



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
NEW DELHI COURT III**

**Item No. 07**  
IA-4312/2022  
In  
IB-2775(PB)/2019

**IN THE MATTER OF:**

Mr. Sasank Kiran Panda

**Vs.**

M/s. The Indure Pvt. Ltd.

**.....OPERATIONAL CREDITOR**

**.....CORPORATE DEBTOR**

**SECTION**

**U/s 9 of IBC, 2016**

**Order Pronounced on 01.08.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets.

IA-4312/2022 is **dismissed**.

IB-2775(PB)/2019 is **dismissed**

-SD-

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT- III**

IA-4312/2022

And

IB-2775/PB/2019

Order 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:**

Mr. Sasanka Kiran Panda

..... Operational Creditor

**Versus**

M/s. The Indure Private Limited

..... Corporate Debtor

**AND IN THE MATTER OF:**

Mr. Sasanka Kiran Panda

..... Applicant

**Versus**

M/s. The Indure Private Limited

..... Respondent

**Order Pronounced On: 01.08.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

For the Applicant : Mr. Vishal Ranjan, Adv.

For the Respondent : Mr. Prashant Mehta, Mr. Varun Gupta,  
Ms. Simran Wason, Ms. Lakshita Arora,  
Adv.

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

**IA-4312/2022 And IB-2775/PB/2019**

**Date of Order: 01.08.2023**



1. This Application was filed by Mr. Sasank Kiran Panda, the Applicant/Operational Creditor on 30.09.2019, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against M/s. The Indure Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has withheld bonus, medical reimbursements, Provident Fund, Gratuity, Leave encashments, etc. The amount claimed to be in default is Rs. 2,93,613/- [(Rupees Two Lakh Ninety Three Thousand Six Hundred and Thirteen Only), including an interest amount @15% i.e. Rs. 33,648/-] as on 01.04.2017.
2. The Operational Creditor was working as Safety Officer with the Corporate Debtor from March 2011. The Operational Creditor worked with the Corporate Debtor till November 2016 but the Corporate Debtor has withheld Bonus, Leave Encashments, Gratuity, Provident Fund, medical reimbursements, etc. of the Operational Creditor. The Operational Creditor has carried out his duties diligently and with honesty. Even then the Operational Creditor has not been paid leave encashment, bonus, gratuity, medical reimbursement, Notice pay. The Operational Creditor repeatedly requested the Corporate Debtor for clearing the outstanding debts but despite repeated assurances of payment, the Corporate Debtor has failed to make the entire payment, which is claimed by the Operational Creditor. The Operational Creditor whenever demanded payment, the Corporate Debtor made false promises but by giving all such false and frivolous promises the Corporate Debtor actually kept the Operational Creditor in the dark with the sole motive to cause wrongful gain to themselves and thereby causing wrongful losses to the Operational Creditor.



3. The Applicant served on the Respondent a statutory demand notice dated 28.07.2019 under Section 8(1) of the Code demanding payment in respect of the unpaid Operational Debt due. The notice was dispatched by Speed Post and was duly received by the Corporate Debtor Company. It is submitted despite the service of the statutory notice dated 28.07.2019, the Corporate Debtor company has failed to give reply to the demand notice sent by the Operational Creditor and also did not discharge its liability towards the Applicant.
4. It is stated by the Respondent that the present petition is not maintainable because of the pre-existing dispute between the parties. There are deficiencies in services as entailed under the contract of employment dated 22.03.2011. It is paramount to highlight the conduct of the Applicant and the existence of a dispute between the employer and employee. The Applicant has been habitually taking leaves without permission/prior approvals during his employment period and without prior approval of the concerned officers of the Respondent Company and the reasons provided for such absence without leaves are nothing short of false statements, recklessness and negligence. The conduct of the applicant is nothing short of malicious and fraudulent as he has siphoned of money from Co-workers and the site incharge at Dahej RIL, which subsequently led to complaints from co-workers and the site incharge to HR Department of the Respondent Company. The same is placed on record vide emails dated 11.08.2016. It is further submitted that the claims raised by the Applicant are malafide in nature and done so to harass the Respondent and have not been backed by any document having evidentiary value to substantiate the said claim. The allegation, therefore are vehemently denied.
5. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
6. After considering the facts and circumstances of the present case, we are of the opinion that the Contract of Employment through the Appointment Letter dated 22.03.2011 and the relation between the



Applicant (Employee) and the Respondent (Employer) during the continuation of the relationship of employer and employee or thereafter for any reason would fall within the ambit of contractual dispute, and the same cannot be treated as an “Operational Debt” as defined under section 5(21) of the Code. Guidance in this regard is also available in the judgment of Hon’ble NCLAT in **Jain Irrigation Systems Ltd. Versus Pragyawan Technologies Pvt. Ltd.** Company Appeal (AT) (Insolvency) No. 311 of 2023, wherein it is held that

*“Section 9 Proceedings are not the proceedings where the dispute raised by the parties arising out of the contract between the parties can be gone into and adjudicated. The scheme of Insolvency Proceedings contemplates that the proceeding shall go on only when there is an admitted debt and default, the forum is not for deciding and adjudicating the contractual dispute between the parties.”*

7. While applying the principles as laid down by the Hon’ble NCLAT, we are of the opinion that there is no operational debt as defined in Section 5(20) of the Code, which is already due and payable by the Corporate Debtor to the applicant. The debt, if any, would crystalize only after the contractual dispute is decided by the Competent Court in the Applicant’s favour. Therefore, we are of the considered view that the instant application filed under Section 9 of the Code is not maintainable.

8. **Order**

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fails to fulfill the criteria laid down under Section 9 of the Code and therefore, is inadmissible. It is accordingly, hereby ordered as follows: -

- i. The Application bearing **IB-2775/PB/2019** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating



Authority Rules for initiating CIRP against the Respondent is hereby **dismissed**.

- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

**IA-4312/2022**

9. This application has been filed by Mr. Nishant Kumar, Authorized Representative of the Corporate Debtor, who has been authorized vide Board Resolution dated 21.07.2022.
10. It may be mentioned that one Sasanka Kiran Panda, the Operational Creditor has filed IB-2775/PB/2019 against M/s. The Indure Private Limited, the Corporate Debtor under Section 9 of IBC seeking initiation of CIRP against the Corporate Debtor on the ground that a sum of Rs. 2,64,965/- is due and payable towards the services provided by the Operational Creditor during the course of his employment with the Corporate Debtor.
11. In this application, the Corporate Debtor has stated that as per the books of accounts and documents available with the Corporate Debtor an outstanding amount of Rs. 92,987/- is due and payable to the Operational Creditor and the said amount shall be paid by the Corporate Debtor by Demand Draft.
12. The Corporate Debtor has therefore prayed to this Tribunal that necessary orders for settling the matter be passed and IB-2775/PB/2019 be disposed of or in terms of the said settlement.
13. The Ld. Counsel appearing for the Applicant/Operational Creditor has vehemently opposed the objections raised by the Corporate Debtor and refuted that any settlement being arrived at between the parties.
14. The Operational Creditor has also not made any statement having received any payment from the Corporate Debtor towards the full and final settlement.



15. It is the settled Principle of Law that no party can be directed to settle the dispute and we are not inclined to pass any such direction to the Operational Creditor. We, therefore, do not deem it appropriate to entertain this application.

16. Accordingly, IA-4312/2022 **dismissed** and **disposed of**.

**-SD-**

**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**-SD-**

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**