



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

**CP No.: IB 78(ND)/2024**

*(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 Continental Energy Solutions**

**...Operational Creditor / Applicant**

**VERSUS**

**M/s C P Arora Engineers Contractors Pvt. Ltd.**

**...Corporate Debtor / Respondent**

**Pronounced on: 09.01.2025**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE  
MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**Present:**

For Applicant : Mr. Amit Agrawal, Adv.

For Respondent : Mr. Mahesh, Adv.

**ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

1. This instant application is filed by M/s. Continental Energy Solutions through its sole proprietor Mr. Pramodkumar Jejani (hereinafter referred to as '**Applicant**'/ '**Operational Creditor**'), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**the Code**') with a prayer to initiate Corporate Insolvency Resolution Process in respect of



M/s C P Arora Engineers Contractors Pvt. Ltd. (hereinafter referred as **'Respondent'** or **'Corporate Debtor'**).

2. The Corporate Debtor having CIN: U45201DL2003PTC119930 was incorporated on 17.04.2003 under the provisions of the Companies Act, 1956 having its registered office situated at 175, MIG Flats, Prasad Nagar, New Delhi 110005 and is engaged in the business of building of complete constructions or parts thereof, & civil engineering. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Adjudicating Authority having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor.
3. The present petition was filed on 22.01.2024 before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 1,40,94,725/- (Rupees One Crore Forty Lakhs Ninety-Four Thousand Seven Hundred Twenty-Five only). The Demand Notice sent by the Operational Creditor to the Corporate Debtor is annexed to the Petition as *Annexure – A7*. Further the Applicant is a micro enterprise engaged in manufacturing activities within the meaning of MSMED Act and is registered with District Industries Centre, Nagpur (DIC). The udyam registration certificate is annexed as '*Annexure-A 10*'.
4. Ld. Counsel for the Petitioner has raised the following contentions:
  - a. The corporate debtor placed verbal orders, and in compliance thereof, goods were sold and supplied by the petitioner. The tax invoices and e-way bills are collectively annexed as Annexure A1 at Pg. No. 35-80 of the main petition. The corporate debtor purchased goods for a total sum



amounting to INR 3,81,62,388/- for the period between 25.04.2022 to 28.03.2023, as reflected in the ledger statement of the operational creditor annexed as Annexure A3 at Pg. 82 of the petition.

- b. The last payment of INR 1,00,00,000/- was made by the corporate debtor on 18.12.2022, whereas the implied terms of payment categorically mandate that payment has to be made within 30 days from the date of invoice, which is an undisputed fact. The last Tax Invoice, No. CES / 22-23 / 075, was raised on 28.03.2023, which fell due on 27.04.2023. Owing to the delay in remittance of the unpaid debt amounting to INR 1,40,94,725/-, the corporate debtor is liable to pay accrued interest amounting to INR 28,93,442/-, as reflected in the interest sheet annexed as Annexure A4.
- c. Furthermore, the ledger statement of the corporate debtor annexed as Annexure No. A5 at Pg. 84-86 reveals that as on 02.02.2023, the operational debt amounts to INR 1,15,89,229/-. The difference in the quantum of debt is purely because the ledger does not comprise the entries of Invoice No. CES / 22-23 / 065 dated 11.02.2023 for INR 11,33,184/- and Invoice No. CES / 22-23 / 075 dated 28.03.2023 for INR 12,15,394/-, as the goods were supplied subsequent to the issuance of the ledger by the corporate debtor.
- d. Despite the elapsing of 12 months from the date of last payment, i.e., 18.12.2022, and 9 months from the date of the last invoice, i.e., 28.03.2023, the corporate debtor continued to default in remitting the operational debt. Consequently, the petitioner issued a statutory notice dated 26.12.2023 under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 via speed post at the registered address on 28.12.2023,



thereby demanding the unpaid debt along with accrued interest for delayed payment and incidental charges applicable thereon. The statutory notice dated 26.12.2023 in FORM 3 & FORM 4, postal receipts dated 28.12.2023, e-mail dated 31.12.2023, and delivery tracking reports dated 13.01.2024 are annexed as Annexure No. A7 at Pg. 92-120.

- e. In response to the statutory notice, the corporate debtor issued a reply dated 08.01.2024, annexed as Annexure No. A8 at Pg. 121-122. It is worthwhile to observe that the reply issued by the corporate debtor is silent about booking of TDS for an amount of INR 28,085/- in respect of the goods sold and supplied.
  - f. The petitioner further submits that since the issuance of Invoice No. CES / 22-23 / 013 dated 13.05.2022, the respondent started making delayed and untimely payments, thereby resulting in the accrual of interest in terms of Section 73 of the Contract Act, 1872, Section 34 of the Civil Procedure Code, 1908, Section 61 of the Sale of Goods Act, 1930, Section 12(2) of the Specific Relief Act, 1963, Sections 3 & 4 of the Interest Act, 1978, and Sections 16 & 17 of the MSMED Act, 2006, as the operational creditor is a registered MSE within the meaning of the said Act.
5. In reply to the contentions raised by the Petitioner, the Ld. Counsel for the Respondent has put forth the following:
- a. The Applicant/Operational Creditor sent a demand notice dated 26.12.2023, and in reply thereto, the Corporate Debtor sent a letter dated 08.01.2024, clearly stating that the details of the claim made by the Operational Creditor were not correct and that the accounts between



the parties were required to be reconciled to ascertain the true and correct picture and the amount, if any, payable. It was specifically stated that the records were lying in the Corporate Debtor's M.P. office and required verification, which would take some time. The Corporate Debtor advised the Operational Creditor to contact them after 10 days. It was also categorically stated that no interest was payable as wrongly claimed. The said reply of the Corporate Debtor is annexed at Page No. 121 of the petition, and the Corporate Debtor craves leave to refer to and rely upon the same. The reply was duly received by the Operational Creditor on 13.01.2024, but without even waiting or contacting the Corporate Debtor after 10 days, the Operational Creditor straightaway approached this Tribunal with the present petition within 10 days of receipt of the said reply.

- b. The Corporate Debtor further submits that the total claim made by the Operational Creditor towards the principal amount is Rs.1,40,94,725/- (Rupees One Crore Forty Lacs Ninety-Four Thousand Seven Hundred Twenty-Five only). However, the Operational Creditor has not given credit for Rs.28,085/- being the TDS deducted and deposited by the Corporate Debtor on account of the Operational Creditor. Accordingly, after deducting the said amount of Rs.28,085/- towards TDS, the total amount comes to Rs.1,40,66,640/- (Rupees One Crore Forty Lacs Sixty-Six Thousand Six Hundred Forty only).
- c. It is further submitted that from time to time, the Corporate Debtor has made various payments to the Operational Creditor, which have all been received and duly acknowledged by the Operational Creditor.



- d. The Corporate Debtor submits that there have been continuous, running, and regular transactions of sale and purchase between the Operational Creditor and the Corporate Debtor. Therefore, the question of claiming interest does not arise. At no point in time has the Operational Creditor previously claimed any interest. Considering the business transactions between the parties and the lumpsum payments made by the Corporate Debtor to the Operational Creditor from time to time, there has never been any occasion for any interest payment to be raised or paid.
- e. The Corporate Debtor further submits that the purported claim raised by the Operational Creditor towards interest is absolutely wrong, illegal, and not payable. Even in the ledger account filed by the Operational Creditor, no amount towards interest has been claimed, nor has any bill ever been raised for the same. Additionally, the Operational Creditor has never made any demand for interest at any point in time prior to the filing of the present petition. It has been a regular practice that the goods were sold and delivered, and lumpsum payments were made by the Corporate Debtor from time to time. Hence, the claim for interest is baseless and untenable.

### **Findings & Analysis:**

- 6. We have heard the Ld. Counsel for both the Operational Creditor and the Corporate Debtor and have carefully perused the documents submitted by them. This is a Petition u/s 9 of the Code and the legal framework and essentials for the admission of Section 9 Petition requires the following conditions to be satisfied:



a) The operational creditor must establish that there exists a valid and legally enforceable debt that is due and has not been paid by the corporate debtor, amounting to a default.

b) Limitation Period: The debt must be within the statutory period of limitation prescribed under the Limitation Act, 1963, which is three years from the date of default unless extended by acknowledgment or payment.

c) Minimum Threshold of Debt: The amount of default must exceed Rs. 1 Crore as mandated under the Notification No. S.O. 1205(E) dated 24.03.2020.

d) Absence of Pre-Existing Dispute: There must not be any pre-existing dispute regarding the debt or its amount before the issuance of the statutory notice under Section 8 of the Code.

7. Considering the factual background of the present case, the Operational Creditor claims that the Corporate Debtor placed verbal orders and in compliance, goods were sold and supplied for a total value of Rs. 3,81,62,388/-. The unpaid principal amount as of the date of petition stands at Rs. 1,40,94,725/-. The last payment of Rs. 1,00,00,000/- was made on 18.12.2022, and the last invoice, No. CES/22-23/075, was raised on 28.03.2023, falling due on 27.04.2023. Thus, **the debt remains unpaid** beyond the stipulated 30-day period, **constituting default**. The Operational Creditor has claimed accrued interest amounting to Rs. 28,93,442/-, citing the delay in payment.

8. The Corporate Debtor, in its reply dated 08.01.2024, has not denied the principal debt outright but raised objections on two grounds:



i) The need to reconcile accounts to ascertain the correct payable amount.

ii) Non-payability of interest, as no such claim had been raised historically or reflected in the ledger.

9. The Corporate Debtor further contended that TDS of Rs. 28,085/- deducted on behalf of the Operational Creditor has not been accounted for, reducing the outstanding amount to Rs. 1,40,66,640/-.

10. Upon perusal of the documents, including the tax invoices, ledger statements, and statutory notice under Section 8(1) of the Code, it is evident that the principal debt exceeds the statutory threshold of Rs. 1 Crore. Furthermore, the Corporate Debtor has acknowledged transactions and payments without categorically denying the debt. This Adjudicating Authority does not need to go into the **quantification of the exact amount of the debt**. The only aspect that requires consideration is whether the debt exceeds the statutory threshold of **Rs. 1 Crore**. In the present case, the admitted principal debt, even after accounting for minor adjustments such as TDS, clearly **exceeds Rs. 1 Crore**. Therefore, the threshold requirement under Section 4 of the Code stands satisfied.

11. The Corporate Debtor contends that the accounts require reconciliation and disputes the claim for interest. However, it is a settled legal principle that a mere plea of reconciliation without substantial evidence of a dispute does not constitute a **pre-existing dispute** under the Code. In the present case, the Corporate Debtor's reply dated 08.01.2024 does not raise any specific or substantial dispute regarding the principal debt. The objection pertains primarily to the interest component, which does not invalidate the claim of default on the principal amount. Further, the plea regarding TDS is a minor





adjustment and does not alter the fact that the debt amount remains well above the threshold limit.

12. Further, the statutory notice was issued on **26.12.2023**, and the last payment was made on **18.12.2022**. The petition has been filed well within the three-year limitation period prescribed under the Limitation Act, 1963. Thus, the claim is not barred by limitation.

13. Based on the foregoing analysis, the Tribunal finds as follows:

- a) There exists a **debt** of more than **Rs. 1 Crore**, which is due and payable.
- b) The Corporate Debtor has defaulted in payment of the said debt.
- c) The petition has been filed **within the limitation period**.
- d) There is **no pre-existing dispute** regarding the principal debt.

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

- a) The Application bearing **IB-78(ND)/2024** filed by the Applicant/Operational Creditor, under section 9 of the Code read with Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Corporate Debtor is **admitted**.
- b) We also declare 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:  
*(a) 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, Adjudicating Authority, arbitration panel or other authority;*  
*(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*



*(c) 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;*

*(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

*(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, concessions, 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) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.



- e) **Mr. Umesh Singhal** having address: Sigma Legal Group, 407-408, GD-ITL Tower B-08, Netaji Subhash Place, Pitampura, New Delhi, 110034, Email id **singhaluk@hotmail.com**, registration number **IBBI/IPA-002/IP-N00124/2017-18/10293** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 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.
- g) 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.



- h) The IRP shall perform all his functions as contemplated, interalia, by Sections 17, 18, 20 & 21 of the Code. He 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.
- i) 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.
- j) The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Operational Creditor.
- k) In terms of Section 7(7) 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.



- l) 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.
- m) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
- n) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Accordingly, the present petition bearing CP No. **IB-78(ND)/2024** is **admitted.**

**-sd-**

**(DR. SANJEEV RANJAN)**

MEMBER (TECHNICAL)

**-sd-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

MEMBER (JUDICIAL)



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

**IA 5323(ND)/2024 in CP No.: IB 78(ND)/2024**

*(Application under Rule 32 of NCLT Rules, 2016)*

IN THE MATTER OF:

**M/s Continental Energy Solutions**

**...Operational Creditor / Applicant**

**VERSUS**

**M/s C P Arora Engineers Contractors Pvt. Ltd.**

**...Corporate Debtor / Respondent**

**Pronounced on: 09.01.2025**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE  
MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**Present:**

For Applicant : Mr. Amit Agrawal, Adv.

For Respondent : Mr. Mahesh, Adv.

**ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

1. This instant application is filed by M/s C P Arora Engineers Contractors Pvt. Ltd. (hereinafter referred as '**Corporate Debtor**') against M/s. Continental Energy Solutions through its sole proprietor Mr. Pramodkumar Jejani (hereinafter referred to as '**Operational Creditor**', under Rule 32 of NCLT Rules, 2016 (for brevity '**the Code**').



2. This Application has been filed by the Corporate Debtor praying for the following:

*“a) The Company Petition (IB) NO. 78/NDB/NCLT/IBC /SEC. 9/ 2024 filed by the Operational Creditor be dismissed;*

*b) Pass any such further order or orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

3. The Corporate Debtor submits that the Company Petition IB 78(ND)/2024 filed by the Operational Creditor, claiming a sum of Rs. 1,40,94,725/- (including interest), is malafide and intended to pressurize and blackmail the Corporate Debtor. Despite the Corporate Debtor's willingness to settle the matter amicably, as evidenced by its offer to pay the amount in installments—subject to the adjustment of Rs. 28,085/- towards TDS—the Operational Creditor has imposed unwarranted and legally untenable conditions, such as the settlement of unrelated dues payable to a third party, M/s Shree Rubber Tech, which is neither a party nor a claimant in the present proceedings.
4. The Corporate Debtor further states that it had, in good faith, requested reconciliation of accounts in response to the statutory notice, but the Operational Creditor hurriedly filed the petition without carrying out such reconciliation. The petition, therefore, has been filed with ulterior motives and not with a genuine intent to resolve the matter. The Corporate Debtor prays that the petition be dismissed, and the parties be directed to reconcile their accounts to ascertain the correct and payable amount, ensuring justice and preventing irreparable loss to the Corporate Debtor.



5. This Bench is of the view that the grounds raised by the Corporate Debtor for dismissal of the petition are untenable and cannot be considered as valid defences under Section 9 of the IBC. Minor disputes regarding the reconciliation of accounts, TDS adjustments, or extraneous conditions imposed during negotiations do not constitute *pre-existing disputes* under law. Further, the acknowledgment of debt, coupled with the Corporate Debtor's offer to settle the matter in instalments, clearly establishes the existence of debt and default.
6. Considering the facts and circumstances of the case, this Adjudicating Authority finds no merit in the application filed by the Corporate Debtor seeking dismissal of the petition. Hence, **IA 5323(ND)/2024 in CP IB 78/ND/2024 stands dismissed.**

**-sd-**

**(DR. SANJEEV RANJAN)**

MEMBER (TECHNICAL)

**-sd-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

MEMBER (JUDICIAL)