

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

**CP No.4204 (IB)/MB/C-IV/2018**

Under Section 9 of The IBC, 2016

In the matter of

**SHANTANU BHARAT AGARWAL**

...Operational Creditor

v/s.

**INDOTECH INDUSTRIAL SOLUTIONS**

**PRIVATE LIMITED**

...Corporate Debtor

**Order Delivered on 03.12.2019**

**Coram:** Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner: Adv. Saurabh Pandya, Adv. Aagam Doshi.

For the Respondent: None Present

***Per: Rajasekhar V. K. Member (Judicial)***

**ORDER**

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **Shantanu Bharat Agarwal an individual person** ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Indotech Industrial Solutions Private Limited** ("the Corporate Debtor") [CIN: U72900PN2006PTC128617].

2. The Corporate Debtor is a company incorporated on 19.06.2006 under the Companies Act, 1956, as a Private Company limited by shares with the Registrar of Companies, Maharashtra, Pune. Its Corporate Identity Number (CIN) is U72900PN2006PTC128617. Its registered office is at S. No. 129, Off. No.1 & 2, First Floor, Ankur Plaza, Mumbai-Bangalore Highway, Nr. Flyover Bridge, Warje, Pune 411058. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.11,00,000/-(Rupees Eleven Lakh only) as principal amount as per Agreement dated 11.05.2018 executed between **Indotech Industrial Solutions Private Limited and Shantanu Bharat Agarwal (Annexure 'A'** to the petition at pp.12-18). The date of default is 15.07.2018.
4. The Operational Creditor states that the Corporate Debtor entered into an agreement dated 11.05.2018 with the Operational Creditor to supply, install, test and commission ghee manufacturing plant at the premises of Operational Creditor for principal amount of Rs.11,00,000/- and on the terms and conditions as more particularly mentioned in the Agreement.
5. The Operational Creditor stated that as per terms of the Agreement dated 11.05.2018 by which the Corporate Debtor was obliged to complete the entire project within 55 days (excluding trial run for 10 days) from the date of the agreement failing which the Corporate Debtor is liable to pay liquidated damages of 0.5% amount of total project cost per week. Further,

the Corporate Debtor was bound to deliver all the equipments at premises of the Operational Creditor latest by 05.07.2018 and to do the final commissioning latest by 15.07.2018.

6. The Operational Creditor submitted that the Operational Creditor was to pay the Corporate Debtor an amount of Rs.11,00,000/- on 11.05.2018 and the same was paid to the Corporate Debtor vide bank transfer/RTGS on 11.05.2018. The Operational Creditor further submitted that as agreed under clause 3 of the agreement dated 11.05.2018 that the balance consideration was to be paid by the Operational Creditor subject to the Corporate Debtor performing their obligation of supplying, installing, testing and commissioning ghee manufacturing plant for satisfaction of Operational Creditor.
7. The Operational Creditor submitted that the revised purchase order dated 30.05.2018 was issued by the Operational Creditor revising the project cost to Rs.25,37,400/- (**Annexure 'D'** to the petition at pp.21-26) and same was accepted unconditionally by the Corporate Debtor vide email dated 31.05.2018 (**Annexure 'E'** to the petition at p.27).
8. The Operational Creditor further stated that the email dated 26.06.2018 (**Annexure 'F'** to the petition at p.28) was received and on the same day replied by Operational Creditor stating that the terms of Agreement/ revised Purchase Order were not changed/ modified. It is also stated that the emails dated 28.06.2018 (**Annexure 'G' & 'H'** to the petition at pp.29-30) and 27.07.2018 (**Annexure 'I'** to the petition at p.31), the

Corporate Debtor expressed inability to complete the assigned project.

9. The Operational Creditor submitted that the Corporate Debtor failed to perform its obligations and committed the breach of Agreement/ revised purchase order. It is also submitted that the Corporate Debtor failed to complete the installation of all equipments by 15.07.2018 and also failed to refund the amount of Rs.11,00,000/-.
10. Since the Corporate Debtor failed to make a repayment, the Operational Creditor has filed this Petition on 01.11.2018 before this Adjudicating Authority.
11. The Operational Creditor had served a Demand Notice in Form 3 dated 13.08.2018 to the Corporate Debtor (**Annexure 'Q'** to the petition at pp.65-69) in terms of section 8 of the IBC. The Corporate Debtor has sent a reply to the Demand Notice dated 27.08.2018 (**Annexure 'R'** to the petition at pp.70-71).
12. The Corporate Debtor has not filed a reply to the Petition.
13. We have heard the Ld. Counsel for the Operational Creditor and perused the record.
14. In our order dated 16.04.2019 we have given further opportunity to the Corporate Debtor to file the reply. However, despite service of court notice on the Corporate Debtor, no reply has been filed. There is no representation from the Corporate Debtor side. Therefore, it is held that the Corporate Debtor does not dispute its liability and has defaulted in the payment to the operational creditor.

15. In Tata Chemicals Limited Vs. Raj Process Equipments and systems Private Limited (CP No.21/2018, order delivered on 30.11.2018), this bench had held that refund of advance money is not in connection with goods or services. The service was to be rendered not by the Operational Creditor but the Corporate Debtor.
16. Similar is the view held by the NCLT, Kolkata in SHRM Biotechnologies Private Limited vs. VAB Commercial Private Limited (CP (IB) No.799/KB/2018) dated 11.10.2018.
17. In the present case also, the claim relates to non-payment of advance money and hence the same is not covered under the definition of "Operational Debt".
18. For the reasons stated above, the application fails and therefore, the same is rejected.
19. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on grounds of dismissal of the present petition.
20. Let a copy of this order be communicated to the parties in terms of the provisions of section 9(5)(ii) of the IBC.

**Sd/-**

**RAVIKUMAR DURAISAMY**  
**Member (Technical)**

03.12.2019

**Sd/-**

**RAJASEKHAR V.K.**  
**Member (Judicial)**