

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**CP No. 1697/IBC/NCLT/MB/MAH/2018**

**Under Section 9** of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Industrial X-Ray & Allied Radiographers Pvt Ltd

Petitioner/ **Operational Creditor**  
v.

Indus Projects Ltd

Respondent/ **Corporate Debtor**

Heard on: 30.09.2019

Order delivered on: 01.10.2019

**Coram :**

Hon'ble M.K. Shrawat, Member (J)

**For the Petitioner :**

Paresh Chandulal Mehta, Authorized Representative

**For the Respondent :**

None Present

***Per: M. K. Shrawat, Member (J)***

**ORDER**

1. M/s Industrial X-Ray & Allied Radiographers Pvt Ltd (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 9.05.2018 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as, M/s Indus Projects Pvt Ltd (hereinafter as **Corporate Debtor**) having registered address at Marol Naka, Mathurdas Vasanji Road, Andheri East, Mumbai.
3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as **₹95,31,485/-** payable as on 15.03.2018

**Submissions by the Operational Creditor :**

4. The Learned Representative for the Operational Creditor has submitted that the Operational Creditor and the Corporate Debtor have business dealings for Non Destructive Testing (NDT) Methods of Examination and Evaluation which include methods of Radiography, Ultrasonic Testing, Eddy Current etc which are methods of inspecting materials for its hidden flaws. The Operational Creditor was responsible for sourcing Non Destructive Testing for the Company.
5. Accordingly, the Corporate Debtor had placed an order for Radiography and Ultrasonic Testing work at different sites for different dates. The details of orders placed by the Corporate Debtor are given as follows:
  - a. Work Order for Radiography Work at the Site- BPCL Chembur; and Ultrasonic Testing Work at the Site -GAIL, Vijapur, Guna. (Period: 03/08/2012 to 25/09/2015)
  - b. Work Order for Iridium Radiography Work for 3 Nos. Horton Sphere at BCPL, Dibrugarh, Assam. (Period: 09/07/2015 to 28/12/2015)
  - c. Work Order for carrying out NDT work at Opal, Dahej. (Period: 30/09/2013 to 31/10/2013)
  - d. Work Order for carrying out NDT work, M.P Testing and Ultrasonic testing for Sphere and Mounted Bullet at the Site- IOCL, Panipat/Naphta Cracker.
6. Pursuant to these orders, the Operational Creditor had provided the required services to the Corporate Debtor, against which the Operational Creditor raised invoices from IXAR Aug-12/001/12-13 to IXAR/June-17/225/17-18 till 30.06.2017 for an amount of ₹95,31,485/- only. In support placed Ledger Accounts of respective sites and submitted a reconciliation of different sites as under:-  
Reconciliation of Ledger Account of Different Sites of M/s Indus Projects Limited in the Books of M/s Industrial X-ray & Allied Radiographers Pvt Ltd.

Sr no. in Petition	Site	Outstanding Amount
139	Indus Project Limited Andheri	17,26,66.00
140	Indus Project Limited (BCPL)- Dibrugargh, Assam	12,69,84.00
141	Indus Projects Limited Dahej- Baroda	12,14,765.30
142	Indus Projects Limited (IOCL-Panipat)	44,40,632.00
	<b>Total Debt</b>	<b>59,55,047.30</b>

7. The 'Corporate Debtor' availed and enjoyed the said supply and delivery of the services provided by the 'Operational Creditor' but inspite of repeated requests and reminders, **failed to pay** for the same and has till date not honoured their commitment and has defaulted in making payment of the said invoice amount to the Operational Creditor.
8. Hence, on 15.03.2018 the Operational Creditor has issued a '**Demand Notice**' U/s. 8 of the Code. The said notice was duly served upon the Debtor. However, the Corporate Debtor had not replied to the said demand notice. Hence **no question of 'existence of dispute'** arises in this matter. Consequently, the Financial Creditor has produced on record an affidavit U/s 9(3)(b) of the Code stating that no dispute has been raised in this petition.
9. It is pointed out that even after the receipt of the said Notice of Demand, the Debtor had neither paid the Demanded Amount nor raised a dispute in respect of the 'Debt' in question within the stipulated time of 10 days. The Corporate Debtor had nowhere disputed its liability for the payment of the unpaid invoice of total amount of ₹95,31,485/-The Operational Creditor has annexed the affidavit u/s 9(3)(b) of IBC stating that no notice of dispute has been received from the Respondent Corporate Debtor.
10. Hence, the Operational Creditor has filed this Petition/Application to initiate CIRP over the Debtor. It is stated that, as the Debtor has neither paid the amount nor contesting the Debt, this Petition/Application may be Admitted for Commencement of CIRP.

#### **No Submissions by the Corporate Debtor :**

11. The Corporate Debtor has never appeared before this Bench despite the matter being listed on various Occasions. The Corporate Debtor was served a notice for intimation of the date of hearing on 15<sup>th</sup> April 2019 and an Affidavit to that effect has been produced on record. First date of hearing was fixed on 5/12/2018 but the Respondent remained absent. Opportunities were granted on 11/02/2019, 15/04/2019, 25/06/2019 & 07/08/19, but of no use qua the Debtor. Despite service of various notices, the Corporate Debtor has neither appeared nor filed a reply to this petition. Hence, it is understood that there is no defence to this petition available to the Debtor.

#### **Findings:**

12. This Bench has gone through the submissions of both the parties and pleadings evidences on record. On the basis of the evidences on record the Operational Creditor has established that he has supplied and delivered the services of Non Destructive Testing that include Radiography, Ultrasonic Testing, Eddy Current etc to the Corporate Debtor, for which an amount of ₹95,31,485/-is due and a default of Non Payment had also occurred. Considering these facts and circumstances, in my humble opinion the nature of the Debt is an '**Operational Debt**' as defined under section 5 (21)

of the Definitions under The Code. There is a “**Default**” as defined under section **3 (12)** of The Code on the part of the Debtor.

13. I have also perused the notice sent under Section 8 (2) of the Code and it came to my notice that the Debtor received the same but not paid the amount of unpaid outstanding due. Further, if the Debtor wanted to place on record evidence of ‘Dispute’ then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no ‘Dispute’ in respect of the outstanding Debt. Instead, the act of the Corporate Debtor of not acknowledging the debt reveals that the Corporate Debtor is at fault and is liable to pay the defaulted amount
14. As a Consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/Applicant, it is my conscientious view that this Petition deserves ‘**Admission**’
15. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Mr. Uday Sakrikar**, having registration no. as IBBI/IPA-001/IP-P01230/2018-19/, as Interim Resolution Professional for initiation of CIRP, address at Lane nos 8, Sahanukar Colony, Kothrud, Pune 411038. The proposed IRP is hereby appointed.
16. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP. It shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
17. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
18. The appointed IRP shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.

19. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

Sd/-

**Dated: 01.10.2019**

**M. K. SHRAWAT  
MEMBER (JUDICIAL)**

s.s