

**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 255/2023  
And  
CP (IB) No. 123/Chd/Chd/2019**

**Under Section 9 of the Insolvency  
and Bankruptcy Code, 2016.**

**In the matter of CP (IB) No. 123/Chd/Chd/2019**

**Alcare Containers Co.**  
206, Anand Estate, 189-A,  
Sane Guruji Marg, Chinchpokli(W),  
Mumbai-400011  
through its Authorized Representative  
Mr. Ganesh Udadheyay

...Petitioner-Operational Creditor

Vs.

**Ind Swift Limited**  
having its registered office at  
781, Industrial Area, Phase-II,  
Chandigarh-160002  
CIN No. L24230CH1986PLC006897

...Respondent-Corporate Debtor

**IA No. 255/2023**

**Ind Swift Limited**  
having its registered office at  
781, Industrial Area, Phase-II,  
Chandigarh-160002  
CIN No. L24230CH1986PLC006897

...Applicant-Corporate Debtor

Vs.

**Alcare Containers Co.**  
206, Anand Estate, 189-A,  
Sane Guruji Marg, Chinchpokli(W),  
Mumbai-400011  
through its Authorized Representative  
Mr. Ganesh Udadheyay

...Respondent-Operational Creditor

**Judgment delivered on: 12.09.2023**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-  
Operational Creditor in main CP  
and respondent in IA No.255/2023 : Mr. Vishav Bharti Gupta, Advocate

For the Respondent-  
Corporate Debtor in main CP  
and applicant in IA No. 255/2023 : Mr. Keshav Gupta, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)**

**IA No. 255/2023**

The present application has been filed by the corporate debtor under Section 60(5) of the IBC seeking to place on record the note on maintainability of the petition along with annexures containing purchase orders made by the respondents with the petitioners and judgments.

2. It is averred that a default of Rs. 1,46,46,999/- as the principal amount occasioned on accounts of some goods supplied by the petitioner pursuant to the purchase contracts. The amount in question is disputed, yet realizing that indeed some amount was due, the respondent company through its representative has on several occasions tried to reconcile the accounts and pay the dues of the petitioners. The said fact stands duly admitted by the respondents in their reply to the IA no. 1502 of 2022. An application was filed by the respondent seeking mediation as the petitioner was not coming forward to accept the dues. Even the request for mediation was rejected by the petitioners. The entire principal dues as claimed were offered to be paid to the respondent by placing on record demand drafts the entire principal which is the total principal amount claimed by the applicants

by way of filing of IA no. 1502 of 2022. Even the said payment has been refused by the applicants in their reply to the IA. Since the applicant itself has refused to accept the payment of money tendered by the petitioner, there is no default.

3. We have heard the learned counsel for the applicant and have pursued the record carefully. Therefore, we hold that in this application, the applicant-corporate debtor has requested to place on record note on maintainability of the petition along with annexures containing purchase orders made by the respondents with the petitioners and judgments. Therefore, the above mentioned documents are taken on record. Hence, the present application is allowed and stands disposed of accordingly.

**JUDGMENT in CP (IB) No. 123/Chd/Chd/2019**

4. The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Alcare Containers Co.** through its authorised representative Mr. Ganesh Udadheyay (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Ind Swift Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

5. The Corporate Debtor, namely, Ind Swift Limited, is a Company incorporated on 06.06.1986 under the provisions of Companies Act, 1956 with CIN No. L24230CH1986PLC006897 with its registered office at 781, Industrial Area, Phase-II, Chandigarh-160002. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the

corporate debtor is attached with the main petition and marked as Annexure A2.

6. The facts of the case, briefly, as stated in the petition are that the operational creditor was engaged in the business of manufacturing/ supplying of aluminum tubes and based on the requirement of the corporate debtor the operational creditor supplied material to the corporate debtor at various times and raised invoices. The business transactions were carried on since 2013 and the payments were made from time to time through cheques and RTGS. The payments became irregular in March-April 2014 when various cheques were dishonored. Even though payments were not made, the operational creditor kept supplying the goods and the corporate debtor kept issuing post-dated cheques. The corporate debtor made the last payment of Rs.1,00,00 on 23.06.2015 through RTGS. The corporate debtor failed to make the payment for 11 invoices. On 30.04.2016 cheque no. 290366 dated 24.04.2016 got dishonored. The petitioner filed the petition for winding up under Section 433 of the Companies Act, 1956 at Hon'ble Punjab and Haryana High Court, Chandigarh on 06.07.2016. Thereafter, the matter was transferred and was taken up by this Adjudicating Authority.

7. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 3,12,33,057/- (Rupees Three Crores Twelve Lakhs Thirty Three Thousand Fifty Seven Only) (including Principal-Rs.1,46,46,999, interest @24% per annum from respective due dates of invoices till 09.01.2019- Rs. 1,47,01,3030 (outstanding against 11 invoices), C Form pending amount including interest and penalty Rs.

18,84,755/-). The default occurred on 24.04.2016 i.e. date on which the last cheque no. 290366 got dishonoured. Copy of partnership deed, VAT Registration, Factory License, Central EXcise Registration, PAN Card (Annexure- A1), Calculation Sheet (Annexure- A2), cheques deposited but deposited (Annexure- A3), cheque bouse cases (Annexure- A6), bailable and non-bailable warrants issued (Annexure- A7), invoices (Annexure- A8) , ledger (Annexure- A9), email conversations (Annexure- A11), case filed with High Court (Annexure- A12) are attached with the main petition.

8. A demand notice in Form 3 and 4 is stated to be issued by the operational creditor on 15.01.2019 and the same has been delivered to the corporate debtor vide registered post as the postal receipts and the tracking report is attached at annexure-A10 of the petition. The corporate debtor did not give a reply to the demand notice till date.

9. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Dairy No. 2974 dated 12.06.2019. The corporate debtor has filed reply vide diary No.4462 dated 30.08.2019, wherein it is stated that the Claims are time-barred. Each transaction between the parties was an individual transaction and there was no running account no any agreement to the same. No amount is admitted by the respondent company towards which is due to be paid to the petitioner company, which would entitle them to file the petition. Certain material was supplied and invoices of total value of Rs.1,46,46,999 were raised based on the ledger maintained by the petitioner company. The petitioner had a contradiction to the purchase

orders raised by the respondent company. The petitioner has mentioned extra billing of the quantities of the material in the invoices as the respondent company had never raised orders for such quantities and therefore, the petitioner has deliberately concealed this fact. The respondent company had to incur expenditure on its own account to arrange for quality products to make for its supplies at huge additional cost for completion of its products as the petitioner was not paying any heed towards the request of the respondent company for replacement of the interior quality products supplied to them by the petitioner. The company had to suffer huge losses on account of delay in production or sales. The petitioner company has earlier filed a company petition number 114 of 2016 for winding up under section 433 of the Companies Act, 1956 in the honorable Punjab and Haryana High Court, Chandigarh which was taken up by the tribunal on 16.01.2017 by way of transfer. The petitioner company is not entitled to file any other company petition on similar circumstances. However, it is submitted that no amount is due in favour by respondent company to the petitioner company.

10. The rejoinder was filed vide Diary No. 00252/4 dated 29.05.2023, wherein it is stated that The respondent has misread the petition's reply to IA No.1502/2022. The petitioner has never accepted the amount offered by the respondent as correct as falsely alleged. The petitioner has only placed on record the amount of it by responding in light of that purported offer not to pay only the principal amount. The mediation application was not maintainable. Yet, in any event, the petitioner is not

bound in law to accept the principal amount. The affidavit in rejoinder was filed vide Dairy No 6660 dated 27.11.2019.

11. The short written submissions have been filed by the petitioner vide Diary No. 01255/7 dated 28.07.2022 and Dairy No. 00252/3 dated 15.05.2023.

12. We have heard the learned counsel for the petitioner as well as the corporate debtor and have perused the records.

13. The first issue for consideration is whether the demand notice in Form 3 and 4 on 15.01.2019 was properly served. The demand notice has been delivered to the corporate debtor vide registered post as the postal receipts and the tracking report is attached at annexure-A10 of the petition. The corporate debtor did not give a reply to the demand notice till date. Therefore, a demand notice was duly served.

14. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of the affidavit by the learned counsel for the petitioner that there is no dispute communicated by the corporate debtor for the unpaid operational debt and no payment has been received during this period. Further, no reply to the demand notice has been received at all. There is no pre-existing dispute between the parties at all with regard to the unpaid operational debt.

It is submitted by the petitioner that the purported payment of principal amount is conditional and under protest which is no payment in law. The offer to pay the principal amount after 9 years is neither justified nor bonafide. The IBC does not deliberate failure to repay the dues of an operational creditor,

who is MSME and is governed by the MSME Act. The petitioner has relied on the judgment of the **Hon<sup>ble</sup> Supreme Court in the case of E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd. reported in (2022)**

**3 SCC 161** held as under:

*36. IBC is a complete code in itself. The adjudicating authority and the appellate authority are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelises and circumscribes the ambit of such jurisdiction. Thus, while the adjudicating authority and appellate authority can encourage settlements, they cannot direct them by acting as courts of equity. In Pratap Technocrats (Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Ltd., (2021) 10 SCC 623, paras 35, 44 and 47: (2022) 1 SCC (Civ) 80], a two-Judge Bench of this Court, speaking through D.Y Chandrachud held:*

*44. These decisions have laid down that the jurisdiction of the adjudicating authority and the appellate authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the adjudicating authority or the appellate authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of IBC and the Regulations under the enactment.*

*47. Hence, once the requirements of IBC have been fulfilled, the adjudicating authority and the appellate authority are duty-bound to abide by the discipline of the statutory provisions. It needs no emphasis that neither the adjudicating authority nor the appellate authority have an uncharted jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework.*

It is further submitted by the petitioner that IA No. 1502/2022 was filed to place on record the demand drafts which is filed to delay the process. The respondent has itself offered to pay Rs. 2.05 crores including interest around April 2019, during the course of hearing in the proceedings taken out by the petitioner under Section 138 of the Negotiable Instruments Act before the learned Metropolitan Magistrate Esplanade Mumbai. The claim of the



petitioner is not for interest alone. The debt due to the petitioner is on basis of the goods supplied.

The Corporate Debtor has further relied upon the judgment of the **Hon'ble Supreme Court in the case of M/s Invent Asset Securitisation and Reconstruction Pvt. Ltd. v. M/s Girnar Fibres Ltd.** and judgments passed by **Hon'ble National Company Law Appellate Tribunal, New Delhi** in the cases of **S.S. Polumers v. Kanodia Technoplast Limited Company Appeal (AT) (Insolvency) No. 1227 of 2019, SBF Pharma v. Gujarat Liqui Pharmacaps Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 883 of 2019, Amsons Communication Pvt Ltd. Company Appeal (AT) (Insolvency) No. 540 of 2020**, which are not applicable in the facts of the present case. In these cases, the Corporate Debtor paid the principal amount before the notice was issued by the learned Adjudicating Authority and the claim of interest of the Appellant was found to be mala-fide and without any basis. Similarly, the other authorities are also not applicable. In the present case, the Applicant is MSME and entitled to interest as MSME Act. The status of petitioner being MSME is not disputed by the respondent-corporate debtor. Hence, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand.

15. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 15.01.2019 in Form 3 and 4 attached as (Annexure A10) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e. on 24.04.2016 i.e. date on which the last cheque no. 290366 got dishonoured.

This application was filed vide Diary No. 541 on 01.02.2019 and was re-filed on 08.03.2019 vide Diary No.1149. Therefore, this Adjudicating Authority finds that this application is filed within limitation. Here, reliance can be placed upon the judgment of ***Hindustan Apparel Industries v. Fair Deal Corporation, New Delhi 2000 SCC OnLine Guj 137.***

16. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 3,12,33,057/- (Rupees Three Crores Twelve Lakhs Thirty Three Thousand Fifty Seven Only) (including Principal-Rs.1,46,46,999, interest @24% per annum from respective due dates of invoices till 09.01.2019- Rs. 1,47,01,3030 (outstanding against 11 invoices), C Form pending amount including interest and penalty Rs. 18,84,755/-). Copy of partnership deed, VAT Registration, Factory License, Central EXcise Registration, PAN Card (Annexure- A1), Calculation Sheet (Annexure- A2), cheques deposited but deposited (Annexure- A3), cheque bouse cases (Annexure- A6), bailable and non-bailable warrants issued (Annexure- A7), invoices (Annexure- A8) , ledger (Annexure- A9), email conversations (Annexure- A11), case filed with High Court (Annexure- A12) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

17. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that

from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

18. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **Ind Swift Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

19. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. However, vide IA No. 1693 of 2023, Ms. Sunita has been proposed as IRP. The Form-B dated 01.02.2023 wherein AFA Certification is valid upto 31.01.2024 along with the certificate of registration issued by the Insolvency and Bankruptcy Board of India has been submitted. The Law Research Associate of this Tribunal has checked the credentials of Ms. Sunita and there is nothing adverse against her. In view of the above, we appoint Ms. Sunita, Registration No. IBBI/IPA-002/IP-NO1208/2021-2022/14031, E-mail: [csskanwar@gmail.com](mailto:csskanwar@gmail.com), Mobile No. +91-9872003058, the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Ms. Sunita shall be in accordance with the provisions of Section 16(5) of the Code;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6

of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is

to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other

entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

20. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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;
- 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 Operational Assets and Enforcement of Security Interest Act, 2002;
- 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.

21. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

22. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.



23. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

24. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

25. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)  
Member (Technical)

September 12 , 2023  
VN/TBG

Sd/-

(Harnam Singh Thakur)  
Member (Judicial)