

**THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**COURT- III**

**IB-3226/ND/2019**

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016.

**IN THE MATTER OF:**

**M/s. OKAYA POWER PRIVATE LIMITED**

***Through its Authorised Representative,***

**Registered Office: -**

**D-7, Udyog Nagar, Main Rohtak Road,**

**New Delhi - 110041**

*.....Operational Creditor*

***Versus***

**M/s. BHARAT SANCHAR NIGAM LIMITED**

**Registered Office: -**

**Bharat Sanchar Bhawan,**

**Harish Chander Mathur Lane,**

**Janpath, New Delhi – 110001**

*..... Corporate Debtor*

*Delivered on: - 09.02.2024*

**Coram:**

**Shri Bachu Venkat Balaram Das**

Hon'ble Member (Judicial)

**Shri Atul Chaturvedi**

Hon'ble Member (Technical)

IB – 3226 (ND) 2019

D.O.O – 09.02.2024

**Appearances:**

For Applicant : Mr. Achin Mittal, Mr. Saurav Kumar, Advocates

For Respondent : Ms. Sapna Sinha, Mr. Pankaj Garg, Advocates

**ORDER****Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s. Okaya Power Private Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s. Bharat Sanchar Nigam Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

a) It is submitted that, the Applicant Company is a private limited company engaged in the business of sale and distributions of different kinds of batteries under the brand name of 'Okaya' and the Corporate Debtor is a public sector unit providing all telecom services (Landline, Broadband, Mobile, Satellite communications etc.) to its customers across PAN India. The 100% stake of the Corporate Debtor is owned by the Govt. of India.

b) The Corporate Debtor issued various invitations on tenders for the procurement of batteries at various offices/work station in the year 2016. The

Operational Creditor, being one of the leading brand in the market, filed the tender Application and was successfully declared as L1 on various occasions. The Operational Creditor raised various invoices amounting to Rs. 48,53,246/- in exchange of delivery and supply of the goods/batteries to the Corporate Debtor on various sites. The Corporate Debtor has only cleared the part payment to the tune of Rs. 28,70,023/- and the outstanding amount of Rs. 19,83,223/- is still to be paid by the Corporate Debtor.

c) It is further averred that, despite several requests and demands raised for payment of outstanding dues the Corporate Debtor has ignored all such demands. The Operational Creditor having no recourse has issued a demand notice dated 09.09.2019 under Section – 8 of IBC 2016, in Form 3 for the demand of Rs. 19,83,223/- along with interest @ 24% p.a. from the date of delivery of goods till realised. The Corporate Debtor has not replied to the Section – 8 demand notice.

3. In response to the contentions raised by the Operational Creditor/ Applicant. Corporate Debtor has raised various counter contentions which are as follows: -

a. It is submitted by the Ld. Counsel for the Corporate Debtor that the total liability upon the Corporate Debtor is to the tune of Rs. 5,92,707/- only and not Rs. 19,83,223/- as claimed by the Operational Creditor and the same is evident from “WhatsApp message” received by one of the Senior Officer of the Corporate Debtor, Shri Alok Kumar, AGM on 12.11.2021 from Sh. Gaurav Taneja an AVP of Operational Creditor.

b. As per the record of the Corporate Debtor only a sum of Rs. 3,17,993/- is due and the same amount is disputed due to various reasons such as

issuance of non-satisfactory report, GST related issues etc. The Corporate Debtor has sent various letters to the Operational Creditor to rectify the faults in the batteries but same issues have not yet been resolved. The Corporate Debtor is ready to clear the pending amount of Rs. 3,17,993/- provided the Operational Creditor clears the defaults and fulfils other requirements.

4. We have heard the arguments advanced by the Ld. Counsel appearing for the Operational Creditor as well as for the Corporate Debtor and also perused the records.

5. The Operational Creditor's claim is based on the facts that the Applicant had supplied goods/batteries to the Corporate Debtor. As per the demands and requirements of the Corporate Debtor, the Operational Creditor had issued various invoices for the supply and installation of material which has been accepted by the Corporate Debtor and thus, the contract has come into existence. It is stated by the Applicant that, since the Corporate Debtor did not make the due payment of the Operational Debt, the Applicant had issued Demand Notice dated 09.09.2019 under section – 8 of IBC, 2016 and served at the registered office of the Corporate Debtor. On the contrary, the Corporate Debtor has submitted that only Rs. 3,17,993/- is due and payable to the Corporate Debtor. The Corporate Debtor is ready to settle the dispute on a condition that, the Applicant/Operational Creditor must clear GST tax issues and resolve the issues of the defective batteries.

6. In the light of the arguments advanced and the documents submitted before this Adjudicating Authority, we would like to answer one important question which emerges for our consideration: -

I. *Whether CIR process can be initiated against a PSU and if yes in what circumstances?*

7. To answer this question we would like to place reliance on a judgement passed by Hon'ble Supreme Court in the matter of ***Hindustan Construction Company Ltd. & Anr. v. Union of India & Ors. WRIT PETITION (CIVIL) NO. 1074 OF 2019.*** The relevant paragraph of the above mentioned judgement is reproduced below for reference: -

***“63. From a conspectus of the above provisions, what is clear is that NHAI is a statutory body which functions as an extended limb of the Central Government, and performs governmental functions which obviously cannot be taken over by a resolution professional under the Insolvency Code, or by any other corporate body. Nor can such Authority ultimately be wound-up under the Insolvency Code.”***

8. The instant application has been filed under Section 9 of IBC seeking initiation of M/s. Bharat Sanchar Nigam Limited, which is a statutory body. We have to therefore examine as to whether CIRP can be initiated against a statutory body in the touchstone of the principle laid down by the Hon'ble Supreme Court of India in the case of ***Hindustan Construction Company Ltd. & Anr. v. Union of India & Ors.*** Though, the pleadings on record are silent on the functions and duties of the Respondent Company but it is well-known fact that BSNL is a public sector undertaking fully owned by the Government of India. It is engaged in providing Telecom Services throughout the country which includes landline, mobile, Broadband services etc. Considering the fact that the BSNL is a statutory body and discharges its functions as an extended limb of the Government of India, we are of the considered view that the ratio laid down in the judgment of the Hon'ble

Supreme Court *supra* will be squarely applicable to the facts of the present case and therefore, it would not be prudent to initiate CIRP against the Corporate Debtor herein. The question is answered accordingly.

9. We have also examined the case on merits. While perusing the records we find that the Operational Creditor has failed to prove the exact quantum of 'Operational Debt' as during the pendency of this petition the Corporate Debtor made part payments to the Operational Creditor to the tune of Rs. 5,92,707/-. The averments of the Applicant stating that there is a 'debt' which the Corporate Debtor is liable to pay has not been proved by placing suitable evidence on record. We have no hesitation to hold that the instant petition filed under section – 9 of IBC, by the Operational Creditor is only to recover its alleged dues and therefore liable to be dismissed.

10. In the light of the above findings IB – 3226 (ND) 2019 stands ***dismissed***.

**SD/-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**SD/-**

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