



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CP(IB) No.8/Chd/Hry/2025

(An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

Shakti Iron and Steel Company

through Mr. Rajesh Kumar Pandey (Partner)

authorized by the other partner namely Mr. Raj Kumar Pandey

Registered Office at: 23, 'O' Road, Belgachia, Liluah,

Howrah - 711108

EMAIL: shaktiironcompany@gmail.com

...Petitioner/Operational Creditor

Versus

Indus Towers Limited

Registered Office at: Building No. 10, Tower-A,

4th Floor, DLF Cyber City, Gurugram, Haryana - 122002

EMAIL: compliance.officer@industowers.com

...Respondent/Corporate Debtor

Order delivered on: 08.08.2025

Coram: MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)

MR. KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)

Present:

For the Petitioner

: Mr. Aritra Basu, Mr. Patita Paban Bishwal, Ms. Sohini Dey, Advocates

For the Respondent

: Mr Manish Jain, Mr. Savar Mahajan, Mr. Siddhant Jain, Advocates



ORDER

1. The present Petition is filed on 09.12.2024 by an Authorised Representative on behalf of **Shakti Iron and Steel Company** (hereinafter referred to as “**Operational Creditor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) for initiation of Corporate Insolvency Resolution Process (CIRP) against **Indus Towers Limited** (hereinafter referred to as “**Corporate Debtor**”), through its Authorised Signatory for payment of the lease amount demanding the outstanding operational debt of Rs. 1,26,39,046/-. The date of default, as mentioned in the Petition, is 06.09.2024.

2. Brief facts of the case as stated in the Petition and narrated by their Learned Counsel is that:

(i) A lease deed dated 14.06.2024 was executed between the Operational Creditor and the Corporate Debtor which had a lock-in period of two years, i.e., till 13.06.2026. The Corporate Debtor terminated the lease deed by the notice dated 05.09.2024. Further, it is stated that the Corporate Debtor is liable to make payment of the unpaid lease rentals for the period from 14.06.2024 and 13.06.2026 which the Corporate Debtor has defaulted to pay. Hence, the Operational Creditor filed the Petition for initiation of CIRP against the Corporate Debtor.

3. The Petition has been opposed by the Corporate Debtor by filing a Reply, vide Diary No.03812/5 dated 22.04.2025 The various contentions raised in the affidavit in reply and as argued by their Counsel are briefly summarised as under:-



(i) The Corporate Debtor has challenged the maintainability of the present Petition filed by the Operational Creditor, asserting that the Petition is barred under Section 9(5)(ii)(d) due to the existence of a pre-existing dispute. It is submitted that the Operational Creditor is misusing the insolvency mechanism to recover purported lease rentals for a future lock-in period, even though a legitimate and bona fide dispute exists between the parties arising from the terms of the Lease Deed.

(ii) The Corporate Debtor has already raised a bonafide and substantial dispute concerning, inter alia, the legality and effect of the termination, the obligation of the Operational Creditor to refund the security deposit amounting to Rs. 39,55,194/- in accordance with the terms of the Lease Deed, and the mischaracterization by the Operational Creditor of future lease payments (i.e. alleged payment for the lock-in period) as 'operational debt' under the Code.

(iii) The Lease Deed was executed to enable the Corporate Debtor to establish an EV (electric vehicle) charging facility, but due to the withdrawal of a third-party partner, the project became commercially unviable. In accordance with Clause 7 of the Lease Deed, the Corporate Debtor exercised its contractual right to terminate the lease within six months and issued a termination notice on 05.09.2024 prior to any alleged default or demand notice issued by the Operational Creditor. Relevant extracts of Clause 7 of the Lease Deed are quoted below for ease of reference:



“7. The Lessor hereby agrees that, without any derogation of any of of the rights of the Lessee under this Lease Deed, there shall be a rent free period that shall start from the date of execution of this Lease Deed and shall continue during the minimum period of 50 days but not later than 60 days from the date of deposit of Security deposit by the Lessee to the Lessor and for 45 days thereafter (“Rent Free Period”) and accordingly, for and during this Rent Free Period, the Lessor shall not be entitled to Rent from the Lessee and the Lessee shall not be liable to pay any Rent. The Lessor hereby agrees that during this Rent Free Period^ too, all rights and interests of the Lessee and obligations of the Lessor under this shall be effective and enforceable from the date of execution of this Lease Deed. The payment of Rents shall commence from the expiry of the Rent Free Period (hereinafter referred to as "Lease Rent Commencement Date ”).

In the event of the lessee commencing its commercial EV operations at the premises before the aforesaid date of the "lease Rent Commencement Date ", the date of start of the EV business operations -would be considered as the "Lease Rent Commencement Date ", The "Lease Rent Commencement Date" cannot be furthered beyond the 45 days tenure, as earmarked. Further, if the lessee is unable to complete the project and make the same commercially operable within a period of 6 months from rent start date then the lessee shall have a right to exit this contract without any cost other than the rent payable for the occupancy period... ” (emphasis supplied)

(iv) The Operational Creditor, in response to the Termination Notice, issued a reply on 27.09.2024 raising several objections, including the issue of refund of the security deposit deposited by the Corporate Debtor. Subsequently, on 24.10.2024, the Operational Creditor issued a rejoinder to the said reply. Following this, on 09.11.2024, the Operational Creditor sent a legal notice demanding payment of unpaid lease rentals along with GST as per the lease deed.

(v) However, almost immediately after this legal notice, the Operational Creditor hastily issued a demand notice dated 11.11.2024 under section 8 of the Code, seeking payment of Rs.



1,26,39,046/- as operational debt. This included amounts claimed for a future lock-in period from June 2024 to June 2026, which extends even beyond the date of the demand notice and thus cannot be considered due or payable at the time.

(vi) It is stated that the dispute was clearly communicated through prior correspondence, including letters and replies issued before the section 8 demand notice, thereby attracting the statutory bar under Section 9(5)(ii)(d) of the Code. The Supreme Court's ruling in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353** was relied upon to argue that the existence of a genuine dispute, even if subject to further investigation, mandates rejection of an insolvency application.

(vii) The Corporate Debtor further contends that the amounts claimed are arbitrary, inflated, and pertain to future dues that are not yet payable, given the valid termination of the lease. Additionally, the Operational Creditor's intention appears to be recovery, rather than resolution or insolvency. The submission is reinforced by precedents including Swiss Ribbons, Pioneer Urban, and HPCL Bio-Fuels cases, which emphasize that IBC cannot be used as a debt recovery tool or to settle contractual disputes.

4. The Written submission on behalf of the Operational Creditor is filed vide diary no.03812/02 dated 03.02.2025, wherein it is stated that the Corporate Debtor entered into a registered lease deed dated 14.06.2024, for a term of ten years. Key obligations under the lease included a 105-day rent-free period from the date of the security deposit, a monthly lease rent



of Rs.6,59,199/- plus GST, a conditional right to terminate the lease within six months if the project wasn't viable (with rent still payable for the occupancy period), and a mandatory lock-in period of two years from the execution date, during which termination by the Corporate Debtor was not permitted unless due to the Operational Creditor's fault.

4.1 It is further stated that despite no breach or default by the Operational Creditor, the Corporate Debtor issued a termination notice on 05.09.2024, before the expiry of the lock-in period, making it liable to pay lease rentals for the unexpired duration. A demand notice was then issued by the Operational Creditor on 27.09.2024, followed by the Corporate Debtor's response on 24.10.2024. Subsequently, a demand notice under section 8 of the Code was issued on 11.11.2024, and the Corporate Debtor replied on 18.11.2024.

4.2 The Corporate Debtor did not dispute the existence or content of the lease deed, and further stated that the possession was handed over for establishing EV charging infrastructure. The rent-free period applied from June 14, 2024 to October 15, 2024, and rent became payable from 16.10.2024. Termination was only permissible after six months from the rent start date, and only if the project could not be commercially operated, with rent still due for the period of occupancy. Clause 6.1 of the lease deed imposed a lock-in period of two years from 14.06.2024, and termination within this period by the Corporate Debtor, unless due to the lessor's fault, triggered liability to pay rent for the remaining lock-in term.

4.3 The claim by the Operational Creditor for such rent is considered an "operational debt" under Section 5(21) of the Code supported by NCLAT's



rulings in ***Jaipur Trade Expocentre Pvt. Ltd. v. Jaipur Jet Airways Training Pvt. Ltd. (2022) SCC Online NCLAT 263, paras 41 and 42*** and ***Vaibhav Agarwal v. Sunil Sachdeva & Anr. (2024) SCC Online NCLAT 764, para 16***. These judgments confirm that unpaid lease rentals for commercial use are operational debts and that failure to pay them constitutes default.

4.4 It is further stated that the termination of the lease gave rise to the present proceedings. The Corporate Debtor was not entitled to terminate the lease within the lock-in period and, by doing so, incurred liability to pay for the unexpired term. Clause 6. 1 further specifies that if such lease deed is terminated before the lock-in period, the Operational Creditor will be entitled to the lease rental for the unexpired period. This position is further backed by judgments from NCLAT in ***Smartworks Coworking Spaces Pvt. Ltd. v. Turbot HQ India Pvt. Ltd. (2023) SCC Online NCLAT 234, paras 16 to 19*** where early termination was held to make the lessee liable for the full lock-in period rent. Similarly, the NCLT, Mumbai in ***Alliance Spaces Pvt. Ltd. v. Maharashtra Biofertilizers (India) Pvt. Ltd. (2024) SCC Online NCLT 1826, para 11*** and the Bombay High Court in ***Indiabulls Properties Pvt. Ltd. v. Treasure World Developers Pvt. Ltd. (2014) SCC Online Bom 4768, para 59*** held that claim for licence fee for the remainder of the lockin period wherein there is a provision in such regard in the contract executed between the parties can be a claim on account of the debt due and payable by the licensee to the licensor.



5. We have heard the submissions made by the Learned Counsel for Petitioner Operational Creditor as well as the Respondent Corporate Debtor and have gone through the material available on record carefully, along with the extant provisions of the Code and the settled position of law on the subject issue.

6. We upon careful perusal of the documents placed on record including the registered Lease Deed dated 14.06.2024, the termination notice issued by the Corporate Debtor dated 05.09.2024, the subsequent exchange of correspondences between the parties finds that the relationship between the Operational Creditor and the Corporate Debtor is governed by the registered Lease Deed dated 14.06.2024, under which the Corporate Debtor was inducted as a lessee for a period of ten years in respect of the immovable property for the purpose of establishing, operating, and maintaining electric vehicle charging infrastructure.

7. The Clause 6.1 of the Lease Deed prescribes a lock-in period of two years from the effective date and provides that in case the Lease is terminated by the Lessee (i.e. Corporate Debtor) prior to expiry of the said period, the Lessor (i.e. Operational Creditor) shall be entitled to claim rental amount for the balance lock-in period.

8. The Corporate Debtor, however, issued a termination notice on 05.09.2024, citing commercial frustration of the Lease Deed owing to the withdrawal of the third party for whom the EV infrastructure was being established. The said notice further records that possession of the premises was not taken and the lease obligations had not commenced, since the rent-free period was still subsisting. Based on this, the Corporate



Debtor claimed a refund of the security deposit amounting to Rs.39,55,194/- and denied any liability to pay rent for the remaining lock-in period.

9. The Operational Creditor responded to the said termination asserting that the Lease had come into full effect, possession of the premises was already handed over, and that the Corporate Debtor had initiated development and infrastructure activities through its vendors. It was also contended that the Corporate Debtor had no right to terminate the Lease Deed before 15.04.2025 (i.e., six months from the rent commencement date) and such termination was in breach of Clause 6.1 of the Lease Deed, thereby entitling the Lessor (i.e. Operational Creditor) to claim unpaid rent aggregating to Rs.1,26,39,046/- for the lock-in period, in addition to damages. A demand notice was thereafter issued seeking recovery of unpaid lease rentals.

10. We find that the entire dispute between the parties revolves around the scope, applicability and enforceability of Clauses 6.1 and 7 of the Lease Deed, which deal with termination, rent commencement, lock-in period and the right to exit. The Corporate Debtor has raised several specific and substantial objections, including that the project became commercially unviable due to a third party's withdrawal, that possession was not effectively taken, and that the termination was in exercise of a special contractual exit right under Clause 7 of the Lease Deed. In contrast, the Operational Creditor has provided detailed correspondence and allegations suggesting otherwise, including assertions of construction activities and breach of lease obligations.



11. We also note that the claim raised by the Operational Creditor is in respect of future unpaid lease rentals for the unexpired lock-in period and not for any actual goods or services supplied. It is well-settled that only debts which have crystallized and become due can qualify as “operational debt” within the meaning of Section 5(21) of the Code. The rent claimed by the Operational Creditor pertains to a prospective liability based on an alleged breach of a lease covenant and does not arise out of any provision of goods or services.

12. Having considered the facts of the case, we find that there arise a serious and genuine dispute which was in existence prior to the issuance of the demand notice under section 8 of the Code. The Corporate Debtor's termination notice dated 05.09.2024, as well as its detailed reply dated 27.09.2024, establish that there was a clear and real dispute with regard to both liability and quantum, well before the statutory notice was issued. The test laid down by the Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (Supra)** makes it clear that where there exists a pre-existing dispute that is not spurious, hypothetical, or illusory, the Adjudicating Authority is bound to reject the application under section 9 of the Code.

13. We also observe that the present proceedings appear to have been initiated with the sole intent of recovering alleged contractual dues arising out of the lease arrangement and not for any insolvency-related default. As laid down in *K. Kishan v. Vijay Nirman Company Pvt. Ltd.* and *Swiss Ribbons Pvt. Ltd. v. Union of India*, the IBC is not a recovery mechanism and cannot be invoked for enforcing disputed claims or for penalising a



party for breach of contract, particularly when alternate remedies under civil law are available and more appropriate.

14. In view of the above, we find that the present application is hit by the bar under Section 9(5)(ii)(d) of the Code and is liable to be rejected on the ground of existence of a pre-existing dispute. The matter between the parties pertains to highly contentious issues relating to the performance and termination of a Lease Deed, and therefore does not fall within the scope of the insolvency proceedings.

15. Accordingly, the Company Petition bearing **CP (IB) No.8/Chd/Hry/2025** is dismissed and disposed of.

Sd/-

Kaushalendra Kumar Singh
Member (Technical)
Jashan

Sd/-

Khetrabasi Biswal
Member (Judicial)