



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**I.A. (IB) NO. 370/KB/2025**

**IN**

**C.P (IB) NO. 15/KB/2024**

***An Application under Section 9 of the Insolvency and Bankruptcy Code,  
2016***

**IN THE MATTER OF:**

**KUSHAL POLYSACKS PVT LTD.**

**... Operational Creditor**

**Versus**

**SHREE RAM ELECTROCAST (JHARKHAND) PVT. LTD.**

**... Corporate Debtor**

**And**

**I.A. (IB) NO. 370/KB/2025**

***An Application under Section 60(5) of the Insolvency and Bankruptcy  
Code, 2016***

**IN THE MATTER OF:**

**SHREE RAM ELECTROCAST (JHARKHAND) PVT. LTD.**

**... Applicant**

**Versus**

**KUSHAL POLYSACKS PVT LTD.**

**... Respondent**

**Date of Pronouncement of Order: 16<sup>th</sup> September, 2025**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**CORAM:**

**Smt. Bidisha Banerjee, Member (Judicial)**

**Shri. Cmde Siddharth Mishra, Member (Technical)**

**APPEARANCE:**

**For the Operational Creditor:**

**Mr. D. N. Sharma, Sr. Adv.**

**Mr. Niloy Sengupta, Adv.**

**Mr. Ankit Agarwala, Adv.**

**Mr. Sujit Banerjee, Adv.**

**For the Corporate Debtor :**

**Mr. Ratnanko Banerji, Sr. Adv.**

**Mr. Kanisk Kejriwal, Adv.**

**Mr. Yash Badkur, Adv.**

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. The Court congregated through a hybrid mode.
2. The Ld. Counsels of both the parties were heard.
3. This petition has been preferred by Kushal Polysacks Pvt. Ltd, hereinafter referred to as the '**Operational Creditor/OC**' to seek initiation of Corporate Insolvency Resolution Process against respondent Shree Ram Electrocast, the '**Corporate Debtor/CD**' under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity, 'I&B Code'.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**4. FACTS OF THE CASE:**

**4.1** OC is the Del Credere Agent (DCA) of Indian Oil Corporation Limited (IOCL), which will appear from DCA Agreement dated June 22, 2010 [Pg-33-49 of CP). Object and purport of the DCA agreement is to stand guarantee for goods sold and delivered and to ensure timely payment to IOCL for and on behalf of the customers.

**4.2** As per the norms of IOCL, M/s Shree Ram Electrocast (Jharkhand) Pvt Ltd (CD) purchased goods/polymer granules from the IOCL, tagging the OC as their DCA.

**4.3** As per the DCA agreement, any purchaser of good is required to raise indent, through their DCA with the IOCL. On approval of the indent by the DCA, supply is effected by IOCL and IOCL raises invoice upon the purchaser, tagging the enlisted DCA. DCA is required to pay the Invoice within 48 hours, otherwise 36% interest will be charged upon the DCA or existing bank guarantee of DCA will be invoked.

**4.4** Thus, the CD after tagging the OC, has been purchasing goods/polymer granules since the Financial Year 2021-22 to 2022-23 and OC has continuously paid the value of the goods by maintaining running and continuous account, and lastly found dues of Rs. 2,32,86,934/- as on 30th June 2023.

**4.5** The CD was unable and neglected, to pay the amount even after repeated reminder from OC and Indian Oil due to which IOCL marked the



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

CD as defaulter and banned it to lift any IOCL material Pan India basis since.

**4.6** As OC is the DCA, invoices were raised by IOCL as annexed in CP at pages-57 to 70 and not by OC directly upon CD because of the special nature of the DCA Agreement.

**4.7** Operational debt under section 5(21) of IBC refers to claim arising out of goods or services. In the present case, purchaser of goods/CD raised indents for purchasing granules upon IOCL through OC/DCA. Once IOCL approves the requisitioned indent received from CD and agrees to supply the goods, IOCL raises invoice upon CD with copy marked to the OC and on tagging the enlisted OC/DCA. The details of the invoices have been set out in the ledger statements which were all part of the statutory notice dated July 3, 2023 issued by OC upon CD.

**4.8** The CD never raised any dispute against any single invoice raised by IOCL as mentioned in the ledger statements which were part of the statutory notice also.

**4.9** That the IOCL followed SAP software whereby, each and every detail of the transaction always provided to CD which includes Invoices. Physical copy of the invoices always forwarded with the transporter and CD always confirmed the same.

**4.10** As a Del Credere Agent (DCA) of Indian Oil Corporation Limited (IOCL) which will appear from DCA Agreement dated June 22, 2010 [Pg-33-49 of CP], OC as DCA stood guarantee for payment of the total amount of value of the goods/polymer granules which was sold by IOCL to its



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

customers. Reference is made to clause 5.1.1 of DCA Agreement at Pg-40 of CP.

**4.11** As per clause 5.2 of DCA Agreement at pg-41 of CP, OC is solely responsible to recover dues from customers of IOCL

**4.12** Payment made by OC on behalf of the CD to IOCL has been credited against the account of the CD and hence the present dues are limited between the CD and the OC. IOCL has already realized the default committed by the CD from the OC.

**4.13** On September 23, 2021 CD being one of the customers of IOCL issued a letter to IOCL tagging OC as the authorized DCA in respect of the transaction for supply of goods by IOCL/seller to CD/buyer/customer [pg-50 of CP). CD thereafter submitted document before IOCL and official email of CD is at pg-51 of CP i.e dheerajagarwal@beekaygroup.co and thus the CD always accepted the terms and conditions of the DCA agreement.

**4.14** From the financial year 2021-22, CD started lift/buy/purchase goods from IOCL and tagged OC as the registered DCA. IOCL raised invoices upon CD with copy marked to OC. Particulars of the invoices will also appear from the ledger statements for financial year 2023-24, which have been annexed at pg-107-126 and 127-128 of CP. Some of the invoices as sample have been annexed at pg-57-70 of CP, wherein the Code Number of OC as the DCA has been recorded.

**4.15** Clause 5.2 of DCA agreement (pg-41) provides that DCA will be responsible to ensure timely payments within 48 hours, for the goods supplied and sold by IOCL to its customers failing which high rate of interest @ 36% per annum will be levied upon DCA by IOCL apart from the



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

right available to IOCL to invoke the performance bank guarantee or to encash the cash deposit furnished by OC/DCA.

**4.16** Clause 5.2.5 of DCA further provides (Pg-41 of CP) that the recovery of money from the customer will be the exclusive responsibility of DCA , the IOCL will not be responsible but if the customer fails to pay the value of the goods supplied to IOCL, the recorded DCA will have to pay the money on behalf of the customer to IOCL, and thereafter, the recorded DCA will be responsible to recover the same from the the customer.

**4.17** The CD, as the customer of IOCL having not paid the entire amount payable to IOCL during the financial years 2021-2022 and 2023-24 a sum of Rs. 2,32,86,934/became payable by CD to IOCL, and therefore, OC as the DCA was compelled to make such payment to IOCL on behalf of CD, confirmed by mail dated 04th July, 2023 failing which huge interest component , @ 36% p.a and penalty would be levied upon OC.

**4.18** Statutory notice under section 8 of IBC dated July 3, 2023 was issued by the advocate of OC upon CD (pg-129 to 165 of CP).

**4.19** The Ld. Advocate of CD gave a combined reply to the statutory notice dated July 3, 2023 which was issued on behalf of OC and another statutory notice dated July 5, 2023 which was issued on behalf of OC but to another entity namely Samarth Fablon Private, subject matter of C.P.(IB) No. 14/KB/2024 which shows that Section 8 notice has been served. The Date of Default is March 29, 2023 and no payment from CD been received.

**5. CONTENTIONS OF OC**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**5.1** The reply to the statutory notice itself contains admissions at various places. The same is evident from pg-174, 175, 189 and 190 of CP.

**5.2** The CD has admitted the claim of OC, as will appear from email dated July 4, 2023, which was issued from the official email ID of CD, namely, dheerajagarwal@beekaygroup.co., pg-51 of CP. that a sum of Rs.2,32,86,934/- is payable by CD to OC and if IOCL agrees to give credit for Rs.81,22,896/-, then a sum of Rs. 1,51,64,308/- is payable by CD to OC. The admitted claim being more than the threshold limit the CP should be admitted.

**5.3** In the sur-rejoinder filed by CD affirmed on July 29, 2024 at pg-3 thereof, CD has stated that email dated July 4, 2023 was not issued this email has been issued from dheerajagarwal@beekaygroup.co. Aforesaid attempt to deny the admission by way of an affidavit of the CD is complete fraud, upon this Tribunal because CD has registered the same email ID, i.e. dheerajagarwal@beekaygroup.co before IOCL while submitting its documents for registration as will appear from pg-51 of CP from the very inception, the CD had maintained the entire transaction from this registered Email of said Dheeraj Agarwal, one of the director and authorized person of CD, with the IOCL, and not from any other email.

**5.4** While CD has admitted that after factoring various purported deductions and discounts to which CD was entitled to that the net outstanding amount could come to more than the threshold limit payable by CD to OC. it is entitled to set off a sum of Rs.4.68 crore in view of the family settlement dated August 27, 2018 for a period when the CD and OC have not entered into any obligation.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**5.5** This Adjudicating Authority is not empowered to adjudicate or decide set off or counterclaim which is beyond the jurisdiction of the Adjudicating Authority as has been authoritatively held in several judgments/decisions as under:-

*i) Swiss Ribbons (P) Ltd. vs. Union of India reported in 2019 (4) SCC 17, para-52, 61, 63.*

*ii) Vishal Doshi vs. Bank of India reported in 2020 SCC OnLine NCLAT 442 , para-11, 16, 17.*

*iii) AP Coated Drums and Barrels Pvt. Ltd. vs. Haresh Dharmani reported in 2019 SCC OnLin NCLAT 549, para-8*

**SUBMISSIONS OF THE LD. COUNSEL ON BEHALF OF THE CORPORATE DEBTOR**

**6.** The Board Resolution dated 18.11.2022, authorising Mr. Saumik Dutta to initiate proceedings, lacks clarity. Thus, no valid authority exists to initiate proceedings against Shree Ram Electrocast.

**7.** Both directors of Kushal (Naresh Kumar Agarwal and Kushal Agarwal) resigned on 22.11.2022, just four days after the alleged authorisation. Their resignation makes the Board Resolution ineffective. Further there is no subsequent authorisation by the existing Board is on record. Petition filed on 11.01.2024 is thus without authority and non-maintainable. Hence, the





**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

petition is defective since there is no valid authorisation in favour of the deponent by the Board of OC.

**8.** The claim of OC arises out of sale of goods made by IOCL under invoices raised by IOCL. There is no case of guarantee made out in the Petition. The OC has annexed 14 invoices totalling Rs. 2,74,79,972/- Crores, but claims only Rs. 2,32,17,554/- Crores. No clarity is provided on which invoices remain unpaid. Invoices claimed to be outstanding have not been disclosed or identified.

**9.** The OC is using the present proceedings for purposes other than insolvency resolution and as a recovery tool.

**10.** There are serious disputes regarding the claims of OC, OC and CD are admittedly family companies and there are several family disputes between the promoters, pending before civil court.

**11.** That the OC has all along acted as an agent of IOCL. Invoices for supply were raised by IOCL. Claim in the petition is arising out of invoices/supplies by IOCL. Therefore, OC cannot file present proceedings in its own name as per provisions of Indian Contract Act, 1872 and Transfer of Property Act, 1882.

**12.** It is submitted that under Section 230 of the Indian Contract Act, 1872, an agent cannot personally enforce contracts entered into by himself on behalf of principal. Therefore, the OC claiming to be an agent of IOCL has no locus to file the present proceedings in its own name.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**13.** It is submitted that there is no admission by Shree Ram for the entire claim of the OC.

**14.** Further it is submitted that emails from Shree Ram relied upon by OC are misread. The email dated 26.05.2023 offers set-off for Rs. 81,22,896/- lakhs and Rs. 96,41,031/- lakhs from a gross sum of Rs. 2,32,86,934/- Crores . Therefore there was an admission of Rs. 55.2 lakhs.

**15.** That the set-off claims of Shree Ram which were coupled with the amount claimed by the OC in such emails, cannot be ignored. The emails cannot be bifurcated or dissected to extract admissions by Shree Ram. The emails, when taken as a whole, would at best amount to admission of Rs.55,23,007, which has been offered by Shree Ram for deposit during the course of hearing, without prejudice.

**16.** The emails relied upon by OC show that it was the practice of both parties to enter into group wise accounting, considering the companies of both groups of brothers. Therefore, isolated statements for any single entity cannot be relied upon.

**17. COUNTER SUBMISSIONS OF THE OC**

**17.1. The CD & the OC are family companies with history of inter-mingled transactions**

1. Admittedly, the promoters of the CD & OC are full-blooded brothers and while they were running the companies as joint family companies, the companies were family companies.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

2. Pursuant to the family settlement of 2011, the businesses were separated and divided amongst the brothers and consequently the shareholdings, immovable properties and other assets were also divided. Application for de-merger and amalgamation also stood allowed by the Hon'ble High Court.

3. After, the family settlement and consequent division of business, the element of joint ownership did not survive.

4. The purported operational debt' claimed in the CP has accrued through supply of polymer granules by the OC to the CD on dates much later in time and without any condition and/or reference to the family settlement.

5. Goods sold and delivered to the CD was done by OC as a Del Credere Agent (DCA) of Indian Oil Corporation Limited as will appear from DCA Agreement dated June 22, 2010.

6. Therefore, for such 'operational debt' the argument of past family history has no bearing.

**17.2 Invoices were raised by IOCL and therefore Section 230 of the Contract Act, does not debar the OC to sue on behalf of IOCL**

1. The clause 5.2.5 of the DCA agreement as well as the acknowledgment of the CD empowers the present OC alone to recover the dues from an allocated customer of IOCL . Such overt clause in the DCA agreement empowers the OC solely to file the present proceedings against the CD.

2. The Present CP is maintainable as held by the Hon'ble NCLAT in the case of Madras Chemicals & Polymers vs. Vijay Aqua Pipes (P) Ltd. Company



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

Appeal (AT) (CH) (INS.) No. 298/2021 Decided on 28-Aug-23 (2023) SCC OnLine NCLAT 574 that in cases relating to DCA, the appropriate remedy is to file a Section 9 application as the debt accrued by a DCA on behalf of a principal is an operational debt' and not a 'financial debt'.

**17.3 The admissions made by the CD are not conditional and hence can be construed as an admission of 'operational debt' without the conditions being fulfilled.**

1. That the subject transaction were completely, in between the two corporate entities, and admission of dues were made in ordinary course of business. It is well settled principle of law that personal affairs of the directors cannot bind the companies.
2. CD has tried to create cloud upon the complaint, by dragging some family disputes of the two brothers, pending adjudication before separate forum, without touching any of the transaction of the subject proceeding, as we came to know after legal searching.
3. It is an afterthought attempt of the CD and taken only after issuance of the Statutory notice. There is a clear admission of the CD in its email dated 04/07/2023 (Page-14 of Rejoinder) which is unconditional, clear and un rebutted.
4. The CD has only riddled its admissions with a bogus condition of adjustments of family settlement after the statutory notice was served on the CD. There are no communications, notices etc. ever from the side of the CD prior to issuance of the statutory notice claiming such adjustments.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**17.4 The director who had authorized the signatory to file the proceedings, had resigned as a director as on the date of filing of the application however the authorisation given by him stands valid.**

1. That an authorization which is rightly given by a person continues to operate till it is revoked and/or set-aside.
2. Mr. Naresh Kumar Agarwal, an Ex- Director who had empowered the present authorized signatory to file the present application had done it in his capacity of a the then director. After his resignation as a director, he continues to be the majority shareholder of the OC company.
3. Thus the CP was filed by OC through the person who was authorized by the Board Resolution. When the Board resolution was issued, Mr. Naresh Agarwal was the valid director of OC. His subsequent resignation does not invalidate the board resolution.
4. The decisions of the board meetings of the OC empowering the present signatory have not been made a subject matter of challenge or contention by the present board.
5. All earlier board resolutions continue to operate.

**17.5 Pending suit relating to family settlement in the application does not constitute pre-existing dispute hence the CP can be admitted.**

1. Such suit has been filed seeking decree of specific performance from civil court with prayers against Bishnu Kumar Agarwal regarding payment of



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

the compensatory money in lieu of the family settlement, as Bishnu Kumar Agarwal was liable to compensate Naresh Kumar Agarwal to the tune of Rs.50 Crores against the family settlement, his default in such payment is the subject-matter of the suit.

2. The civil suit, which was filed in 2023 by Naresh Agarwal, is only for enforcement of the family settlement dated December 11, 2011 as amended, on August 27, 2018. Naresh Agarwal was compelled to file the suit because Bishnu Agarwal had acted in breach thereof and had failed to pay the revised amount of Rs.21 crores as mentioned in the amended family settlement dated August 27, 2018.

3. the amount which is claimed to be in default under the DCA agreement was not paid by CD, which is the subject matter of the present section 9 IBC application, being CP (IB) No.15/KB/2024. Further, CD is not even a party to the said civil suit, and hence, the pendency of the civil suit is not a bar for the maintainability of the present section 9 petition, being C.P.(IB) NO. 15/KB/2024.

4. The suit does not involve any reliefs so far as it relates to inter-company business transactions relating to sale of goods. The 'operational debt' claimed by the OC in the present CP has not been claimed in the suit by Naresh Kumar Agarwal.

5. The CD cannot be reasonably allowed to take advantage of a suit filed against its promoter for payment of money by an individual by qualifying it as a 'pre-existing dispute'.

6. The subject matter of suit does not constitute a pre existing dispute for the purpose of present proceedings.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

7. Transaction between the parties started in the year 2021-22 and continued till 2022-2023 as will be evident from the letter of supply and financial ledger of both parties. It's a frivolous attempt to misguide the authority with a transaction almost a decade prior the CD entering into a contract with no relevance during said payment period with CD or any of its activities.

**17.6 OC cannot claim interest @ 36% based on the document being DCA Agreement wherein the CD is not a party.**

1. The goods which were supplied to CD are based upon indents raised by CD upon OC/DCA under the DCA Agreement. Further, invoices which were raised by IOCL upon CD refers to OC as the DCA under the same agreement and therefore the terms and conditions of the DCA are fully applicable upon CD. The email issued by IOCL confirming the rate of interest for delayed payment will be 36% with effect from June 16, 2018, will appear from pg-873 of the other CP No.14 of 2024, Vol. V.

2. Reliance placed by CD on the judgment of Mobilox and also Ramco Cements will not help because in the present case there is categorical admission of CD of the debt and CD is unnecessarily trying to mislead the NCLT by referring to the personal transactions which were entered into between the two brothers being the two promoters of CD and OC.

**17.7 The OC has attempted to distinguish the judgements relied upon by the CD, as not applicable to the present case, in the following manner.**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

i. ***Hindustan Fertilizer Corporation Ltd. Vs. Great Eastern Shipping Company Limited*** reported in ***1997 SCC OnLine Del*** page 493 para 7.2.9 and para 8 dated 22nd May, 1987, the proposition that agent of a disclosed principal has no right to sue and the same is also hit by Section 130 of Transfer of Property Act.

It is stated that the facts of this of this Delhi High Court judgment are distinguishable because the factual matrix in Delhi High Court judgment does not arise out of a Del Credere Agency (DCA). Clause 5.2.5 at page 41 of CP empowers the DCA/OC to take steps for recovery of money from the customer/purchaser and IOCL has no responsibility in case purchaser/CD fails to pay for any reason. Hence, no further assignment deed is necessary as contemplated under Section 130 of the Transfer of Property Act, 1882.

ii. ***Radhakrishna Sivadutta Rai & Ors. Vs. Tayeballi Dawoodhhai*** reported in ***AIR 1962 SC 538*** was relied on the proposition that agent of a disclosed principal has no right to sue. It is submitted that this judgment is also distinguishable on facts as in in this judgment of the Supreme Court also, there was no Del Credere Agency agreement and hence issues raised and decided therein will not apply to the facts of our case.

iii. ***M/s Alturas Trading Corp. vs. VRMX Concrete India Pvt. Ltd.*** of NCLT Chennai Bench in ***CP/IB/179/CHE/2021*** was cited to show that the Section 9 filed by OC is not maintainable as the claim arising out of Del Credere Agency agreement is not an operational debt. However, the law laid





**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

down in this NCLT Chennai decision of October 4, 2021 is not good law for the below mentioned reason:-

(a) There is no discussion on the law giving rise to such finding in this judgment,

(b) This Chennai NCLT judgment has failed to appreciate that in case of DCA Agreement, the DCA cannot issue any invoice directly upon the purchaser and on this erroneous basis NCLT had dismissed the Section 9 application saying that invoices were raised by the principal and not the DCA;

(c) However., the law laid down in this Chennai NCLT decision is no longer good law in view of the decision of the NCLAT reported in 2023 SCC OnLine NCLAT 574 dated August 28, 2023 (Madras Chemicals and Polymers Vs. Vijay Aqua Pipes Pvt. Ltd.). NCLAT has now held in paragraph 64 of this judgment that the claim arising out of a Del Credere Agency agreement is an operational debt and not a financial debt. Therefore, NCLAT had upheld the order of dismissal of the Section 7 of IBC petition passed by the NCLT, Chennai Bench.

v) ***Union of India vs. N. Murugesan & Ors.*** reported in **2022(2) SCC 25** This judgment on the principles of approbate, reprobate will not apply in the facts of the present case. In view of clear admission of debt made by the CD in the reply to the statutory notice because the adjustment which the CD is claiming on account of discount both pre-sale and post-sale is not relatable to the OC because this is an issue between CD/purchaser and principal/IOCL but because of the delay on the part of CD to make



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

payment to OC/DCA that IOCL had disallowed the claim of CD of either pre-sale discount or post-sale discount and hence no question arises of any set off or adjustment as claimed by CD in its reply to statutory notice.

(v) 1961 Law Weekly Madras High Court 786. that one cannot blow hot and cold at the same time. It is submitted that the ratio and the law laid down in this judgment does not apply because it is not the case of OC that it is approbating or reprobating or blowing hot and cold at the same time.

vi) ***Neeraj Jain vs. Cloud Walker Straming Technologies*** reported in **2020 SCC OnLine NCLAT 445** for the proposition that Section 9 application must be filed with complete invoices failing which it should be dismissed. It is submitted that paras 47 and 48 of this very judgement supports the case of OC. that it is the nature of transaction which is relevant for the purpose of considering whether invoices are generated during the course of transaction or not, if the demand notice is issued in Form-3 of the IBBI (Application to Adjudicating Authority) Rules, 2016, it is not mandatory that the copy of invoice should be attached if there are other documents to prove the existence of operational debt and the amount in default is attached with the application. Further in a case which arises out of a Del Credere Agency agreement, invoices were raised by IOCL/principal upon CD and there is no question of OC raising invoices upon CD and hence invoices could not be annexed with the statutory notice and the Section 9 petition but, however, the complete ledger statements were disclosed giving particulars of the invoices raised by IOCL upon CD.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

vii. ***Visen Industries Limited Vs. Peekay Agencies Pvt. Ltd.*** dated 11th November, 2024 C.P. (IB) No.122 of 2024 of the Hon'ble NCLT, Kolkata Bench. The aforesaid decision of the NCLT, Kolkata Bench has been relied upon by CD for the proposition that when there is a practice and understanding of both the groups to settle their dues not entity wise but on group level then OC cannot unilaterally choose to claim one entity's due and make an application under IBC.

It is submitted that the facts of this judgment are clearly distinguishable because in this case the family settlement dated 11th December, 2011 and amended, family settlement dated 27th August, 2018 do not refer to or mention or include name of any entity nor has any entity signed both the family settlements. Further, the CD in the present case is also not party to the family settlements. The present transaction which is the subject matter of Section 9 is an independent commercial transaction between the two entities and none of the two entities are parties to the family settlements.

**17.8 Personal Affairs of the Directors cannot bind the Company**

It is urged that the CD is trying to avoid the admitted payment to OC by unnecessarily referring to the disputes between the personal affairs of two directors namely Naresh Agarwal and Bishnu Agarwal. It is a settled principle of law that personal affairs of directors do not bind the company.

**17.9 Defense of the CD is Moonshine and frivolous**

1. CD has not denied the transaction in question.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

2. CD has also not denied that the OC has paid the dues of IOCL on their behalf

3. No disputes raised against the claims of the OC, during the contemporaneous period.

4. When the transactions were in between two corporate entities, a cloud has attempted to be created by saying the dues were paid to OC, in the year 2012, without showing any forwarding letters to that effect. The start of contractual supply did not take effect before 2021 then how dues can be paid in 2012.

5. Such payment was not even in made in the designated account of the SBI

6. Indian Oil Corporation Ltd refused to deliver any further goods to the CD after several attempts to get the CD to clear dues of OC close all tie ups and delivery, due to outstanding amount, as shown, in this application.

7. Desperately, the CD re-coursed to plaint to TS no: 722 of 2023, which has no connection with the claim, under this proceeding. After legal search, it appeared that CD has not claimed that amount against the OC, in that suit.

8. In reply to Statutory notice, CD has not denied that claim but sought adjustment of some payments made earlier, particularly when the Adjudicating Authority cannot adjudicate set off.

9. Further claim of the OC has admitted vide Email dated 04.07.2023 Page 14 of the Rejoinder.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**18.** Heard the Ld. Counsels of both the parties and perused the documents on record.

**ANALYSIS AND FINDINGS**

**19.** OC was appointed as a Del Credere Agent (DCA) by Indian Oil Corporation Limited (IOCL) via a formal agreement dated June 22, 2010 which is evident from Pg. 33–49 of CP. Under this DCA arrangement, OC acted as the facilitator for the supply of goods (polymer granules) to IOCL's customers and also as a Guarantor, ensuring timely payment to IOCL for such goods, even if the actual customer defaulted.

**20.** M/s Shree Ram Electrocast Pvt. Ltd., the CD began purchasing goods from IOCL by tagging OC as their DCA, as per IOCL's norms. CD raises an indent through OC. IOCL supplies the goods and raises invoices directly on CD, with OC's name tagged. OC, as DCA, is obligated to make the payment within 48 hours of invoice.

**21.** Failure to pay the amount within the time attracts 36% interest p.a., and IOCL may invoke bank guarantee or cash deposits of the DCA.

**22.** CD continued to purchase goods from IOCL through OC during FY 2021–22 to 2022–23. OC maintained a running account, regularly paying IOCL on behalf of CD. However, as of 30 June 2023, CD had defaulted on payments, and Rs. 2,32,86,934/- remained due and unpaid.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**23.** Despite repeated reminders from both OC and IOCL, CD failed to clear the dues. Consequently, IOCL marked CD as a defaulter and banned it from lifting materials across India.

**24.** All invoices were raised by IOCL, not OC, because of the special nature of the DCA agreement (Pg. 57–70 of CP). It is evident that the CD never disputed any invoice, all invoices were admitted either by conduct or silence, and are part of the statutory notice dated July 3, 2023.

**25.** It is evident that as per Clause 5.1.1 and 5.2 of the DCA Agreement (Pg. 40–41 of CP), OC undertakes responsibility for timely payment to IOCL and has exclusive responsibility to recover dues from IOCL's customers.

**26.** Further under Clause 5.2.5, if the customer fails to pay, OC must pay IOCL, and then has the exclusive right to recover from that customer. CD's formal tagging of OC as its DCA via letter dated Sept 23, 2021, Pg. 50–51 of CP demonstrates clear acceptance of these terms.

**27.** As CD failed to pay its dues, OC made the final payment to IOCL on July 4, 2023, to avoid steep interest and penalties.

**28.** A statutory demand notice under Section 8 of IBC was issued on July 3, 2023, the same is evident from Pg. 129–165 of CP.

**29.** The Corporate Debtor's reply to the statutory demand notice under Section 8 of the IBC (contained at pages 174, 175, 189, and 190 of the Company Petition) contains clear admissions regarding the debt claimed by the OC. These admissions are crucial as they substantiate the existence of debt and default, a prerequisite for admission of a Section 9 application. Reference is made to Annexure 'M' of the CP.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**30.** Additionally, a key admission is evident in the email dated July 4, 2023, sent from the CD's official registered email ID, i.e., dheerajagarwal@beekaygroup.co (Pg. 51 of CP). In this communication, CD admits liability of Rs. 2,32,86,934/-, while asserting that if IOCL were to grant a credit of Rs. 81,22,896/-, then the net outstanding payable to OC would be Rs.1,51,64,308/-. Even assuming this reduced amount, the admitted debt exceeds the threshold limit of Rs. 1 crore.

**31.** With regard to the denial of the authenticity of the email on July 4, 2023, it can be said that all communication related to the transactions between CD, OC, and IOCL was carried out through this very authorized and officially recognized email. The sender, Mr. Dheeraj Agarwal, is a Director and Authorized Signatory of the CD. Thus, this attempted denial is a deliberate misrepresentation and a fraud upon the Tribunal.

**32.** While acknowledging that a sum above the threshold is payable, the CD seeks to set off Rs. 4.68 crore, allegedly arising from a family settlement agreement dated August 27, 2018. This claim relates to a completely separate issue and predates any transaction between CD and OC under the DCA arrangement. This is a clear attempt to introduce extraneous contractual disputes unrelated to the present operational debt.

**33.** CD seeks to set off Rs. 4.68 crore based on a family settlement, which the OC disputes, emphasizing that no obligations existed between CD and OC during the family settlement period.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**34.** It is established by law and reiterated in judgments Swiss Ribbons (supra), Vishal Doshi (supra), AP Coated Drums (supra) that set-off or counterclaims are outside the jurisdiction of the Adjudicating Authority under the IBC.

**35.** At this juncture we would refer to the decision of the Hon'ble NCLAT in **Madras Chemicals & Polymers vs Vijay Aqua Pipes** Company Appeal (AT) (CH) (INS.) No. 298/2021 reported in **(2023) SCC OnLine NCLAT 574** which held as follow:

*60. Going by the 'Objective' and 'Scheme' of the 'I & B Code, 2016', this 'Tribunal', on the basis of surrounding facts and circumstances of the instant case, in the teeth of Clause 15 of the 'Del Credere Agency Agreement', dated 04.04.2017 and keeping in mind of a prime fact that the 'Default', which took place, pertaining to the 'Supply of Goods', comes within the definition of 'Operational Debt', as per Section 5(21) of the I & B Code, 2016 and hence, Section 9 of the I & B Code, 2016, attracts in an 'unambiguous manner'. Viewed in that perspective, the 'Debt', in the present case, cannot be termed as 'Financial Debt', as per Section 5 (8) of the I & B Code, 2016, in the considered opinion of this 'Tribunal'.*

Hence, the debt arising from DCA agreements are operational debts and maintainable under Section 9 of the IBC.

**36.** The pending civil suit involving family settlement enforcement between promoters does not constitute a pre-existing dispute affecting the present operational debt claim between the two companies.





**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**37.** CD is not a party to the family settlement suits, and the commercial transactions underlying the claim occurred years after the family settlement.

**38.** The interest rate of 36% on delayed payments is supported by IOCL's confirmation and applicable under the DCA agreement terms. Invoices raised by IOCL as principal support the operational debt claim, and CD's challenge on this ground is rejected.

**39.** In an identical matter concerning the same Del Credere Agent, we have already passes the following order:

**"1) Analysis and Findings:**

***a. The issues that fell for determination the following:***

***i)*** Whether Mr. Shaumik Dutta has a **valid authorization** to file the present Company Petition, and the present Company Petition is as such maintainable.

***ii)*** Whether **Kushal Polysacks** is an agent of **IOCL** and as such it is entitled to file this Petition under Section 9 of the IBC, 2016 as an Operational Creditor against **Samarth Fablon Pvt. Ltd.** the Corporate Debtor.

***iii)*** Whether there are **pre-existing disputes** between the parties

***iv)*** Whether the **present dispute stands already settled** by way of a family settlement.

**2) On valid authorization [Issue No.(i)]**

**a.** The authorization in question is extracted verbatim herein below for clarity:



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

***“EXTRACT OF BOARD RESOLUTION***

*CERTIFIED TRUE COPY OF THE RESOLUTION PASSED IN THE MEETING OF THE BOARD OF DIRECTOR OF M/S KUSHAL POLYSACKS PRIVATE LIMITED HELD AT ITS OFFICE AT "GANDHI HOUSE", 16, GANESH CHANDRA AVENUE, 4TH FLOOR, KOLKATA 700013 ON 18/11/2022 AT 04.30 P.M.*

*RESOLVED THAT as our company is dealing with the Delcredere Commission Agent under the Indian Oil Corporation Limited and dealing with the 422 customers, who are purchasing the Polymer products from the Indian Oil Corporation Limited, tagging us with their DCA and list of the said customers are enclosed herewith, as a part of this Resolution and in case there their accrues any dues of those customers, found pending for more than 2 months, our company shall take an immediate steps to recover the same including initiation of proceeding under the Insolvency & Bankruptcy Code, 2016;*

*RESOLVED FURTHER that, Mr. Saumik Datta, son of Late Tapan Kumar Dutta, our, Sales Manager, do hereby authorized to represent Kushal Polysacks Private Limited in the matters related to said IBC proceeding or any recovery proceeding against those attached listed companies before the competent court of laws and/or before the Hon'ble NCLT Kolkata Bench and/or the Hon'ble NCLAT, New-Delhi, and we do hereby authorize him to Mile and execute and affirm such cases, replies, affidavits and/or appear before Department/Authority/Court and do all such deeds and things incidental to or connected with the same.*

*FURTHER RESOLVED THAT for the best interest of the company Mr. Saumik Datta will sign, verify and affirm all petitions, affidavit, appointing advocate(s), Vakalatnama and*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

*other necessary papers/documents, for maintaining those legal proceedings, on behalf of M/s Kushal Polysacks Private Limited.”*

- b. It is discernible from the records and is not in dispute that Shaumik Dutta was duly authorized by Mr. Naresh Kumar Agarwal, vide Board Resolution dated 18.11.2022. (page 35 of the CP) to represent **Kushal Polysacks** in all IBC related proceedings before NCLT and NCLAT.*
- c. Admittedly, both Mr. Naresh Kr. Agarwal and Mr. Kushal Agarwal were Directors of the Company till they resigned on 22.11.2022.*
- d. Thus, as on the date of authorization (18.11.2022) they were fully authorized to appoint Mr. Shaumik Dutta to represent **Kushal Polysacks Private Limited** in the matters related to any IBC proceeding or any recovery proceeding against those attached listed companies before the competent court of laws and / or before this Bench and / or the Hon'ble NCLAT, New-Delhi, and to authorize him to file and execute and affirm such cases, replies, affidavits and / or appear before Department / Authority / Court and do all such deeds and things incidental to or connected with the same.*
- e. Page No. 35 of the Company Petition shows that Shaumik Dutta is duly authorized to act on behalf of the Company.*
- f. There is nothing on record to show that this Authority was revoked subsequently at any point of time.*

*Hence, we hold that*

- i. The authorization to file IBC proceedings was legally granted to the said Shaumik Dutta by the Company as on 18.11.2022.*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

*ii. The Authority having never got revoked subsequently, neither expressly nor impliedly by operation of law as on the date of filing of the present Company Petition (i.e. 22.11.2022) the authorization was still valid.*

*iii. Thus the CP is filed by an Authorized Representative of the Kushal Polysacks (OC).*

**3) Whether Kushal is an agent of IOCL [Issue No. (ii)]**

**a. Determination of true nature of relationship between the parties:**

*i) One of the cardinal principles of interpretation of documents, is that the nomenclature of any contract, or document, is not decisive of its nature. An overall reading of the document, and its effect, is to be seen by the courts. [State of Orissa V. Titaghur Paper Mills Co. Ltd. 1985 Supp SCC 280];*

*ii) This principle was reiterated in [Prakash Roadlines (P) Ltd. V. Oriental Fire & General Insurance Co. Ltd. (2000) 10 SCC 64];*

*That the task of Court is to, upon an overall reading of the materials presented by the parties, discern the true nature of the relationship between the parties and the nature of the service provided.*

*iii) In the case of C.C., C.E. and S.T. Bangalore (Adjudication) & Ors. Vs. Northern Operating Systems Pvt. Ltd., it is held “ One of the cardinal principles of interpretation of documents, is that the nomenclature of any contract, or document, is not decisive of its nature.*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

*An overall reading of the document, and its effect, is to be seen by the courts.”*

*iv) In the case of **B.K. Muniraju V. State of Karnataka & Ors.**, reported in **2008 (4) SCC 451**, it was held “a sentence or a term in a contract does not determine the real nature of the contract. It is true that the Courts should not rewrite the contract while making an attempt to interpret it.”*

*v) In the case of **D.N. Revri & Co.**, reported in **AIR 1976 SC 2257**, it was held that “a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it.”*

-  
*To determine whether Kushal Polysacks is an agent of IOCL and entitled to prefer this application. It would be necessary to extract the **Del Credere Associate Agreement (DCA)** made on 22.06.2010.*

**b. “DEL-CREDERE ASSOCIATE AGREEMENT**

*This Del-Credere Associate Agreement is made on this 22 day of Jun, 2010, at Delhi by and between*

*1. **M/s. Indian Oil Corporation Limited**, a company incorporated, existing and functioning under the laws of India, presently having its registered office at G9, Ali Yavar Jung Marg, Bandra (East), Mumbai-400 051 and part of Corporate Office at, Indian Oil Bhavann, Yusuf Sarai New Delhi-110016 (hereinafter referred to as IOCL).*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

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2. **M/s Kushal Polysacks Private Ltd.**, having its principal/registered office at 16, Ganesh Chandra Avenue, Gandhi House, 4th Floor, Kolkata-700013 acting through the Managing Director/**duly authorized representative appointed as Del Credere Associate at Kolkata (West Bengal) (hereinafter referred to as the 'DCA'**, which expression shall, unless repugnant to the context or meaning, be deemed to include its successors, administrators, legal representatives and permitted assigns) of the Second Part.

**Whereas**

A. **IOCL** is in the process of setting up a Polymer Plant at Panipat Refinery, Panipat, Haryana, India which is intended to produce 1.25 MMIPA of polymers namely, BORELL LLDPE, HDPE and PP.

B. IOCL wishes to appoint del-credere associates for securing, prompt payments to IOCL against sale of Products) by IOCL to its Customer.

C. **The DCA has represented to IOCL that it has adequate resources and experience to render services as a del-credere associate for securing payments owed to IOCL by its Customers** and for promotion of its Products, and IOCL has agreed to engage the services of the DCA on a non-



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

*exclusive basis during the Term (as defined below), subject to and in accordance with terms and conditions set forth herein, Now, therefore, Parties agree as follows:*

**DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

XXX

XXX

XXX

**Allocated Customer** means the Customer allocated by IOCL in accordance with Clause 4.1.2.

**Customer** shall mean the any Person desirous of purchasing the Product(s) and or who purchases the Product(s)

Confirmation of Indent means the confirmation with respect to the Indent, issued by IOCL.

XXX

XXX

XXX

**DCA Representative** means person(s) duly authorized by **DCA** for implementation of this Agreement and communicated to IOCL in writing.

XXX

XXX

XXX

**Event of Default** shall mean the failure or neglect to comply with any obligation under the Agreement, and without prejudice to the generality of foregoing occurrence of any or all of the following:

XXX

XXX

XXX

**Indent** shall mean the purchase order placed by the Allocated Customer through the DCA in the form prescribed by IOCL from time to time.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

***Invoice** shall mean the invoice raised by IOCL for sale of Product(s) to the Allocated Customer.*

XXX

XXX

XXX

*Service Charge shall mean INR 350 (Three Hundred and Fifty only) per metric ton of Product (excluding Service Tax and Education Cess) or such rates as may be decided by IOCL from time to time as per market conditions for the services rendered by the DCA and as per terms and conditions of this Agreement.*

XXX

XXX

XXX

**2. EFFECTIVE DATE**

*This Agreement shall come into full force and effect on 1<sup>st</sup> May, 2010.*

**3. SCOPE**

*IOCL hereby appoints the DCA as one of its associates on del-credere basis for securing prompt payments to IOCL against sale of Product(s) to its Customers and promotion of the Product(s), during the Term, on terms and conditions contained herein;*

**DISTRIBUTION / SALE OF PRODUCT(S)  
Customer Registration and Allocation**





**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**4.1.1 A Customer shall be required to obtain registration with IOCL and DCA shall facilitate the same.**

**4.1.2 IOCL shall, at its discretion, allocate Customers to the DCA.** However, any such allocation of Customers by IOCL shall, as far as practicable, take into consideration the legitimate concerns of the DCA. The DCA acknowledges That IOCL reserves the right to allocate a Customer to more than one DCA.

**4.2 Indent and Confirmation of Indent**

A Customer desirous of purchasing the Product(s) shall place an **Indent with the DCA**. The **DCA** shall forward to IOCL, the Indent received from an Allocated Customer in the prescribed manner. **IOCL**, at its sole discretion and depending on production and availability of the Product(s), issue the Confirmation of Indent to such Allocated Customer pursuant to the Indent, **under intimation to the DCA**

**4.3 Sale of Products**

**4.3.1 Point of Sale. The sale of Product(s) by IOCL, to the Allocated Customer** shall be Ex-Works and or Ex-IOC Warehouse, based on the production and availability, and upon terms and conditions to be specified from time to time by IOCL.

**Invoice raised by IOCL** shall include VAT/CST as applicable.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

4.3.2 *The Products shall be sold as per rates stipulated in the Price List, unless specified otherwise by IOCI, with respect to an Allocated Customer.*

4.3.3 *The terms of sale of the Product by IOCL to the Allocated Customer shall be as determined by IOCL. The DCA acknowledges that such terms of sale may change with mutual agreement of IOCL and the Allocated Customer.*

**5.1 Security**

5.1.1 ***The DCA shall stand guarantee for the full amount due from the Allocated Customer (including price of Product, applicable taxes and duties). The DCA shall furnish security in the form of an irrevocable and unconditional bank guarantee or cash deposit or both.*** *The security amount / extent of security shall not be less than INR 1,00,00,000 (Indian Rupees One Crore Only) and shall be subject to revision by IOCL from time to time based on market conditions.*

5.1.2 *The Bank Guarantee shall;*

- i. Be in the format attached hereto as Annexure 2 or any other modified format that IOCL may require.*
- ii. **Be from a bank acceptable to IOCL.** Such bank shall be a Scheduled bank under the Reserve Bank of India and which shall not be a co-operative bank,*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

*iii Be continuing in nature and accordingly be kept renewed from time to time anti renewals shall be furnished at least one month before the expiration of the same;*

XXX

XXX

XXX

*5.1.3 **IOCL shall be entitled to invoke the security** (Bank Guarantee and / of Cash Deposit) in case of loss or damage caused to/ suffered or would be caused to or suffered by IOCL by reason of any breach or event of default **by the DCA or representatives of the DCA** of any of the terms or conditions contained in the Agreement.*

XXX

XXX

XXX

*5.1.5. **The DCA shall, at the option of IOCL,** simultaneous with the furnishing of the security, deliver a Letter of Authorization to IOCL, in the form and manner acceptable to IOCL **whereby IOCL, shall be authorized to debit the designated bank account of the DCA, upto limits stipulated by IOCL,** with respect to any amounts due and payable by the DCA to IOCL in accordance with this Agreement.*

*5.2 **Payment for sale of Product***



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**5.2.2. In case timely payments are not realized by IOCL from the Allocated DCA Customer, IOCL will be entitled to recover the monies from the DCA.**

*In case IOCL, for whatever reason, fails to recover the monies from the DCA, the DCA shall be responsible for making such payments to IOCL together with Applicable Interest Applicable Interest shall mean such rate of interest as may be specified in the terms of sale of the Product to the Allocated Customer, which shall be not less than SBI Prime Lending Rate plus 2% on all sums due calculated from the due date of payment.*

**5.2.3. The DCA acknowledges that amounts recovered by IOCL, from the DCA in accordance with this Agreement shall be credited to the account of the concerned Allocated Customer, and in such event, the DCA shall have recourse to the Allocated Customer but it shall have no recourse to IOCL;**

*IOCL shall also have the right to realize the payment along with the interest by invoking the security (Bark Guarantee and/or Cash Deposit).*

**5.2.5. The DCA alone shall be responsible for recovery of monies from an Allocated Customer, at its risk, cost and consequence and IOCL shall not be responsible in case, for whatever reason, the DCA fails to recover monies from the concerned Allocated Customer.**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

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**7. DCA COVENANTS**

*7.1. Engagement of Employee*

*The DCA shall engage adequate number of competent sales persons, accounts, computer operators or any other manpower, etc., as may be required to comply with this Agreement. The DCA shall arrange regular trainings for its employees at its own cost.*

**7.2. Periodic Reports**

XXX XXX XXX

*7.2.3. The DCA shall furnish such other reports and records in a timely manner. as per the formats and periodicity advised by IOCL from time to time.*

XXX XXX XXX

**7.3 Customer Relationship**

**7.3.1 The DCA shall appropriately attend to Customers at the office;**

*7.3.2 The DCA shall cultivate and maintain good relationship with Customers. in accordance with sound commercial*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

*practice and make best efforts to inspire the Customers to purchase the said Products from IOCL*

XXX XXX XXX

**7.3.4 The DCA shall provide day to day services to the Allocated Customers, co-ordinate with the Allocated Customer as well as IOCL for timely supplies.**

XXX XXX XXX

**7.3.5 The DCA shall be assigned targets for sales volume and customer addition with mutual consent of the Parties;**

**7.6 Liability for Payments**

**The DCA shall be solely and completely responsible for any expense** *(whether by way of salary or other benefits or compensation, statutory or otherwise)* to be made to any person including its employees or any other persons retained by the DCA or the account of such person, **who is involved in providing any part of implementation of this Agreement.**

XXX XXX XXX

**7.8 Cost and Expenses**

The **DCA** shall be responsible for all **costs and expenses** incurred in complying with its obligations under this Agreement;

**7.9 Compliance with Requirements**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

*The **DCA** shall ensure compliance with all Requirements and maintain all records (including statutory records and documentation) as may be applicable in the performance of the Agreement.*

**7.10 Recovery from Allocated Customer**

*The DCA shall not, under any circumstance, recover from the Allocated shall Customers in excess of the amount(s) due and payable by the Customers to IOCL with respect to the sale of the Products made by IOCL.”*

*A bare perusal of the Clauses extracted supra would exemplify and demonstrate that this DCA Agreement confers all the rights upon the IOCL, the principal and Kushal the present OC, acts as an Agent. The Agreement empowers the present OC alone to recover the dues from an allocated customer of IOCL. Such overt clause in the DCA agreement empowers the OC the sole Authority to file the present proceedings against the CD.*

**c. Effect of DCA Agreement**

*The DCA agreement between the IOCL and the DCA Kushal is explicit on the following:*

**i) The Supplier:**

*IOCL is the supplier of goods which acts through its agent DCA (here Kushal)*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**ii) The DCA**

*Kushal Polysaks as Del Credere Agent (DCA) is*

- a. appointed by IOCL as one of its associates on Del Credere basis.*
- b. bound to secure against payments owned to IOCL by its customers (allocated customers including the CD Samarth).*

**iii) The Allocated Customer**

*Samarth is the allocated customer.*

**iv) Procedure of Placing Indent**

*IOCL allocated the customer **Samarth** to DCA under the following process:*

- a. Samarth Fablon the Corporate Debtor is an allocated Customer, as a customer, it approaches IOCL for specified goods.*
- b. A customer is required to obtain registration with IOCL (the supplier);*
- c. The DCA facilitates such registration;*
- d. The IOCL at its discretion allocates customers to a DCA or to more than one DCA.*
- e. The allocated customers (here Samarth) then places indent through the DCA.*

**v) Role of the DCA**

- a. The DCA will then forward the indent to IOCL;*
- b. The IOCL depending upon production and availability of products, issue confirmation of indent to such Allocated Customers under intimation to the DCA.*





**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

- c. The products would be sold by IOCL as per terms of sale decided by the IOCL;*
- d. Invoice shall be raised by IOCL.*
- e. Thus invoices are not required to be issued by the DCA.***

***vi) Liability of the DCA to repay the Supplier in the event of default of Customer.***

- a. The DCA shall stand guarantee for the full payment from the Allocated Customer (here Samarth);*
- b. The DCA shall forthwith security in the form of an irrevocable and (Anx. 19) unconditional bank guarantee in the format accepted by the IOCL;*
- c. Ensure full and timely payment by allocated customer to IOCL for the products purchased by Allocated Customer (here Samarth) from IOCL, shall alone be responsible for recovery of dues of IOCL from allocated customers.*
- d. In case IOCL fails to get timely payments from the customers, IOCL will recover its dues from the DCA with interest.*
- e. Thus, although issues are not raised by the DCA, it stands guarantee for the full payment from allocated customer and is liable to pay the IOCL if allocated customer fails to pay IOCL.*

***vii) Remedy of the DCA***

- a. DCA shall have recourse to the allocated customer (here Samarth) but not to the IOCL (the Supplier).*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

***b.** Thus, DCA having paid the IOCL for the default of allocated customers can only sue the allocate customer (Samarth) and not the IOCL.*

**viii) RIGHTS of IOCL**

- a.** To allocate Customers to DCA.*
- b.** Issue confirmation of indent to allocated customers under intimation to DCA.*
- c.** Raise invoice upon the allocated customer tagging the DCA.*
- d.** Issue bank guarantee (BG) from the DCA to ensure its prompt payments from the allocated customers.*
- e.** Invoke the BG by reason of default by DCA to realize payments from Allocated Customers.*

**ix) OUTCOME:**

- a.** Thus, evidently and irrefutably, the DCA (here Kushal) as an agent of the IOCL, upon default in payment of an allocated customer (Samarth) to the IOCL (the Supplier) for the products sold and delivered by IOCL to the customer (Samarth) through DCA, against invoices issued by IOCL tagging the DCA, is bound to repay the IOCL and recover its dues from the customer (Samarth);*
- b.** The IOCL has in fact assigned its right to sue, to the DCA.*
- c.** Hence, this present petition filed by the DCA Kushal against the allocated customer Samarth, for payments, it has made to the supplier IOCL for goods supplied by IOCL to Samarth, and dues*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

*of Samarth towards payments against such dues, which are recovered by IOCL from DCA Kushal, can maintain this Section 9 application against the allocated customer (Samarth).*

**d. LEGAL PROVISIONS**

Chapter VIII of the Contract Act, 1872 deals with "Of Indemnity and Guarantee". Section 124 defines "Contract of indemnity" and Section 126 defines "Contract of guarantee". Section 126 which is relevant for the present case is as follows:

**"Guarantee" defined under Section 126 of the Contract Act, thus:**

**i) "126. "Contract of guarantee", "surety", "Principal debtor" and "creditor".** – "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written."

**A contract becomes a guarantee when the contract is to perform the promise or discharge the liability of a third person in case of default.** Thus, when a person enters into a contract to perform or discharge the liability of a third party, the contract becomes a contract of guarantee.

*In the present case Kushal the OC guarantees to perform its promise to "Creditor" IOCL to discharge the liability of a "third party" (allocated*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

*customer, here Samarth) the “principal debtor” who owes to the “Creditor” IOCL”.*

**40.** In view of the aforesaid discussion, the present **C.P (IB) NO. 15/KB/2024** stands **admitted**. The Operational Creditor is directed to furnish the Applicant of I.A (IB) NO. 370/KB/2025 a copy of the Civil suit no. 127 of 2020 titled as Mr.Naresh Kumar Agarwal & Anr. V. Bishnu Kumar Agarwal & Ors. Hence, the **I.A (IB) NO. 370/KB/2025** stands **disposed of**.

**41.** The C.P. (IB) NO. 15/KB/2024 filed under Section 9 of I&B Code stands ALLOWED, and accordingly, we order the initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor by the following Orders:

a. The Application filed by Kushal Polysacks Pvt. Ltd.(Operational Creditor), under Section 9 of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the Corporate Insolvency Resolution Process in respect of **Shree Ram Electrocast (Jharkhand) Pvt. Ltd.** (Corporate Debtor).

b. There shall be a moratorium under section 14 of the IBC.

c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

e. **Mr. Soumitra Lahiri, Registration No. IBBI/IPA-001/IP-P00734/2017-2018/11232**, Phone no. 8420969857, email: [slahiri0207@gmail.com](mailto:slahiri0207@gmail.com), is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18,19, 20 and 21 of the Code.

f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

assistance as may be required by the Interim Resolution Professional in this regard.

h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

i. The Operational Creditor shall deposit a sum of Rs. 2,00,000/-(Rupees Two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

j. In terms of section 9(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

k. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order

**42.** The **C.P. (IB) No. 15/KB/2024** to come up on 28.10.2025 for filing the periodical report.



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO.I  
KOLKATA**

**C.P (IB) NO. 15/KB/2024**

**43.** A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

**Cmde Siddharth Mishra  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on this, 16<sup>th</sup> Day of September, 2025**

Oindrila, K. (LRA)