

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III  
C.P. (IB) – 50(ND)/2023**

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. FAITH MERCANTILE PRIVATE LIMITED**

*Having Its Registered Office at:*

1607, Ambadeep Building, KG Marg Connaught Place  
New Delhi-110001

*Through Its Director*

Mr. Nand Kishore Chugh

**..... Operational Creditor**

**VERSUS**

**M/s. NUBERG ENGINEERING LIMITED**

*Having Its Registered Office at:*

204, Second Floor, Vardhman Sunrise Plaza,  
Vasundhara Enclave, East Delhi, Delhi-110096

**..... Corporate Debtor**

**Order Pronounced On: 27.02.2024**

**CORAM:**

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

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

**APPEARANCES:**

For the Applicant : Mr. Ashutosh Gupta, Mr. Gaurav Rana, Mr. Ajitesh  
Kumar, Mr. Shresh Garg, Mr. Yatharth Jain, Advs

For the Respondent : Mr. Abhishek Anand, Mr. Anang S., Advs.

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**Date of Order: 27.02.2024**

## **ORDER**

### **PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. This Application has been filed by M/s. Faith Mercantile Private Limited, through its Director Mr. Nand Kishore Chugh, the Applicant/Operational Creditor 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. Nuberg Engineering Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 2,30,89,682/- (Rupees Two Crore Thirty Lakh Eighty Nine Thousand Six Hundred and Eighty Two Only) along with interest @ 24% p.a. during the period of October 2021 to July 2022 amounting to Rs. 64,04,768/- (Rupees Sixty Four Lakh Four Thousand Seven Hundred and Sixty Eight Only).

2. **Submissions of the Applicant/Operational Creditor:**

i. It is submitted that the Corporate Debtor had been purchasing materials used for manufacturing including SS Plates, Coil, Angles, Bar & Rods etc. from Operational Creditor and has issued various purchase orders over phone from April 2016 to September 2022. The requested materials were supplied within the agreed time and immediately after supplying of materials, the Operational Creditor used to raise its invoice on Jhagadia Office of the Corporate Debtor. During the period from 16.12.2021 till 20.07.2022, the Operational Creditor had supplied goods worth ₹1,95,33,153/- (Rupees One Crore Ninety Five Lakh Thirty Three Thousand One Hundred and Fifty Three Only) to Corporate Debtor with respect to purchase order placed by the Corporate Debtor. The Jhagadia Office of the Corporate Debtor stopped making payments with respect to the invoice raised by the Operational Creditor. The invoices along with relevant e-way bills raised by the Operational Debtor were sent with goods as well as

through emails and the same were duly acknowledged by the Corporate Debtor in the corresponding emails.

- ii. It is submitted that in terms of the invoices raised, 60 days credit period was available to the Corporate Debtor for making the payment to the Operational creditor. The Corporate Debtor assured payment and issued post-dated cheques which were dishonoured on the due date.
- iii. The Corporate Debtor had no intention of payment of outstanding dues, the Operational Creditor served a Demand Notice under Section 8 of Code for seeking payment of outstanding dues of 2,30,89,682/- (Rupees Two Crore Thirty Lakh Eighty Nine Thousand Six Hundred and Eighty Two Only) inclusive of interest from October 2018 to September 2022.

3. **Submissions of the Respondent/Corporate Debtor:**

- i. The Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant and has stated that there is no crystallized Operational Debt due and payable by the respondent and as such there is no default on the part of the Corporate Debtor which is essential for initiation of any CIRP under the IBC, 2016.
- ii. It is submitted that the Corporate Debtor has been very regular in payment of all invoices raised by the Operational Creditor and no unpaid Operational Debt could be crystallized by the Operational Creditor as stated in the application. The Corporate Debtor has paid Rs. 10,25,161/- (Rupees Ten Lakh Twenty-Five Thousand One Hundred and Sixty-One Only) on 14.10.2022, immediately before the issuance of the Section 8 demand notice by the Applicant.
- iii. It is submitted that despite the above payments, the Operational Creditor preferred to file this instant application and at the same time the said facts of payment were not disclosed to the Applicant and no affidavit in compliance with Section 9(3)(c) of the Code was filed deliberately which tantamount to concealment of substantial facts of the case.
- iv. It is submitted that the Bank Account Statement of the Respondent/ Corporate Debtor evidencing payment is reproduced which are as follows:

NUBERG ENGINEERING LIMITED						
Faith Mercantiel Pvt Ltd						
Sr. No	Invoices				Payment Details	
	Number	Date	Amount (in Rs.)	GRN date	Amount (in Rs.)	Date
1	455	16.12.2021	80,41,438.00	18.12.2021	19,09,141.00	30.09.2022
					20,00,000.00	17.12.2022
					16,82,061.00	23.12.2022
2	456	16.12.2021	3,27,188.00	18.12.2021	14,88,102.00	31.01.2023
3	457	16.12.2021	4,78,378.00	18.12.2021	17,13,283.00	17.02.2023
4	DN-03	18.12.2021	2,55,116.00		2,32,535.00	18.12.2021
5	DN-04	18.12.2021	2,10,115.00			
6	463	30.12.2021	27,28,003.00		27,25,275.00	28.02.2023
7	173	12.07.2022	30,88,567.00	14.07.2022	20,85,478.00	17.02.2023
					10,00,000.00	17.02.2023
8	177	19.07.2022	17,11,669.00	20.07.2022	10,00,000.00	07.03.2023
					8,00,000.00	24.03.2023
9	247	20.07.2022	86,047.00	23.07.2022	85,113.00	23.09.2022
10	248	20.07.2022	1,54,850.00	23.07.2022	1,56,686.00	23.09.2022
11	249	20.07.2022	19,73,404.00	23.07.2022	15,00,000.00	14.03.2023
					3,81,388.00	24.03.2023
<b>GRAND TOTAL</b>			<b>1,90,54,775.00</b>		<b>1,87,59,062.00</b>	
<b>Balance</b>					2,95,713.00	

v. It is submitted that after the aforesaid payments, only Rs. 2,95,713/- (Rupees Two Lakh Ninety Five Thousand Seven Hundred and Thirteen Only) which is solely pending towards interest amount. This clearly shows the bona fide intention of the Corporate Debtor to clear its pending dues at the same time it can be said that the Corporate Debtor is solvent enough to pay-off its liabilities.

#### 4. **Analysis and Findings**

- i. We have heard the Ld. Counsels appearing for both parties. Records as well as pleadings and written submissions have been perused.
- ii. It is the case of the Applicant that the Operational Creditor issued a demand notice dated 18th October 2022 demanding payment of an unpaid Operational Debt due amounting to Rs. 2,30,89,682/- (Rupees Two Crores

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Thirty Lakh Eighty-Nine Thousand Six Hundred and Eight Two Only) inclusive of interest amounting to Rs. 64,04,768/- (Rupees Sixty Four Lakh Four Thousand Seven Hundred and Sixty Eight Only) which was above the threshold limit as provided under Section 4(1) of IBC. The Date on which the Default occurred ranges between 16.12.2021 till 30.09.2022. The Application under Section 9 was filed by the Operational Creditor on 09.12.2022.

- iii.** It is contended by the Corporate Debtor that from September 2022 to March 2023, they made a total outstanding payment of Rs.1,87,59,062/- (Rupees One Crore Eighty-Seven Lakh Fifty-Nine Thousand and Sixty-Two Only) and according to the Corporate Debtor only Interest amounting to Rs. 2,95,713/- (Rupees Two Lakhs Ninety Five Thousand Seven Hundred and Thirteen Only) was due and payable and therefore, the present application is below the threshold of Rs. 1 Crore as provided under Section 4 of the Code and is not maintainable.
- iv.** From the perusal of the records, it is amply clear that the entire principal amount has been paid by the Corporate Debtor to the Operational Creditor. The Operational Creditor has admitted in the rejoinder affidavit that they have received the amount of Rs. 1,63,75,578 from the Corporate Debtor to principal amount and only the interest amount is outstanding.
- v.** Mr. Abhishek Anand, Ld. Counsel appearing for the Corporate Debtor has relied upon the following judgments passed by the Hon'ble NCLAT. In the case of **S.S. Polymers Vs. Kanodia Technoplast Limited** in 'Company Appeal (AT) (Ins) No. 1227 of 2019 decided on 13.11.2019 where in it was observed that:

*“3. The Adjudicating Authority has noticed that a sum of Rs.25,00,000/- out of Rs.32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs.7,71,800/- was also paid by 'Corporate Debtor' to the Applicant by 17th January, 2019 through NEFT(s). The said amounts were paid before the admission of the application under Section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under Section 9 of the I&B Code for a sum*

of Rs.2,16,155/- towards interest. In this background, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed.

4. The Learned Counsellor the Appellant relied on 'Invoices' to suggest that in the 'Invoices', the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'.

5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the I&B Code.

6. We find no merit in this Appeal and it is accordingly dismissed."

In the case of **Permal Wallace Pvt. Ltd. Vs. Narbada Forest Industries Pvt. Ltd.**, Company Appeal (AT) (Insolvency) No. 36 of 2023, it was observed:

*"5. Having heard Learned Counsel for the parties, we are of the view that Adjudicating Authority did not commit any error in rejecting Section 9 Application. It has been laid down by the Hon'ble Supreme Court in "Swiss Ribbon Pvt. Ltd. Vs. Union of India" ((2019) 4 SCC 171, IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of the interest and application was not filed for resolution of any insolvency of the Corporate Debtor."*

In the case of **Rohit Motawat vs Madhu Sharma** Comp. App. (AT) (Ins) No. 1152 of 2022, it was observed:

*"Before parting, we are constrained to observe that the Adjudicating Authority has erred in not looking into the facts that the principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for 'recovery'."*

- vi.** According to the law laid down by the Hon'ble NCLAT in the above-mentioned cases, it is clear that once the entire amount has been paid by the Corporate Debtor CIRP cannot be initiated only on the basis that only the interest has to be paid. We find force in the arguments of Mr. Anand. Therefore, we do not see any reason to pass an order initiating Corporate Insolvency Resolution Process in the present case. Hence, the present Application stands **dismissed**.

#### 5. **Order**

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present Applicant fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- i.** The Application bearing **IB-50/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 hereby **dismissed**.
- ii.** 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)**