



IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III

Item No. 06

IA-4311/2022

In

IB-2666(PB)/2019

IN THE MATTER OF:

Mr. Mahipal Singh

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-4311/2022 is **dismissed**.

IB-2666(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-4311/2022

And

IB-2666/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. Mahipal Singh Operational Creditor

Versus

M/s. The Indure Private Limited Corporate Debtor

AND IN THE MATTER OF:

Mr. Mahipal Singh 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,
Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

IA-4311/2022 And IB-2666/PB/2019

Date of Order: 01.08.2023



1. This Application was filed by Mr. Mahipal Singh, the Applicant/Operational Creditor on 23.09.2019, 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 7 months salary of the Operational Creditor along with bonus, medical reimbursements, Provident Fund, Gratuity, Leave encashments, etc. The amount claimed to be in default is Rs. 14,14,492/- [(Rupees Fifteen Lakh Fourteen Thousand Four Hundred and Ninety Two Only), including an interest amount @15% i.e. Rs. 1,50,019.30/-] as on 01.04.2017.
2. The Operational Creditor was working as a Deputy General Manager with the Corporate Debtor from January 2012. The Operational Creditor worked with the Corporate Debtor till April 2019, but the Corporate Debtor has withheld 7 months salary of the Operational Creditor along with bonus, medical reimbursements, Gratuity, Provident Fund, Leave encashments etc. The Operational Creditor has carried out his duties diligently and with honesty. Even then the Operational Creditor has not been paid salary for seven months i.e. commencing from June to December 2018, amongst other rightful legitimate dues. 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. 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 16.01.2012. 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. The same is made evident upon perusal of intimation of numerous letters addressed to the Personal Manager/HR Department of the Respondent Company by the Applicant that such leaves were taken by the applicant without prior approval, of the concerned officers of the Respondent Company and reasons provided for such absence without leaves are nothing short of false statements, recklessness and negligence which can be duly verified by the letters written by the Applicant. 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. In Rejoinder, the Operational Creditor submitted that the Operational Creditor was working as a Deputy General Manager and was stationed at the New Delhi Head Office of the Corporate Debtor. As and when



required he was asked by the Corporate Debtor itself to make visits to their different sites across the country. The documents that are annexed by the Corporate Debtor are routine letters written by the Operational Creditor, to claim his salary, once he returned from the outstation assignments and nothing else.

6. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
7. 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 16.01.2012 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 was 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.”

8. 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.

9. **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-2666/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-4311/2022

10. The present application has been filed by M/s. Indure Private Limited, the Corporate Debtor in IB-2666/PB/2019 which was filed by one Shri Mahipal Singh, the Operational Creditor under Section 9 of IBC seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on the ground that a sum of Rs. 12,64,473/- is due from the Corporate Debtor for the work done by him as an employee of the Corporate Debtor.
11. It is stated by the Applicant that as per the books of accounts and documents provided with the Corporate Debtor, an amount of Rs. 6,68,168/- is to be paid towards the full and final settlement to the Operational Creditor by way of demand draft and the Corporate Debtor intends to settle the matter with the Operational Creditor.
12. The fact remains that the Corporate Debtor has admitted the liability and wants to settle the matter with the Operational Creditor and therefore has filed this application seeking to permit the Corporate



Debtor to settle the matter and dispose of the IB- 2666/PB/2019 on that basis.

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-4311/2022 **dismissed** and **disposed of**.

-SD-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)