



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

Item No.01

IB-342(PB)/2021

IN THE MATTER OF:

Mr. NILESH VASANTRAO BHORKAR **Operational Creditor**
VERSUS

M/s. THE INDURE PRIVATE LIMITED **Corporate Debtor**

Order Pronounced On: 05.09.2023

SECTION

U/s 9 of IBC, 2016

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant : PCA Sanjay Kumar Ruia
For the Respondent : Mr. Sudhir Makkar, Mr. Ankit Shah, Mr. Varun
Gupta, Ms. Simran Wasan, Ms. Lakshita Arora,
Ms. Shweta Singh, Mr. Shubham, Advs.

ORDER

Order pronounced in open court vide separate sheets. **IB-342(PB)/2021** is
allowed.

-SD-

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

-SD-

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



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

IB – 342/ND/2021

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. NILESH VASANTRAO BHORKAR

Proprietor of M/s. NB Equipments & Engineering Services

Having Its Registered Office at:

513, Tower-B, Lodha Business District,

Kolshet Road, Thane (West)

Mumbai-400607.

..... Applicant/Operational Creditor

VERSUS

M/s. THE INDURE PRIVATE LIMITED

Having Its Registered Office at:

Indure House, G.K. Part-II,

New Delhi-110048.

Through Its Authorised Representative

Mr. Nishant Kumar

..... Respondent/Corporate Debtor

Order Pronounced On: 05.09.2023

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant : PCA Sanjay Kumar Ruia

For the Respondent : Mr. Sudhir Makkar, Mr. Ankit Shah, Mr. Varun
Gupta, Ms. Simran Wasan, Ms. Lakshita Arora,

Mr. Nilesh Vasant Rao Bhorkar, Proprietor of M/s. NB Equipments & Engineering Services vs. M/s. The Indure Pvt. Ltd.

IB – 342/ND/2021

Date of Order: 05.09.2023



Ms. Shweta Singh, Mr. Shubham, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by Mr. Nilesh Vasantao Bhorkar, Proprietor of M/s. NB Equipments & Engineering Services, the Applicant/Operational Creditor on 28.06.2021, 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 defaulted/failed to clear the outstanding amount of Rs. 2,24,41,128/- [(Rupees Two Crore Twenty Four Lakh Forty One Thousand One Hundred and Twenty Eight Only), Rs. 1,59,31,124/- as principal outstanding amount plus Rs. 65,10,004/- as interest amount under MSME Act] as on 18.12.2018.
2. The Operational Creditor is involved in the business of supply of Cranes and Equipments for Construction and Maintenance on Rental Basis. The Corporate Debtor is involved in taking Govt. and other large Contracts of complete constructions or parts thereof under the category of civil engineering.
3. The Corporate Debtor approached the Operational Creditor and informed its desire to hire the crawler crane for the Muzaffarpur Thermal Power Project in Bihar. The Operational Creditor on 29.04.2016 gave the Offer and was in receipt of the Work Order for the supply of one crawler crane on the same date. On 20.09.2016, the Operational Creditor received the second work order for the supply of the crawler crane at Muzaffarpur Thermal Power Project in Bihar.
4. The Operational Creditor had raised various invoices from May 2016 till 31.03.2020 (including the invoice for the Mobilisation Charges). The



total invoices raised amounted to 4,78,46,637/- out of which total payments received by the Operational Creditor was Rs. 3,19,15,513/- including TDS Credit of Rs. 6,000/-. The last payment was received on 22.10.2020. However, there are 30 unpaid invoices (including one partly paid) from December 2018 till March 2020.

5. The Operational Creditor sent an email dated 24.07.2020 to the Respondent mentioning that there are structural changes in the Proprietorship Firm and enclosed the copy of GSTIN, Cancelled Bank Cheque and invoices for April to June 2020 billed in the name of the Company M/s. NB Equipments & Engineering Private Limited.
6. The Operational Creditor is a Registered Micro Small and Medium Enterprise (MSME). In case of default in the payment of the outstanding invoices, the Corporate Debtor is liable to pay 18% interest per month from the date of the default (15 days from the date of billing) to the Operational Creditor. The total debt outstanding as on 09.06.2021 (date of issue of Demand notice) is Rs. 1,59,31,124/- along with interest Rs. 65,10,004/- @ 18% per month as per the terms of the MSMED Act, 2006 amounting to total aggregate claim of Rs. 2,24,41,128/- (Rupees Two Crore Twenty Four Lakh Fourty One Thousand One Hundred and Twenty Eight Only).
7. The Operational Creditor Company had sent letters and various email correspondence to release outstanding payments. On 18.07.2018, the Corporate Debtor issued letter to Dy. General Manager (ME), KBUNL, Kanti, Muzaffarpur Thermal Power Project, Bihar to release direct payment of Rs. 35,00,000/-.
8. The Operational Creditor Company served Demand Notice to Respondent Company dated 09.06.2021 via email and also by the speed post receipt dated 10.06.2021 under Section 8 of the Insolvency and Bankruptcy Code, 2016. The speed post was duly received by the Company on 15.06.2021 as per the tracking report. The Operational Creditor is not in receipt of any reply to the Demand Notice on the date of filing of the present application.



9. Following are the details of the Debt of the Operational Creditor:

Total Debt (Invoices raised): Rs. 4,78,46,637/- (Rupees Four Crore Seventy Eight Lakh Forty Six Thousand Six Hundred and Thirty Seven Only).

Total Payments received/TDS Credits: Rs.3,19,15,513/- (Rupees Three Crore Nineteen Lakh Fifteen Thousand Five Hundred Thirteen Only) including TDS Credits of Rs. 6,000/- deducted and deposited by the Corporate Debtor.

Details of Transaction: Supply of two (2) numbers of Mobile Crawler Cranes on Rental Basis at site Muzaffarpur Thermal Power Station.

Date of First Billing 24.05.2016

Date from which debt fell due: 03.12.2018

Principal Outstanding: Rs. 1,59,31,124/- (Rupees One Crore Fifty Nine Lakh Thirty One Thousand One Hundred and Twenty Four Only).

Interest under MSME Act: Rs. 65,10,004/- (Rupees Sixty Five Lakh Ten Thousand and Four Only).

Total Amount Claimed: Rs. 2,24,41,128/- (Rupees Two Crore Twenty Four Lakh Fourty One Thousand One Hundred and Twenty Eight Only).

Date on which default occurred: 18.12.2018 (15 days of credit period)

Date of Last Payment: 22.10.2020

10. On the contrary, the Respondent/Corporate Debtor has submitted that the reply to the demand notice under Section 8 on 09.06.2021 raises objections to the demand notice. However, the Applicant herein has not annexed the same along with the application and suppressed the facts receiving the reply to the demand notice and therefore this application ought to be rejected on that ground. The Respondent/Corporate Debtor raised various objections as to the genuineness of the invoices and also denied having received the majority of the invoices. The Respondent/Corporate Debtor has stated



that an email dated 06.11.2019 was written indicating therein the invoices which have not been received by the Respondent/Corporate Debtor. It is further stated that the ledger accounts, 26 AS and Bank Statements filed by the Applicant do not tally with each other and the ledger accounts were never sent to the Respondent/Corporate Debtor. The Respondent/Corporate Debtor also stated that there was an inordinate delay by the Applicant to provide the Crawler Crane despite repeated requests made by the Respondent/Corporate Debtor and thus the Applicant failed to provide the services on time and thereby committed breach of contract.

11. In the backdrop of the averments made by the parties and this Adjudicating Authority as to whether the services as agreed upon between the parties were provided by the Applicant to the Respondent/Corporate Debtor and proper invoices were raised and the said invoices were received and accepted by the Respondent/Corporate Debtor. The Respondent/Corporate Debtor raised a preliminary objection as to the fact that the Applicant has suppressed the fact that the Respondent/Corporate Debtor sent a reply to the demand notice and did not annex a copy of the said reply along with the present application. The Applicant in its rejoinder affidavit has denied the said allegations and submitted that the Applicant never received any such reply and the said reply was manufactured and afterthought it was sent with a back date after filing of the present application. Be that as it may, we are of the view that the receipt or non-receipt of the reply to the demand notice under Section 8 will have a bearing upon the merits of the present case unless the Respondent/Corporate Debtor has raised a specific pre-existing dispute.

12. The Respondent/Corporate Debtor has raised various objections with respect to the invoices issued by the Applicant/Operational Creditor. The Respondent/Corporate Debtor contended that though the Applicant has claimed payment for 30 outstanding invoices but only 29 invoices have been placed on record. In response to the said



allegation, the Applicant submitted that Invoice no. 0179 dated 05.03.2019 for the month of February, 2019 for a sum of Rs. 5,54,600/- has been mentioned, however the Respondent/Corporate Debtor has ignored the same. We have perused the demand notice under Section 8 as well as the present application filed under Section 9 of IBC, 2016 and we are satisfied that all the 30 invoices have been placed on record by the Operational Creditor. Therefore, the objections raised by the Corporate Debtor that all the invoices were not annexed along with the demand notice cannot be accepted.

13. The Respondent/Corporate Debtor has placed heavy reliance on the email dated 06.11.2019 to show that there was a dispute which existed in the past prior to the date of issuance of demand notice.

The email dated 06.11.2019 is extracted below:

“From: Vivek Kumar kumar@indure.com

Sent: 6 November, 2019 3:38 PM

Subject: Fw: NB EQUIPMENT STATEMENT

Dear Sir,

Amount highlighted in yellow colour bill in ledger, not received

Kindly send the bill asap,

With Regards,

Vivek”

14. A bare perusal of the said email dated 06.11.2019 shows that the Corporate Debtor has asked the Applicant/Operational Creditor to send the invoices but it does not indicate any pre-existing dispute. Further, there are no other documents on record to show that any pre-existing dispute was raised by the Respondent/Corporate Debtor prior to the issuance of the demand notice under Section 8 of IBC, 2016. We, therefore, accept the submissions that there was not a pre-existing dispute between the Respondent/Corporate Debtor and the Applicant/Operational Creditor.



15. On a conspectus of the case, we have found that the Corporate Debtor has not been able to establish either a pre-existing dispute or that the demand notice or the application under Section 9 was defective because of not enclosing all the 30 invoices. The Operational Creditor has established that he has supplied the goods/material to the Corporate Debtor and raised proper invoices along with the log sheet and the Corporate Debtor has failed to make the payments due to the Operational Creditor and therefore we are of the view that the present application under Section 9 of the IBC, 2016 ought to be **admitted**.

16. **Order**

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

- i. The Application bearing **IB-342/ND/2021** 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 **admitted**.
- ii. We also declare a 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:
 - i. *“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;*
 - ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
 - iii. *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;

- iv. *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period;]

- iii. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.
- iv. The Operational Creditor has proposed the name of Mr. Vinod Radhakrishnan Nair as the Interim Resolution Professional (“IRP”) having address: Flat No. 108, First Floor, A-wing, Om Rachna Cooperative Housing Society Limited, Sector-17, Vashi, Navi Mumbai, Maharashtra-400703. His Email id is vinod@nairca.com. His Contact No. is +917039500000. His



registration number is IBBI/IPA-001/IP-P01352/2018-2019/12083. The Operational Creditor filed a copy of the Consent Issued by Mr. Vinod Radhakrishnan Nair in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, Mr. Vinod Radhakrishnan Nair is appointed as IRP.

- v.** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- vii.** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.



- ix.** The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (“CoC”).
- x.** In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xi.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- xii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- No order as to costs.

-SD-

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

-SD-

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