



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

**Item No. 103**  
IB-436(ND)/2021

**IN THE MATTER OF:**

M/s. Viterra India Private Limited

**.....OPERATIONAL CREDITOR**

**Vs.**

M/s. Budha Global Private Limited

**.....CORPORATE DEBTOR**

**SECTION**

**U/s 9 of IBC, 2016**

**Order Pronounced on 12.09.2023**

**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. IB-436(ND)/2021  
is **admitted.**

**-SD-  
(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

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



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III  
(IB) – 436(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:**

**M/s. VITERRA INDIA PRIVATE LIMITED**

(Formerly Known as M/s. Glencore Agriculture India Private Limited)

*Having Its Registered Office at:*

Energy, Unit-B, 4<sup>th</sup> Floor, Appa Saheb

Marathe Marg Prabhadevi, Mumbai-400025.

*Through Its Director*

Ms. Sharmila S. Gaikwad

**..... Operational Creditor**

**VERSUS**

**M/s. BUDHA GLOBAL LIMITED**

*Having Its Registered Office at:*

Shop No. 4053 to 4055, Southern Site,

Naya Bazar, Delhi-110006.

**..... Corporate Debtor**

**Order Pronounced On: 12.09.2023**

**CORAM:**

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

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. R. Sudhinder, Ms. Aastha Trivedi, Advs.

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**(IB) – 436(ND)/2021**

**Date of Order: 12.09.2023**



For the Respondent : Mr. Vijay Kasana, Mr. Abhijeet Vikram Singh,  
Mr. Kshitij Chhabra, Advs.

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. This Application has been filed by M/s. Viterra India Private Limited, the Applicant/Operational Creditor on 26.07.2021, 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. Budha Global Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 3,67,25,000/- (Rupees Three Crore Sixty Seven Lakh Twenty Five Thousand Only) along with interest @ 10% p.a. from 28.08.2017 till 25.07.2021 amounting to Rs.1,44,68,027/-.
2. On 03.07.2017 the Corporate Debtor executed a Purchase Order bearing number BGPL/2017-18/02 ("Purchase Order") with the Operational Creditor for the sale of 28,250 metric tonnes (MTs) of the Commodity at the unit rate of Rs. 23,450 per metric tonne, on the terms and conditions as set out in detail in the Purchase Order.
3. As per Clause 1.1 of the Purchase Order, the Corporate Debtor was obligated to make an advance payment of Rs. 8,28,07,812/- towards the purchase of the Commodity within maximum of three days of acceptance of the Purchase Order. In an email dated 11.08.2017, the Operational Creditor requested the Corporate Debtor to pay the initial deposit of Rs. 8,28,07,812/- as per the terms of the Purchase Order.

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4. Vide an email dated 28.08.2017, the Corporate Debtor agreed to settle the said Commodity at a new unit rate of 22,150 per metric tonne. Consequently, the Operational Creditor was to retain the Commodity and the difference in the amount from the original unit rate to the amended unit rate for the Commodity was to be paid to the Operational Creditor by Corporate Debtor. The Corporate Debtor requested the Operational Creditor to send a debit note for the difference amount of Rs.3,78,00,000/- and assured that payments would be made by the Corporate Debtor within the same week. The Operational Creditor raised a debit note bearing number DN/17 18/PULSES/0004 on 28.08.2017 for the difference amounting to Rs. 3,67,25,000/-. The aforesaid debit note was emailed to the Corporate Debtor on 29.08.2017.
5. Despite repetitive emails/reminders, and despite admitting its liability towards the Operational Creditor, the Corporate Debtor failed to make the advance payments as per the terms of the Purchase Order. On 10.02.2020, the Operational Creditor through its Advocate issued a demand notice under Section 8(1) of the IBC, 2016 for an amount of Rs. 3,67,25,000/- along with interest amount of 10% from 28.08.2017 till date of payment/realization.
6. The Corporate Debtor received the Demand Notice and by a letter dated 20.02.2020, the Corporate Debtor through its Advocates responded to the same. The Corporate Debtor for the lack of a better defence, once again simply denied the existence of the signed, stamped, and executed Purchaser Order.
7. The Respondent/Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant and stated that there is a pre-existing dispute between the parties and the present application is liable to be dismissed. It is the case that prior to the demand notice dated 10.02.2020, the Applicant had sent a recovery notice dated 06.02.2018 which was duly replied vide letter dated 18.03.2018, in which the Respondent had categorically mentioned that the



Respondent had never written any email to the Applicant nor the Respondent had entered into any contract or given purchase order to the Applicant.

8. The Respondent has neither placed any purchase order with the Operational Creditor nor any demand was made to supply any kind of material to the Respondent nor the Respondent has asked anyone to place any demand or receive any goods on its behalf. The Applicant has placed reliance on the alleged Procurement order dated BGPL/2017-2018 dated 03.07.2017 which was never signed, stamped or executed by the Respondent Company or its directors/employees/ARs, etc. The said document is a completely forged document, fabricated with the purpose of cheating the answering Respondent and the answering Respondent has already filed a police complaint in this regard on 24.08.2021 at P.S. Greater Kailash vide complaint bearing no. 81670612100635.
9. We have heard the Ld. Counsels for both parties and also perused the documents available on record.
10. The scope of IBC is limited to see whether there is a debt due and if any default has occurred in the payment/re-payment.
11. It is relevant to mention that in the present Application, the claim of the Operational Creditor arises from the Purchase Order wherein upon payment of the initial advance by the Corporate Debtor, the Operational Creditor was required to supply yellow peas. However, despite several requests by the Operational Creditor, the Corporate Debtor failed to make the payment of the initial advance and failed to lift the said goods. Thereafter, the Corporate Debtor and the Operational Creditor resolved the matter and the Corporate Debtor requested the Operational Creditor to issue a debit note with respect to the difference in the rates of the yellow peas vide email dated 28.08.2017.
12. We find that the debt arises out of the debit note bearing number DN/17 18/PULSES/0004 on 28.08.2017 for the difference amounting

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to Rs. 3,67,25,000/-. The said amount is a debt disbursed against the consideration owned by the Operational Creditor, hence it is covered under the definition of "Operational Debt" as defined under Section 5(21) of IBC, 2016 and the Applicant will be treated as "Operational Creditor" as defined under Section 5(20) of IBC, 2016.

13. From the bare perusal of the definition of "Operational Debt", it is amply clear that for a debt to be classified as an Operational debt, the claim amount should be in respect of sales of any goods or rendering of contractual services or employment. Admittedly, the claim made by the Applicant is in respect of the provision of goods or services. Accordingly, the debit note raised by the Applicant as per mandate in terms of the Purchase Order bearing number BGPL/2017-18/02 be treated as an "Operational Debt" as defined under section 5(21) of the Code.
14. A bare perusal of the present application stated that 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. The Operational Creditor has established that he has supplied the goods/material to the Corporate Debtor and raised debit notes on the request of the Corporate Debtor and the Corporate Debtor has failed to make the payments due to the Operational Creditor.
16. Having considered the facts and circumstances of the case, we are of the considered view that the Operational Creditor has established



that the debt is due and there is a default committed by the Corporate Debtor and there is no pre-existing dispute pending on the date when the Operational Creditor sent the demand notice under Section 8 of IBC, 2016.

Therefore, we are of the view that the present application under Section 9 of the IBC, 2016 ought to be admitted.

17. 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, ordered as follows: -

a) The Application bearing **IB-436/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 **admitted**.

b) 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;]*

- c) 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.
- d) Since section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the Resolution Professional along with the application to act as Interim Resolution Professional for the Corporate Debtor, the Operational Creditor has not proposed any name of the Resolution Professional. Therefore, this Adjudicating Authority appoints Mr. Santanu Kumar Samanta, as the

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Insolvency Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by IBBI. The registration number of the IRP is IBBI/IPA-001/IP-P-02324/2020-2021/13511, the address of the IRP is C-170, Golf View Apartments, Saket, National Capital Territory of Delhi, Delhi-110017 and the e-mail id of the IRP is [santanukumar@yahoo.com](mailto:santanukumar@yahoo.com) and the contact no of the IRP is +919810031794.

Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

Accordingly, Mr. Santanu Kumar Samanta is appointed as IRP.

- e) 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.
- f) 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.
- g) 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.

- h)** 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.
- i)** 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”).
- j)** 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.
- k)** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

No order as to costs.

**-SD-**

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

**-SD-**

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