



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**(IB)-598(ND)2022**

**IN THE MATTER OF:**

**M/s Bhotika Trade & Services Private Limited**

Registered office at :  
SF-11 2<sup>nd</sup> Floor, Vasant Square Mall,  
Vasant Kunj, New Delhi-110070

**...Applicant/Operational Creditor**

**VERSUS**

**M/s. Avinash EM Projects Private Limited**

Registered office at :  
308, National Arcadeplot No. 4,  
LSC Main Road, Gazipur, Delhi-110096

**...Respondent**

**Section: 9 of the IBC, 2016**

**Order Delivered on : 14.11.2022**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant** : Adv. Anup Kumar D Sayare

**For the Respondent** : Adv. A. K. Singh



## ORDER

### PER SHRI L. N. GUPTA, MEMBER (T)

M/s. Bhotika Trade & Services Private Limited (for brevity, the **'Applicant/Operational Creditor'**) has filed the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Avinash EM Projects Private Limited (for brevity, the **'Respondent'**).

2. The Respondent namely, M/s. Avinash EM Projects Private Limited is a Company incorporated on 31.01.2006 with CIN U45201DL2006PTC145665 under the provisions of the erstwhile Companies Act, 1956, having its registered office situated at 308, National Arcade plot No. 4, LSC Main Road, Gazipur, Delhi-110096, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs. 10,33,00,000/- and Paid-up Share Capital is Rs.1,87,96,250/- as per the Master Data of the Respondent.

3. It is stated by the Applicant that it is engaged in the business of selling products relating to construction and related fields and the respondent is engaged in the business of Government contracts, construction work, civil engineering, etc., particularly in oil and gas industry. It is further stated by the Applicant that during 2013-14, the Applicant sold various Construction and Welding Equipment to the



Respondent. The Respondent issued various debit balance confirmations, as the Respondent was having dispute with his main client GAIL, as informed to the Applicant. Since GAIL is a government enterprise, which had to pay the Respondent, Applicant had sold goods on credit and accepted the debit balance confirmations from Respondent.

4. The particulars of the debt claimed including the total amount of debt/default and the date of default are mentioned in Part IV of the application, which are reproduced below, for the sake of convenience:

**Part - IV**

<b>PARTICULARS OF OPERATIONAL DEBT</b>		
1.	TOTAL AMOUNT OF DEBT,	Rs. 1,61,12,474.86 (Rupees One Crore, Sixty-One Lakhs, Twelve Thousand Four Hundred Seventy-Four and Paise Eighty-Six only) as on 18.02.2022
	DETAILS OF TRANSACTIONS ACCOUNT OF DEBT FELL DUE,	OF WHICH
	AND THE DATE FROM WHICH SUCH DEBT FELL	Material was sourced from the Bhotika Trade & Services Pvt. Ltd. on credit, for which Invoices were issued and debit balance was confirmed by AVINASH EM PROJECTS PRIVATE LIMITED. It was due on various dates.  For Bhotika Trade & Services Pvt. Ltd.



	DUE	Due dates are: - <table border="1"><thead><tr><th>S.No.</th><th>Dates</th></tr></thead><tbody><tr><td>1.</td><td>18.03.2014</td></tr><tr><td>2.</td><td>15.03.2017</td></tr><tr><td>3.</td><td>20.02.2020</td></tr></tbody></table>	S.No.	Dates	1.	18.03.2014	2.	15.03.2017	3.	20.02.2020		
S.No.	Dates											
1.	18.03.2014											
2.	15.03.2017											
3.	20.02.2020											
2.	AMONT CLAIMED TO BE IN DEFAULT  AND THE DATE ON WHICH THE DEFAULT OCCURRED  (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	Rs. 1,61,12,474.86 (Rupees One Crore, Sixty-One Lakhs, Twelve Thousand Four Hundred Seventy-Four and Paise Eighty-Six only) as on 18.02.2022  <table border="1"><thead><tr><th>S.No.</th><th>Dates</th></tr></thead><tbody><tr><td>1.</td><td>18.03.2014</td></tr><tr><td>2.</td><td>15.03.2017</td></tr><tr><td>3.</td><td>20.02.2020</td></tr><tr><td>4.</td><td>29.02.2022 (As the date of Form 3 is 18.02.2022 plus 10 days of statutory period)</td></tr></tbody></table> (Computation table attached)	S.No.	Dates	1.	18.03.2014	2.	15.03.2017	3.	20.02.2020	4.	29.02.2022 (As the date of Form 3 is 18.02.2022 plus 10 days of statutory period)
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4.	29.02.2022 (As the date of Form 3 is 18.02.2022 plus 10 days of statutory period)											



5. On perusal of the Part IV of the Application, it is observed that the Applicant has claimed the total amount of Rs. 1,61,12,474.86 as the unpaid operational debt.

6. It is stated by the Applicant that the Demand Notice dated 18.02.2022 under Section 8 of IBC 2016 was issued at the registered office of the Respondent, which was replied by the Respondent. The Applicant has filed the Affidavit under Section 9(3)(b) of 2016.

7. On issuance of notice, the Respondent has filed its reply dated 20.10.2022, opposed the prayer made by the Applicant for initiating CIR Process and raised the following objections –

7.1. The Application is nothing but an attempt to initiate recovery of the dues, which is not allowed under the provisions of the IBC.

7.2. The Application is not maintainable as the Applicant has failed to disclose the pendency of dispute between the parties, as the quality of the goods supplied were not up to mark and that is why money was not paid to the Applicant.

7.3. That no such dues of Rs. 1,16,12,474.86/- are due or payable as on 18.02.2022, as alleged. The material which was taken, was all substandard and it was orally informed by the Respondent to the Applicant. It is further stated that dues dates are all wrong and denied.

7.4. It is submitted that the invoices are old and not legible. Each entry of the Ledger Statement is wrong, false, and specifically denied.



Debit balance confirmation is taken by taking advantage of the fiduciary relationship which the Applicant enjoyed with the Respondent. Computation Table entries are all wrong and false.

8. During the hearing on 03.11.2022, the Ld. Counsel appearing for the Respondent, however, admitted the debt due to financial distress faced by the Respondent. Nevertheless, we would still like to examine the transaction between the parties.

9. On perusal of the Part IV of the Application, it is observed that the Applicant has relied on the multiple dates of defaults such as 18.03.2014, 15.03.2017, 20.02.2022 and 29.02.2022. It is also observed that the Applicant has not clearly indicated the particulars of the unpaid invoices in the part IV. Therefore, at this juncture, we would like to refer to the computation of default annexed with the application. The scanned copy of the same is reproduced below:

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**Bhotika Trade And Services Pvt Ltd**

**Avinash Em Projects outstanding calculation**

Posting Date	Invoice No.	Invoice Amount	Balance Due	Int 2013-14	Int 2014-15	Int 2015-16	Int 2016-17 (As on 10-03-2017)	Int 2017-18 (From 11-03-2017 To 31-03-2018)	Int 2018-19	Int 2019-20 (As on 10-02-2020)	Int 2020-21 (From 11-02-2020 to 31-03-2021)	Int 2021-22 (As on 18-02-2022)	Total Interest	Total Due
30/04/13	87	3,418,632.00	3,412,852.76	751,762.64	819,084.66	819,084.66	771,959.24	866,210.08	819,084.66	709,125.35	929,043.97	727,077.89	7,212,433.16	10,625,285.92
30/04/13	88	629,850.00	629,850.00	138,739.56	151,164.00	151,164.00	142,466.89	159,861.11	151,164.00	130,870.75	171,457.25	134,183.93	1,331,071.50	1,960,921.50
10/6/2013	184	629,850.00	629,850.00	122,173.64	151,164.00	151,164.00	142,466.89	159,861.11	151,164.00	130,870.75	171,457.25	134,183.93	1,314,505.58	1,944,355.58
11/6/2013	187	512,550.00	512,550.00	99,083.64	123,012.00	123,012.00	115,934.60	130,089.40	123,012.00	106,498.06	139,525.94	109,194.21	1,069,361.85	1,581,911.85
<b>Total</b>		<b>5,190,882.00</b>	<b>5,185,102.76</b>	<b>1,111,759.48</b>	<b>1,244,424.66</b>	<b>1,244,424.66</b>	<b>1,172,827.63</b>	<b>1,316,021.70</b>	<b>1,244,424.66</b>	<b>1,077,364.91</b>	<b>1,411,464.41</b>	<b>1,104,639.97</b>	<b>10,927,371.10</b>	<b>16,112,474.86</b>
							4,773,436.43			8,411,247.71			10,927,372.10	

For Bhotika Trade & Services Pvt. Ltd.

Director

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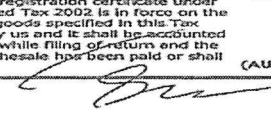
Bhotika Trade & Services Pvt. Ltd. Vs. Avinash EM Projects Pvt. Ltd



10. From perusal of the aforesaid computation table, it is observed that the Applicant has claimed the invoices dated 30.4.2013, 30.04.2013, 10.06.2013 and 11.06.2013. Further, it is also evident that the principal amount (shown as "the balance due" in the table) is Rs. 51,85,102.76. The remaining amount of Rs.48,45,033.46 is claimed on account of interest.

11. Hence, we would like to examine **Whether the Applicant could have claimed interest along with the principal amount in the instant Application?**

12. To examine whether the Applicant could have claimed interest, we would like to examine the invoices annexed with the Application:

TAX INVOICE					
<b>BHOTIKA TRADE &amp; SERVICES PVT. LTD.</b> 505,Laxmi Mall, 5th floor, Laxmi Industrial Estate, New Link Road, Andheri (West), Mumbai-400053, India Phone: +91 22 40169951-3 Fax:+91 22 40169954 E-mail: rajiv@bhotika.com VAT TIN No. : 27080291292 V dt. 1-4-2006 CST: 27080291292 C					
<b>CONSIGNEE</b> AVINASH EM PROJECTS PVT LIMITED RICE MILL STORE, INFRONT OF CNG GAS STATION AURYS DIVYAPUR, AURIYA Uttar Pradesh, India			<b>INFORMATION</b> Invoice No.: <u>BTSPL/87/2013-14</u> Date: <u>30/04/13</u> Delivery Note No. <u>BTSPL/87/2013-14 DT 30.04.13</u> Customer's Order/ Reference No.: <u>AEPL/GAIL/AJPL/2101201/003</u> TIN No.: <u>09766201095</u> CST No.: Despatch Doc. No.: <u>7961</u> Transporter's Name: <u>MRS CARGO MOVERS</u> Mode of Despatch: <u>By Road</u> Terms of Payment: <u>Advance</u> Due Date: <u>30/04/13</u>		
<b>BUYER'S PARTICULARS</b> AVINASH EM PROJECTS PVT LIMITED On Chhijarsi-Kulesra Road, Chotpur Sector 63 ,Noida Uttar Pradesh, India					
Sl No.	ITEM DESCRIPTION	QTY.	UOM	UNIT RATE	AMOUNT (IN INR)
1	Innershield NR208P 2.00mm(ED031912)	3,600.00	Kgs.	570.0000	2,052,000.00
2	Innershield NR208P 2.00mm(ED031912)	2,280.00	Kgs.	570.0000	1,299,600.00
<b>TOTAL</b>					<b>3,351,600.00</b>
CST @ 2.00 %					<b>67,032.00</b>
Tax Amount					<b>INR 67,032.00</b>
Amount in Words.					<b>NET AMOUNT PAYABLE INR 3,418,632.00</b>
Three million four hundred and eighteen thousand six hundred thirty-two Indian Rupee					
Declaration: We hereby declare that our registration certificate under The Maharashtra Value Added Tax 2002 is in force on the date on which the same of goods specified in this Tax Invoice has been effected by us and it shall be accounted for in the Turnover of sales while filing of return and the due tax, if any, payable on these has been paid or shall be paid.			For BHOTIKA TRADE AND SERVICES PVT. LTD.  (AUTHORISED SIGNATORY)		

For Bhotika Trade & Services Pvt. Ltd.

TRUE COPY

Director



**TAX INVOICE**  
**ISSUE OF INVOICE UNDER RULE 11 OF CENTRAL EXCISE RULES 2002**  
**CENVAT CREDIT UNDER RULE 7 OF EXCISE RULES 2002**  
**IMPORTER / FIRST/SECOND STAGE DEALER'S INVOICE**

EXTRA COPY

<b>CST No.:</b> 27010291292C <b>VAT No.:</b> 27000291292V <b>Central Excise Regn No.:</b> AACCB5790XDD002 <b>C.E. Divided:</b> Maharashtra, Jala Gali Road, Andheri (West), Mumbai-400 003  <b>C.E. Division:</b> ANDHERI (West)  <b>PAN No.:</b> AACCB5790K <b>Commissionerate:</b> V	<b>Name and Address of Registered Dealer Issuing the Invoice</b> <b>BHOTIKA TRADE &amp; SERVICES PRIVATE LIMITED</b> 305, Laxmi Mill, 5th floor, Laxmi Industrial Estate New Link Road, Andheri (West), Mumbai, PIN-400 053 India Maharashtra  <b>PHONE:</b> 022-4018921/03 <b>FAX:</b> 022-40149254 <b>E-Mail:</b> reg@bhotika.com <b>Warehouse Address :-</b> Building no A-8, Gali no 25, Prasa Complex, Dapodi Road, Dhulewad, PIN-421316 India, Maharashtra	<b>Invoice No.:</b> 27 <b>Date:</b> 30/04/2013
<b>CONSIGNEE:</b> AVINASH EM PROJECTS PVT LIMITED RICE MILL STORE, FRONT OF ONG GAS STATION AURYS DNYAPURANVA Uda, Pradhik, India  <b>Ecc Code No.:</b> AAFCA5913Q5TWH <b>C.E. Regn No.:</b> <b>Range:</b> <b>Commissionerate:</b> <b>Division:</b> <b>CST/VAT No.:</b> <b>PAN No.:</b>	<b>BILL TO:</b> AVINASH EM PROJECTS PVT LIMITED On Chhajani-Nivasa Road, Chajner Sector 63 Modra Uda Pradhik, India  <b>CST/VAT No.:</b> 99/201103 <b>CST No.:</b>	<b>Truck No.:</b> MH145Y-2052 <b>Mode of Transport:</b> By Road <b>Date &amp; Time of Issue of Invoice:</b> 30/04/2013:16:56  <b>Date &amp; Time of Removal of Goods:</b> 30/04/2013 18:00

Item Code	Description of Goods	Quantity	Unit	Unit Price	Disc. (%)	Rate	Tax	Duty Rate %	Amount Duty Paid	Unit	HSN Code	Excl. Duty	Ed. Cert	HE Cert	Amount of 4% ACD	Amount (Rs.)
9	Ironshield H8230P 2.00mm(ED011912)	80,11,1000	2600.00	370.00	0.00	370.00	Exe.	12.00	39,18,673	Kgs.	1013	11,871.00	0.00	0.00	0.00	2,612,000.00
10	Ironshield H8230P 2.00mm(ED011912)	80,11,1000	2280.00	370.00	0.00	370.00	Exe.	12.00	39,18,673	Kgs.	1013	19,245.00	0.00	0.00	0.00	1,299,600.00
<b>P.O. No. &amp; Date:</b> AEFKAGJAJM/21/01/2013 <b>Chassis / Delivery No.:</b> H15F/07/2013-14 DT/04/2013															<b>Total</b> Freight Discount <b>CST @ 2%</b> Roundoff Amount <b>Grand Total (Rs.)</b>	2,311,600.00 0.00 0.00 67022.00 0.00 <b>3118322.00</b>
<b>Total Excise Duty in Figures:</b> 238472.00 <b>Total Excise Duty in Words:</b> TWO LAC THIRTY THOUSAND FOUR HUNDRED SEVENTEEN ONLY		<b>Total Cenvt in Figures:</b> 0.00 <b>Total Cenvt in Words:</b>		<b>Total HE Cert in Figures:</b> 0.00 <b>Total HE Cert in Words:</b>		<b>Total ACD in Figures:</b> 0.00 <b>Total ACD in Words:</b>		<b>Total Amount in Figures:</b> 3118322.00 <b>Total Amount in Words:</b> THIRTY FOUR LAC EIGHTEEN THOUSAND SIX HUNDRED THIRTY TWO ONLY								

<b>MANUFACTURER / SUPPLIER/IMPORTER DETAILS</b> <b>BHOTIKA TRADE &amp; SERVICES PRIVATE LIMITED</b> 305, Laxmi Mill, 5th floor, Laxmi Industrial Estate New Link Road, Andheri (West), Mumbai, PIN-400 053 India Maharashtra  <b>Range with Address:</b> Maharashtra, Jala Gali Road, Andheri (West), Mumbai-400 003  <b>Commissionerate:</b> V	<b>CST No.:</b> 27010291292C <b>Central Excise Regn No.:</b> AACCB5790XDD002 <b>C.E. Divided:</b> ANDHERI (West) <b>Postal Address of Division:</b> Maharashtra, Jala Gali Road, Andheri (West), Mumbai-400 003
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Sl. Item Code	Description of Goods	QTY	Duty/Unit	D.Rate %	Invoice / Bill of Entry & Date	Tariff	Assessable Value	Duty Paid	Ed. Cert @ 2%	HE Cert @ 1%	ACD @ 4%
1	Ironshield H8230P 2.00mm(ED011912)	20016.00	39,18,673	12.00	4018413 20/04/2013	82,11,3000	1,542,133.91	78,361.00	0.00	0.00	0.00
<b>Assessable Value in Words:</b> FIFTY NINE LAC FORTY TWO THOUSAND ONE HUNDRED THIRTY FIVE AND NINETY ONE PAISE ONLY <b>Amount of Duty Paid in Words:</b> SEVEN LAC EIGHTY FOUR THOUSAND THREE HUNDRED SIXTY ONE ONLY											
<b>CERTIFICATE:</b> Certified that the goods covered under this invoice were (a) imported directly by us or received directly from M/S: The Lincoln Electric Company (Australia) PTY LTD,						Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and that there is no additional consideration flowing, directly or indirectly from the buyer.					
Who have imported the said goods (b) Received directly from the factory / depot / consignment agent, authorized premises of M/s: _____						Declaration: * We hereby Certify that our registration Certificate under the Maharashtra Value Added Tax Act, 2002 is in force on the date on which the sale of the goods specified in this invoice is made by us and that the remission of the duty covered by this invoice has been effected by us and it shall be accounted for the remission of duty while filling of the return and 04 & as per if any, payable on the sale has been paid or shall be paid.					
(c) Received from M/s: _____ Who are the first stage dealer of M/s: _____						For <b>BHOTIKA TRADE &amp; SERVICES PRIVATE LIMITED</b> <i>Sajjanraaj Chidambur</i> Authorized Signatory					
<b>Place:</b> Mumbai <b>Date:</b> 30/04/2013											

For Bhotika Trade & Services Pvt. Ltd.

TRUE COPY

Director

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13. On perusal of the above invoices, we find no clause in the invoices pursuant to which, in case of default by the Respondent, the Applicant would be entitled to claim interest.

14. In this context, we refer to the Judgment dated 27.07.2018 in **Pavan Enterprises Vs Gammon India Ltd. Company in Appeal (AT) (Insolvency) No. 148 of 2018**, wherein the Hon'ble NCLAT held that -

*"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. **If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principal amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.***

*5. In the present appeals, as we find that the principal amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. **If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer.**"*

*(Emphasis Placed)*

15. Further, the Hon'ble NCLAT in its judgement dated 15.07.2022 in **Company Appeal (AT) No. 690 of 2022, Prashant Agarwal vs. Vikash Parasrampur & Anr**, has held, as given overleaf :




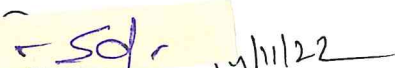
*“(vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount **as well as interest on delayed payment which was clearly stipulated in the invoice itself.** It is noted that the total principal debt amount of Rs.97,87,220/- along with interest the total debt makes total outstanding as Rs.1,60,87,838/-. Thus, the total debt outstanding of OC is above Rs.1 crore as per requirement of Section 4 IBC read with notification No. S.O 1205 (E) dated 24.3.2020 (Supra), and meets the criteria of Rs.1 crore as per Section 4 of IBC and Application is therefore maintainable in present case. We concur with the orders of Adjudicating Authority on this issue also.”*

*(Emphasis Placed)*

16. Since neither any specific agreement between the parties is placed on record or produced, pursuant to which interest could be claimed by the applicant nor there is any delayed payment clause with interest is in the invoices, therefore, we are of the considered view that interest cannot be claimed by the Applicant herein, merely to reach the minimum threshold amount of Rs. One Crore.

17. Since the Application is filed on 28.07.2022, therefore, the minimum threshold of Rs 1 Crore is applicable to the instant case. **Since the Principal outstanding in the instant case is less than the minimum threshold amount of Rs. One Crore, we have no other option but to dismiss the Application.**

  
(L. N. GUPTA)  
MEMBER (T)

  
(BACHU VENKAT BALARAM DAS)  
MEMBER (J)