

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**(IB)-265/ND/2021**

**IN THE MATTER OF:**

**Transit Geo System Integrators Private Limited**  
**C/18, Shivkrupa Society, Amba Nagar**  
**U.M. Road Surat, Gujarat-395017**

**...Applicant**

**VERSUS**

**Stahl Tecniks Private Limited**  
**2<sup>nd</sup> Floor, Plot No. 10, LSC**  
**Pocket B-1 Vasant Kunj,**  
**New Delhi-110070**

**... Respondent**

**Section: 9 of IBC, 2016**

**Order Delivered on: 20.10.2021**

**CORAM:**

**SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)**  
**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

For the Petitioner : Mr. Aaditya Pande, Advocate

## **ORDER**

### **PER SHRI L. N. GUPTA, MEMBER (T)**

The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Transit Geo System Integrators Private Limited (for brevity '**Applicant**') through its Director Mr. Dipesh Shashikant Dasadia, who is duly authorized vide their Board Resolution with a prayer to initiate the Corporate Insolvency process against M/s Stahl Tecniks Private Limited (for brevity '**Corporate Debtor**').

2. The Operational Creditor namely, M/s Transit Geo System Integrators Private Limited is a Private Company incorporated under the provisions of the erstwhile Companies Act, 1956 on 03.04.2010 with CIN U29100GJ2010PTC060137 having its registered office at C/18, Shivkrupa Society, Amba Nagar, U.M. Road Surat, Gujarat-395017.

3. The Corporate Debtor namely, M/s Stahl Tecniks Private Limited is a Private Company incorporated under the erstwhile Companies Act, 1956 on 05.06.1984 with CIN U74899DL1984PLC018316 having its registered office at 2<sup>nd</sup> Floor, Plot No. 10, LSC, Pocket B-1, Vasant Kunj, New Delhi-110070.

4. The Authorized Share Capital of the Corporate Debtor is Rs.5,00,000/- and Paid-up Share Capital of the Company is Rs.3,80,000/- as per the Master Data of the Corporate Debtor.

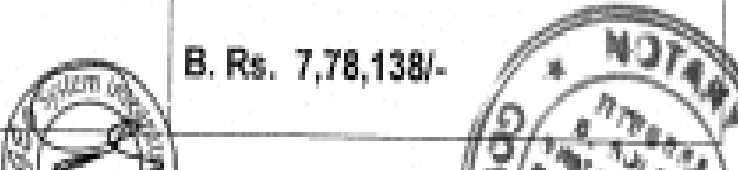
5. That this Petition filed under Section 9 of IBC, 2016 was argued for the very first time on 11.08.2021. That during the course of preliminary hearing, a question was raised by this Bench that as to how the “debt” claimed in Part-IV of the Application is covered under the ambit of “Operational Debt” ? That the arguments were heard on this limited aspect and the matter was reserved to test the maintainability of the present Application.

6. That the following has been stated by the Applicant in Part IV of the Application. The scanned copy of the Part- IV is reproduced below :

**PART IV**

**1. PARTICULARS OF OPERATIONAL DEBT**

1.	Total amount of debt Details of Transactions on account of which Debt fell due And the Date from which such debt fell due	A. Rs. 2,09,685/-  Total Claim for Financial Year 2011-12 including Tax plus Penalty plus Interest Payable for 'C' form not supplied by Corporate Debtor as per Assessment Order dated 28.03.2017 of the Sales Tax Department.  B. Rs. 7,78,138/-
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Claim for Financial Year 2012-13 including tax plus Penalty plus Interest Payable for 'C' form not supplied by Corporate Debtor as per Assessment Order dated 28.03.2017 of the Sales Tax Department and Including Interest on amount paid to government on behalf of Stahl Tecniks Pvt Ltd from 27-06-2017 till date (i.e. 2 years) at 24% PA as per order.

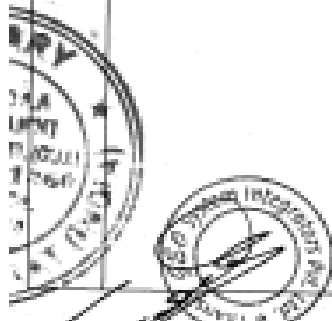
**Total Claim Amount :**  
Rs. 9,87,823/-

Working of computation of total claim amount attached with notice (Annexure-I) and with this petition in Annexure-II-A.

Tax consultant Certificate ascertaining liability towards non submission of C forms of Corporate Debtor is attached with notice (Annexure-I) and with this petition in Annexure-II-B. This includes summary of Bills and C Forms not issued and assessment order issued by sales tax department.

Corporate Debtor purchased various goods during 2011 to 2013 from Operational Creditor on the basis of concessional rate of Sales Tax on Inter State Sale and Corporate Debtor was liable to issue 'C' form to the Operational Creditor to produce before the Sales Tax Department.

Corporate Debtor made payment of all bills but never issued 'C' form as required and resultant Operational Creditor was levied additional / differential tax plus penalty for non submission of 'C' form and interest on such tax and penalty as stated in the Assessment Order.



		<p>Operational Creditor also filed Civil Suit for not issuing 'C' form.</p> <p>Now as per Assessment Order dated 28.03.2017 liability of Operational Creditor is crystallised and also paid by petitioner and it is recoverable from Corporate Debtor hence this action to file application to commence CIRP.</p> <p>Various Demand Communication for outstanding 'C' forms are attached with notice (Annexure-I) and with this petition in Annexure-II-C.</p> <p>Operational Creditor issued demand notice to corporate debtor on 29.07.2019 through authorized representative Whole Time Company Secretary Dhiren R. Dave duly authorised by Board of director of applicant company at duly convened meeting held 15.02.2019 and same was delivered on 02.08.2019. Copy of Demand Notice attached as Annexure-I. Copy of Board Resolution to initiate action under IBC is attached as Annexure-D.</p>
2.	Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form)	<p>Amount of Default: Rs. 9,87,823/-</p> <p><b>Default occurred since 28.03.2017 i.e. the date of Assessment Order of the Sales Tax Department.</b></p>

7. That from perusal of the Part-IV of the Application, it is observed that the entire claim of the Operational Creditor is based on the Assessment Order dated 28.03.2017 passed by the Sales Tax Department. It has been stated that the demand raised by the Sales Tax Department of Rs.9,87,823/- was paid by the Operational Creditor on behalf of the Corporate Debtor. That the Final Notice of Assessment under the CST Act. 1956, issued by the Sales Tax Department to the Applicant has been placed on record, scanned copy of which is reproduced overleaf :

[FORM VIII(B)]

[See Rule 9a of the central Sales Tax (Gujarat) Rules, 1970]

FINAL NOTICE OF ASSESSMENT UNDER THE CENTRAL SALES TAX ACT, 1956

To,  
TRANSIT GEO SYSTEM INTEGRATORS PVT. LTD.  
OF 13/C.404.1st FLOOR,PASHWANATH  
COMPLEX,OPP.BHAKTI  
AUTOMOBILS,U.M.ROAD,SURAT,CHORASI,SURAT  
RC No. 24722204037

\*In Continuation of the notice in form 6B served on you on the 16 day of 03 2015

1 \* With reference to your petition/appeal/revision, dated the - day of - 20- before Assistant Commissioner of sales Tax/Additional Commissioner of Sales Tax/Commissioner of Sales Tax/Sales Tribunal.

(i) The amount of tax payable by you for the Period from 01/04/2012 to 31/03/2013 has been finally assessed at Rs. 3719514 as shown in the table below:

(ii) The Penalty payable by you u/s - of the Gujarat Value Added Tax Gujarat Value Added Tax Act default in paying tax upto the - has been determined at Rs. -

(iii) A Penalty of Rs. - has also been imposed on you under subsection - of section - of the - Act read with [Section 9(2) of the Central Sales Tax Act, 1956.

(iv) A Penalty of Rs. - has also been levied on you under section 10A of the Central Sales Tax Act, 1956.

(v) Total amount of tax and Penalty is Rs. 3719514

2 The total amount of tax paid by you already is Rs. 2754565 in words - only that is Rs. - in excess of the due.  
\* A refund order is enclosed. You should apply to - for the refund of this sum.

3 You are hereby directed to pay the sum of Rs. 941146 ( Rupees NINE FOUR ONE ONE FOUR SIX ) into the government treasury at SURAT on or before 27/04/2017 (date) or within 35 days of the date of service of this notice whichever is later and to produce the receipt in proof of payment before the undersigned not later than 5 days from the date of payment as aforesaid, failing which the said sum together with further penalty as specified in para 3 below will be recovered from you as an arrear of land revenue.

4 If you do not pay the amount, the tax shown as due on or before the date specified above you will be liable under [sub section (5) of Section 45 of the Gujarat Sales Tax Act, 1969] read with [Section 9(2)] of the Central Sales Tax Act, 1956 to pay a penalty at the rates specified therein for the period commencing from the date of the assessment order/the order in appeal/revision against an order of assessment or appeal during which the said amount remains unpaid.

5 An appeal against the assessment/first appeal order must be presented to the DC APPEAL, [under Section 65 of the Gujarat Sales Tax Act, 1969 in the manner prescribed by the Gujarat Sales Tax Rules, 1970] read with section 9(2) of the



અધ્યક્ષ વાણિક્યકેરો કમિશનર,  
૫૨૬-૮, સુરત.

Central Sales Tax Act, 1956 within 60 days from the passing of the order of the assessment/first appeal. The order of assessment/first appeal was passed on the - 20-

Seal :

Place : SURAT

Date :28/03/2017

Signature :

Designation :

\* Strike out whichever is not required

8. That during the course of hearing it was submitted by the Ld. Counsel appearing for the Applicant that the aforesaid debt claimed is an “Operational debt” since the same is arising out of the dues payable to the Sales Tax Department of the State Government.

9. Here, the issue which emerges for our adjudication is – **whether the Sales Tax Demand paid by the Operational Creditor can be claimed as reimbursement from a Corporate Debtor as an “Operational Debt” ?**

10. After hearing submissions of the Applicant and perusing the Application and documents placed on record, we observe that in order to adjudicate the issue, it is necessary to visit the definition of “Operational Debt” as defined under Section 5(21) of IBC, 2016. The same is reproduced below:

*5. (21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*

11. From bare perusal of Section 5(21) of the Code, it is observed that three types of debts are covered under the definition of “Operational Debt”, which are as follows :

- a) *a claim in respect of the provision of goods or services,*
- b) *claim or dues in respect of employment, and*
- c) *dues arising under any law in force and payable to the Central Government, any State Government or any local authority;*

12. As the “Operational Debt” is to be claimed by an “Operational Creditor”, we, therefore, refer to the definition of the Operational Creditor as defined under Section 5(20) of the Code. The same is reproduced below:

**5.(20) “operational creditor”** *means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”;*

13. That in the instant case, as evident from Final Notice of Assessment (Supra), the Tax Demand has been raised by the Sales Tax Department against the Operational Creditor and not against the Corporate Debtor.

14. That although the definition of the Operational Debt includes the dues arising under any law in force and recoverable by the Central Government or State Government or any local authority, in our considered view, the dues payable to the Government can be claimed by the Government only in the capacity of the Operational Creditor.

15. The payment of Tax Demand made and discharged by the Applicant herein to the State Government will not result in automatic assignment or transfer of such payment/debt to the Corporate Debtor and therefore, Operational Creditor cannot claim the same as reimbursement from the Corporate Debtor as the Operational Debt.

**16. Therefore, we conclude that the amount shown in part IV of the application as defaulted amount, basing on the Final Notice of Assessment dated 28.03.2017, is neither arising out of provision of goods and services nor is a claim in respect of employment nor it represents the dues payable to the Government, is not an Operational Debt within the meaning of Section 5(21) of the IBC, 2016 and therefore, the applicant is not the operational creditor u/s 5(20) of IBC 2016. Accordingly, the present Application filed under Section 9 of IBC, 2016 is not maintainable and hence, dismissed.**

17. However, nothing expressed in this order shall be construed as an expression of opinion and would result in restraining the applicant herein to seek remedy/agitate before any other forum.

**Sd/-  
(L. N. Gupta)  
Member (T)**

**Sd/-  
(Abni Ranjan Kumar Sinha)  
Member (J)**