



IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III

Item No. 05
IA-4310/2022
In
IB-2665(PB)/2019

IN THE MATTER OF:

Mr. Ishwari Chand Kushwaha

.....OPERATIONAL CREDITOR

Vs.

M/s. The Indure Pvt. Ltd.

.....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-4310/2022 is **dismissed**.

IB-2665(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-4310/2022

And

IB-2665/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. Ishwari Chand Kushwaha Operational Creditor

Versus

M/s. The Indure Private Limited Corporate Debtor

AND IN THE MATTER OF:

Mr. Ishwari Chand Kushwaha 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-4310/2022 And IB-2665/PB/2019

Date of Order: 01.08.2023



1. This Application was filed by Mr. Ishwari Chand Kushwaha, the Applicant/Operational Creditor on 15.10.2019, 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 6 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. 5,57,158/- [(Rupees Five Lakh Fifty Seven Thousand One Hundred and Fifty Eight Only), including an interest amount @15% i.e. Rs.94,645/-] as on 01.04.2017.
2. The Operational Creditor was working as an Engineer (Mechanical) with the Corporate Debtor since June 2010. The Operational Creditor worked with the Corporate Debtor till December 2018, but the Corporate Debtor has withheld 6 months salary of the Operational Creditor along with bonus, reimbursements, 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 six months i.e. commencing from July 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. The Applicant did forum shopping on account of availing its right for recovery of dues under the labour laws. The Applicant filed a complaint before the Office of the Deputy Labour Commissioner (District South) under the Minimum Wages Act, 1948 and Delhi Shops & Establishment Act, 1954. A notice of appearance to that effect was received by the Respondent dated 06.09.2019. To further elucidate the existence of a prior dispute, it is stated that the Respondent has already authorized personnel to pursue the matter before the Labour Commissioner. 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 allegations, therefore are vehemently denied.
5. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
6. It is observed by this bench that in the Complaint filed before the Office of the Deputy Labour Commissioner (District South) regarding the invocation of statutory rights by the employee against the employer, both parties raised serious dispute in this regard, which is sub judice before the Office of the Deputy Labour Commissioner (District South).
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 28.05.2010 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-2665/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-4310/2022

10. The present application has been filed by M/s. Indure Private Limited, the Corporate Debtor in IB-2665/PB/2019 which has been filed under Section 9 of IBC by one Shri Ishwari Chand Kushwaha, the Operational Creditor seeking initiation of CIRP against the Corporate Debtor on the ground of default in payment of a sum of Rs. 4.88.463/- which was due and payable for the services provided by the Operational Creditor to the Corporate Debtor during the course of his employment.
11. The Corporate Debtor has prayed for allowing it to settle the matter and to dispose of/dismiss (IB) 2665/PB/2019.
12. It is contended that an amount of Rs. 3,90,585/- is due and payable to the Operational Creditor as per the accounts of the Corporate Debtor and the said amount will be paid by the Demand Draft. It is also submitted by the Corporate Debtor that Operational Creditor has filed a complaint before the Deputy Labor Commissioner (District South) under the Minimum Wages Act, 1948 and Delhi Shops and Establishment Act, 1954, pursuant to which a notice dated 06.09.2019 been issued to the Corporate Debtor for appearance.
13. Be that as it may, 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 (IB)-2665/PB/2019 on that basis.



14. 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.
15. The Operational Creditor has also not made any statement having received any payment from the Corporate Debtor towards the full and final settlement.
16. 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.
17. Accordingly, IA-4310/2022 **dismissed** and **disposed of**.

-SD-

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

-SD-

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