount of Rs.25,19,37,387/- to the applicant. The work in terms of the said purchase order was completed to the satisfaction of the corporate debtor and no complaint howsoever was ever made, at the time services were being provided or even after that. Moreover, the corporate debtor had amended the Purchase order, by extending the time period of the work order, upto 31.03.2014.

- 5. It is submitted by the applicant that after completion of work, invoices for a total sum of Rs. 25,04,19,332.64/- (Rupees Twenty-Five Crore Four Lakh Nineteen Thousand Three Hundred Thirty-Two and Sixty-Four Paisa only)were raised. Out of which the corporate debtor made a payment of Rs. 22,40,36,916.27/-(Rupees Twenty-Two Crore Four Forty Lakh Thirty-Six Thousand Nine Hundred Sixteen &twenty Seven Paisa Only) including taxes.
- 6. The applicant states that as per the running account of corporate debtor maintained in its books a sum of Rs. 2,63,82,416.37 is due and payable by the corporate debtor. The corporate debtor has failed to make payment and since the applicant being registered as MSME under MSMED Act, 2006, moved a Reference to the MSME facilitation Council for reconciliation regarding the payment of amounts due from the corporate debtor. It is the averment of the applicant that being registered as MSME, it is entitled to charge interest as per Section 16 of MSMED Act 2006, which is three time the bank rate as notified by RBI. The reconciliation was done by the MSME Council and it was observed by the council that payment worth Rs.11,04,849.09 was made by corporate debtor to the applicant without giving payment advices. Accordingly, the applicant gave credit of Rs. 11,04,849.09/- to the corporate debtor, reducing liability in the books of applicant to Rs. 2,52,77,567.28.

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- 7. The applicant states that in spite of various requests through e-mails and phone, corporate debtor failed to make payment and in response the corporate debtor issued a letter dated 15.03.2016 enumerating the deductions to be made by the corporate debtor in the outstanding amount, due to which the payment is not being made. Applicant states that the reasons elaborated by the corporate debtor in the said letter are vague, sham, created only to evade liability and fail to provide a valid reason for failure to pay the applicant. Further no-show cause notice was issued to the applicant for clarification before deducting the amount due from the corporate debtor. The letter dated 15.03.2016 is annexed.
- 8. The applicant states that a performance Bank Guarantee given by the applicant to corporate debtor was released on successful completion of work and the same was cancelled by bank on 04.08.2014, on the advice of corporate debtor. Thereafter, vide email dated 11.12.2014, the applicant again requested the corporate debtor to release the outstanding amount and the corporate debtor agreed to release the withheld amount subject to the condition that applicant shall submit indemnity bond for Rs. 1.37 Crore against the order No.65000021, to indemnify the corporate debtor in case of demand by the authorities on account of statutory non-compliance by the applicant. However, in spite of submitting the said bond by the applicant the corporate debtor failed to release the payment. The email dated 11.12.2014 is annexed.
- 9. The applicant states that the MSME facilitation Council vide order dated 05.04.2016 referred the matter to Delhi International Arbitration Centre (for brevity 'DIAC'), Delhi High Court. The corporate debtor thereafter filed writ petition before Hon'ble High Court of Delhi challenging the MSME status of the applicant. The matter was sub-judice accordingly the proceedings before DIAC,

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were stayed vide order dated 04.08.2016. The copy of order dated 04.08.2016 of the Hon'ble Delhi High Court is annexed.

- 10. The applicant submits that in spite of repeated request and follow-up the corporate debtor failed to make payment of its outstanding dues. The applicant sent demand notice dated 25.09.2018 to corporate debtor under Section 8 of the Insolvency and Bankruptcy code, 2016 demanding Rs. 2,52,77,567.28 (Rupees Two Crore Fifty-Two Lakh Seventy-Seven Thousand and Twenty-Eight Paisa Only) along with interest accrued as per MSMED Act, 2006 aggregating to an amount of Rs.12,61,66,434.66 (Rupees Twelve Crore Sixty-One Lakh Sixty-Six Thousand Four Hundred Thirty-Four and Sixty-Six Paisa Only). The notices had been duly served on the corporate debtor and reply dated 06.10.2018 was sent by the corporate debtor, wherein it was stated that they need one week time to reply and further raised objections with regards the claim being bogus. Also, stated that the matter is pending before the Hon'ble Delhi High Court, DIAC and MSME facilitation council. The copy of reply dated 06.10.2018 has been annexed.
 - 11. The applicant filed application under Section 9 of the I & B code to initiate the CIRP. As per Form V, the total debt outstanding is Rs.12,61,66,434.70/-,(Rupees Twelve Crore Sixty-One Lacs Sixty-Six Thousand four hundred thirty-four only) including interest upto 31st August 2018. Further interest shall be calculated upto the date of final payment.
 - 12. The applicant filed reply, denying the contentions of the applicant and stated the following objections:
 - a) That there is a pending proceeding relating to the very same issue between the parties. The applicant has raised a claim of the very contract before the Micro Small Entrepreneur facilitation Council as being under MSME

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Act 2006. The dispute is also sub-judice, before the Hon'ble Delhi High Courts with regards applicability of MSME Act. The applicant has filed a claim for a sum of Rs.3,60,10,750/- along with interest before the MSME facilitation Council. The council referred the matter to DIAC for arbitration and on the first date of hearing, the corporate debtor pointed out the discrepancies in the bills produced by the applicant. The copy of minutes of meeting of the council held on 08.09.2015 is annexed.

- b) The corporate debtor states that vide letter dated 15.03.2016 they offered to pay the applicant an amount of Rs.9,48,152/- elaborating various heads of deductions. It is further stated that applicant vide letter dated 08.04.2016, refused to accept the amount offered by the corporate debtor. The copies of letter dated 15.03.2016 and 08.04.2016 are annexed. Further applicant has admitted an error of Rs. 11.04 Lakhs in its accounts, but there are other payments also made by the corporate debtor which have not been account and have been deliberately omitted from the accounts. The corporate debtor stated that a payment of Rs. 82,78,628 was made and the same is evident from the letter dated 15.03.2016. The present matter is sub-judice.
- c) The corporate debtor has disputed the claims of the applicant, as the same is inflated and certain claims already paid by the corporate debtor had also been demanded.

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d) That the applicant is not an operational creditor and no operational debt is due against him, the amount being claimed is not toward any good or services provided. Further the invoices in question in the present application pertain to invoices, being more than 3 years old and are time barred. It is denied that the account of corporate debtor maintained in its

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books is a running account. The invoice-to-invoice payment was made to the applicant. Further, the claim of applicant in respect of each bill is time barred. The last bill was raised on 29.05.2014. The payment of Rs. 500 received on 09.02.2015, as mentioned by the applicant is denied stating that no proof regarding such payment has also been attached. The default pertains to bills raised during the year 2012-2014. Hence the present application is time barred.

- the with regards raised was e) That dispute made accordingly and workmanship/services/workman/material deductions in the invoices. It is the contention of corporate debtor that applicant has made a misleading statement that after execution of work, the invoices for Rs 2,52,77,567.22/-were raised and payment of Rs.22,40,36,916.27/- was made. The payments made were invoice to invoice basis and the applicant with an intention to mislead the court the applicant has filed wrong figures, overstating the amounts to draw unlawful gains. Further the deductions made in the invoice were as per the terms of the contract and were well within the knowledge of the applicant. The applicant by signing the payment advices mentioning deductions has also acknowledged the same and no objection howsoever were ever raised by the applicant.
- 14. The applicant filed rejoinder reiterating its contentions and stated the following:
 - a) That the corporate debtor has field reply based on a concocted fact, with ulterior motives of denying the legitimate dues of the applicant.
 - b) That as on date no proceeding is pending before any court of law relating to unpaid operational debt. The applicant denies all allegations made with respect to interest charged. The applicant has failed to file any evidence to

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support it contentions, the corporate debtor was satisfied with the quality of work rendered by the applicant, which is evident from the fact that applicant extended the period of contract.

- c) That the corporate debtor denied to reimburse the dues to the applicant which were paid to the workers as per revision in minimum wages, on the ground that the applicant has not submitted any proof of transfer of payment in the bank account of workmen ignoring the facts that the applicant is only seeking reimbursement of difference in the revised minimum wages and earlier minimum wages. Further also states that PF was optional and was required to be deposited by the applicant in case of those employees who had availed PF. Therefore, the applicant submitted Form 11 to the corporate debtor stating that PF contribution was not required, as PF was not deposited.
- d) That as per dated 15.03.2016 the claim stands admitted, which more than 1 Lakh is amounting to admission of default. Hence CIRP must be initiated.
- 15. The applicant has filed affidavit and stated that the corporate debtor had reconciled its accounts and sent an email dated 25.05.2015 to the applicant, wherein it was mentioned that accounts have been reconciled and the payment shall be released. The email dated 25.05.2015 has been annexed. The applicant has also placed on record the copy of return of employees contribution in prescribed form for payment towards ESIC.
- 16. The applicant filed written submissions and stated the following:

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- a) A performing bank guarantee was released by the bank on 04.08.2014 on successful completion of work. There exists no dispute with respect to the said bank guarantee, for work contract.
- b) There is no communication on record to show that the corporate debtor had raised dispute with regard the claim of the applicant before they approached the MSME council.
- c) The applicant has relied upon the case of "iValue Advisors Pvt. Ltd. Bs Srinagar Banihal Expressway Ltd.", Company Appeal (AT)(Ins)No. 1142of 2019, wherein it is stated that the appellant had a relief open under the MSME act and only because the appellant moved an application before the authority under MSME Act, does not mean that there is a preexisting dispute.
- d) The applicant has relied upon the case of "Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited" Civil Appeal No. 9405 of 2017, wherein it is stated that.

"While examining an application under Section 9 of the act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs. 1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate

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of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

- e) Also, relied upon the case of "PVM Innvennsys Private Limited Vs. C.Tel Infosysytems Private Limited", CP(IB)295(ND)2019, wherein the application was admitted on the condition that the no notice of dispute has been raised and the admitted amount of default is more than 1 Lakh. Further it is also stated that the dispute regarding the amount shall be decided by the IRP.
- f) That there is no pending arbitration pertaining to the dispute as raised before this bench. In the letter dated 05.09.2016 it was stated that the matter shall be referred to DIAC, but the same was never referred.

17. The corporate debtor filed written submission and stated the following:

- a) That the application is filed for non-payment of disputed amount of Relation 12,61,66,434,740/- including interest. Disputes are pending before various fora. The dispute raised by the corporate has also been acknowledged by the applicant in its letter dated 08.04.2016. The corporate debtor has relied upon the case of Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353, of the Hon'ble Supreme Court, wherein it is stated that the moment there is a pre-existing dispute, the corporate debtor gets out of the clutches of the code and the application must be rejected.
- b) That the argument of the applicant regarding the admission of debt of Rs. 9,48,162/- vide letter dated 15.03.2016 is a totally new averment made during the course of hearing and had nowhere been mention in the Section 9 application, hence it is the contention of corporate debtor that

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no argument with regards to the subject which has not been pleaded, shall be made or accepted moreover, the applicant in its application has only mentioned that the letter dated 15.03.2016 issued by the Corporate shows the alleged reasons for not making payment. Further it has been categorically recorded the following:

"We once again reiterate that this letter is not to be treated as an admission of any liability on part of IGL."

Hence, the plea for admission of claim by the corporate debtor is an afterthought, relying upon the case of: Naresh Jain Vs. Krishna Rani, 2002, SCCOnline Del 203.

Though the offer was made vide letter dated 15.03.2016 and the same was not accepted by the applicant hence it is not a contract. To support its contention the applicant has relied upon the case of "Oxbridge Associates Limited Vs. Atul Kumra, 2019 SCC OnLine Del 10641."

It is also the contention of the corporate debtor that the applicant has deliberately suppressed the written objection filed by the corporate debtor before the council, the letter dated 08.04.2016 filed by the applicant, before the council rejecting the offer of the corporate debtor. The applicant has also attached incomplete chain of emails to mislead the tribunal.

The corporate debtor further reiterates relevant portion of the response letter dated 08.04.2016 filed by the corporate debtor before MSME council, which stated the following:

"The applicant does not intend to accept the offered amount of INR 9,48,162/- as settlement amount as the claim of the Applicant runs into crores and the Respondent is withholding the said amount without any justified reason. It is respectfully submitted that the dispute has arisen between the Applicant and the Respondent and the Conciliation between them is also not possible and hence the dispute needs to be referred to Arbitrators. You are requested to refer the matter to Delhi International Arbitration Centre (DAC), Delhi High Court Campus, Shershah Road, New Delhil 10003 for Arbitration."

द्वार्थ रहित

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- 18. The date of default is 23.04.2012 and is continuing till date, the present application is filed on 14.02.2019. Hence the application is not time barred and filed within the period of limitation.
- 19. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
- 20. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete.
- 21. Considering the documents on records and submissions made, we are of view that there are issues pending between the parties. The dispute has also been raised by the corporate debtor in its reply to the demand notice of the applicant. The email communication exchanged between the parties with regards the total claim has also been placed on record. The admission by the corporate debtor in its letter dated 15.03.2016, offering to pay an amount of Rs. 9,48,162/- during the pendency of the issue before MSME council and while referring the matter to DIAC in 2016, speaks volume.

The letter dated 15.03.2016 read as follows:

"An amount of Rs. 4,75,821/- can be released by IGL, as stated aforesaid, which had been deducted towards poor workmanship as a gesture to reconcile the disputes. On overall basis, as shown above, IGL is prepared to pay an amount of Rs. 9,48,162/- to your company"

Moreover, the MSME council in its minutes dated 05.04.2016 also recorded as follows:

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"the representative of the applicant submitted that they have received a proposal of M/s IGL dated 15/03/2016 in which IGL has offered to pay Rs.4,75,821/-, whereas he has made a claim of Rs. 2.63 crore, accordingly the offer made by the respondent is quiet insignificant in comparison to the claim."

The dispute raised by the corporate debtor with respect to the amount payable and also the issue before the Hon'ble Delhi High Court is whether the applicant is a small enterprise in terms of the MSME Act. Accordingly the difference of amount payable and interest at rate of 36% per annum on the outstanding dues is to be adjudicated as per the corporate debtor which will only quantify the amount payable to the corporate debtor. The liability to pay has no where been challenged by the corporate debtor. Hence, Despite the fact that, the corporate debtor has raised dispute prior to issue of the demand notice, in our view, the debt of more than Rs.1 Lakh, has become due to the applicant and there is a default on part of the corporate debtor, which in this case has been admitted vide the letter dated 15/03/2016 by the corporate debtor. The genuinity of the letter also is not challenged neither any argument is made by the corporate debtor that the letter is not issued by them. Hence the debt of more than 1 Lakh is due and payable with respect to which default has occurred. We are further strengthened by the law laid down by the Hon'ble Supreme Court in

> "Innoventive Industries Ltd. Vs. ICICI Bank and Ors. - (2018) 1 SCC 407" it is observed and held as follows:

> "The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an installment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go en de pe back to Section 3(6) which defines "claim" to mean a right

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to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority."

The adjudicating authority is not to decide the quantum of debt payable, the same will be decided by IRP on basis of claim filed along with supporting documents. In view of the above discussion application is admitted.

22. The Applicant has proposed the name of an IRP in the application along with Form 2, which was subsequently withdrawn by filing an application and new name, was proposed. The said application was allowed. Accordingly, this bench appoints Mr. Arun Chaddha as IRP of the corporate debtor, having registration no. IBBI/IPA-001/IP-P00165/2017-2018/10334, having address at 727, Bharampuri, Merrut, Uttar Pradesh-250002, mobile No. 9810286133 and email id chadharun@yahoo.com 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 Respondent. The specific consent has been filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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23. 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 corporate debtor, prohibiting as per 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 force.

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- 24. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Arun Chaddha to meet out the expenses and perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the applicant. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
- 25. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SUMITAPURKAYASTHA MEMBER (T)



DR. DEEPTI MUKES! MEMBER (J)

Date of Presentation of application for Copy....9. 6/. 09/. 20 2/ No. of Pages 6 Copying Fee. Registration &

Total 7. 5.00/ Date of Receipt &

Record of 18/1487/ND/20 98/89 Date of Prepa Date of Delie M/s Shanyi Constructon

inaraprastha Gas Ltd.

DD/DR/AR/Court Officer National Company Law Tribunal New Delhi

Deputy Registra National Company Law Tribunal

CGO Complex, New Delhi-110003