

**BEFORE THE AJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

C.P. (I.B) No.88/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.12.2019**

Name of the Company: Indu Corporation Pvt Ltd  
V/s  
Shree Narmada Architectural Systems  
Ltd

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	<i>Pravin Sheth</i> <i>Nidhi Shah</i>	<i>Adv &amp; Solicitor</i> <i>Adv</i>	<i>} Respondent</i>	<i>Nidhi</i>
2.				

**ORDER**

The Respondent is represented through learned counsel.

The Order is pronounced in the open court vide separate sheet.

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**MANORAMA KUMARI**  
(MEMBER JUDICIAL)

Dated this the 10th day of December, 2019.

PC



**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. No. (IB) 88/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. Indu Corporation Private Limited**

"NISHUVI", 4<sup>th</sup> Floor  
75, Dr. Annie Besant Road  
Worli  
MUMBAI 400 018

**Petitioner**  
Operational Creditor

**Versus**

**M/s. Shree Narmada Architectural Systems Private Limited**

Plot No. 95/1, Paiki,  
Opp. Apna Ghar Society  
Bholav  
BHARUCH 392 001  
GUJARAT STATE

**Respondent**  
Corporate Debtor

**Order delivered on 10<sup>th</sup> December, 2019.**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)**

**Appearance:**

Advocate Mr. Arjun Sheth along with Ms. Vidhi Thakkar for respondent.

Sr. Advocate Mr. D. Shroff along with Advocate Mr. Zubin F. Bharda and Advocate Mr. Rajendra D. Jadhav for petitioner.

**ORDER**

1. Mr. Paresh S. Kapashi, being authorised signatory on behalf of the operational creditor **M/s. Indu Corporation Private Limited** filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

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2. The petitioner/operational creditor is a private limited company having identification No. U27104MH2006PTC160932 and having registered office at Worli, Mumbai is engaged in supply of steel and allied material.
  
3. The respondent/corporate debtor is a company registered under the Companies Act, having identification No. U45200GJ2000PLC037316 and having registered office at Bharuch, Gujarat State. Authorised share capital of the respondent company is Rs. 50,00,000/- and paid up share capital is Rs. 23,67,000/-.
  
4. The applicant/Petitioner has submitted that the operational creditor has been supplying various steel and allied material to the corporate debtor from time to time as per instructions received from the management of the corporate debtor. Total material supplied are of the period from 30.06.2015 to 08.08.2015 against which payment is outstanding. The applicant has also filed statement showing details of invoices, date of billing, date of default and interest calculations on account of which debt fell due is shown in a table attached with the application (**Annexure III – page 13 of the application**). That, the invoices against which payments are outstanding are annexed with the application (**Annexure IV**) i.e. 10 number of invoices. That, the proof of delivery in terms of lorry receipt are also attached with the application (**Annexure V**). That, all the sales pertaining



to the outstanding amount are inter-state sales and "C" form has been issued by the corporate debtor which itself is sufficient proof for sale & delivery of goods. That, the "C" forms are attached to the application (**Annexure VI**). That, input tax credit has been claimed by the corporate debtor in terms of VAT which also fortifies that transactions have taken place between the operational creditor and corporate debtor.

5. The operational creditor has further submitted that the amount due against goods supplied to the corporate debtor has been confirmed by reconciliation of the invoices issued by the operational creditor with the "C" forms for the quarter ending June, 2015 and September 2015 issued by the corporate debtor. That, the ledger of the corporate debtor in the books of the operational creditor for FY 2015-16 has been attached with the application (**Annexure VII**). That, last payment of Rs. 2,00,000/- was received on 31.03.2016 as per bank statement attached with the application.

6. The operational creditor has further stated that due to non-payment of dues, demand notice dated 6<sup>th</sup> June, 2018 was issued upon the corporate debtor on 12<sup>th</sup> June, 2018 and copy of the demand notice is attached to the application (**Annexure X**). That, the corporate debtor has replied to the demand notice vide letter dated 5<sup>th</sup> July, 2018 which is beyond the stipulated period of 10 days from the date of



receipt of demand notice. That, the application is well within the period of limitation as the last payment received was on 31.03.2016 and the demand notice was received on 12<sup>th</sup> June, 2018. That, even after service of demand notice no payment has been received from the corporate debtor, hence this petition. That, the total amount claimed to be in default is **Rs. 4,57,71,578/- (Rupees four crores fifty-seven lacs seventy-one thousand five hundred seventy-eight only)** which include interest claimed on the debt up to 06.06.2018 @ 18% per annum.

7. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Board resolution authorising Mr. Paresh Kapashi to act on behalf of the operational creditor	11
2	Particulars of claim	12
3	Statements showing details of invoices, date of billing, date of default & interest calculations on account of which debt fell due	13
4	Tax invoices	14-23
5	Lorry receipt	24-33
6	"C" forms	34-37
7	Ledger of the corporate debtor in the books of the operational creditor for FY 2015-16	38-41
8	Bank statement showing the last payment received by the operational creditor from corporate debtor	42-534
9	Bankers certificate issued by the bank of the operational creditor	535
10	Demand notice issued to the corporate debtor by operational creditor	536-539
11	Indian Post docket & proof of delivery of demand notice	540-543
12	Reply of corporate debtor to the demand notice dated 05 <sup>th</sup> July, 2018	544-545
13	Affidavit of No notice of dispute	
14	Affidavit in support of the company petition	

8. The respondent/corporate debtor filed affidavit in reply inter alia stating that...



- i) the petitioner has not supplied a copy of petition;
- ii) rate of interest shown by the petitioner varies at different;
- iii) petition appears to be time barred because the copies of the invoices relied upon by the petitioner have last due date of 22.09.2015 thereby meaning the limitation expired on 21.09.2018;
- iv) during the course of first hearing, none appeared for the petitioner;
- v) insolvency petition is not a recovery petition and so it cannot stop limitation;
- vi) payment of Rs. 2.00 lacs made on 31.03.2016 cannot be considered as acknowledgement of debt;
- vii) there is no reference to any of the purchase orders in the invoices as also there is no reference to any lorry receipts;
- viii) there is no acknowledgement of the goods in the lorry receipts;
- ix) since the possession of the concerned premises is not in the possession of the respondent, the respondent is unable to ascertain which goods and of what quality came to be received by the respondent etc. etc.



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**Findings**

9. Heard learned lawyers appearing for both the sides, also seen the documents annexed to the application.
  
10. On perusal of the records it is found that the demand notice dated 6<sup>th</sup> June, 2018, received by the respondent on 12<sup>th</sup> June, 2017 and replied by the corporate debtor on 5<sup>th</sup> July, 2018. In the reply dated 5<sup>th</sup> July, 2018, the corporate debtor has admitted having received the demand notice on 11<sup>th</sup> June, 2018. That, the corporate debtor had replied the demand notice beyond the stipulated period of ten days.
  
11. On perusal of the records it is found that the last date of the invoice against which payment is due is 22.09.2015 and the last payment received against the outstanding is 31.03.2016. Since this fact has been never denied by the corporate debtor, the question of the petition being time barred due to the law of limitation does not arise. Moreover, in the reply itself the corporate debtor admitted to have paid Rs. 2,00,000/- on 31.03.2016 as reflected from para 10 of the reply.
  
12. Further, on perusal of the ledger attached to the reply filed by the respondent (**Page No. 52 to 54**) it is found that from 2013 onwards the respondent has been making lump sum payment against the invoices raised by the operational



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creditor from time to time. It is evident that payments were made not on the basis of, bill to bill basis, but on adhoc basis, therefore, contention raised by the respondent that payment of Rs. 2.00 lacs made on 31.03.2016 cannot be considered as acknowledgement of debt, is not justifiable.

13. On perusal of the record it is found that **(para 3 of reply to demand notice)** the respondent has admitted that on 6<sup>th</sup> August, 2015 factory premises of the respondent company were closed and taken over by the receiver appointed **under an ex parte order of DRT -III, Mumbai** litigation and upon challenging such action, **by order dated 5<sup>th</sup> October, 2015, DRT - III had restored possession of the factory.** On bare reading of the application and affidavit in reply filed by the corporate debtor, it is clear that the goods supplied against which the invoices are pending is for the period from 30.06.2015 to 08.08.2015. That, possession of the respondent factory is taken over by DRT -III on **06.08.2015.** Therefore, the contention raised by the corporate debtor that since the concerned premises was not in the possession of the respondent during the period from 30.06.2015 to 08.08.2015, is not acceptable. Further, pendency of proceeding before the Debt Recovery Tribunal could not be a ground for not commencing insolvency resolution process in view of the fact that Bankruptcy Code is having overriding effect over any other law.



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14. On perusal of the records it is found that having failed to get the outstanding payments from the respondent, the applicant was compelled to issue demand notice under section 8 of I & B Code on 06.06.2018. Record also shows that the respondent has not raised any reply/dispute against the demand notice so issued by the applicant within the stipulated time limit.

15. It has been observed in **Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ(JP) 2 SC** that while examining an application under Section 9 of the Act, will have to determine the following: -

- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

**and**

- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.



16. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of IB Code. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

17. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.



18. From the above stated discussion and on the basis of material available on record, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
19. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
20. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the



Central Government in consultation with any financial sector regulator.

21. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
22. The applicant/operational creditor has not proposed the name of IRP. Therefore, this Adjudicating Authority hereby appoint Shri Manish Kumar Bhagat, 103-104 Panchdeep Complex, Mithakhali Six Road, Navrangpura, Ahmedabad 380 009 ([mbhagat2003@gmail.com](mailto:mbhagat2003@gmail.com)) having registration No. IBBI/IPA-001/IP-P00856/2017-2018/11438 to act as an interim resolution professional under Section 13(1)(c) of the Code.
23. This Petition is accordingly admitted.
24. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.



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25. Registry is directed to inform the office of the Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of liquidation and sale of assets to realise the amount for all the stakeholders.

*Manor*  
**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

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Certified to be True Copy of the Original

*[Signature]*  
Deputy Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad