

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P. (IB) No.228/BB/2018  
U/s 9 of IBC, 2016  
R/w Rule 6 of I&B(AAA) Rules, 2016

**In the matter of:**

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

“Nishuvi”, 4<sup>th</sup> Floor, No.75,

Dr.AnnieBeasant Road, Worli,

Mumbai – 400 018

- Petitioner/Operational Creditor

**Versus**

**M/s.Bhuwalka Steels Industries Limited,**

10<sup>th</sup> Mile, Old Madras Road,

Bandapura Village, Karnataka

Bengaluru – 560 049.

- Respondent/Corporate Debtor

**Date of Order: 08<sup>th</sup> April, 2019**

**Coram:** 1. Hon’ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon’ble Dr. Ashok Kumar Mishra, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Ms.Aradhana Lakhtakia

For the Respondent : Shri RaghuramCadambi

**ORDER**

**Per:**Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.228/BB/2018 is filed by **M/s.Indu Corporation Pvt. Ltd.**, (Petitioner /Operational Creditor) U/s 9 of IBC, 2016, R/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of **M/s.Bhuwalka**



**Steels Industries Ltd.**(Respondent/Corporate Debtor)for committing a default in payment of Rs. 15,46,34,976.18/- (Rupees Fifteen Crore Forty Six Lakhs Thirty Four Thousand Nine Hundred and Seventy Six Only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue, are as follows:

- 1) M/s.Indu Corporation Private Limited(Petitioner/Operational Creditor) is a private limited Company incorporated under the provisions of the Companies Act, 1956 CIN NO.U27104MH2006PTC160932 *having* its registered office at "Nishuvi", 4<sup>th</sup> Floor, No.75, Dr.AnnieBeasant Road, Worli, Mumbai-400 018.
- 2) M/s.Bhuwalka Steels Industries Ltd, (herein after referred as Respondent/Corporate Debtor) is a private limited wasincorporated on 18<sup>th</sup> August, 1981. Its Authorized Share Capital is Rs. 25,00,00,000/- (Rupees Twenty Five Crores Only) and its Paid up capital is Rs.10,37,44,980/- (Rupees Ten Crores Thirty Seven Lakhs Forty Four Thousand Nine Hundred and Eighty Only).
- 3) The Petitioner is engaged in the distribution & marketing of steel and non-ferrous metals, including stocking and supplying of TATA Steel. The Corporate Debtor is a Company engaged in manufacture of steel and allied products. It is one of the Companies, which are part of the Bhuwalka Group of Companies.
- 4) The Petitioner and Corporate Debtor have had a business relationship whereinthe Petitioner has been supplying various steel and allied materials to the Corporate Debtor from time to time, on basis of purchase orders placed by the Corporate Debtor,



and raising invoices upon the Corporate Debtor for the material supplied.

- 5) During the years 2014-15, the Petitioner duly supplied the Materials ordered by the Corporate Debtor and issued invoices ("Invoices") against the deliveries. The Invoices were required to be paid within 90 days and an interest 18% p.a was to be charged on payments made after the due date. The materials were accepted by the Corporate debtor and no dispute was ever raised about the delivery or quality of the materials supplied. However, payment for the said invoices was not made and the same remained due.
- 6) Total Debt/Outstanding of the Corporate Debtor on account of the said invoices from 31.05.2014 to 26.06.2015 for total of Rs.21,03,23,671/-, as on the date of the last invoice. On 31.05.2015, a Debt Balance amount of Rs.10,03,49,783.50/- standing in the name of the Petitioner with its account in Sri Durga Trade Links Pvt. Ltd. (sister concern of the Corporate Debtor) was transferred to the Petitioner's account with the Corporate Debtor. Hence, as on 31.05.2015, the outstanding amount on account of the Invoices was reduced to RS.10,99,73,887.54. This was the last payment made in respect of the payment of the Invoices.
- 7) The Corporate Debtor, by way of a Written Communication dated 31.05.2015, confirmed that balance of Rs.10,99,73,887.54 was outstanding. As per the terms of the invoice, interest of 18% p.a came to be levied on each unpaid invoice, and hence, a total interest (calculated up to May 1, 2017) of Rs.4,46,61,088.64 became outstanding, along with the principal sum due
- 8) Due to non-payment of the outstanding amount, a Demand notice dated 22.06.2017 under Rule 5 of the I&B (AAA) Rules, 2016 was



issued by Petitioner to the Corporate Debtor demanding payment of Rs.10,99,73,887.54/- the principal sum in default. The Corporate Debtor issued a response dated 01.08.2017, wherein it raised some untenable technical objections but failed to show that there was any existing dispute regarding the amounts payable, nor was it able to demonstrate that the outstanding had been paid to the Petitioner.

3. The Respondent/Corporate Debtor has filed Statement of Reply dated 27.12.2018 by inter alia contending as follows:

- 1) The Respondent/Corporate Debtor, M/s.Bhuwalka Steel Industries Limited, is a Company incorporated under the provisions of the Companies Act, 1956. The Respondent is a reputed Company in the business of manufacturing of steel and allied products.
- 2) Around 2010, the steel industries in the country slipped into a deep financial crisis. The financial crisis was an industry wide phenomenon and resulted in the shutting down and closure of several leading steel Companies and caused losses running into several Crores of Rupees. The crisis was a result of deep imbalances and structural problems in the several sectors of the steel industry, including but not limited to issues in the demand and supply markets. The unfavorable global market and negative investor sentiment also contributed to the deep crisis in the steel industry.
- 3) The Respondent Company is a part of a larger group of Companies in the steel industry. The Respondent Company's business operations and financial ecosystem are connected to and depended on its sister Companies in the steel industry. Due to the general crisis, the respondent and its sister



Companies went into severe losses and were unable to discharge many of their payment obligations as and when they became due.

- 4) The Respondent Company made several attempts to improve its financial situation. However, all these efforts failed to improve the health of the Company. The Respondent Company approached financial institutions seeking funds in order to discharge some of its liabilities. However, these efforts too proved unsuccessful. The existing accounts of the respondent Company with its banks and Financial Institutions have become non-performing assets (NPA). The Respondent Company is, therefore, presently, in a state of insolvency.
- 5) Insofar as the dues of the Petitioner/Operational Creditor Company are concerned, the Petitioner has previously sought to reconcile the exact amounts due, owing to issues relating to the quality of the supply. However, unfortunately, the Respondent Company is not in a position to repay any amounts whatsoever to the Petitioner Company, much less the amounts claimed by the Petitioner Company (including interest).
- 6) Given its insolvent financial Conditions, the respondent Company for bona fide reasons, is unable to discharge its liabilities towards various entities including the Operational Creditor herein. Therefore, the Respondent Company is able and willing to abide by the orders of this Hon'ble Tribunal under the provisions of the I&BC, 2016.
- 7) A Memo dated 08.04.2019 is filed by producing a copy of the latest audited financials of the Corporate Debtor for the financial year 2017-18. Therefore, the Respondent has no objection to initiate the CIRP in respect of the Corporate Debtor.



4. Heard Ms.Aradhana Lakhtakia, learned Counsel for Petitioner and Shri Raghuram Cadambi, Learned Counsel for Respondent. We have carefully perused the pleadings of both the parties and also extant provisions of law.
5. Ms.Aradhana Lakhtakia, learned Counsel for the Petitioner, has further submitted that the debt and default in question is not in dispute and the Petition is filed in accordance with law and a qualified IP namely **Mr. Shivadutt Bannanje is named as IRP with Registration No. IBBI/IPA-002/IP-N00266/2017-18/10779**, who has also filed written Consent in Form-2 dated 28.02.2018, is eligible to be appointed as IRP.
6. Shri Raghuram Cadambi Learned Counsel for Respondent has inter alia submitted that they are not disputing the debt and default and thus they have no objection to initiate CIRP as prayed for. The Respondent could not pay the outstanding amount in question despite its best efforts.
7. The material documents filed by the petitioner clearly established that the Respondent failed to pay outstanding of Rs.15,46,34,976.18/- respect of payment for supply of goods (i.e.steel and allied products) from the supplier, i.e. Petitioner to the Respondent. As stated supra, the Respondent has also admitted its liability towards the Petitioner. The Petition is filed strictly in accordance with law and also suggested a qualified Resolution professional namely **Mr. Shivadutt Bannanje with Registration No. IBBI/IPA-002/IP-N00266/2017-18/10779** to appoint as IRP. Therefore, we are of prima facie view that the said RP is provisionally qualified to be appointed as IRP. Hence, we are



of the considered opinion that it is fit case to admit by initiating CIRP respect of Corporate Debtor with other consequential orders.

8. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, U/s 9(5)(i) and other extant provisions of the IBC, 2016, the following orders are passed:

- 1) CP(IB)No.228/BB/2018 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Bhuwalka Steels Industries Limited, Corporate Debtor;
- 2) We hereby appointed **Mr. Shivadutt Bannanje, with Registration No. IBBI/IPA-002/IP-N00266/2017-18/10779** is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as per provisions of Code and various rules issued by IBBI from time to time.
- 3) The following moratorium is declared prohibiting all of the following, namely:
  - 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, tribunal, 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 supply of essential goods and services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
  - f. the provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government
  - g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process;
- 4) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file progress reports to the Tribunal from time to time.
  - 5) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out her functions as such, under the Code and Rules made by IBBI.
  - 6) Post the case for report of the IRP on **10<sup>th</sup> May, 2019**.



**(ASHOK KUMAR MISHRA)**  
**MEMBER, TECHNICAL**



**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**