IN THE NATIONAL COMPANY LAW TRIBUNALNEW DELHI
SPECIAL BENCH (COURT – II)

Item No. 301
IB-542/ND/2025

IN THE MATTER OF:

Mr. Vrindaban Bihari Khandelwal
Flat 501, Tower 16, Vipul Greens
Sohna Road Sector 48, Gurgaon - 122018 **... APPLICANT/OC**

Versus

Marposs India Pvt. Ltd.
J-30, 1st Floor, Lajpat Nagar - III,
Delhi, India, 110024 **...Respondent/CD**

Under Section: 9 of IBC, 2016

Order delivered on 15.10.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SHRI RAVINDRA CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:

For the OC : Adv. A. Ahmad, Adv. Rachit Ranjan, Adv. Sarthak Tiwari

For Respondent :

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

1. The present application has been preferred under Section 9 of IBC, 2016 for initiation of CIRP qua the Respondent. Part-IV of the application reads thus:

PART-IV

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.	I. **TOTAL AMOUNT OF DEBT:** Rs. 1,08,69,558 /- (Rupees One Crore Eight Lakhs Sixty-Nine Thousand Five Hundred and Fifty-Eight Only) on account of unpaid operational debt due from the corporate debtor as per the Engagement Letter, Appraisal Letters

			and the Termination Letter issued by Marposs India Private Limited to its erstwhile employee Mr. Vrindaban Bihari Khandelwal. However, interest will be calculated up to the date of final payment. II. **DETAILS OF THE TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE:-**
			1. That Marposs India Private Limited (hereinafter referred to as "Corporate Debtor") is a private Limited company limited by shares incorporated on 09/07/2007 under the Companies Act, 1956 (now the Companies Act, 2013),
			having its registered office at " J-30, 1st Floor, Lajpat Nagar - III, Delhi, India, 110024. 2. That the Corporate Debtor is mainly engaged in the business of Assembly sales and servicing of High Precision Measuring Equipments. The corporate Debtor is wholly owned subsidiary of MARPOSS SpA Italy.

			3. That Mr. Vrindaban Bihari Khandelwal (hereinafter referred to as "Operational Creditor/ Employee") is an Indian citizen residing at Flat 501, Tower 16, Vipul Greens, Sohna Road, Sector 48, Gurgaon – 122018.
			4. That the Operational Creditor was appointed by Parent Co., MARPOSS SpA Italy, vide Appointment Letter dated 27 April 2007. As per Parent Co's Appointment Letter, the engagement of the employee was to commence from 2 July 2007 and to continue on parent Co roll till the incorporation of Indian Company i.e. Corporate Debtor. The Operational Creditor was to be taken on roll of the Corporate Debtor immediately on its incorporation. Copy of the Appointment Letter dated 27.04.2007 and 26.11.2007, are annexed and marked as **ANNEXURE A-III.**

			5. That the Corporate Debtor had issue Appraisal Letter / Emolument Revision Letter every year to the Operational Creditor during the period of employment wherein basic salary along with variable pay (including medical allowance, special allowances, Performance linked bonus, etc.) were revised from time to time. It is
			submitted that the last Emolument Letter was issued by the corporate debtor on 14.02.2024, wherein the basic salary of the Operational Creditor was Rs. 3,45,000/- per month excluding other allowances
			and Additional Benefit such as Provident funds, New Pension Scheme and Performance Linked Bonus. 6. It is pertinent to mention that the total compensation of the Operational Creditor consists of the basic salary, all allowances and the variables/Additional Benefits. Moreover, Additional Benefits as

			mentioned in the Emolument Revision Letters are part of the total CTC of the Employee and the Corporate Debtor is liable to pay all said variables along with basic salary. It is submitted that the Operational Creditor has received all the performance bonus till 2022 as per the Emolument Revision Letter. However, the Corporate Debtor did not pay the performance linked bonus since the year 2023. Copy of Emolument Revision Letter dated 01.09.2023 and 14.02.2024 and history of variable pay/ performance linked bonus as per the Emolument

Revision Letter are herein annexed and Marked as **ANNEXURE A-IV (COLLY)**.

7. That the Corporate debtor has also executed the Gratuity Trust Deed dated 14.06.2018 for the Employee for safeguarding the gratuity funds of the employee. That as per the terms of the gratuity trust deed, the gratuity amount has to be paid to the Employee on retirement/ on termination/ on specific age. Copy of Gratuity Trust Deed dated 14.06.2018 executed between the parties is annexed herewith and marked as **ANNEXURE-A-V.**

8. It is to be noted that during the employment, Financial Position of the Company has been continuously deteriorating after COVID 20. That the Corporate Debtor did not pay the salary of the Operational Creditor for the month of December 2023 and cut down

		various cost to the company. In this process, the Salary for Dec 2023 of the Operational Creditor was not provided by the corporate debtor and also not paid afterwards. Copy of the Salary Slip for the month of December 2023 showing unpaid salary is annexed herewith and marked as **ANNEXURE-A-VI.**
		9. Subsequently, the Corporate Debtor issued Termination Letter dated 29.04.2025 to **Mr. Vrindaban Bihari Khandelwal** without any fault on the part of the Operational Creditor/ Employees. Copy of the Termination Letter dated 29.04.2025 issued to the Operational Creditor is annexed herewith and marked as **ANNEXURE-A-VII.**

		10. It is submitted that as per the Termination Letter dated 29.04.2025, mentions Payment of Salary on every month end followed by the full and final settlement of the compensation (including leave encashment, variable pay and gratuity) was to be settled by 26.07.2025. However, till now, the payment of full and final settlement of the compensation of the Employee has not been made.
		11. It is submitted that the Corporate Debtor has also issued No Dues Certificate to the Employee evidencing that no dues are there to be paid on behalf of the Operational Creditor. Further, the termination letter dated 29.04.2025, have the provision of the monthly salary to be paid every month and full and final

		settlement to be completed within 26.07.2025. Copy of the No Dues Certificate is annexed herewith and marked as **ANNEXURE-A-VIII.** 12. That the Corporate Debtor failed to release the unpaid operational Debt/ salary for the month of May 2025, Jue 2025 and July 2025 along with variable pay as mentioned in the Termination Letter dated 29.04.2025. That the Operational Creditor requested the Corporate Debtor to pay the requisite salary to which the HR of the Corporate debtor vide email dated 10.06.2025 provided an unusual and unjustified reason of delaying payment of monthly salary by 1 or 2 week due to ongoing Audit. It is submitted that the said reason is just delaying tactics not to pay to the

			Operational Creditor. It is submitted that the corporate debtor failed to release salary of the Employee for the month of May 2025, June 2025 and July 2025 as per the Termination Letter/ No Dues Certificate and the Appointment Letter issued by the Corporate Debtor.
			13. That as per the terms of the Termination Letter dated 29.04.2025, the full and final settlement of the compensation (including leave encashment,
			variable pay and gratuity) was to be settled by 26.07.2025. However, the Corporate Debtor failed to release the unpaid operational debt. Subsequently, the Operational Creditor Time and again approached the Corporate Debtor via calls, messages, WhatsApp, emails and personal visit. However, despite continuous assurances, the Corporate Debtor has not released the salary and

		other payment of the Operational Creditor. Copy of table of Description of pending and due amount of Rs. 1,08,69,558/- (Rupees One Crore Eight Lakhs Sixty-Nine Thousand Five Hundred and Fifty-Eight Only) from the Corporate Debtor is annexed herewith and marked as **ANNEXURE-A-IX.**
		14. That the Corporate Debtor failed to release the unpaid operational Debt amounting to Principal amount of Rs. 1,08,69,558/- (Rupees One Crore Eight Lakhs

		Sixty-Nine Thousand Five Hundred and Fifty-Eight Only) as per the Termination Letter dated 29.04.2025 issued by the Corporate Debtor. 15. That after the default/ non payment of the unpaid operational debt due and payable by the Corporate Debtor, the Operational Creditor served a Demand Notice dated 08.08.2025 in Prescribed Form 3 as per the Section 8 of the Insolvency and Bankruptcy Code, 2016 read with provision of Rule 5 of the Insolvency and bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor demanding payment of unpaid operational debt. Copy of the Demand Notice Demanding payment in Form 3 under Rule 5 of the Insolvency and

		Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 dated 08.08.2025 served upon the Corporate Debtor via email and speed post attached

		herewith and marked as **ANNEXURE A-X.** 16. That the Corporate Debtor after receiving the demand notice, replied to the Demand Notice vide email dated 22.08.2025 wherein the corporate debtor just for the sake of objecting the Section 9 Petition has raised misleading, moonshine, motivated and fabricated argument without any justification. Copy of the

		17. It is submitted that in the reply the Corporate Debtor has produce irrelevant and fraudulent argument mainly: i. The appointment letter will be governed by Arbitration and Conciliation Act; ii. Corporate Debtor has already issued Bonafide dispute; iii. Company is not liable to pay variable pay;
		iv. Action under IBC is nothing but oppressive act with ulterior motive. **18.** It is submitted that there is no dispute raised before the issuance of the demand notice by the Operational Creditor. It is submitted that the Human Resources Department of the corporate debtor informed via mail dated 10 June 2025 about carrying out audit of

			financial transactions and reimbursement documents with a target time to conclude the same within 1 or 2 weeks. Accordingly, all due payments were told to be delayed by 1 or 2 weeks. However, no payment was made to the Operational Creditor by the Corporate Debtor till date.
			19. It is submitted that the corporate debtor has itself issued the integrity certificate based upon high performance of the Operational Creditor/ Employee. variable pay has been received to the Operational creditor in full, all time during the period of the employment, Thus, performance of the employee cannot be quested by the Corporate Debtor just to escape the insolvency. Copy of the Integrity Certificate issued by the Corporate Debtor to the Operational creditor is attached and marked as **ANNEXURE A-XII.**

		20. Thus, all the objections raised by the Corporate Debtor is just to oppose the well-maintained Section 9 petition. There was no pre-existing dispute, the amount is crystallized, moreover, the Corporate Debtor itself assured for the payment to be made with merely 1-2 weeks of delay. However, no payment was received till date.
		III. **DATE FROM WHICH SUCH DEBT FELL DUE:-** As per the terms of the Termination Letter dated 29.04.2025, the full and final settlement of the compensation (including leave encashment, variable pay and gratuity) will be settle by

		26.07.2025. Thus, 26.07.2025 is the date of default.
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED. (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	**TOTAL AMOUNT OF DEBT**: Rs. 1,08,69,558 /- (Rupees One Crore Eight Lakhs Sixty-Nine Thousand Five Hundred and Fifty-Eight Only) on account of employees due as per the engagement letter, appraisal letters and the Termination Letter issued by Marposs India Private Limited to its erstwhile employee Mr. Vrindaban Bihari Khandelwal.
		However, interest will be calculated up to the date of final payment

2. To substantiate his plea regarding operational debt, Ld. Counsel for the Applicant could make a reference to appointment letter dated 26.11.2007.

3. It is quite weird that when appointment could be offered in November 2007, the effective date regarding emoluments is 01.01.2008. Even otherwise also, we find from Annexure-A to the appointment letter that when from 01.01.2008, the

Leave Travel Allowance is shown as one month's basic salary in a year and the amount of medical benefit is also at the rate of Rs. 15,000/- per annum, the Annexure-A to the Emoluments Revision Letter indicate that the Leave Travel Allowance and Medical Allowance were made payable on monthly basis. The Annexure-A to appointment letter and to the Emoluments Revision Letter dated 01.01.2023 reads thus:

Annexure "A"

to the Appointment Letter of Mr. V.B. Khandelwal

(Effective from January 1, 2008)

TERMS OF COMPENSATION

Basic Salary	:	Rs. 67,800/- p.m.
Special Allowance	:	Rs. 33,400/- p.m.
House Rent Allowance	:	Rs. 33,900/- p.m.

ADDITIONAL

1.	Provident Fund	:	12% of Basic Salary
2.	Medical	:	Rs 15,000/- per annum.
3.	L. T. A.	:	Up to one month's basic salary in a year.
4.	Reimbursement of Driver's Salary	:	Rs 72,000/- per annum.
5.	Reimbursement for Newspapers & Magazines	:	Rs 24,000/- per annum.

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Annexure "A"

to Emoluments Revision Letter of Mr. Vrindaban Bihari Khandelwal

(Effective from January 1, 2023)

TERMS OF COMPENSATION

Basic Salary	:	Rs. 345,000/- p.m.
Special Allowance	:	Rs. 172,500/- p.m.
House Rent Allowance	:	Rs. 172,500/- p.m.
Medical Allowance	:	Rs 2,100/- p.m.
Leave Travel Allowance	:	Rs 28,750/- p.m.

ADDITIONAL BENEFITS

1.	Provident Fund	:	12% of Basic Salary
2.	Company's Contribution to New Pension Scheme	:	10% of Basic Salary
3.	Co. Car with maintenance and Driver	:	On actual basis (Presently Hyundai Tucson Sign. AT provided
4.	Performance Pay	:	Rs 15,00,000/- due and Payable on the basis of performance

4. Still, the fact may be noted with the view that the same could be an arrangement between the Applicant and the Corporate Debtor. However, what is disturbing is that how employer's contribution to Provident Fund for May 2025 could be treated as component of pay. As per the prescribed provisions of law, the contribution towards Employees Provident Fund is deducted from the salary of the Applicant and then the employer also make the contribution to the effect.

Both the employee's and the employer's contributions are to be deposited in the Employees Provident Fund account.

5. We are also unable to appreciate that how the date of default qua the various amount mentioned in the statement showing recoverable dues from MARPOS India Pvt. Ltd. can be same.

6. If we go by the notice of termination dated 29.04.2025 served upon the Applicant, in Clause-3 (ii) (c) of the notice it has been mentioned that the emoluments and dues admissible to Applicant would be calculated by the Finance Department and the management was requested for the assessment and approval of the same for being presented to the Board/MD of the Company. At the first place there is no confirmation of the amount mentioned in the statement by the company and secondly we are unable to appreciate that how the amount which the company was liable to contribute towards Provident Fund would be treated as amount payable to the Applicant and how the default can be alleged in respect of said amount.

7. If the Company has flouted any law regarding contribution to the Provident Fund, it would be liable to action in accordance with law. However, the failure of the Company to make such contribution cannot be construed as a default. Besides, it is the Employees' Provident Fund Organisation (EPFO) which is responsible for releasing the Provident Fund amount to the employee in terms of the applicable law. The inclusion of the Employer's Provident Fund contribution in the calculation sought casts a shadow upon the correctness of the

computation. Therefore, we are of the view that the present application is not maintainable. The statement showing recovery of dues, placed on record by the Applicant as Annexure-A9, reads thus:

Vrindaban Bihari Khandelwal

Statement showing recoverable dues from MARPOSS INDIA Pvt Ltd as on 26 July 2025

Description of Recoverable amounts	Amount
Salary for Dec 2023 - not paid due to Co financial situation (PF Paid)	679,440
Performance Pay for 2023	1,500,000
Performance linked Bonus for 2024	1,500,000
Performance linked Bonus for 2025 till 28 July 2025	858,904
Unpaid Salary for May 2025 (Basic 345000+HRA 172500+ Spl All 172500+ LTA 28800+ Medical 2100)	720,900
Unpaid Salary for June 2025 (Basic 345000+HRA 172500+ Spl All 172500+ LTA 28800+ Medical 2100)	720,900
Unpaid Salary for July 2025 (28 Days) (Basic 345000+HRA 172500+ Spl All 172500+ LTA 28800+ Medical 2100)	651,135
Employer contribution of PF from Salary of May 2025 12% of Basic of 345000	41,400
Employer contribution of PF from Salary of June 2025 12% of Basic of 345000	41,400
Employer contribution of PF from Salary of July 2025 (28 Days) 12% of Basic of 345000	37,394
NPS Contirbution 10% of Basic for July 2025 (28 Days) 10% of Basic of 345000	31,161
Gratuity 18 Years (Basic 345000/26*15*18)	3,582,692
Leave encashment (Paid leaves from Jan 1 2024 to 28 Jul 2025) (Basic 345000/26*38)	504,231
Sub Total	**10,869,558**
Total Claim including interest	**10,869,558**

8. As analysed hereinabove, no default can be alleged against the Corporate Debtor with respect to certain amounts referred to in the chart. It is not for this Tribunal to undertake calculations to determine the exact quantum of debt and default.

While filing an application under Sections 7 or 9 of the IBC, 2016, the Applicant is required to disclose a specifically calculated and confirmed amount that has been defaulted by the Corporate Debtor.

9. It is also *stare decisis* that while considering an application under Section 9 of the IBC, 2016, this Tribunal cannot direct initiation of CIRP in respect of an unspecified or disputed amount of debt.

10. In view of the fact that the Applicant has failed to establish any specific amount of default on the part of the Corporate Debtor, we find no merit in the present application, and the same is accordingly rejected. No order as to costs. It goes without saying that the present order would not come in the way of the Applicant to seek redressal of his grievance regarding the amount due to him and not paid by the employer, in accordance with law.

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)