



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI COURT-III**

**RCP 2(ND)/2024 (Old Case No. IB-548(ND)/2023)**

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**IN THE MATTER OF:**

**M/s. HONEY YARN**

*Through its Proprietor*

**Mr. PARDEEP KUMAR,**

230, Sherpur Khurd,

Near Rana Gas Agency,

Ludhiana-141001

**..... Applicant/Operational Creditor**

**VERSUS**

**M/s. WELLDONE EXIM PRIVATE LIMITED**

6/843, Main Bazar, Mehrauli,

New Delhi-110030

**..... Respondent/Corporate Debtor**

**Order Pronounced On: 26.07.2024**

**CORAM:**

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

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES**

**For the Applicant:** Mr. Nahush Jain, Adv & CS Arshiya Jain, PCS

**For the Respondent:** Mr. Saurabh Kalia, Ms. Aastha Agarwal, Adv.



## **ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present Application has been filed by **M/s. Honey Yarn**, the Applicant/ Operational Creditor before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”) against **M/s. Welldone Exim Private Limited**, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted and failed to clear the outstanding amount of Rs. 1,31,48,053/- (Rupees One Crore Thirty-One Lakhs Forty-Eight Thousand Fifty-Three Only) along with interest @ 9% p.a. on the account of delay as on 28.04.2023.

### **2. Brief Background of the Case**

- i. The Operational Creditor deals in knitted clothes and yarn and the Corporate Debtor has been purchasing goods from the Operational Creditor on credit vide different bills and had been making part payments. After adjusting all the part payments made by the Corporate Debtor, an amount of Rs. 68,25,725/- (Principal amount) is due against the Corporate Debtor as per the ledger of the Operational Creditor.
- ii. The Operational Creditor approached the Corporate Debtor several times with the request to make the payments of the entire balance amount but the Corporate Debtor postponed it.
- iii. The Corporate Debtor failed to make any payment regarding any outstanding amount despite repeated requests, the Operational Creditor was constrained to file a civil suit for recovery of money of Rs 68,25,725/- along with interest @ 9% upto the date of filing the Civil Suit before the Civil Judge, Senior Division, Ludhiana having CS No. 248 of 2014 on 11.03.2014 titled as M/s. Honey Yarn Vs. G.D. Manglam Exim Pvt. Ltd. (now known as M/s. Welldone Exim Pvt. Ltd).
- iv. The Additional District Judge, Commercial Court, Ludhiana on 28.04.2023 passed a decree for the recovery of Rs. 74,40,040/- in favour of the Operational Creditor along with interest @ 9% p.a. from the date of filing the suit till the decree and thereafter from decree till realization.
- v. The Corporate Debtor has not made any payment even after the terms of the judgement and decree dated 28.04.2023.



- vi. The Operational Creditor issued a Demand Notice dated 21.07.2023 under section 8 of IBC, 2016 to the Corporate Debtor. The Demand Notice was delivered to the Regd. Address of the Corporate Debtor on 24.07.2023. No reply to the Demand Notice or any notice of dispute was received after the lapse of 10 days from the delivery of the Demand Notice even till date.

Hence, the present petition.

### **3. Submissions of the Operational Creditor:**

- i. It is submitted that the Operational Debt arises out of the goods supplied by the Operational Creditor to the Corporate Debtor which has been crystalized vide Court Decree dated 28.04.2023 to be Rs. 74,40,040/- (Rupees Seventy Four Lakh Forty Thousand and Forty only). The Corporate Debtor has not made any payment even after the terms of the judgement and decree dated 28.04.2023. Thus, the Date of Default from which the Debt fell due is the date of decree i.e. 28.04.2023 passed by Ld. Additional District Judge, Commercial Court, Ludhiana in favour of the Operational Creditor.
- ii. The Operational Debt had admittedly arisen out of supply of goods by Applicant to the Corporate Debtor during 2011 to 2013. There is no dispute with regards to the fact that Applicant used to supply goods to the Corporate Debtor during that period. Therefore, the amount arising out of invoices from the goods supplied by Applicant during 2011 to 2013 is an operational debt, which has now been crystalized pursuant to Court Decree dated 28.04.2023.
- iii. No appeal has been filed by Respondent/ Corporate Debtor against the said Decree dated 28.04.2023, hence, the same has attained finality and is not disputed by the Respondent/Corporate Debtor. Accordingly, the date of default is considered as the date of decree. Hence, the application filed under Section 9 is within limitation.
- iv. The total amount of debt amounts to Rs. 1,31,48,053/- (Rupees One Crore Thirty One Lakhs Forty Eight Thousand and Fifty Three only) including Rs. 63,22,328/- as interest amount calculated as per the decree dated 28.04.2023. wherein it was held that the Plaintiff will also be entitled to get interest at the rate of 9% p.a. on the Principal Amount of Rs. 68,25,725/- from the date of filling of the suit till decree and thereafter from decree till realization. Therefore, the amount of debt is above the threshold limit of 1 Crore as per Section 4 of the Code.



#### **4. Submissions of the Corporate Debtor:**

The Corporate Debtor in its Reply Affidavit has submitted that the present application is not maintainable and is liable to be dismissed on the following grounds: -

##### **A. Decree Holders cannot maintain a Section 9 Petition**

- i. The Operational Creditor in the present section 9 Petition does not fall under the definition of 'Operational Creditor' as provided under section 5(2) of the Code and instead falls under the category of other creditors as provided for in Section 3(10) of the Code. It provides a wide definition of "creditor", including but not limiting it to mean inter alia a Financial Creditor, an Operational Creditor and a Decree Holder respectively simply as a creditor to whom a financial or operational debt (as the case may be) is owned.
- ii. Section 3(8) of the Code provides another wide definition, this time of "financial debt" which is defined by way of non-exhaustive list of debts that can be categorized as such. "Operational Debt" on the other hand is given a precise definition under section 3(21) of the Code as a debt arising from goods, services, employment or government dues.
- iii. The Debt of the Operational Creditor is admittedly out of a decree passed by the Ld. Additional Judge, Commercial Court, Ludhiana dated 28.04.2023 and is not a debt arising from goods, services, employment or government dues. The mechanisms of the Code cannot be used as machinery from recovery of the alleged debts of the parties. It is completely barred under the provisions of the Code.

##### **B. The Alleged Debt, consequently the Petition is time barred**

- i. The Operational Creditor has mentioned the Date of Default as 28.04.2023 which is also the Date of Decree obtained by the Application from the Ld. Additional Judge, Commercial Court, Ludhiana.
- ii. The invoices attached with the Application were raised in 2011 till 2013, which subsequently was the reason for the Operational Creditor to file a suit for recovery before the Civil Court.
- iii. A judgement or a decree passed by a court for recovery of money by civil court/Debt recovery Tribunal cannot shift the date of default for the purpose of computing the period from filing an application under Section 9 of the Code. Thus, the alleged debt and consequently the present application under Section 9 is barred by limitation.



C. Threshold of 1 Crore is not met

- i. The Operational Creditor has failed to comply with Section 4 of the Code which stipulates that the minimum amount of default for filing a Petition to initiate insolvency shall be Rs. 1 crore.
- ii. In the invoices attached with the present Application, there is no interest component arising thereof. The Operational Creditor has included the interest amount so awarded in the said decree to the principal amount of Rs. 68,25,725/- (Rupees Sixty-Eight Lakhs Twenty-Five Thousand Seven Hundred Twenty-five only). The claim for interest is not arising out of supplies of goods or services and do not form part of the Operational debt. When there is no provision for interest referred to in the invoices, thus question of realising and charging interest based on decree is not maintainable.

D. IBC is not intended to be a substitute of a recovery forum

- i. The present proceedings are misconceived as the Operational Creditor is seeking to extort money from the Respondent Company. It is settled law that the IBC is not a recovery proceeding and the Operational Creditor may have other remedies available under law for the recovery of money, but triggering of CIRP is unwarranted.
- ii. The Respondent is a viable and running concern, and is also solvent and in a position to pay its alleged debts to its creditors, including the Petitioner herein.
- iii. The insolvency proceedings stand at a different footing and cannot tantamount to recovery proceedings, and CIRP of a Corporate Debtor cannot be initiated for purposes of recovery of money. In the present case, since the Applicant/Operational Creditor has failed to take steps towards executing the said decree, instead has approached this Hon'ble Tribunal to initiate Insolvency proceedings.

**5. Analysis and Findings**

- i. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
- ii. It is the case of the Applicant/Operational Creditor that there exists an operational debt amounting to Rs. 68,25,725/- that arises out of the goods supplied to the Corporate Debtor and invoices issued in the year 2011-2013. He is also a Decree Holder and is entitled to receive an amount of Rs. 1,31,48,053/- (Rupees One Crore Thirty One Lakhs Forty Eight Thousand and Fifty Three only) including Rs. 63,22,328/- as interest amount calculated as per the decree dated 28.04.2023.



- iii. Having heard the submissions, the following issues needs to be considered:

**FIRST ISSUE- Whether a decree holder can be an “Operational Creditor”?**

**SECOND ISSUE- Whether the present petition is barred by Limitation?**

**THIRD ISSUE- Whether the Threshold of Rs. 1 Crore as per Section 4 of the Code is met?**

**a) Whether a decree holder can be an “Operational Creditor”?**

- iv. The Ld. Counsel for the Respondent/Corporate Debtor submits that the debt of the Operational Creditor is admittedly out of a decree passed by the Ld. Additional Judge, Commercial Court, Ludhiana dated 28.04.2023 and is not a debt arising from goods, services, employment and government dues. The Decree holders are treated as “other creditors” in terms of Section 3(10) of the Code. The mechanisms of the Code cannot be used as machinery from recovery of the alleged debts of the parties. It is completely barred under the provisions of the Code. He relied upon the judgment of Hon’ble Tripura High Court in the case of **Subhankar Bhowmik vs Union of India and Another**, reported in 2022 SCC OnLine Tri 208 wherein the Court held that a decree holder is not a Financial Creditor under the Code. The Decree Holders as creditors are separate from "Financial Creditors" and "Operational Creditors" and that the Code does not provide for any malleability or overlap of classes of creditors to enable decree holders to be classified as financial or Operational Creditors. The Hon’ble Supreme Court dismissed a Special Leave Petition preferred against the aforesaid judgment of Hon’ble Tripura High Court in **Subhankar Bhowmik vs Union of India and Another**, reported in 2022 SCC Online SC 764.
- v. On the contrary, the Ld. Counsel for the Operational Creditor contends that the Decree Holder can be considered as an Operational Creditor and Section 9 Application can be filed by a Decree Holder based on a Decree. Just because a Decree has been obtained with regards to a Debt, will not change its original character of debt. Reliance has been placed on the judgment of Hon’ble Madras High Court in the case of **Cholamandalam Investment and Finance Company Ltd. v. Navrang Roadlines Private Limited**, O.S.A.(CAD) No.115 of 2022 wherein it was held that the debt if originally was an operational debt, then a decree based on the said debt shall continue to be considered as an Operational Debt.



vi. The Hon'ble Supreme Court of India in the case of ***Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy & Anr***, reported in 2021 SCC OnLine SC 543, unequivocally held that on a conjoint reading of the provisions of the IBC, it is clear that a final judgment and/or decree of any Court or Tribunal or any Arbitral Award for payment of money, if not satisfied, would fall within the ambit of a Financial Debt, enabling the creditor to initiate proceedings under Section 7 of the IBC. The relevant paragraph of the judgment is reproduced below:

*“131. It is true that the finding of **Patna High Court in Ferro Alloys Corporation Limited v. Rajhans Steel Limited** (supra) was rendered in the context of Section 434(1)(b) of the Companies Act 1956, which provided that a company would be deemed to be unable to pay its debts if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor of the company was returned unsatisfied in whole or in part.*

*132. We see no reason why the principles should not apply to an application under Section 7 of the IBC which enables a financial creditor to file an application initiating the Corporate Insolvency Resolution Process against a Corporate Debtor before the Adjudicating Authority, when a default has occurred. As observed earlier in this judgment, on a conjoint reading of the provisions of the IBC quoted above, it is clear that a final judgment and/or decree of any Court or Tribunal or any Arbitral Award for payment of money, if not satisfied, would fall within the ambit of a financial debt, enabling the creditor to initiate proceedings under Section 7 of the IBC.”*

The Hon'ble NCLAT in the case of **Ashok Agarwal v. Amitex Polymers Private Limited, (AT)(Insolvency) No.608 of 2020** wherein it was observed that: -

*“43. Considering the fact that the Appellant/Operational Creditor in the Company petition in IB 185/ND/2019 before the National Company Law Tribunal, the Principal Bench had come out with a plea that the Respondent/Corporate Debtor owes a sum of Rs.8,85,000/- and for which a demand notice dated 11.3.2019 was issued to the Respondent/Corporate Debtor for which no reply was issued by the Respondent/ Corporate Debtor to the Appellant/Operational Creditor and this Tribunal taking note of the prime fact that the Appellant/Operational Creditor is a 'Decree Holder' as per the*



*‘Consent Decree’ passed on 25.10.2018 in Civil Suit No.6912 of 2016 by the Learned Additional District Judge, Saket Court, New Delhi, this Court comes to an irresistible and inescapable conclusion that a ‘Decree Holder’ is no way excluded from the purview of the ambit of the term ‘Operational Creditor’ as per Section 5(20) of The Insolvency and Bankruptcy Code 2016 and the contra view taken by the ‘Adjudicating Authority’ in the impugned order is clearly held by this Tribunal as an unsustainable one in the eye of Law.*

.....

*47. Section 3(10) of The Insolvency and Bankruptcy Code 2016 defines ‘Creditor’ and even in the said definition a ‘Decree Holder’ cannot be excluded to file an Application under the Code. Going by the definition 3(10) of ‘Creditor’, it includes ‘Financial Creditor’, ‘Operational Creditor’.”*

- vii. Based on the law laid down by Hon’ble NCLAT in **Ashok Agarwal (Supra)**, the Applicant cited judgments of the co-ordinate Bench of the Tribunal who have taken similar view in the case of **Shrinathji Spintex Pvt Ltd. Vs. Sunrise Ginning Pvt Ltd. and Shree Shyam Avenues P. Ltd. v. Vaxtex Cotfab Ltd.** of NCLT Ahmedabad Bench and **Globe Capital Market Ltd. v. Narayan Securities Ltd.** of NCLT New Delhi Bench.
- viii. The Ld. Counsel for the Operational Creditor relies upon the judgment of Hon’ble NCLAT in the case of **Urgo Capital Limited v. Bangalore Dehydration and Drying Equipment Company Private Limited, Company Appeal (AT) (Insolvency) No. 984 of 2019** wherein it was held that the Adjudicating Authority was not required to question the reasons for not taking steps for executing the decree in Civil Court. Since the amount is payable to the Financial Creditor and based on the decree passed by the Court, the Financial Creditor was legally entitled to file a petition under Section 7 of the Code. Since, the definition of word creditor in I&B Code includes decree-holder, therefore if a petition is filed for the realisation of decretal amount, then it cannot be dismissed on the ground that applicant should have taken steps for filing execution case in Civil Court.
- iv. There is no dispute that the Applicant used to supply goods to the Corporate Debtor. Therefore, the amount arising out of invoices from the goods supplied by Applicant during 2011 to 2013 is an Operational Debt, which has now been crystalized pursuant to Court Decree dated 28.04.2023.





No appeal has been filed by Respondent/Corporate Debtor against the said Decree dated 28.04.2023, hence, the same has attained finality and is not disputed by the Respondent/Corporate Debtor. As per the law laid down by the Hon'ble Supreme Court and the Hon'ble NCLAT in the above-mentioned judgments, we are of the considered view that the Decree Holder cannot be excluded from the purview of Operational Creditor under Section 5(20) of the Code.

**b) Whether the present petition is barred by Limitation?**

- v. The Ld. Counsel for the Respondent/Corporate Debtor submitted that the date of default is chosen as 28.04.2023, i.e., the date of decree. It is evident from the invoices attached with the Petition were raised in 2011 till 2013. The Date of Decree cannot shift the date of default and when time begins to run it can only be extended in the manner provided in the Limitation Act. He further relied on the finding of NCLT, Kolkata Bench in the case of **Venus Buildtech India Private Limited v. Senbo Engineering Limited** C.P. (IB) No. 60/KB/2021), while dismissing the petition under Section 9 of the Code on the ground that the date of default cannot be shifted forward to the date of decree.
- vi. On the contrary, the Ld. Counsel for the Applicant submitted that a decree and/or final adjudication would give rise to a fresh period of limitation for initiation of the Corporate Insolvency Resolution Process. The Ld. Counsel contended that the NCLT, Kolkata Bench in **Venus Buildtech (Supra)** relied on the judgment of **Subhankar Bhowmik (Supra)** and no reference was made to judgment of Hon'ble NCLAT in **Ashok Agarwal (Supra)** case and therefore is per incuriam.
- vii. The Ld. Counsel for the Applicant has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy & Anr**, reported in 2021 SCC OnLine SC 543. The relevant paragraph from the judgment is reproduced below: -

*“130. In effect, this Court speaking through Nariman J., approved the proposition that an application under Section 7 or 9 of the IBC may be time barred, even though some other recovery proceedings might have been instituted earlier, well within the period of limitation, in respect of the same debt. However, it would have been a different matter, if the applicant had approached the Adjudicating Authority after obtaining a final order and/or decree in the recovery proceedings, if*



*the decree remained unsatisfied. This Court held that a decree and/or final adjudication would give rise to a fresh period of limitation for initiation of the Corporate Insolvency Resolution Process.*

**138.** *A final judgment and order/decreed is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decreed, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the Recovery Certificate.*

.....

**143.** *Moreover, a judgment and/or decreed for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decreed or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decreed and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”*

viii. The Hon’ble Supreme Court in the case of **Kotak Mahindra Bank Ltd. v. A. Balakrishnan & Anr.**, Civil Appeal No. 689 Of 2021 upheld its earlier judgment in the case of **Dena Bank (Supra)** and observed the following:-

**“69.** *We have already hereinabove, done the exercise of considering the relevant provisions of the IBC afresh and come to a conclusion that a liability in respect of a claim arising out of a Recovery Certificate would be a “financial debt” within the meaning of clause (8) of Section 5 of the IBC and a holder of the Recovery Certificate would be a “financial creditor” within the meaning of clause (7) of Section 5 of the IBC. We have also held that a person would be entitled to initiate CIRP within a period of three years from the date on which the Recovery Certificate is issued. We are of the considered view that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same.”*



- x. The Hon'ble Supreme Court in the above-mentioned judgments held that a person would be entitled to initiate CIRP within a period of three years from the date on which the Recovery Certificate is issued. Therefore, the Decree passed by the Ld. Additional Judge, Commercial Court, Ludhiana dated 28.04.2023 would give rise to a fresh period of limitation for initiation of the Corporate Insolvency Resolution Process. By committing a default, in the payment as per the Decree, the amount became due and payable. Therefore, the Date of Default shall be 28.04.2023, the Date of the Decree and therefore, the present application is not barred by limitation. Therefore, the Applicant has rightly invoked jurisdiction of this Adjudicating Authority under Section 9 of the IBC after serving Demand Notice dated 21.07.2023 as prescribed under Section 8 of the Code.

**c) Whether the Threshold of Rs. 1 Crore as per Section 4 of the Code is met?**

- x. The Ld. Counsel for the Corporate Debtor submits that in the invoices attached with the present Application, there is no interest component arising thereof. The Operational Creditor has included the interest amount so awarded in the said decree to the principal amount of Rs. 68,25,725/- (Rupees Sixty-Eight Lakhs Twenty-Five Thousand Seven Hundred Twenty-five only) and thus, realising and charging interest based on decree is not maintainable. Therefore, the Operational Creditor has failed to comply with Section 4 of the Code which stipulates that the minimum amount of default for filing a Petition to initiate insolvency against the Operational Creditor.
- xi. On the contrary, the Ld. Counsel for the Operational Debtor contends that interest in the present matter has been determined based on the Court Decree, which has admittedly not been challenged by the Corporate Debtor and has thus attained finality. Therefore, the total debt amounts to Rs. 1,31,48,053/- (Rupees One Crore Thirty One Lakhs Forty Eight Thousand and Fifty Three only), which includes Rs. 63,22,328/- as interest calculated according to the decree dated 28.04.2023. The decree stipulated that the Plaintiff would receive interest at a rate of 9% per annum on the Principal Amount of Rs. 68,25,725/- from the date of filing the suit until the decree, and thereafter until payment is made. Therefore, the debt exceeds the statutory threshold of 1 Crore as per Section 4 of the Code.
- xii. After perusal of the invoices attached with the Petition, we find that the invoices do not indicate that in the event of failure on the part of the Corporate



Debtor to pay the invoiced amount, the Applicant was entitled to interest on the due amount. In the present case, the Applicant failed to provide any communications that show that interest will be charged in the case of delayed payment which has been agreed by the parties.

The Hon'ble NCLAT in the case of **Pavan Enterprises Vs. Gammon India Ltd.** Company Appeal (AT) (Insolvency) No. 144 of 2018 dated 27.07.2018, 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 the 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."*

We are therefore of the considered view that the judgment passed by Hon'ble NCLAT in **Pavan Enterprises (Supra)** will apply to the present case. The argument of the Applicant/Operational Creditor that the interest is added to the Principal Amount in terms of the decree is not justified as the interest provided by the Civil Court acts as compensation in favour of the Applicant and is to be charged against the Respondent for the period starting from the date of filing the suit until the decree, and thereafter until payment is made. The calculation of the Interest does not arise out of any contract between the parties as there is no interest component in the invoices attached with the petition. The claim for interest is not arising out of supplies of goods or services and do not form part of the Operational Debt in terms of Section 5(21) of the Code. Hence, we observe that the Interest as provided by the Civil Court vide Decree dated 28.04.2023 cannot be clubbed together to reach the threshold limit of Rs. 1,00,00,000/-.

We are satisfied that the Operational Debt as per Section 5(21) does not include the Interest amount awarded by the Civil Court decree and the Principal Amount of debt crystallized by the Decree amounts to Rs. 68,25,725/- and is below the threshold limit of Rs.1,00,00,000/-.

Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be **dismissed**.



## 6. Order

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fails to fulfil the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- i. The Application bearing **RCP 2(ND)/2024, (Old Case No. IB-548(ND)/2023)** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **dismissed**.
- ii. The Registry is directed to send a copy of the order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

No order as to costs.

**-Sd-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

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