



**NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CP(IB) No. 51/CB/2024**

(An Application 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:

SIDDHGIRI HOLDINGS PRIVATE LIMITED

Having Registered office at:
BP-271, Ravi Nagar, Mughalsarai,
Chandauli, Uttar Pradesh-232101

..... **Applicant/Operational Creditor**

Vs.

BHILAI JAYPEE CEMENT LIMITED

Bhilai Jaypee Grinding Plant
Bhilai Steel Plant Premises,
Slag Road, Bhilai
Chattisgarh-490001
Email: sectl.dept@jalindia.co.in

..... **Respondent/Corporate Debtor**

DATE OF PRONOUNCEMENT: 15.10.2025

CORAM: DEEP CHANDRA JOSHI (MEMBER JUDICIAL)

BANWARI LAL MEENA (MEMBER TECHNICAL)

APPEARANCE:

FOR APPLICANT: **MR JOY SAHA, SENIOR ADVOCATE**
MR SHASWAT KUMAR ACHARYA, ADVOCATE
MR ABHIJEET AGARWAL, ADVOCATE

FOR RESPONDENT: **MR ASHISH SHRIVASTAVA, SENIOR ADVOCATE**
MR SHAKTI SEKHAR, ADVOCATE
MR SARVESH MEHRA, ADVOCATE
MR ANUPAM CHAUDHARY, ADVOCATE

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ORDER

PER: DEEP CHANDRA JOSHI MEMBER (J):

1. The present Application has been filed on 17.08.2024 by **SIDHGIRI HOLDINGS PRIVATE LIMITED** (hereinafter referred as "**Applicant/Operational Creditor/OC**") seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against **BHILAI JAYPEE CEMENT LIMITED** (hereinafter called "**the Respondent/Corporate Debtor/CD**") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code,2016 (hereinafter called "**Code/IBC**") read with Rule 6 of Insolvency & Bankruptcy (Application to adjudicating Authority) Rules, 2016 for an Operational Debt of **Rs.45,40,22,840.95/-** (Rupees Forty Five Crores Forty Lakhs Twenty Thousand Eight Hundred Forty Rupees and Ninety Five Paisa) and the first date of Default as stated in Part-IV of the application is 07.12.2021

2. **The Applicant in its Application made the following averments that:**

a. The Respondent had been regularly purchasing coal from the Applicant for the operations of its Cement Plant and this present Application arises out of 3 transactions between both the parties, that arose out of 3 Purchase Orders i.e. P.O. No. RMPO/4100035118 ("**Purchase order 1**"), RMPO/4100035358 ("**Purchase order 2**") and RMPO/4100036118 ("**Purchase order 3**") placed by the respondent on 01.11.2021, 15.11.2021 and 02.02.2022.

b. The Respondent through these 3 Purchase orders placed order for 2000 MT of coal each, amounting to 6000 MT and as per each of the purchase orders the payment in respect of each purchase order were to be made by the respondent after 15 days of delivery of each order.

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c. The Applicant in respect of three purchase orders has raised multiple invoices since 15.09.2021 till 18.05.2022 which was accepted by the respondent without any demur or protest. The respondent has duly acknowledged its outstanding liability to the tune of Rs. 31,08,21,256 as on 31.03.2023 vide its email dated 25.09.2023 and subsequently had made a payment of Rs. 1,00,00,000/- on 21.12.2023 which is adjusted against the invoices raised prior to invoice no. SH/CND/2122/4331 dated 15.09.2021. The respondent failed to make any payment with respect to the invoices raised from 15.09.2021 and on the date of this application a total amount of Rs.45,40,22,840.95/- i.e. Rs. 30,08,21,256.06 (Principal) and Rs. 15,32,01,584.89/- (Interest @ 24%) is due and payable by the respondent with respect to all the invoices raised in pursuance of all the three purchase orders

d. The Applicant raised the first invoice in respect to Purchase Order 1 vide invoice No. SH/CND/2122/4331 on 15.11.2021 and completed delivery on 21.11.2021 and the amount became due and payable on 06.12.2021 and hence the first date of default is 07.12.2021.

e. The Applicant has issued a Demand Notice u/s 8 in Form-3 to the respondent on 22.06.2024 and the same was received by the respondent on 06.07.2024 but the respondent did not respond to the notice.

3. The Respondent in its reply raised the following contentions that:

a. The present application has been filed with an intent of recovery and is in contravention with the objective of IBC as the respondent is a solvent company.

b. The applicant has failed to provide any certificate from the financial institutions confirming non-payment of unpaid

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operational debt and the invoices, E-way bills, GSTR Forms, ledger book maintained by the applicant, bank statement of the applicant which are filed by the applicant cannot be hence the application is not in compliance with the requirement provided u/s 9(3)(c) making the application defective and incomplete.

c. The applicant has not appended any record of default as mandatorily required under section 9(3)(d) of the code and Regulation 20 (1A) of IBBI (Information utilities) Regulation, 2017 which is in light of the order dated 03.04.2023 issued by Registrar, NCLT and Circular No. IBBI/IU/79/2023 dated 16.06.2023 issued by IBBI.

d. The affidavit verifying the application and the affidavit u/s 9(3)(b) of the code is defective as in the affidavit the address of the deponent is stated to be in Chandauli, Uttar Pradesh whereas the affidavit has been notarized in Cuttack Odisha, which makes both the affidavits defective in nature.

e. The applicant has not furnished extracts of Form GSTR-1 and GSTR-3B filed in terms of Rule 59(1) of the CGST Rules, 2017 rather has filed only purported screenshots of the GST filing portal and the same does not qualify as requisite evidence in term of Regulation 2B of IBBI (Insolvency Resolution of Corporate Person) Regulations,2016. The said screenshots are also not accompanied by any certificate/affidavit under section 63 of BSA, 2023 which is sine qua non in regard to digital evidence.

f. The applicant has appended selective pages of bank account statement and neither the statement does not contain any information that indicate the details of the accounts to which the said bank statement belongs, nor it contains the seal of the bank. The applicant has also failed to provide a certificate u/s 63 of BSA,2023 which is mandatory as the statements are internet generated copy.

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g. The applicant has placed on record email communications between the parties but has not appended any certificate u/s 63 of BSA, 2023 as required under rules of evidence in support of the digital documents making it inadmissible before this Adjudicating Authority.

h. The applicant has admitted the fact that the respondent has made payments in terms of the invoices and hence there is no existence of default.

4. The Applicant in its rejoinder in addition to its averments in the application made the following submissions that:

a. The requirement of NESL/Information utility certificate for ascertainment of default is not mandatory but only directory. The requirement of certificate from the bank certifying the bank account statement is also directory in nature and hence the defect is curable and in event of any direction from the Adjudicating Authority the same will be brought on record to cure the defect.

b. GSTR-1 along with corresponding GSTR-3B for the period from October 2021 till May 2022 has been placed on record along with the application as Annexure-7.

c. The selective portions of the bank statements have been placed on record to prevent the application from becoming unnecessarily bulky and to protect confidentiality of monetary transactions that does not pertain to the respondent but in case it is directed the entire bank statement of the applicant will be brought on record.

d. There is no applicability of section 63 of BSA, 2023 in the present case since the existence of operational debt is admitted by the respondent.

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5. We have perused the documents brought on record and we have extensively heard Mr. Joy Saha, learned Senior Counsel and Mr. Shaswat Acharya, learned Counsel appearing for the applicant. We have heard Mr. Asish Srivastava, learned Senior Counsel appearing for the respondent.

This is an application filed under section 9 by the applicant seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the respondent for a default of Rs. Rs.45,40,22,840.95/-.

6. During perusal of the records, it was noticed that the applicant has pleaded that the first purchase order no. 4100035118 was made on 01.11.2021 but there are 39 invoices placed before this Authority pertaining to purchase order no. 4100035118 which are dated from 05.09.2021 till 30.09.2021. The details of the invoices are as follows:

Sl No	Invoice No.	Date of Invoice	Amount
1.	SH/CND/2122/4331	15.09.2021	436711.81
2.	SH/CND/2122/4337	16.09.2021	424886.22
3.	SH/CND/2122/4337	16.09.2021	420016.87
4.	SH/CND/2122/4360	17.09.2021	347811.25
5.	SH/CND/2122/4374	18.09.2021	416817.00
6.	SH/CND/2122/4379	19.09.2021	558863.12
7.	SH/CND/2122/4403	21.09.2021	347533.00
8.	SH/CND/2122/4404	21.09.2021	349480.74
9.	SH/CND/2122/4405	21.09.2021	429338.21
10.	SH/CND/2122/4409	21.09.2021	418764.75
11.	SH/CND/2122/4410	22.09.2021	421408.11
12.	SH/CND/2122/4411	22.09.2021	416817.00
13.	SH/CND/2122/4433	24.09.2021	419460.37
14.	SH/CND/2122/4455	26.09.2021	419460.37
15.	SH/CND/2122/4463	26.09.2021	410139.03

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16.	SH/CND/2122/4464	26.09.2021	415286.63
17.	SH/CND/2122/4473	27.09.2021	430590.33
18.	SH/CND/2122/4481	27.09.2021	433094.57
19.	SH/CND/2122/4483	27.09.2021	393722.34
20.	SH/CND/2122/4485	27.09.2021	415704.01
21.	SH/CND/2122/4487	27.09.2021	431703.32
22.	SH/CND/2122/4488	28.09.2021	419042.99
23.	SH/CND/2122/4489	28.09.2021	418208.25
24.	SH/CND/2122/4490	28.09.2021	434903.19
25.	SH/CND/2122/4494	28.09.2021	426594.84
26.	SH/CND/2122/4496	28.09.2021	343915.76
27.	SH/CND/2122/4497	28.09.2021	418347.37
28.	SH/CND/2122/4498	28.09.2021	477197.04
29.	SH/CND/2122/4499	28.09.2021	430729.45
30.	SH/CND/2122/4503	28.09.2021	420434.24
31.	SH/CND/2122/4504	29.09.2021	348506.87
32.	SH/CND/2122/4505	29.09.2021	353793.60
33.	SH/CND/2122/4507	29.09.2021	505439.31
34.	SH/CND/2122/4508	29.09.2021	417651.75
35.	SH/CND/2122/4509	29.09.2021	434624.94
36.	SH/CND/2122/4510	29.09.2021	435042.31
37.	SH/CND/2122/4514	30.09.2021	346002.63
38.	SH/CND/2122/4516	30.09.2021	417790.87
39.	SH/CND/2122/4520	30.09.2021	580149.17
Total Amount			₹1,63,85,983.63

7. As regards to theses invoices listed above it was found that the corresponding E-way bills were generated after the date of the purchase order and furthermore the respondent has also not raised any objections to the genuinity of these invoices. Albeit the fact no objection has been raised, this Adjudicating Authority cannot put a blind eye to

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the anomaly of dates existing in these invoices and hence this Adjudicating Authority will deduct the invoices amounting to Rs. 1,63,85,983.63 to consider the threshold amount but it is noted that such deduction won't make any material change as the debt claimed to be in default is approximately Rs 45 crores.

8. In ***Mobilox Innovations Private Limited v Kirusa Software Private Limited CIVIL APPEAL NO. 9405 OF 2017*** the Hon'ble Apex Court at Para 25 had clearly laid down the point of determinations for the Adjudicating Authority while adjudicating an application u/s 9 of the Code. Para 25 of the judgement is reproduced herein for brevity:

25. Therefore, the adjudicating authority, when 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.

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Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate 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.

9. The only material change that has taken place since **Mobilox (Supra)** is that the threshold amount has been increased to Rs. 1 Crore from Rs. 1 Lakh vide legislative amendment, barring that other points of determination has remained intact. In the present case the applicant has averred that it has supplied coal to the respondent in pursuance of three purchase orders and has raised multiple invoices from 15.09.2021 to 18.05.2022 with respect to coal delivered in pursuance to such purchase orders and the amount raised through these invoices along with interest is in default.

10. Upon perusal of the reply of the respondent and the arguments made by Mr. Asish Srivastav, learned senior counsel appearing for the respondent, it is found that the respondent in a nutshell has objected to this application on the following grounds:

- a.** The present application is imitated with an intent of recovery instead of resolving insolvency of the respondent and the debt is not an operational debt as defined under section 5(21) of the Code.
- b.** Defective affidavit on account of mismatch of address of the deponent and the place of notarization.
- c.** Absence of Certificate of unpaid debt from the bank which maintains the account of the applicant.
- d.** Absence of any proof of default issued by any information utility.

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- e. Absence of certificate u/s 63 of BSA, 2023 along with email copies, internet generated bank statements, and copies of internet generated GSTR-1 Forms, which makes them inadmissible.
- f. Appending selective portions of the Bank Statements in place of the entire bank statement evincing transactions with respondent.

11. Before we delve into the contentions raised by the parties. It is noted that no dispute, whatsoever, has been raised by the respondent in regard to the receipt of coal supplied by the applicant. The respondent has also neither disputed the genuinity of invoices brought on record by the applicant nor disputed the receipt of such invoices by it in its reply or oral submissions. The respondent has also neither disputed the existence of the debt or the quantum of debt which is stated in Part-IV of the application, instead, upon perusal of the reply it is noted that at Para 38 of its reply the Respondent has stated the following:

38. PART-IV: The Contents of Part-IV of the captioned application are matters of record and merit no specific response except what is specifically denied by the corporate debtor herein.

In the entire reply or in the oral submissions the respondent in no manner whatsoever has neither contended about the existence of debt and nor regard to the quantum of debt amount and in absence of any such contention this Adjudicating Authority finds no reason to doubt the debt amount stated by the applicant in Part-IV of the application.

The respondent has not raised any contention on the issue of limitation as well and from the documents on record it is evident that the application is well within limitation.

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12. The respondent has contended that the present application is liable to be dismissed as it is incomplete for the reason that the application does not contain certificate under 63 of BSA, 2023 in support of the email communication, internet bank statements and internet generated copy of Form GSTR-1. It is noted that the email communication relied upon by the applicant to establish acknowledgement of outstanding debt is not the primary evidence evincing the existence of the debt and Form GSTR-1 is filed to corroborate the fact that supply of goods was indeed made and GST invoice was raised by the applicant in favor of the respondent, which is not disputed by the respondent. The existence of debt is clearly established by the copies of the invoices raised by the applicant and furthermore the acceptance of existence of debt on part of the respondent in its reply makes the contention of the respondent with regard to section 63 of BSA, 2023 untenable. In this regard reliance is also placed on the judgment of Hon'ble NCLAT in **Pijush Banerjee vs. IL & FS Financial Services Limited in Company Appeal (AT) (Insolvency) No. 1383 of 2022 [NCLAT]** wherein the Hon'ble NCLAT has held that section 65 B Certificate under the Indian Evidence Act, 1872 (*pari materia* to section 63 of BSA, 2023) is not relevant while dealing with requirement of filing of a application under IBC.

13. The learned Senior counsel appearing for the respondent has strongly contended that non adherence to section 9(3)(c) and 9(3)(d) of the code by not appending certificate from the bank certifying the outstanding unpaid debt and certificate from the information utility makes the application incomplete and is liable to be dismissed. In this regard learned senior counsel for the applicant placed reliance on **Vijay Kumar Singhania vs. Bank of Baroda & Ors. reported in 2023 SCC OnLine NCLAT 2320** wherein it was held that Information Utility certificate is not mandatory for ascertainment of default of the CD but it is only directory in nature.

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Upon perusal of the verbatim of section 9(3)(c) of the code it is observed that the requirement of certificate of bank statement is qualified by the phrase 'if available' which is also the case for section 9(3)(d), which deals with certificate from information utility and hence in light of the judgement in Vijay Kumar Singhania (Supra) and the identical usage of the phrase 'if available' in both 9(3)(c) and 9(3)(d) makes section 9(3)(c) also directive.

14. As regards to the contention of difference in address of the deponent and place of notarization in the affidavit, it is observed that there is no requirement as such in law that any affidavit has to be notarized by the deponent at the place of his residence where the deponent duly affixes his/her signature to affidavit in presence of the notary who is notarising the document, hence this argument of the respondent does not hold any water.

15. In light of the above observations, there is no dispute that there exist an 'operational debt' and 'default' of an amount beyond Rs. 1 Crore and there is no pre-existing dispute and all the conditions necessary under section 9 of the code are materially fulfilled and hence we are inclined to hold that there exists an outstanding operational debt, a default and accordingly the present Application bearing **CP (IBC) No. 51/CB/2024** under Section 9 of the Code read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP of **BHILAI JAYPEE CEMENT LIMITED** is **ALLOWED** and the Corporate Debtor is '**ADMITTED**'.

16. The **Moratorium** under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all the following in terms of section 14(1) of the Code –

- 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;

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- 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.

17. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process until this 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 of the Insolvency & Bankruptcy Code, 2016.

18. As proposed by the applicant **Mr. Ashutosh Khemani** having registration no. **IBBI/IPA-002/IP-N01177/2021-2022/13902** and Email Id: ashutosh.khemani@gmail.com office at Office No. 1-C, 3rd Floor, Shyam Plaza, Pandri, Opp New Bus Stand, Raipur, Chattisgarh-492001 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Applicant to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

19. The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by section 13(1)(b) of the Code.

20. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended, or interrupted

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during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

21. The IRP shall perform all his functions as contemplated, *inter alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or cooperate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

22. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

23. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

24. The Financial Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakhs only)** with the within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

25. In terms of section 9(5)(i) of the Code, the Registry is hereby directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven (7) working days and

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upload the same on website immediately after pronouncement of the order.

26. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Commercial Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

27. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

28. The Resolution Professional shall submit his periodic reports before this Adjudicating Authority as per rules/regulations.

29. CP (IBC) No. 51/CB/2024 stands ALLOWED.

BANWARI LAL MEENA

Member (Technical)

DEEP CHANDRA JOSHI

Member (Judicial)