

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1



ITEM No.302

C.P.(IB)/142(AHM)2024

Proceedings under Section 9 IBC

IN THE MATTER OF:

M/s Arham Enterprise

Vs

CLASSIC CORRUGATIONS PRIVATE LIMITED

.....Applicant

.....Respondent

Coram:

Order delivered on: 09/01/2025

PRESENT:

For the Applicant :

For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-I, AHMEDABAD**

CP(IB) No. 142 of 2024

[Petition 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 Arham Enterprise

A Partnership Firm registered under
Indian Partnership Act, 1932

Having Registered Address at:

TF-1, Manek Avenue, Opp. Memnagar
Bus Stop, Sardar Chowk, Memnagar,
Ahmedabad- 380052

.... Operational Creditor/Applicant

Versus

**Classic Corrugations Private Limited
(CIN: U21099GJ2011PTC065103)**

Having Registered Address at:

69, Soham Integrated Park,
Mahijada Bareja Road,
Off Kamod Dholka Highway,
Mahijada, Ahmedabad- 382425

.... Corporate Debtor/Respondent

Order Pronounced on: 09.01.2025

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

For the Applicant

: Mr. Jaimin R. Dave, Advocate
a/w Ms. Hirva Dave, Advocate

For the Respondent : Mr. Apurva S. Vakil, Advocate

ORDER

Per Bench

1. The Present Application was filed on 15.03.2024 by **M/s.**

Arham Enterprise (hereinafter referred to as "**the Applicant/Operational Creditor**") against **M/s. Classic Corrugations Private Limited** (hereinafter referred to as "**the Respondent/Corporate Debtor**") under Section 9 of the Insolvency and Bankruptcy Code, 2016 (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 (in short "**CIRP**") against the Respondent/Corporate Debtor for having defaulted in payment of its outstanding operational debt.

2. On perusal of **Part-I** of the Form-5 reveals that the Operational Creditor is one M/s. Arham Enterprise, a partnership firm. The registered Address of the Operational Creditor is situated at Plot TF-1, Manek Avenue, Opp. Memnagar Bus Stop, Sardar Chowk, Memnagar,

 Ahmedabad, Gujarat- 380052, India and the GST No. of the Operational Creditor is 24ABGFA8724Q1ZY. A copy of GST registration certificate of the Operational Creditor are annexed in the application as **ANNEXURE - A Colly**.

3. On perusal of **Part-II** of the Form-5 reveals that the Respondent/Corporate Debtor is one M/s. Classic Corrugations Private Limited having CIN No.U21099GJ2011PTC065103. The registered office of the Respondent/Corporate Debtor is situated at 69, Soham Integrated Park, Mahijada bareja Road, Off Kamod Dholka Highway, Mahijada, Ahmedabad, Gujarat - 382425, India. A copy of Master Data of the Corporate Debtor is annexed in the application as **ANNEXURE - B**.
4. Affidavit dated 22.12.2023 affirming this application is signed by one Mr. Avinash Kishanchand Mittal, Partner and Authorized Signatory of the Operational Creditor. A copy of the Authority Letter dated 21.12.2023 authorizing Mr. Avinash Kishanchand Mittal is annexed in the application as **ANNEXURE - C**.

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- 5.** On perusal of **Part-III** of the Form-5 reveals that the Operational Creditor has not proposed the name of any person to be appointed as Interim Resolution Professional.
 - 6.** On perusal of **Part-IV** of the Form-5 reveals that total dues as claimed by the Operational Creditor is Rs.4,77,92,592/- consisting of Rs.3,49,84,107/- being Principal Amount and amount of Rs.1,28,08,485 as an interest at the rate of 12.00% p.a. along with further running interest from 01.02.2024 till the date of realization.
 - 7.** The averments made by the Operational Creditor in its application are summarized hereunder: -
 - a) It is submitted by the applicant that M/ s. Arham Enterprise [herein after referred to as "Operational Creditor"] is a partnership firm engaged in the business of manufacturing and supplying of kraft papers. The Operational Creditor has sold different types of kraft papers to M/s. Classic Corrugations Private Limited [herein after referred to as "the Corporate Debtor"] from time to time.
 - b) It is stated that the Operational Creditor has supplied the Kraft papers to the Corporate Debtor as per their requirement and in pursuance thereto, had raised invoices from time to time. The Operational Creditor has supplied the requisite Kraft papers to the Corporate Debtor till the month of June 2022. It is further stated that the Corporate Debtor has duly received the said kraft



papers supplied by the Operational Creditor from time to time without raising any kind of dispute and/ or demur. Not only that, the Corporate Debtor has also consumed/ utilized the said kraft papers supplied by the Operational Creditor.

- c) It is stated that as per the terms of the invoices, the Corporate Debtor was liable to make payments within 1 (one), 7 (seven) or 30 (thirty) days from the date of invoice, failing which the Operational Creditor was entitled to claim interest at the rate of 24% per annum. However, as per the mutual understanding and considering the long-standing business relations, the Operational Creditor was giving a general credit period of 30 (thirty) days to the Corporate Debtor for making payments towards the invoices so raised by the Operational Creditor.
- d) It is stated that the Corporate Debtor used to make account payments to the Operational Creditor on adhoc basis, pursuant to the invoices raised by the Operational Creditor, from time to time. However, from August 2019, the Corporate Debtor has made insignificant on account payments against the total amount of invoices raised by the Operational Creditor. That last such on account payment was made by the Corporate Debtor on 06.07.2023 for an amount of Rs.75,000/- (Rupees Seventy-Five Thousand Only).
- e) It is submitted that due to such insignificant payments, all the invoices raised by the Operational Creditor between the period of August 2019 to June 2022 remained outstanding and payment thereunder became overdue. As on today, a total number of 119 (One Hundred and Nineteen) invoices amounting to Rs. 3,49,84,107/- (Rupees Three Crores Forty-Nine Lacs Eighty-Four Thousand One Hundred and Seven Only) remains outstanding and payable. It is further submitted that all the aforementioned invoices are duly accepted by the Corporate Debtor. That despite



consuming/ utilizing the products supplied by the Operational Creditor, the Corporate Debtor miserably failed to discharge its admitted liability.

- f) It is stated that the Operational Creditor used to maintain a running account for the invoices so raised by the Operational Creditor and the payments so received from the Corporate Debtor. The said ledger account also depicts that an amount of Rs. 3,49,84,107/- (Rupees Three Crores Forty-Nine Lacs Eighty-Four Thousand One Hundred and Seven Only) is receivable by the Operational Creditor from the Corporate Debtor.
- g) Furthermore, as per the stipulation contained in the invoices, in case where the invoices remained outstanding beyond the due date of payment, the Corporate Debtor is liable to pay interest at the rate of 24% per annum on such outstanding invoices. That in the present case, the invoices raised by the Operational Creditor have remained outstanding over an elongated period of time and accordingly, the Corporate Debtor is liable to pay interest as well to the Operational Creditor on such outstanding invoices. That considering the general trade practice, the Operational Creditor has merely levied interest at the rate of 12% per annum as against the rate of 24% per annum which is stipulated in the invoices. Therefore, the Corporate Debtor is liable to pay to the Operational Creditor a sum of Rs. 1,28,08,485/- (Rupees One Crore Twenty-Eight Lacs Eight Thousand Four Hundred and Eighty-Five Only) towards interest on the outstanding invoices computed upto 07.08.2023 at the rate of 12% per annum.
- h) Accordingly, a total amount of Rs. 4,77,92,592/- (Rupees Four Crores Seventy-Seven Lacs Ninety-Two Thousand Five Hundred and Ninety-Two Only) admittedly and undisputedly remains outstanding and payable by the Corporate Debtor to the Operational Creditor as on 07.08.2023.

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- i) Apart from releasing nominal payments from time to time, the Corporate Debtor has even acknowledged its outstanding liability through various e-mail correspondences. That on 17.06.2023, director of the Corporate Debtor acknowledged the debt and informed that payment will be made looking into finances of the Corporate Debtor every month, since it is going through a difficult phase. Similarly, on 21.07.2023, director of the Corporate Debtor informed the Operational Creditor that it is waiting for funds and have made plans for releasing the payments as soon as funds are received. Thereafter, on 21.08.2023, director of the Corporate Debtor also agreed to send payment plan by evening.
 - j) Despite the above circumstances, the Corporate Debtor has neither provided a concrete plan for repayment of outstanding dues nor released any payments towards the outstanding dues. Thus, as on 07.08.2023, Rs. 3,49,84,107/- (Rupees Three Crores Forty-Nine Lacs Eighty-Four Thousand One Hundred and Seven Only) is due and payable towards the principal amount and Rs. 1,28,08,485/- (Rupees One Crore Twenty-Eight Lacs Eight Thousand Four Hundred and Eighty-Five Only) is payable towards the interest amount calculated at the rate of 12% per annum. Therefore, the Corporate Debtor is, admittedly and undisputedly, liable to pay total sum of Rs. 4,77,92,592/- (Rupees Four Crores Seventy-Seven Lacs Ninety-Two Thousand Five Hundred and Ninety-Two Only) to the Operational Creditor along with further running interest at the rate of 12% per annum from 07.08.2023 till the date of realization.
 - k) Under the circumstances, on 23.10.2023, the Operational Creditor was compelled to issue a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 calling upon the Corporate Debtor to pay an aggregate amount of Rs. 4,77,92,592/- (Rupees Four Crores Seventy-Seven Lacs Ninety-

Two Thousand Five Hundred and Ninety-Two Only) in full within 10 (ten) days from the date of receipt of the said notice. The said Demand Notice was duly served upon the Corporate Debtor as well as its Director(s) through Registered Post Acknowledgement Due on 26.10.2023.

- l) In response to the said Demand Notice, on 02.11.2023, director of the Corporate Debtor had sent an E-mail denying the demand raised by the Operational Creditor and vaguely stating that there are disputes between the parties. In the same E-mail, it had been also stated that the Operational Creditor shall receive a detailed reply within 10 (ten) days from the date of the said E-mail from his lawyer.
- m) Subsequently, on 10.11.2023, the Corporate Debtor had addressed a letter to the Operational Creditor raising bald and baseless issues inter alia with respect to addressing Demand Notice to directors of the Corporate Debtor, the documents annexed along with the Demand Notice, opening balance in the ledger account maintained by the Operational Creditor, claim and computation of interest, bar of limitation period, pre-existing disputes, bar of Section 10A of the Insolvency and Bankruptcy Code, 2016, debt below the pecuniary jurisdiction, etc.
- n) In the foregoing context, apropos to the issue pertaining to the debt being barred by the law of limitation, it is of great relevance to submit that the Corporate Debtor has categorically admitted and acknowledged its debt and liability towards the Operational Creditor in its own financial statements for the year ended on 31.03.2021 as well as on 31.03.2022 under the head "TRADE PAYABLES". Thus, by virtue of Section 18 of the Limitation Act, 1963, the present claim of the Operational Creditor duly falls within the period of limitation.

- o) Further, on a bare perusal of the financial statements of the Corporate Debtor itself, it transpires that the admitted and acknowledged amount of outstanding debt due and payable to the Operational Creditor for both the years ending on 31.03.2021 and 31.03.2022 is above Rs. 1 Crore, i.e., above the threshold limit stipulated under the provisions of the Insolvency and Bankruptcy Code, 2016. Moreover, even after 31.03.2022, the Operational Creditor has supplied goods approximately worth Rs. 50,00,000/- (Rupees Fifty Lacs Only). Therefore, the contention of the Corporate Debtor that the debt which is due and payable falls below the pecuniary jurisdiction is highly misconceived and unwarranted.
- p) In addition to the above, the contention of the Corporate Debtor with respect to there being a bar of Section 10A of the Insolvency and Bankruptcy Code, 2016 for the debt falling between the period of 25.03.2020 to 25.03.2021, it is relevant to submit that there is a continuous default on the part of the Corporate Debtor in repayment of the outstanding dues prior to, during and even post the period of Section 10A of the Insolvency and Bankruptcy Code, 2016. Moreover, without prejudice to the above, even if the invoices wherein the debt falls due between the said period of 25.03.2020 to 25.03.2021 are being excluded, then also a principal amount to the tune of Rs.2,20,72,116/- (Rupees Two Crores Twenty Lacs Seventy-Two Thousand One Hundred and Sixteen Only) with respect to 77 (Seventy-Seven) invoices admittedly remains outstanding and payable by the Corporate Debtor to the Operational Creditor, which apparently falls above the threshold limit of Rs. 1 Crore. That in the said context, reliance is placed on an order passed by the Hon'ble National Company Law Tribunal, Chennai Bench dated 21.04.2022 in the case of **Classic Exports vs. Ram Charan Company Private Limited** in CP/IB/157/CHE/2021.



q) Furthermore, the allegation of the Corporate Debtor with regards to existence of prior disputes pertaining to the quality of goods supplied by the Operational Creditor is merely a moonshine defense and an afterthought, in so far as subsequent to the alleged E-mails dated 06.01.2020, 13.01.2020, 04.02.2020, 23.04.2022, 25.04.2022 and 28.04.2022, the Corporate Debtor itself have sought time to make payments on account of non-availability of funds and has also promised to make repayments on a timely basis. The said fact is clearly evident from various E-mail correspondences annexed at ANNEXURE - H to the present application.

r) Therefore, the Operational Creditor is constrained to file the present application before this Hon'ble Adjudicating Authority for initiating Corporate Insolvency Resolution Process against the Corporate Debtor in accordance with the relevant provisions of the Insolvency and Bankruptcy Code, 2016.

8. The Operational Creditor filed an additional Affidavit on 25.04.2024 vide inward diary no. 3573 in compliance of order dated 05.04.2024 to place on record the revised computation chart of invoices, which are not falling under the exempted period under Section 10A.

9. The Operational Creditor filed a Pushis on 16.05.2024 for placing on record of Record of Default (Form-D) issued by NeSL. Status of Authentication under the Form-D is shown as '**Disputed**'.

 **10.** Pursuant to the application the Corporate Debtor filed a reply on 09.07.2024 vide Diary no. D5415 in which the contention of the Corporate Debtor is stated as under:

- i. It is denied that the operational debt is of an amount of Rs.4,77,92,592/- (comprising principal amount of Rs.3,49,84,107/- and interest amount of Rs.1,28,08,485/-) calculated at the rate of 12% per annum.
- ii. It is denied that the Operational Creditor has supplied kraft paper to the Corporate Debtor as per the requirement of the Corporate Debtor. I deny that the Operational Creditor has supplied kraft paper to the Corporate Debtor till the month of June 2022. It is denied that the Corporate Debtor received the kraft paper supplied by the Operational Creditor from time to time without raising any kind of dispute and/or demur. The Corporate Debtor has consumed/utilized all the kraft papers supplied by the Operational Creditor. In so far as the terms of the invoices are concerned, I shall refer to the invoices at the time of hearing. I state that as per the mutual understanding and considering the longstanding business relation, the general credit period would vary from 30 days to 90 days or even more.
- iii. It is denied the statements, averments and submissions made in Part IV (of the Company Petition) to the extent the same are contrary and inconsistent with what is stated hereafter. With a

 view to demonstrate that there is a "pre-existing dispute" with respect to the "operational debt".

- iv. It is denied that the statements, averments and submissions made in Part IV (of the Company Petition) to the extent the same are contrary and inconsistent with what is stated hereafter. With a view to demonstrate that there is a "pre-existing dispute" with respect to the "operational debt",
- v. It is stated that the Operational Creditor had issued the statutory demand notice dated 23.10.2023. Alongwith the statutory demand notice dated 23.10.2013, the Operational Creditor had annexed interalia:
 - (a) summary (but not the Invoices) of outstanding invoices for the period 02.08.2019 to 28.06.2022,
 - (b) ledger account for the period 01.08.2019 to 07.07.2023 of the Corporate Debtor in the books of the Operational Creditor showing opening debit balance of Rs.3,72,04,872.60p as on 01.08.2019 along with quarterly summary of transactions from April-June 2017 to July- September 2023. However even though the transactions took place from June, 2017 no ledger account for the period June 2017 to 01.08.2019 was annexed,
 - (c) bill-wise interest calculation sheet and
 - (d) correspondence acknowledging debt.

The said statutory demand notice dated 23.10.2023 was issued by the Operational Creditor in Form-3. However, the invoices relied upon by the Operational Creditor in the statutory demand



notice dated 23.10.2023 were not actually annexed to the said statutory demand notice dated 23.10.2023. Therefore, before the filing of the present Company Petition, the Corporate Debtor did not have an opportunity to deal with the said alleged outstanding invoices relied upon by the Operational Creditor. However, in the present Company Petition, the Operational Creditor has not produced/annexed the annexures of the statutory demand notice dated 23.10.2025.

- vi. The Corporate Debtor gave a reply dated 10.11.2023 (Annexure-K, pages 741-745 of the Company Petition) to the statutory demand notice dated 23.10.2023. The Corporate Debtor in its reply dated 10.11.2023 had called upon the Operational Creditor to provide to the Corporate Debtor, self-certified copies of the Invoices between the period June 2017 upto 28.06.2022. However, there was no response to the same.
- vii. It is submitted that there are inconsistencies/mismatch in the documents produced/relied upon by the Operational Creditor itself. The same can be demonstrated as follows:
 - (a) Firstly, the Operational Creditor has not produced the ledger account of the Corporate Debtor maintained in the books of the Operational Creditor for the period June 2017 (when the transactions commenced) up to 01.08.2019. I submit that if the Operational Creditor is claiming any amount from the (debit) balance amount of Rs.3,72,04,872.60p/- (as of 1.08.2019), the ledger account up to 1.08.2019 is required to be produced.

- viii. It is stated that Annexure-C of the statutory demand notice dated 23.10.2023 and Annexure-F of the Company Petition (ledger account) a large number of entries therein pertain to "rate different and quarterly rebate" and purchases made by the Operational Creditor from the Corporate Debtor.
- ix. It is further stated that there were pre-existing disputes even prior to the issuance of the statutory demand notice dated 23.10.2023 with regard to the quality of goods supplied by the Operational Creditor. Such disputes were reflected in the emails dated 06.01.2020, 13.01.2020, 04.02.2020, 23.04.2022, 25.04.2022 and 28.04.2022. The said aspect has also been stated in paragraph 5 of the reply dated 10.11.2023 of the Corporate Debtor to the statutory demand notice dated 23.10.2023.
- x. It may also be noted that a perusal of the Annexure-B, C and D of the statutory demand notice dated 23.10.2023 (equivalent to Annexure-, and of the Company Petition), the amount of the operational debt includes therein an alleged debt which would fall within the period prohibited by section 10A of the IBC (i.e. between 25.03.2020 to 25.03.2021).
- xi. With reference to Part V sub-para 4 of the Company Petition, It is stated that in so far as the record of default with the information utility is concerned (Annexure-N, pages 824-825 of



the Company Petition), even the same states "07.07.2023" as the "debt start date" and also as "date of default". As demonstrated above, "07.07.2023" can never be the date of default in the facts of the present case.

11. The Operational Creditor thereon filed Rejoinder to the Reply dated 04.07.2024 on 09.08.2024 vide inward Diary no. D6320 states that the contentions made by the Corporate Debtor in their reply are all misconceived and baseless.

12. The Corporate Debtor on 04.09.2024 vide diary no. D6798 filed a further affidavit in reply to negate the contention mentioned under the additional affidavit filed by the Operational Creditor on 25.04.2024.

13. Against the further reply dated 03.09.2024 the Operational Creditor filed a counter affidavit on 24.09.2024 vide diary no. D7267

"It is pertinent to note that both parties were directed to file a summary of their respective submissions pursuant to the order dated 04.10.2024. Pursuant to the said order the applicant and the respondent have filed their written submissions on 11.12.2024 vide Diary No. D8904 and 00.12.2024 vide respectively."

14. Subsequent to the submission of the written synopsis, the matter was taken up for final hearing on 10.12.2024, during which this Tribunal heard the arguments advanced by the



learned Counsel for the Operational Creditor as well as the learned Counsel for the Corporate Debtor and perused the material on record.

15. Observation and Findings of this Tribunal:

- A. On perusal of the records, it is found that the Operational Creditor had supplied goods and services to the Corporate Debtor as per their requirement and in pursuance thereto, had raised invoices from time to time till the month of June 2022.
- B. The Operational Creditor had raised various invoices from between the period of August 2019 to June 2022 a total number of 119 (One Hundred and Nineteen) invoices amounting to Rs.3,49,84,107/-. The goods sold or supplied by the Operational Creditor to the Corporate Debtor were duly received. The Copies of the same are annexed with the Petition as **Annexure E Colly**.
- C. As per the terms of the invoices, the Corporate Debtor was required to clear the invoice within a period of 30 (thirty) days from the date of invoice failing which the Operational Creditor was entitled to claim interest at the

rate of 24% per annum. The terms of the Invoices were never disputed by the Corporate Debtor. That last such on account payment was made by the Corporate Debtor on 06.07.2023 for an amount of Rs. 75,000/-. Copy of the Working Computation Chart is annexed with the Petition as **Annexure G**. Further, revised tabular chart giving summary of invoices, excluding the invoices wherein the debt falls due between the period of 25.03.2020 to 25.03.2021, along with computation of interest is at Pg. Nos. 5 & 6 of the Additional Affidavit dated 25.04.2024.

D. Moreover, even if the invoices wherein the debt falls due between the said period of 25.03.2020 to 25.03.2021 are being excluded, then also a principal amount to the tune of Rs.2,20,72,116/- (Rupees Two Crores Twenty Lacs Seventy-Two Thousand One Hundred and Sixteen Only) with respect to 77 (Seventy-Seven) invoices remains outstanding and payable by the Corporate Debtor to the Operational Creditor, which falls above the threshold limit of Rs. 1.00 Crore. Further, the Operational creditor has placed of the judgment of **Nandamuri Meenalatha**

***vs. Quality Steels and Wire Products reported in
[2023] 154 taxmann.com 185 (NCLAT – Chennai),***

wherein the Hon'ble National Company Law Appellate Tribunal, Chennai Bench had in unequivocal terms held that the Adjudicating Authority is not required to determine the exact amount of claim due to a creditor by a Corporate Debtor while deciding upon an insolvency application.

- E. The Operational Creditor used to maintain a running account for the invoices so raised by the Operational Creditor and the payments so received from the Corporate Debtor. Copy of Ledger Account of Corporate Debtor as maintained by Operational Creditor for the relevant period is annexed with the Rejoinder dated 09.08.2024 at ANNEXURE – R1 (Pg Nos. 13 to 36).
- F. Demand Notice dated 23.10.2023 U/s 8 of the IB Code, 2016 in terms of Rule-5 of I&B (AAA) Rules, 2016 was sent by the Operational Creditor which was delivered to the Corporate Debtor through Registered Post Acknowledgement Due on 26.10.2023 and was replied by

the Corporate Debtor on 02.11.2023 through e-mail and subsequently, on 10.11.2023, the Corporate Debtor had addressed a letter to the Operational Creditor raising various issues.

G. The pleadings show that the status of the authentication of the record of Default is “**Disputed**” from Form D obtained from the NeSL. The same is recorded in the order dated 17.05.2024 stating as under:

“Today, a purshish has been filed on behalf of the applicant attaching therewith Form-D along with certain citation in support of petition filed under Section 9 of the IBC, 2016.

It is seen that the Form-D is having a status of "Disputed".

H. Since the dispute against the transactions between Operational Creditor and Corporate Debtor were never raised prior to the issuance of the demand notice, therefore there is no pre-existing dispute between the parties.

I. It is seen that the Corporate Debtor has relied on few Judgements mainly on the judgment of Hon'ble NCLAT in matter of ***Neeraj Jain v. Cloudwalker Streaming Technologies Pvt. Ltd. (CA (AT)(Ins) No. 1354 of 2019)***

relying on the para's such as Nos. 42 to 45 and Nos. 47-48 which is reproduced as under:-

“.....42. However, if the operational debt is of nature where the invoice is generated as part of the transaction, then in such cases the invoice becomes an essential document to prove the existence of the debt, and thus it has to be submitted. In case of operational debt where the transaction does not involve the generation of the invoice, then as per column 7 of Form 3, documents to prove the existence of operational debt and the amount in default are to be submitted along with the notice in Form 3.

43. However, it cannot be the discretion of the Operational Creditor to deliver the Demand Notice in Form 3 even if the operational debt involves transactions where corresponding invoices are generated but are not filed in court on the pretext that the Operational Creditor has chosen to send the Notice in Form 3.

44. The use of the phrase, ‘deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved’ in Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice in Form 3 or Form 4 as per its convenience. Rather, it depends directly on the nature of the operational debt and applicability of Form 3 or Form 4 as per the nature of the transaction.

45. It is important to mention that legislative provisions are made with a larger perspective to deal with all the eventualities that may arise in the implementation of the said provisions. Therefore, the use of the word “OR” in Section 8 cannot be interpreted as such, that the Insolvency and Bankruptcy Code has provided a choice or a discretion to an Operational Creditor, to provide an escape route from submission of the invoice, which can be treated as the most relevant document to prove the debt and amount in default.

47. Thus, it is clear that the choice of issuance of demand notice u/s 8(1) of the Insolvency and Bankruptcy Code 2016, either in Form 3 or Form 4, under the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules 2016, depends on the nature of Operational Debt. Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice either Form 3 or Form 4, as per its convenience. The applicability of Form 3 or Form 4 depends on whether the invoices were generated during the course of



transaction or not. It is also made clear that the copy of the invoice is not mandatory if the demand notice is issued in Form 3 of the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules 2016 provided the documents to prove the existence of operational debt and the amount in default is attached with the application.

48. It is also made clear that for filing application u/s 9 of Insolvency and Bankruptcy Code 2016, in case the demand notice is delivered in Form 3 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, then the submission of a copy of the invoice along with the application in Form 5 is not a mandatory requirement, provided the documents to prove the existence of operational debt and the amount in default is attached with the application.”

- J. It is seen from the Corporate Debtor relied on the paras in the abovementioned judgment stating that the choice of issuance of demand notice u/s 8(1) of IBC depends on the nature of operational Debt not as per the discretion of the operational debt. However, the Corporate Debtor did not ponder on the **para 79 of the said judgment** in which it is clearly stated that the Corporate Debtor in that case failed to produce the invoices with form-5 of the petition under section -9 of IBC, 2016. The para 79 of the said order is reproduced as under:

“.....

79. *The above contention cannot be accepted because we have found that demand notice delivered under Section 8(1) of the Code was not proper and was also incomplete. The Operational Creditor failed to submit any documents to prove in existence of the Operational debt and the amount in default. The Operational Creditor also failed to submit the copy of invoices and copies of all the documents referred in the*

application to be submitted in Form 5, under Section 9 of the Code. The Operational Creditor has failed to submit the relevant documents under which the debt has become due. The Operational Creditor has only filed the copy of the Supply Agreement, and the projections email, which by themselves can by no stretch of the imagination constitute proof of debt. The Operational Creditor had not filed a copy of the bank statement. Instead of filing the relevant document, the Operational Creditor had solely placed reliance on a few emails to allege that he had suffered losses on account of projections for the demand provided by Flipkart.”

K. Further, the Operational Creditor has relied upon the Judgment dated 02.04.2024 of Hon'ble National Company Law Tribunal, Principal Bench, New Delhi, in the case of **Daily Dairy Essentials vs. Goodhealth Industries Private Limited in C.P. (I.B.) No. 628/(PB)/2023**, after dealing with the judgements passed by the Hon'ble NCLAT in the cases of *Neeraj Jain, Director of M/s Flipkart India Pvt. Ltd. v. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr.* reported in 2020 SCC OnLine NCLAT 445 as well as *Tejinder Pal Setia vs. 2 Kone Elevator India P. Ltd. and Others* reported in 2023 SCC OnLine NCLAT 1790, has categorically held as follows:-

“13. In the present case, the OC has attached invoices with the application which are annexed as Annexure A-5. Even if we assume that the demand notice with invoices has to be sent in Form-4, incorrect label of the application and mentioning wrong provision neither confers jurisdiction nor denudes the court of its jurisdiction. The Hon'ble

 Supreme Court in *Vijaya Bank v. Shyamal Kumar Lodh*, (2010) 7 SCC 635)
held as under:-

25. *Incorrect label of the application and mentioning wrong provision neither confers jurisdiction nor denudes the court of its jurisdiction. Relief sought for, if falls within the jurisdiction of the court, it cannot be thrown out on the ground of its erroneous label or wrong mentioning of provision.*

Further Rule 5 of AA Rules is a guideline to issue Notice, purpose of which is to communicate the correct details of default, till the time no prejudice is caused to CD, mere technical objection does not comes within the way of otherwise a genuine claim. Hence the Demand Notice issued in Form-3 is held to be valid. Issue No.1 is answered accordingly."

L. Therefore, the contention of not attaching invoices with the Form-3 does not render the Petition not maintainable as the invoices were attached with Form-5 in the present case also by way of additional affidavit dated 25.04.2024 which places on record the computation chart of invoices which bifurcate the invoices into:-

- a) invoices falling under Section 10A and
- b) invoices which are not falling under Section 10A.

M. It is seen from the reply of the Corporate Debtor to the demand notice of the Operational Creditor to which they have asked for the ledger account of the CORPORATE

 DEBTOR maintained in the books of the OC for the period June 2017 up to 01.08.2019. However, the Operational Creditor does not place the ledger account of theirs but they produced the ledger account of the Corporate Debtor from the period of 01.4.2017 to 05.05.2023 which sufficient to provide the details of transactions.

N. It is seen that the Corporate Debtor has partly paid the amounts against the invoices raised from the period of August 2019 to 06.07.2023 which fell due on the date which is 06.07.2023 and the amount is adjusted as per section 61 of the Contract Act which is reproduced as under:

"61. Application of payment where neither party appropriates. —

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably."

With respect to the date of default which is mentioned as 07.07.2023 is contested by the Corporate Debtor stating that it should be somewhere in the year of 2019.

However, in our view the transactions between

 Operational Creditor and Corporate Debtor were in the form of running account and the last payment was done on the date of 06.07.2023. Therefore, the date of default is considered as the date on which the last payment is received by the Operational Creditor from the Corporate Debtor. The Hon'ble National Company Law Appellate Tribunal in ***Abhinandan Jain vs. Tanaya Enterprises (P.) Ltd. reported in (2021) 130 taxmann.com 469 (NCLAT)*** has held that when a running account is maintained, it would be material to see as to when the parties concerned treat the debt to be in "default". Therefore, the date of default is correctly mentioned.

- O. It is also seen from the contentions mentioned by the Corporate Debtor that they have relied upon the Central Government Notification dated 24/03/2020 which substituted the amount of Rs. 1.00 lakh to Rs. 1.00 crore. The Corporate Debtor stated that the default of Rs. 1.00 cr. was before the notification and the alleged outstanding amount exceeded Rs.1.00 crore. The cause of action (under Part II of IBC/Code for section 9 Petition) arose the moment according to the Operational Creditor

the accumulated outstanding (i.e. the default) exceeded Rs.1.00 lac up to 24.03.2020 and thereafter when the accumulated outstanding (i.e. the default) exceeded Rs.1.00 crore. The same cannot be considered here as mentioned above that the account was a running account, the notification does not hold on the running accounts of the business transaction and since it was the case here that the accounts were still running. Therefore, the above contention does not hold its ground

- P. Since, the invoices wherein the debt falls due between the said Covid periods of 25.03.2020 to 25.03.2021 are being excluded. Still a principal amount to the tune of Rs.2,20,72,116/- (Rupees Two Crores Twenty Lacs Seventy-Two Thousand One Hundred and Sixteen Only) with respect to 77 (Seventy-Seven) invoices remains outstanding and payable by the Corporate Debtor to the Operational Creditor, which falls above the threshold limit of Rs. 1.00 Crore.
- Q. Further, the Corporate Debtor has categorically admitted and acknowledged its debt and liability towards the OC

in its own financial statements for the year ended on 31.03.2021 as well as on 31.03.2022 under the head "TRADE PAYABLES". Not only that, the Corporate Debtor had also acknowledged its liability towards Operational Creditor in the subsequent e-mail correspondences, more particularly dated 17.06.2023, 21.07.2023 and 21.08.2023. Also, the last on account payment was made by the Corporate Debtor to the Operational Creditor on 06.07.2023. Thus, by virtue of Section 18 as well as Section 19 of the Limitation Act, 1963, the present claim of the Operational Creditor duly falls within the period of limitation.

R. Therefore, in our view the application is complete in terms of Section 9 of the Code. As the Applicant/Operational Creditor has proved that there is debt and despite service of notice under Section 8, the same was not paid by the Respondent/Corporate Debtor. We have also seen that the amount defaulted is more than Rs. 1.00 Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. 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 admitted.

16. Accordingly, in light of the above, it is, hereby ordered as under: -

- (i) The Respondent/Corporate Debtor **M/s Classic Corrrugations Private Limited** is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence, thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:
 - (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;



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- (c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022;
 - (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
 - (e) The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be. However, in terms of Section 14(2) to 14(3) of the Code, the supply of



essential goods or services to the corporate debtor as may be.

- (v) As the Operational Creditor has not named any IRP in the matter, we hereby appoint **Mr. Ashish Anantray Shah** Registered Insolvency Professional Entity having registration number as IBBI/IPA-002/IP-N00214/2017-2018/10666, email-ID: ashish@ravics.com, Mobile No.9825940391, under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP). The IRP shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person

 required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.



(xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

17. Accordingly, the present Petition **CP(IB)/142/AHM/2024** is **admitted**. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)
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Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)