

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.301  
CP(IB)/290(AHM)2022

**Order under Section 9 IBC**

**IN THE MATTER OF:**

Rishabh Infra Through Hari Mohan Gupta  
V/s  
Sadbhav Engineering limited

.....Applicant

.....Respondent

**Order delivered on: 12/07/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**  
**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-sd-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

-sd-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT No.2**

**CP (IB) 290 of 2022**

[An Application filed under Section 9 of the Insolvency and Bankruptcy Code]

**In the matter of:**

Risabh Infra Through Hari Mohan Gupta  
Sole Proprietor

...Applicant

Vs

Sadbhav Engineering Limited

...Respondents

**Order pronounced on 12.07.2024**

**Coram:**

**MRS. CHITRA HANKARE,  
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

M/s Rishabh Infra through Hari Mohan Gupta,  
Sole Proprietor  
7 Transport Centre, Punjabi Bagh  
New Delhi - 110035  
Email : [rishabhsales@gmail.com](mailto:rishabhsales@gmail.com)

**...Applicant/Operational Creditor**

**Versus**

Sadbhav Engineering Limited  
Sadbhav House, Opp -Law Garden Police Chowki,  
Ellisbridge, Ahmedabad Gujarat 380006  
Email: investor@sadbhav.com

**... Respondent/Corporate Debtor**

**Appearance:**

For the Applicant : Mr. Karan Gandhi, Adv.

For the Respondent : Mr. Navin Pahwa, Sr. Adv. a.w Mr. Ravi  
Pahwa, Adv.

## **JUDGEMENT**

1. This application is filed under Sec.9 of IBC 2016 by the applicant who is an operational creditor (sole proprietor) of the respondent Corporate Debtor (CIN L45400GJ1988PLC011322) claiming an amount of Rs.2,61,24,029/- (including principal amount and interest of Rs.72,72,659/- calculated at 24% p.a.) as on 17.05.2022. The Operational Creditor has given a copy of his MSME registration certificate.
2. The applicant has stated that he is engaged in the business of providing construction equipment on hire/rental basis was engaged by the corporate debtor who is the respondent who is in construction business had allotted various work orders to hire the transit mixers owned by the Operational Creditor which were deployed at different projects at different sites as per instructions and requirements since 2014. The work orders issued were extended from time to time. The applicant provided a list of such engagements at various locations and the respondent confirmed the work orders through Running account bills and based on which applicant had issued various invoices for each project for

time to time. The respondent is stated to have paid certain invoices but as on date of petition an amount of Rs.1,88,51,361/- was outstanding with interest of Rs.72,72,659/- calculated at 24% rate of interest.

3. The Operational Creditor sent various reminders to the corporate debtor for the unpaid amounts on various dates by email dated 02.08.2021 to 07.01.2022 and due to lack of any response, sent a demand notice dated 17.05.2022 u/s 8 of the IBC 2016 through both email and speed post. Still there was no response. Further to the demand notice issued on 28.01.2022 via email, the respondent raised certain frivolous, value, illegal contentions/disputes to evade responsibility. However, the applicant replied to the corporate debtor on 03 March 2022. In spite of lack of response he continued to provide the work contract services for certain projects and raised invoices and further some more were pending to be issued due to GST liability to be paid as on 17.05.2022.
4. The applicant has submitted that he has raised various invoices from 31.03.2018 to last date of invoice raised on 31.03.2022 and the due date to make payment was within

30 days from the date of invoice which was independent for its individual due date and he used the FIFO method in the running account to arrive at the default in invoice. It is stated that the due date fell from each date of default against several pending invoices which means that the default commenced on the 31<sup>st</sup> day from the respective invoice. Applicant enclosed all relevant copies of notices issued, respective work orders, ledger and bank statements, bills/certificates, invoices issued by the corporate debtor, paid GSTR forms to supplement the information on maintainability of this application. The applicant has also enclosed various tax invoices wherein the due amount was directed to be paid with interest @24% p.a.

5. The applicant had issued a demand notice on March 3, 2022 and on 27 June 2022 wherein he claimed the repayment by including the principal and interest totalling Rs.2,43,66,709/- to be due and payable. The respondent vide his email dated 12 Feb 2022 sought copy of ledger to prove the claims and also subjected the payment if any to be made to existence of dispute if any, and that the claims were not supported by any documentary evidence, thereby

the amount was disputed and unclear and liable to be withdrawn.

6. The respondent filed its first reply by affidavit on 31 January 2023 and an additional affidavit on 3 May 2023. The respondent denied that there was any provision for paying interest to the operational creditors as there was no clause for interest in the work orders (issued by the respondent) which cannot be claimed in the invoices raised by the applicant. Further, work orders are bilateral documents signed by both the parties and invoices are one sided issued by the seller/supplier and is not maintainable for any deviation from the intention of both the parties when the order was issued for carrying out the work for the corporate debtor and hence claiming interest is legally not maintainable. Further, the 7 work orders were issued at different places constituting different contracts and hence cannot be clubbed for any debt payable, Therefore, the corporate debtor was willing to pay an amount of Rs.188,51,361/- (principal amount less Rs.10,00,000/-) which is already paid in twelve monthly instalments. The respondent also further contended that 3 of the invoices

were covered under Sec.10A of the IBC (Rs.28,13,986/-). The respondent was also prepared to offer a settlement to the applicant.

7. The applicant vide its affidavit submitted that the respondent never initiated or there were any settlement talks between them and the intention of the respondent was to scuttle the insolvency process and denying interest due and payable to him. He also enclosed various judgments in this regard.
8. The respondent filed an additional affidavit on 19<sup>th</sup> August 2023 stating that on various dates starting from 30.01.2023 to 09.08.2023 (table enclosed in page 2) that it had paid an amount of Rs.1,88,51,361/- to the applicant which equals the principal amount due and payable and he is not liable to pay any interest in view of the absence of any such intention in the work order issued on various dates. The respondent also annexed a copy of judgment delivered by Hon'ble Hon' ble NCLAT in CA (AT)(INS) No.1152 of 2022 in case of Vijay Industries vs. NATL Technologies Limited in Civil Appeal No.7352 of 2008 and sought rejection of the application.



9. Heard the various submissions, documents and the developments in the matter and heard both the parties:
- a. The applicant is stated to be a sole proprietor represented through Mr. Hari Mohan Gupta who has submitted this application. There are no documents which reveal further about the entity other than the GST registration number, MSME certificate in the name of Rishabh Infra on whom the work orders were issued.
  - b. The work orders do not carry any provision for interest not any provision for due date after raising the invoice. The work order also does not identify or recognise that the applicant is a MSME nor does the invoice. However, the invoice raised claims interest on due at 24% but does not provide any due date.
  - c. It is a fact that MSME dues are to be paid at 24% rate of interest when due but the provision does not apply when the same is not contracted.
  - d. Further, the respondent, even belatedly during the process of the hearing has paid the principal amount which it had agreed by affidavit and the interest due

demanded is not liable to be paid unless it is agreed in the work order confirmed by both parties and acceptance of the MSME status when the contract was executed for the purpose of payment of dues.

10. In view of the above, we pass the following order:

**ORDER**

The CP(IB) No.290 of 2022 is rejected.

**-sd-**

**DR.V. G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)**

**-sd-**

**CHITRA HANKARE  
MEMBER (JUDICIAL)**