

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

IA-5232/2023
In
IB-368(ND)/2022

IN THE MATTER OF IB-368(ND)/2022:

M/s. LAKSHYA INFRAPROMOTERS PRIVATE LIMITED

..... Operational Creditor

Versus

M/s. THE INDURE PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF IA-5232/2023:

M/s. THE INDURE PRIVATE LIMITED

..... Applicant

Versus

M/s. LAKSHYA INFRAPROMOTERS PRIVATE LIMITED

..... Respondent

Order Pronounced On: 10.07.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

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

APPEARANCES:

For the Applicant : Mr. Rachit Mittal, Mr. Anup Kumar, Advs.

For the Respondent : Mr. Raghav Marwaha, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by M/s. Lakshya Infrapromoters Private Limited, the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016. The Applicant seeks the following reliefs:

“i. Allow the present application and take on record the Additional Affidavit filed by the Corporate Debtor/Applicant; and

ii. Pass any such other or further order(s) as this Hon'ble Court may deem fit and proper in light of facts and circumstances of this case.”

- 2.** The present Application is filed to amend the pleadings and amend the reply filed by the Corporate Debtor/Applicant herein against the Application filed by the Operational Creditor under Section 9 of IBC seeking initiation of the CIRP against the Corporate Debtor Company for its alleged defaults in making the payments of the Operational Debt. It is further submitted that the Corporate Debtor/Applicant had inadvertently overlooked a highly significant aspect, namely, the suspension of CIRP proceedings for unpaid invoices covered under the provision of Section 10A of the Code and the same ground for maintainability of the above-captioned matter is being raised by the Corporate Debtor/Applicant in an Additional Affidavit.
- 3.** In view of the above the present Application filed by the Corporate Debtor/Applicant to place on record the additional affidavit is taken on record. Accordingly, the IA-5232-2023 is **disposed of**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB) –368(ND)/2022**

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. LAKSHYA INFRAPROMOTERS PRIVATE LIMITED

Having Its Registered Office at:

I-78, Site-C UPSIDC, Surajpur Industrial Area,
Greater Noida, Uttar Pradesh-201306.

CIN: U70100DL2010PTC211278

..... Operational Creditor

VERSUS

M/s. THE INDURE PRIVATE LIMITED

Having Its Registered Office at:

Indure House, Greater Kailash-II, New Delhi-110048.

CIN: U74899DL1970PTC005272

..... Corporate Debtor

Order Pronounced On: 10.07.2024

CORAM:

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

APPEARANCES:

For the Applicant : Mr. Rachit Mittal, Mr. Anup Kumar, Mr. Parish
Mishra, Mr. Adarsh, Advs.

For the Respondent : Mr. Abhinav Vasisht, Sr. Adv., Mr. Prashant
Mehta, Mr. Varun Gupta, Ms. Akshita Sachdeva
Jaitly, Ms. Simran Wason, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

(IB) – 368(ND)/2022

Date of Order: 10.07.2024

1. This Application has been filed by M/s. Lakshya Infrapromoters Private Limited, the Applicant/Operational Creditor before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) read with 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 defaulted/failed to clear the outstanding amount of Rs. 1,06,54,446/- [Principal amount of Rs. 83,21,951/- along with interest @ 18% (payable from 01.07.2019 to 31.12.2021) amounting to Rs.23,32,485/-]. The date of default in the present application is 29.11.2018.

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

- i. The Applicant and the Corporate Debtor had entered into a Business Agreement for providing services of dewatering works at the wagon Tippler complex entire deep structure which includes wagon Tippler, tunnel and deepest transfer tower in the site of Job No. I- 2044-2 X 195 MW NTPC Thermal power plant Muzaffarpur vide Work Order/Contract dated 06.10.2017. The Applicant provided the said services along with other allied equipment in accordance with the said work order/Contract. Accordingly, the Applicant raised number of invoices from time to time in respect of such works and an account in the name of the Corporate Debtor was opened in the books of accounts of the Applicant in the ordinary course of Business.
- ii. Initially the Corporate Debtor has made some payments against the running accounts. Thereafter, the Corporate Debtor stopped making payment, the Applicant has made several requests to make payment but the Corporate Debtor fail to make the same.

- iii.** The Applicant issued Demand Notice under Section 8 of the Code to the Corporate Debtor through his Advocate which was duly Delivered to Corporate Debtor in its Registered Address as well as Work Site. Despite of service of the Demand Notice no amount has been paid by the Corporate Debtor.
- iv.** The Applicant has placed the following documents on record in support of the case:
- a)** The copy of Invoice numbered LIPL/19-20/078, 109, 125, 135, 144, 166, 185, 217, 246, 266. LIPL/20-21/007, 027, 045, 063, 078, 102, 216. LIPL/21-22/020, 036, 052, 072, 090.
 - b)** The copy of Ledger Accounts of FY-2019-20, 2020-21 & 2021-22.
 - c)** The copy of demand notice under IBC in Form-3 & 4 Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 19.01.2022 with Computation of financial Advance as on 31.12.21 along with Tracking Report and Postal Receipt.
 - d)** The copy of the Contract dated 06.10.2017 between M/s. The Indure Pvt. Ltd. and M/s. Lakshay Infrapromoters Pvt. Ltd. along with Amendment No.1.

Hence the present Application.

3. Submissions of the Respondent/Corporate Debtor:

- i.** The Respondent/Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant/Operational Creditor and stated that the Corporate Debtor received the notice from Micro and Small Enterprises Facilitation Council, Meerut, Uttar Pradesh with application no. UDYAM-UP-28-0021843/S/00005 dated 07.11.2022, which itself shows that there was a pre-existing dispute between the Operational Creditor and Corporate Debtor. It is submitted that the Corporate Debtor filed a Criminal Complaint against Operational Creditor on 26.04.2022 which shows that there was a pre-existing dispute. It is submitted that the Police Complaint was filed for Extortion,

Criminal Intimidation to cause death or grievous hurt, criminal conspiracy and offences under IT act with other accused.

- ii.** The initial invoices raised by the Operational Creditor are of a date much before the issuance of the MSME certificate to the Operational Creditor. It is evident that the Operational Creditor cleverly claimed interest under MSME for the invoices raised before 2020 whereas there is no original certificate consisting of the date of registration under MSME.
- iii.** It is submitted that this Adjudicating Authority does not hold the power to adjudicate upon any claim consisting of interest under MSME, as it is the settled principle of law that there is no power with this Adjudicating Authority to adjudicate the powers of the civil court upon the entitlement of the Operational Creditor to the benefits arising out under MSME Act.
- iv.** It is further submitted that the Operational Creditor has unilaterally calculated the alleged interest without any basis and rationale. It is stated that it was neither the intention of the parties nor consensus ad idem to charge any interest on any of the delayed/late payments. Thus, the inclusion of any interest in operational debt is malafide and bogus.
- v.** It is contended that no invoice annexed by the Operational Creditor contains any signature or receipt on behalf of the Corporate Debtor. Therefore, all the invoices submitted by the Operational Creditor are disputed and there exists a contradiction in the claim of the Operational Creditor.
- vi.** The Corporate Debtor in IA-5232-2023 submitted that there were 22 unpaid invoices placed on record by the Operational Creditor, out of which 8 invoices fall under the bar that has been created by the provisions of Section 10A of Insolvency and Bankruptcy Code 2016. After deducting the 8 invoices covered under Section 10A from the Operational Creditor's overall invoice count, the Operational Creditor's total claim falls beneath the threshold limit of Rs. 1 crore mentioned in Section 4 of Insolvency and Bankruptcy Code 2016.

4. **Key Analysis and Findings:**

i. We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondent. We have also perused the records.

ii. The following issue arise for consideration:

Whether the period of the invoices raised is barred by Section 10A of the Code or not and Whether the present application is within the minimum default amount of Rs.1,00,00,000/- as provided under Section 4 of the Code or not.

iii. **Issue: Section 10A and Threshold Limit**

A. In order to examine whether the invoices in question fall within the period of suspension of proceedings under Section 10A of the Code, we have perused the invoices which are as follows:

S. NO.	INVOICE NO.	DATE	AMOUNT (RS.)	10A
1.	LIPL/19-20/078	01.07.2019	5,20,660/-	No
2.	LIPL/19-20/109	01.08.2019	7,00,000/-	No
3.	LIPL/19-20/125	01.09.2019	7,00,000/-	No
4.	LIPL/19-20/185	01.10.2019	7,00,000/-	No
5.	LIPL/19-20/144	01.11.2019	5,39,980/-	No
6.	LIPL/19-20/166	01.12.2019	7,00,000/-	No
7.	LIPL/19-20/185	01.01.2020	7,00,000/-	No
8.	LIPL/19-20/217	01.02.2020	7,00,000/-	No
	LIPL/19-20/246	01.03.2020	7,00,000/-	No



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10.	LIPL/19-20/266	31.03.2020	7,00,000/-	Yes
11.	LIPL/20-21/007	13.05.2020	7,00,000/-	Yes
12.	LIPL/20-21/027	01.06.2020	2,74,838/-	Yes
13.	LIPL/20-21/045	01.07.2020	1,34,667/-	Yes
14.	LIPL/20-21/063	01.08.2020	81,291/-	Yes
15.	LIPL/20-21/078	01.09.2020	1,32,259/-	Yes
16.	LIPL/20-21/102	01.10.2020	54,667/-	Yes
17.	LIPL/20-21/216	03.03.2021	1,68,148/-	Yes
18.	LIPL/21-22/020	01.05.2021	7,98,709/-	No
19.	LIPL/21-22/036	01.06.2021	3,97,400/-	No
20.	LIPL/21-22/052	01.07.2021	3,94,600/-	No
21.	LIPL/21-22/072	04.08.2021	3,70,800/-	No
22.	LIPL/21-22/090	04.09.2021	3,70,800/-	No
Total:			83,21,951/-	

B. From the perusal of the above table, we find that out of 22 unpaid invoices placed on record by the Operational Creditor, 8 invoices fall within the period of suspension of proceedings under Section 10A of the Code. Be that as it may, in any case, the proviso to Section 10A prescribes that no insolvency proceedings can ever be instituted against any entity for the default arising on or after 25.03.2020, till one year from such date (as notified). The operation of Section 10A was made applicable w.e.f. 25.03.2020 to 24.03.2021. Therefore, the instant application is legally untenable.

C. By going through the 8 invoices falling within the period of suspension of proceedings as barred by Section 10A of Code, we do

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not find any cogent reason to entertain this application, which is liable to be dismissed on this ground alone.

- D.** We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is an outstanding amount of Rs. 1,06,54,446/- [Principal amount of Rs. 83,21,951/- along with interest @ 18% (payable from 01.07.2019 to 31.12.2021) amounting to Rs.23,32,485/-].
- E.** The total outstanding debt after deducting the bill serial No. 10-17 that fall under the period of Section 10A, comes down to Rs. 60,76,081/- (83,21,951-7,00,000-7,00,000-2,74,838-1,34,667-81,291-1,32,259-54,667-1,68,148). Thus the amount of Rs. 60,76,081/- is below the threshold limit as required under Section 4 of the Insolvency and Bankruptcy Code, 2016 and therefore the present Application is not maintainable.
- F.** The Operational Creditor contended that the parties involved in the present case are MSMEs and the interest component ought to be taken into account and added to the principal amount to reach the threshold limit.
- G.** On the contrary, the Corporate Debtor replied that the claim for interest under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, could only be referred to the Micro and Small Enterprises Facilitation Council and in no other court.
- H.** In this regard, we would like to refer to the judgement passed by the Hon'ble NCLAT in the case of **Anant Gupta (Suspended Director) Indure Pvt. Ltd. vs. Nilesh Vasantrao Bhorkar-Proprietor NB Equipment & Engineering Services Company Appeal (AT) (Insolvency) No. 1185 of 2023**, wherein the Hon'ble NCLAT held that:

"7. We are of the view that as far as the claim of the Operational Creditor under the MSME Act of the interest, proceedings have already been initiated. Hence, it is not necessary for this Tribunal

to enter into the issue as to whether the claim of interest as claimed under Para IV is to be allowed. We make it clear that we are not expressing any opinion with regard to entitlement of claim of either of the parties on the said proceedings under the MSME Act. The authority under MSME Act to consider claim of the interest of the Operational Creditor and take an appropriate decision.”

- I. Since there is no agreement or correspondence between the parties with respect to the interest component under the MSMED Act, 2006, the interest cannot be added to reach the Rs. 1,00,00,000/- threshold limit.
- iv. In view of the reasoning given in the above-mentioned paragraph, we are of the considered view that the present application under Section 9 of the IBC, 2016 ought to be dismissed.

5. **Order**

In light of the above facts and circumstances, it is hereby ordered as follows: -

- i. The Application bearing **(IB)-368(ND)/2022** filed by the Applicant under Section 9 of the Code read with Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent, is **dismissed**.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)