





**U23109WB1996PTC079509** under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of **M/s. Sindhu Trade Links Limited** (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for making default in payment of outstanding amount of INR **Rs. 1,26,04,227/-** along with interest @ 18% calculated from the date of last sales invoice being 16.01.2021 for which the payment is outstanding amounting to INR **Rs. 1,65,07,739/-**.

2. The Respondent Company **M/s. Sindhu Trade Links Limited** having **CIN: L63020DL199PLC121695** is incorporated under the provisions of the Companies Act, 2013 having its registered office situated at 129, Transport Centre, Rohtak Road, Punjabi Bagh, New Delhi- 110035, India. Since the registered office of the respondent Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent Corporate Debtor under sub-section (1) of Section 60 of the Code.
3. Briefly stated the facts of the present case as averred by the applicant are that the applicant is engaged in the business of import and supply of coal and other coal based products and that the Corporate Debtor approached the Operational Creditor for purchase of Indonesian Origin Coal at Krisnapatnam Port.
4. It is submitted that the Corporate Debtor placed 2 purchase orders on the Operational Creditor being PO no. STLL/MEL/20-21/0090 dated 26.11.2020 & PO no. STLL/MEL/20-21/0136



dated 21.12.2020 for a total amount of Rs. 15,02,12,997/- on various terms and conditions and also entered into a formal contract dated 10.12.2020.

5. It is submitted that various invoices were raised by the Operational Creditor against the Corporate Debtor between the period from 10.12.2020 to 16.01.2021 & payments were also received vide RTGS from time to time aggregating to a total of Rs. 13,76,08,750/-. It is also submitted that an outstanding balance amount of Rs. 1,26,04,227/- is due and payable to the Operational Creditor and that the Corporate Debtor has already accepted and utilized the supplied coal.
6. It is submitted that despite repeated reminders and follow up from the Operational Creditor with the Corporate Debtor to make the payment towards the outstanding amount, the Corporate Debtor has failed to make the payment towards the unpaid invoices. It is also submitted that the Corporate Debtor has admittedly received all the goods under all the invoices which remain outstanding and no dispute whatsoever regarding the same or the services being provided has been raised to date.
7. It is submitted that the Operational Creditor has received an email from Meenakshi Energy Limited stating that such company was under insolvency. It is also submitted that Operational Creditor had all its dealings /transactions with the Corporate Debtor Viz. M/s Sindhu Trade Links Ltd and it is not concerned with the CIRP of M/s Meenakshi Limited which was a mere consignee and a separate legal entity with whom the Operational Creditor had no privity of contract.
8. It is submitted by the Operational Creditor that in view of the legally outstanding liability, the Operational Creditor through its



company secretary put the Corporate Debtor to notice through demand letter/email of dated 19.03.2022 and 28.04.2022 demanding the payment of pending amount of Rs. 1,26,04,227/- along with applicable interest.

9. It is submitted that the Operational Creditor had sent a Demand Notice in Form-3 as provided under Section 8 of the Code, 2016 through letter dated 06.10.2022 demanding outstanding principal amount of INR 1,26,04,227/- along with interest calculated at the rate of 18% per annum from 16.01.2021 upto 06.10.2022 amounting to Rs. 39,03,512/-. Total claim due from the Corporate Debtor is Rs. 1,65,07,739/-. However, the Corporate Debtor has chosen not to file any reply to the Demand Notice.
10. It is submitted by the Operational Creditor that the Corporate Debtor is unable to pay the debts that are duly acknowledged and admitted; the present application under section 9 of the code ought to be allowed to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
11. The Operational Creditor has submitted an affidavit under section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016 to say that no notice has been given by the Corporate Debtor relating to a dispute of unpaid operational debt.
12. The notice was issued to the Corporate Debtor by this Tribunal vide order dated 09.11.2022. Counsel for the Corporate Debtor appeared on 19.12.2022 but did not file its reply. Accordingly, arguments of counsel for Operational Creditor/applicant were heard.



## **Analysis and Findings**

13. We have heard Ld. Counsel for the applicant and perused the averments made in the application filed by the applicant. The relevant documents annexed with the submissions have been examined.
14. On-going through the submissions made by the Learned Counsel for both the Parties and on perusing the documents placed on record, it is observed that the Corporate Debtor has received the goods supplied by the Operational Creditor and is liable to pay for the same. However, the Corporate Debtor has chosen to remain non-responsive to the demand notice dated 06.10.2022 of the Operational Creditor calling upon the Corporate Debtor to make the payment towards outstanding amount of Rs.1,65,07,739/. The Operational creditor has submitted Account ledger at Annexure F of the application in which an outstanding amount of Rs 1,26,04,227 is shown as on 28-05-2021 and also attached a letter dated 18.10.2022 as Annexure-M of the application from Central Bank of India wherein it has been confirmed that the account of M/s Saraogi Udyog Limited (Account No 3218674542) has not received any payment through RTGS/NEFT/Cheque or transfer from M/s Sindhu Trade Links Ltd for the period of 06.10.2022 to 18.10.2022 i.e. after the serving of demand notice upon the Corporate Debtor. Thus debt and default are proved. Further, on perusal of the 'Coal Supply Contract' dated 10.12.2020 and of the invoices, we find that both the Corporate Debtor and Meenakshi Energy Ltd, Thamminapatnam (V) Chilliakur, Nellore are together in this deal with the Operational Creditor. (Meenakshi Energy Ltd is already undergoing CIRP since 07.11.2019). We further find that the nature of debt is a



“Operational Debt” as defined under section 5 (21) of the Code and the amount of outstanding Operational Debt is above the pecuniary threshold limit of Rs.1 Crore as envisaged under Section 4 of the Code, 2016. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Corporate Debtor. Therefore, the two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a petition under section 9 of the Code, 2016 have been met in this case.

15. The Hon’ble Supreme Court in **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017 para 34,** has laid down what the Adjudicating Authority has to examine in an Application under Section 9.

*“34. 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. 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.”*

16. Further it is a settled preposition of law that an application under Section 9 of the Code, 2016 have to be mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) of the IBC are satisfied.
17. At this juncture, it will be advantageous to refer the judgement dated 12.07.2022 of the Hon'ble Supreme Court in the case **Vidharbha Industries Power Limited vs. Axis Bank Limited** [**Civil Appeal No. 4633 of 2021**] wherein the Hon'ble Supreme Court observed as follow: -

*“74. Sub-section (5) of Section 9 of the IBC provides that the Adjudicating Authority (NCLT) shall, within 14 days of the receipt of an application of an operational creditor under sub-section (2) of Section 9, admit the application and communicate the decision to the Operational Creditor and the Corporate Debtor, provided, the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) of the IBC are satisfied. The Adjudicating Authority (NCLT) must reject the application of the Operational Creditor in the circumstances specified in clauses (a) to (e) of Section 9(5)(ii) of the IBC.*

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*An application of an Operational Creditor for initiation of CIRP under Section 9(2) of the IBC is mandatorily required to be admitted if the application is complete in all respects and in compliance of the requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid*



*operational debt, if notices for payment or the invoice has been delivered to the Corporate Debtor by the Operational Creditor and **no notice of dispute has been received by the Operational Creditor.** The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor.”*

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18. Having regard to the conspectus of facts of the present case and the judgements cited (supra), this Adjudicating Authority is of the considered view that the Corporate Debtor is in default of payment of the outstanding operational debt owed to the applicant and the mandatory requirements as prescribed under Section 9(5) of the Code, 2016 are satisfied.

### **Order**

19. The present company application (**C.P. No. (IB)- 770 (PB)/2022**) **stands admitted and the CIRP is hereby initiated against M/s. Sindhu Trade Links Limited.**
20. Since section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the resolution professional along with the application to act as Interim Resolution Professional for the Corporate Debtor, the Operational Creditor has not proposed any name of resolution professional. Therefore, this Adjudicating Authority appoint **Mr. Vikash Sharma**, as the Insolvency Resolution Professional of the Corporate Debtor from the available list of panel of resolution professionals as maintained by IBBI. The registration number of



the IRP being **IBBI/IPA-001/IP-P02456/2021-2022/13811** and email id **ca.vikash.sharma@gmail.com**.

21. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Vikash Sharma to meet out the expense to 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 Operational Creditor.
22. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(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.”*



*(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”*

23. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under section 19 of the code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the ‘Corporate Debtor’.
24. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



Let copy of the order be served to the parties.

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**(RAMALINGAM SUDHAKAR)**

**PRESIDENT**

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**(AVINASH K. SRIVASTAVA)**

**MEMBER, TECHNICAL**