



**NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CP (IB) No. 142/CTB/2019**

(An Application 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:

SAGAR BUSINESS PRIVATE LIMITED

Poddar Point, 113, Park Street,
Kolkata-700016, West Bengal, India.

..... **APPLICANT/OPERATIONAL CREDITOR**

Vs.

SIDHARTHA CONSTRUCTION AND PRIVATE LIMITED

Rajabagicha, Cuttack,
Orissa-753009.

..... **RESPONDENT/CORPORATE DEBTOR**

DATE OF PRONOUNCEMENT: 19.08.2025

**CORAM: DEEP CHANDRA JOSHI, MEMBER (JUDICIAL)
BANWARI LAL MEENA MEMBER (TECHNICAL)**

APPEARANCE:

FOR APPLICANT: MR. SAHASRANSU SOURAV, ADVOCATE

FOR RESPONDENT: MR. SIDHARTH SANKAR PADHI, ADVOCATE

ORDER

PER: BANWARI LAL MEENA, MEMBER (TECHNICAL)

1. This present Application has been filed on 01.11.2019 by Sagar Business Private Limited (hereinafter **“Operational Creditor/Applicant”**) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as **“CIRP”**) against Sidhartha Construction and Trading Private Limited (hereinafter **“Corporate Debtor/Respondent”**) by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter **“IBC/**

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the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter **“Adjudicating Authority Rules”**) for an Operational Debt of **Rs. 18,99,474/-** (Eighteen Lakhs Ninety-Nine Thousand Four Hundred and Seventy-Four Rupees Only).

BRIEF BACKGROUND:

2. This Tribunal *vide* its order dated 26.07.2022 **‘Dismissed’** the application as the applicant has mentioned the date of default as 06.05.2015 in the Section 8 demand notice and had filed the present application on 01.11.2019 which is beyond the 3 years limitation period as mentioned in the Article 137 of the Limitation Act, 1963, hence the application is barred by the limitation and accordingly, this Tribunal Dismissed the Application. The applicant preferred an appeal against the rejection before the Hon’ble NCLAT.

3. Hon’ble NCLAT *vide* order dated 10.09.2024 in CA(AT)(Ins) No. 1320 of 2022 had set aside the order of this Tribunal dated 26.07.2022. Hon’ble Tribunal revived the present application, i.e. CP (IB) No. 142/CTB/2019, on the ground that the amount of Rs. 2,00,000/- was paid by the respondent by way of a Cheque dated 22.11.2016. It was duly credited to the Bank Account of the applicant, as evident from the ledger maintained by the respondent. Therefore, in view of Section 19 of the Limitation Act, 1963, the payment made by the respondent to discharge the debt invoked the fresh limitation period from 22.11.2016, and the period ends on 21.11.2019. The Present application was filed on 01.11.2019, which falls within the limitation period as per Article 137 of the Limitation Act, 1963 and is not barred by limitation. Hence, this application comes before us for fresh adjudication.

4. **The averments made by the applicant in its application are as follows:**

4.1. The Applicant and Respondent entered into an Oral understanding for the supply of TMT bars on 09.01.2015. As per the

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terms and conditions mutually agreed between the parties, the payment would become due and default would occur after expiry of 30 days from the delivery of the goods, and interest would be charged against the due amount at the rate of 18% per annum if the payment was not made within 30 days from the date of delivery.

4.2. The Applicant has placed on record the purchase order Ref No. SCTPL/SBPL/PO-RAY/STEEL/110 dated 06.04.2015 issued by the respondent for the supply of TMT bars amounting to Rs. 9,58,000/-. Subsequently, the applicant supplied the TMT bar worth Rs. 6,87,845/- and raised an invoice Ref No. SBPL/BBSR/TISCON/15-16/23 dated 07.04.2015 against the Purchase Order Ref No. SCTPL/SBPL/PO-RAY/STEEL/110 issued by the respondent on 06.04.2015.

4.3. Subsequently, the applicant has supplied TMT bars to the respondent on 14.04.2015, amounting to Rs. 7,76,129/- and raised invoice Ref No. SBPL/BBSR/TISCON/15-16/51 dated 14.04.2015, which is evident from the ledger account of the respondent maintained by the applicant, but no purchase order or invoice was annexed by the applicant with this application.

4.4. The Applicant mentioned that despite repeated requests and demands, the Respondent failed to release the outstanding dues. Therefore, a demand notice under Section 8(1) of the Code was issued on 04.09.2018 to the respondent.

5. The Respondent has not furnished any reply to the Section 8 Demand Notice issued by the applicant to the respondent on 04.09.2018.

6. The Respondent, in its reply dated 10.01.2020, filed before this Tribunal, has contended as under:

6.1. The applicant has not supplied any TMT bars to the respondent during the period 06.04.2015 to 14.04.2015. The applicant has admitted that the Date of Default mentioned in the Section 8 Demand Notice of the Code, as annexed with the

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application as 'Annexure-4', is mentioned as 06.05.2015. As the application was filed on 01.11.2019, which is beyond the Limitation Period prescribed under Section 238-A of the IBC, 2016, and Article 137 of the Limitation Act, 1963. Hence, the application is barred by limitation.

6.2. The Respondent has relied on the judgement of the Hon'ble Supreme Court in **B.K. Educational Services Private Limited vs. Parag Gupta and Associates (AIR 2018 SUPREME COURT 5601)** to substantiate that the Limitation Act, 1963 is applicable to the applications filed under Sections 7 and 9 of the IBC, 2016 from the inception of the code, Article 137 of the Limitation Act, 1963 gets attracted. "The right to sue," therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases wherein the facts of the case, Section 5 of the Limitation Act, may be applied to condone the delay in filing such application.

6.3. The Respondent has further contended that the Demand Notice under Section 8 of the IBC, 2016, was never served upon them as annexed with the application as '**Annexure-4**'. Hence, the application under Section 9 of the IBC, 2016, is not maintainable as the applicant has failed to issue a Statutory Demand Notice, as mentioned under Section 8 of the IBC, 2016, to the respondent.

6.4. The Respondent vehemently denied and disputed the invoice annexed to the application by stating that the invoices which have been raised by the applicant are false and fabricated, as the same were never served upon the respondent.

7. The applicant, in response to the reply, filed a rejoinder on 27.01.2020 wherein it has contended that:

7.1. The last payment was made on 22.11.2016 and the two cheques which are drawn in favour of the applicant dated 24.11.2016 and 25.11.2016 were dishonored by the respondent's bank on

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25.11.2016 and 28.11.2016 respectively due to insufficient fund as it is evident from the ledger account of the respondent maintained by the applicant and is annexed as '**Annexure-3**' with the application.

7.2. The Statutory Demand Notice under Section 8 of IBC, 2016, read with Rule 5(1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016) has been served upon the respondents on 17.09.2018 vide postal receipt no. EO972836035IN and the postal tracking report have been attached to the rejoinder affidavit at page 12, confirming the delivery of the Section 8 Demand Notice, which is considered a statutory requirement for filing an application under Section 9 of the IBC, 2016.

8. The respondent submitted a written note of submission on 20.02.2020:

8.1. The respondent contended that the applicant has mentioned date of default as 06.05.2015 as per Section 8 Demand Notice as annexed with the application as '**Annexure-4**' and submitted that applicant has approached the respondent for the payment of default amount but no payment was received from the side of the respondent till the filing of the Section 9 application before this Tribunal.

8.2. Subsequently, the applicant, in its rejoinder, submitted that the respondent had drawn three cheques in favour of the applicant on 22.11.2016, 24.11.2016, and 25.11.2016, for Rs. 2,00,000/-, Rs. 4,71,385/-, and Rs. 9,75,000 respectively. Out of which only the cheque dated 22.11.2016 for Rs. 2,00,000/- was encashed by the bank, while the cheques dated 24.11.2016 and 25.11.2016 were dishonoured by the bank due to insufficient funds in the respondent's account, which contradicts the pleadings made by the applicant in its Section 9 application.

8.3. The respondent also submitted that the cheques dated 22.11.2016, 24.11.2016 and 25.11.2016 were never issued by the

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respondent or any of the authorised representatives of the respondent's company.

8.4. The respondent has relied on the Judgement of the **Hon'ble Supreme Court** in **Babulal Vardharji Gurjar V. Veer Gurjar Aluminium Industries Private Limited (Civil Appeal No. 6347 of 2019)** to substantiate that only Article 137 of Limitation Act, 1963 is applicable to the application filed under Section 7 of IBC, 2016 and the limitation period starts from the date of default but the subsequent acknowledgement of debt cannot extend the limitation period as the provisions under Section 18 of Limitation Act, 1963 does not applies to the application filed under Section 7 of IBC, 2016.

8.5. The respondent denied receiving or acknowledging any Section 8 Demand Notice dated 04.09.2018 and alleged that the applicant fails to produce any material evidence to prove that the Section 8 Demand Notice was duly served upon the respondent prior to filing of this Section 9 application before this Tribunal.

8.6. The respondent submitted that the applicant has brought on record the ledger account of the respondent maintained by the applicant. According to the ledger account, the applicant has raised two invoices, namely Invoice Ref No. SBPL/BBSR/TISCON/15-16/23 dated 07.04.2015 for Rs. 6,87,845/- and invoice Ref No. SBPL/BBSR/TISCON/15-16/51 dated 14.04.2015 for Rs. 9,58,000/-, but the applicant has only brought on record the invoice Ref No. SBPL/BBSR/TISCON/15-16/23 dated 07.04.2015 for Rs. 6,87,845/-, which fails to demonstrate any debt due towards the applicant.

9. The applicant submitted a written note of submission on 07.07.2022:

9.1. The applicant has contended that the present matter has been filed within the Limitation Period as three Cheques had been drawn in favour of the applicant on 22.11.2016, 24.11.2016 and 25.11.2016 for Rs. 2,00,000/-, Rs. 4,71,385/- and Rs. 9,75,000

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respectively and out of which only the cheque dated 22.11.2016 was honored in favour of the applicant and the rest of the cheques were dishonored by the respondent's bank due to insufficient fund in the respondent's bank account. In support of its argument, the applicant has relied on the Judgment of the **Hon'ble Supreme Court** in **Jiwanlal Achariya vs. Rameshwar Lal Agarwalla (AIR 1967 SC 1118)** to substantiate that the cheque itself is an acknowledgement of the payment in the handwriting of the person giving the cheque.

9.2. The applicant has also relied on the Judgement of **Hon'ble High Court of Delhi** in **Bhushan Steel & Strips Limited vs. Bhartiya Loha Udyog Private Limited (2010 (115) DRJ 344)** to substantiate that the principle of Section 19 of the Limitation Act, 1963, it was held that a payment by cheque satisfies the requirement of Section 19. Dishonouring of a cheque would not result in extinguishing the liability of the debtor to the extent of the amount of the cheque, and the cheque remains an effective payment for the purpose of Section 19 of the Limitation Act, 1963.

9.3. The applicant submitted that despite sufficient documentary evidence i.e. cheque dishonor memo and applicant's bank account statement maintained with the ICICI Bank to show the cheque dated 22.11.2016 was honored by the bank and the cheques dated 24.11.2016 and 25.11.2016 was dishonored by the bank, the respondent has made a statement that the cheques dated 22.11.2016, 24.11.2016 and 25.11.2016 are never issued by it which attributes serious allegation of fraud and collusion between the applicant and the ICICI Bank which ought to be deprecated by this Tribunal.

10. In the meantime, the applicant had filed an Interlocutory Application being IA (IB) No. 122/CB/2021 to take additional documents on record. The application was dismissed by this Tribunal vide its order dated 26.07.2022 as it was filed after two years from the date of filing of the present Section 9 application by the applicant. The

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applicant has stated that the respondent had not made any payment till the filing of the present Section 9 application before this Tribunal but in IA (IB) No. 122/CB/2021, the applicant submitted that the last payment was made on 22.11.2016 by the respondent which contradicts the applicant's own submission made in the Section 9 application. Thus, this Tribunal was of the view that IA (IB) No. 122/CB/2021 was filed by the applicant to fill up the lacuna in the main Section 9 application and the Section 9 application was 'Dismissed' by this Tribunal vide its order dated 26.07.2022 as the application was barred by limitation as per Limitation Act, 1963.

11. Subsequently, the applicant preferred an appeal before the Hon'ble NCLAT against the order passed by this Tribunal dated 26.07.2022. Hon'ble NCLAT, vide its order dated 10.09.2024 in Company Appeal (AT) (Ins) No. 1320 of 2022, set aside the order dated 26.07.2022 passed by this Tribunal. Hon'ble NCLAT restored the present Section 9 Application, and the matter was remanded back to this Tribunal for a decision in accordance with law. The Hon'ble Tribunal also observed that the application bearing CP (IB) No. 142/CTB/2019 is not barred by limitation as per the Limitation Act, 1963.

12. After revival of the present Application the Applicant has filed the additional document as IA (IB) No. 122/CB/2021 on 23.01.2025 in the main Section 9 application, wherein it was submitted that the additional documents regarding bank account statement of the applicant maintained by ICICI Bank in which it was clearly mentioned that three cheques are drawn in favour of the applicant by the respondent out of which the cheque dated 22.11.2016 for Rs. 2,00,000/- was honored by the bank and the cheques dated 24.11.2016 and 25.11.2016 for Rs. 4,71,385 and Rs.9,75,000/- respectively were dishonored by the bank due to insufficient fund in the respondent's bank account.

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13. The applicant had submitted a written note of submission on 11.06.2025, wherein the applicant had stated that at the time of filing of this Section 9 application, the pecuniary jurisdiction of this Tribunal was Rs. 1,00,000/- and subsequently it was amended to Rs. 1,00,00,000/- vide Notification No. S.O. 1205 (E), dated 24.03.2020, issued by the Ministry of Corporate Affairs, Government of India.

14. The Respondent had submitted a written note of submission on 27.05.2025, wherein the Respondent specifically denied the allegation of receipt of any goods or invoices from the applicant. The respondent also denied the issuance of any cheques in favour of the applicant, through which the applicant claims that the last payment was made on 22.11.2016 by the respondent for the supply of TMT bars by the applicant to the respondent.

15. We have considered the arguments of the Ld. Counsel for both the Applicant and Respondent, reviewed the pleadings, and examined the documents they relied upon. In essence, the Respondent, opposing this application, has put forward the following points of contention:

15.1. The Application is barred by Limitation as the date of default mentioned in the Section 8 Demand Notice is mentioned as 06.05.2015, and the application was filed on 01.11.2019.

15.2. The Applicant has not served the Section 8 Demand Notice upon the Respondent, which is a statutory requirement to file this Section 9 Application before this Tribunal.

16. The contention of the respondent that the Section 9 application filed by the applicant was not within the limitation period as per Article 137 of the Limitation Act, 1963, fails because the issue was adjudicated by the **Hon'ble NCLAT** in the present case while allowing the appeal in **Company Appeal (AT) (Ins) No. 1320 of 2022**, wherein it was held that the limitation to file the application would expire on 22.11.2019, as it had to be counted from 22.11.2016, since the respondent paid Rs.

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2,00,000/- to the appellant in discharge of its debt as per Section 19 of the Limitation Act, 1963.

17. Hence, considering the Hon'ble NCLAT Judgement Sagar Business Private Limited (supra), as the limitation period was ending on 22.11.2019, and the present Section 9 application was filed on 01.11.2019, which clearly establishes that the present application is within the period of Limitation.

18. The contention of the Respondent regarding non-service of the Section 8 Demand Notice fails as the applicant has brought on record the Postal Receipt No. EO972836035IN through which Section 8 demand Notice was served on the respondents on 17.09.2018, and has annexed the postal tracking report with the rejoinder affidavit. Hence, it is conclusively proved that the Section 8 Demand notice was served upon the respondent on 17.09.2018 prior to the filing of this Section 9 Application.

19. It is conclusively established that the Section 8 Demand Notice was served upon the respondent by the applicant on 17.09.2018, prior to the filing of this present application, and the respondent had not made any payment after receiving the Demand Notice. The Respondent has also not raised any pre-existence of dispute prior to the issuance of the Section 8 Demand Notice under IBC, 2016.

20. The applicant has placed on record an invoice Ref No. SBPL/BBSR/TISCON/15-16/23 dated 07.04.2015 for an amount of Rs. 6,87,845/-, out of which a payment of Rs. 2,00,000/- was made by the Respondent on 22.11.2016 towards partial discharge of its liability. The said transaction was conclusively established before Hon'ble NCLAT. It is further noted that the present application was instituted on 01.11.2019, at which time the pecuniary jurisdiction of this Tribunal stood at Rs. 1,00,000/- or more. However, the threshold limit was subsequently enhanced to Rs. 1,00,00,000/- or more pursuant to Notification No. S.O. 1205 (E), dated 24.03.2020, issued by the Ministry of Corporate Affairs, Government of India.

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21. Hence, it is also conclusively established that the Respondent has in fact defaulted in payment of a debt amount, i.e. beyond Rs. 1 Lakh, and the present application has been filed within the period of limitation.

22. In view of the aforesaid observations, we hereby admit the present application and pass the following orders:

22.1. The Petition bearing CP (IBC) No. 142/CTB/2019 under Section 9 of the Code read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP of **Sidharth Construction & Trading Private Limited** [CIN: U45201OR1982PTC001046], Corporate Debtor is **'ADMITTED'**.

22.2. The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all 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;
- 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 Securitisation and Reconstruction of Financial 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.

22.3. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process until this Adjudicating Authority approves the Resolution

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Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016.

22.4. As the applicant has not proposed any name for the appointment of the IRP. Hence, IRP is appointed the IBBI panel and Mr. Saradindu Jena, having Registration No. IBBI/IPA-002/IP-N00520/2017-2018/11622 and Email Id: ip.jena2017@gmail.com, office at O.U-510, 5th Floor, Esplanade One, Rasulgarh, Bhubaneswar, Odisha, Pin- 751010 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to him possessing a valid Authorization for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

22.5. The IRP so appointed shall make a public announcement of the initiation of the Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

22.6. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The Corporate Debtor is to provide effective assistance to the IRP as and when the IRP takes charge of the assets and management of the Corporate Debtor.

22.7. The IRP shall perform all its functions as contemplated, inter alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under a legal obligation under section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or cooperate with IRP, do not assist or cooperate, the IRP is at liberty to

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make an appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

22.8. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of the obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.

22.9. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

22.10. The Operational Creditor shall deposit a sum of ₹ 1,00,000/- (Rupees One Lakh only) with the within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided in accordance with the Rules.

22.11. In terms of section 9(5)(i) of the Code, the Registry is hereby directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven (7) working days and upload the same on website immediately after pronouncement of the order.

22.12. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Commercial Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.

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

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22.14. The Resolution Professional shall submit his periodic reports before this Adjudicating Authority as per rules/regulations. The petition CP (IB) No. 142/CTB/2019 stands **"ALLOWED"**.

Sd :

BANWARI LAL MEENA
MEMBER (TECHNICAL)

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DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)