



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI**

**BENCH-IV**

**CP (IB) NO. 239 OF 2025**

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

**IN THE MATTER OF:**

**M/s. MITTAL & BROTHERS**

**(THROUGH IT'S PROPRIETOR MR. GAURAV MITTAL)**

**... Operational Creditor**

**VERSUS**

**M/s. JAZZCON ENGINEERS PVT. LTD. & ORS.**

**... Corporate Debtor**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,**

**HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI**

**HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on: 09.09.2025**

**PRESENT:**

**For the Applicant : Mr. Gaurav Mehta, Adv.**

**For the Respondent : Mr. Yashraj Singh, Adv.**



## **ORDER**

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

1. This instant application was filed by M/s. MITTAL & BROTHERS (hereinafter referred as 'Applicant'/ 'Operational Creditor') through its sole proprietor Mr. Gaurav Mittal), having Regd. Office at : - 2007 / 6, Floori, Katra Lachhu Singh, Bhagirath Palace, Delhi- 110006 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Jazzcon Engineers Pvt. Ltd. (hereinafter referred as 'Respondent' or 'Corporate Debtor') for defaulting the payment of total amounting to which comprises of Principal amount of Rs. 58,30,366/- (Fifty-Eight Lacs Thirty-Six) with an additional amount of interest comprising of Interest @ 24% per annum commencing from 08 May 2020 till 31 August 2024 Rs. 1,17,40 ,359.00, which comprises of total debt of **Rs. 1,75,70,725.08 (One Crore Seventy-Five Lacs Seventy Thousand Seven Hundred and Twenty-Five Only)** to be paid by the Corporate Debtor.
2. The Respondent Company M/s. Jazzcon Engineers Pvt. Ltd. & Ors. CIN: U70109DL2006PTC150569, incorporated on 05.07.2006 under the provisions of the Companies Act, 2013, is having its registered office situated at 69, Basement, Sant Nagar East of Kailash, New Delhi- 110065. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of



Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

**3. Briefly stated the facts of the present case as averred by the Applicant/ Operational Creditor are: -**

- a) The Applicant submitted that from the year 2008 to 2016, the Operational Creditor supplied electrical goods in bulk as per the demands of the Corporate Debtor, and during this period, the Corporate Debtor duly made all payments in a timely manner.
- b) The Operational Creditor is a reputed firm engaged in the manufacture and authorized dealership of electrical goods, enjoying established goodwill in the local vicinity. The Corporate Debtor had been making timely payments for the supplies until the year 2016. Considering the past cordial business relationship, the Operational Creditor once again agreed to supply electrical goods to the Corporate Debtor on 08.05.2020, pursuant to its demand. It is pertinent to note that the Corporate Debtor placed multiple orders on a credit basis and, in turn, issued post-dated cheques towards part payments. However, the Corporate Debtor consistently failed to clear the entire outstanding dues as reflected in the ledger account of the Operational Creditor. The Operational Creditor duly supplied the electrical goods from time to time in accordance with the demands and requests made by the Corporate Debtor.



- c) The Applicant has submitted that each invoice expressly contained a stipulation that interest would be charged at the rate of 24% per annum on bills not paid within 30 days. In pursuance of the said transactions, the Corporate Debtor issued several cheques in favour of the Operational Creditor, some of which were duly honoured, while others were dishonoured on various dates, namely, 05.04.2021, 17.04.2021, 02.03.2022, 13.08.2024, 27.09.2024, and 30.09.2024, towards part payment of the goods supplied. All such cheques were duly signed and issued by Mr. Vivek Sharma, Director of the Corporate Debtor. Apart from the aforesaid cheques, several other transactions through cheque, NEFT, RTGS, credit notes, and debit notes also took place between the parties in respect of the supply of goods.
- d) Subsequently, alarmed by the persistent reluctance of the Corporate Debtor to clear the dues arising from the supply of goods, the Operational Creditor, through his counsel, issued a legal notice dated 04.09.2024 under Section 138 of the Negotiable Instruments Act, 1881, in respect of dishonour of cheque(s). By the said notice, the Operational Creditor called upon the Corporate Debtor to pay the cheque amount along with the total outstanding dues. In response, the Corporate Debtor, vide reply dated 27.09.2024, denied any liability and asserted that no payment was due to the Operational Creditor.
- e) As per the books of the Operational Creditor, an outstanding sum of ₹58,30,366/- (Rupees Fifty-Eight Lakhs Thirty Thousand Three



Hundred Sixty-Six Only) remains due, and the total principal amount including accrued interest stands at ₹1,75,70,725/- (Rupees One Crore Seventy-Five Lakhs Seventy Thousand Seven Hundred Twenty-Five Only) as on 30.09.2024. Despite repeated assurances, the Corporate Debtor has failed to discharge its liability. Consequently, the Operational Creditor issued a second legal notice under Section 138 of the Negotiable Instruments Act on 09.10.2024 via email, which was duly served upon the official email ID of the Corporate Debtor, operated by its directors, Mr. Vivek Sharma and Mr. Chattar Singh.

- f) Since the Corporate Debtor failed to make payment despite persistent follow-ups, the Operational Creditor issued a demand notice under Section 8 of the IBC, 2016, in Form 3 dated 16.10.2024, demanding payment for the electrical goods supplied as per the invoices. The said notice was served upon the Corporate Debtor via email on 16.10.2024 and additionally dispatched through speed post on 19.10.2024, which was duly delivered on 21.10.2024 to the Director of the Corporate Debtor.
- g) In view of the foregoing facts and circumstances, it is evident that the Corporate Debtor has failed to discharge its liability towards the Operational Creditor for a sum of ₹58,30,366/- (Rupees Fifty-Eight Lakhs Thirty Thousand Three Hundred Sixty-Six Only), along with interest at the rate of 24% per annum, as stipulated under each invoice, from the date of default until realization. This clearly reflects the unsound financial position of the Corporate



Debtor, exhibiting traits of insolvency. Therefore, in the interest of the creditors as well as in public interest, it is just, equitable, and necessary that the Corporate Insolvency Resolution Process be initiated against the Corporate Debtor.

**4. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:**

- a) The Respondent submitted that the petition is not maintainable as it is barred by the monetary threshold prescribed under Section 4 of the IBC, 2016, and further, the alleged debt arises out of the Section 10A period. The Operational Creditor has claimed a principal sum of ₹58,30,366/-, which falls short of the minimum threshold of ₹1 Crore required to invoke the jurisdiction of this Hon'ble Tribunal under Section 9 of the IBC.
- b) The Petition is barred by the threshold limit, and to reach the prescribed limit, the Operational Creditor has artificially inflated the claim by adding interest at 24% p.a., without any agreement, contract, or mutual understanding to that effect.
- c) To support its contention the Respondent has submitted that the Hon'ble NCLAT in the matter of **Rishabh Infra Through Hari Mohan Gupta Vs Sadbhav Engineering Ltd., Company Appeal (AT) (Insolvency) No. 1881 of 2024** dated 04.11.2024 has held the following with respect to claiming of interest through invoices-

*“9. We are of the view that invoices which have been sent by the Operational Creditor containing the term of interest*



*cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest.”*

- d) Further Hon’ble **NCLAT in Comet Performance Chemicals Private Limited Vs Aarvee Denims and Exports Limited, Company Appeal (AT) (Insolvency) No. 1878 of 2024** further held the following –

*16. First, we look into the claims and counter claims of the threshold limit under Section 4 of the IBC. The Appellant's claims aggregates Rs 1,36,30,679/- (rupees one crore, thirty six lakhs, thirty thousand, six hundred and seventy-nine only) including interest. Section 5 (21)1 of the IBC restricts claims to those arising from goods or services, and interest is recoverable only when expressly agreed upon by the parties. In the absence of such agreement, the interest component cannot be considered part of the operational debt. Consequently, without interest the outstanding principal amount alone is Rs 60,44,800/- (rupees sixty lakhs, forty-four thousand and eight hundred only) and is well below the threshold of Rs 1 crore specified under Section 4 of the IBC.*

*17. The Respondent relies upon **Rishabh Infra Through Hari Mohan Gupta vs Versus Sadbhav Engineering Ltd [Company Appeal (AT) (Insolvency) No. 1881 of 2024]** wherein it has been held that invoices with interest clauses, which were not part of the formal agreement, are unenforceable. This judgment supports the case of the Respondent.*

*18. Accordingly, we agree with the submissions of the Respondent and also the findings of the Adjudicating Authority that no interest can be charged against the supply of goods and services for delayed payments until and unless there is an express agreement between the parties. **We find justification in the claim of the Respondent that the***



***interest claim was unilaterally imposed and lacked any contractual basis.***

- e) In the present case there is no formal agreement between the parties, the Applicant is claiming interest solely on the basis of the unilateral invoices which are neither signed by the Respondent/Corporate Debtor or whose terms were ever agreed upon by the Corporate Debtor that it is the contention of the Ld. Counsel appearing for Respondent that Multiple invoices relied upon by the Operational Creditor pertain to supplies made between 25.03.2020 and 25.03.2021, the period expressly barred by Section 10A of the IBC, for which no petition can ever be filed.





S.no	Invoice No.	Invoice Date	Invoice Amount (₹)
1	72	05-08-2020	40,120.00
2	96	20-08-2020	67,695.00
3	104	25-08-2020	58,914.00
4	118	02-09-2020	14,100.00
5	138	12-09-2020	466,159.00
6	153	18-09-2020	20,473.00
7	183	08-10-2020	799,651.00
8	200	19-10-2020	2,360.00
9	218	27-10-2020	118,885.00
10	226	29-10-2020	71,560.00
11	227	30-10-2020	39,708.00
12	251	07-11-2020	41,911.00
13	252	09-11-2020	29,105.00
14	264	19-11-2020	7,316.00
15	284	01-12-2020	49,950.00
16	285	02-12-2020	49,966.00
17	313	21-12-2020	94,588.00
18	314	21-12-2020	39,158.00
19	360	16-01-2021	96,319.86
20	361	16-01-2021	19,942.00
21	411	13-02-2021	297,048.00
22	476	10-03-2021	1,183,319.00
23	504	20-03-2021	80,844.00
Total			<b>36,89,091.86</b>



- f) It is submitted that the alleged Principal amount claimed by the Applicant is Rs. 58,30,366 out of which Rs. 36,89,091.86 is the amount arising from the invoices raised during Section 10A period. It is further submitted that since the principal amount is ineligible during the Section 10A period, any interest calculated on such amount is illegal.

### **ANALYSIS AND FINDINGS**

5. We have heard the learned counsels appearing for the parties and have examined the pleadings, documents, and material placed on record.
6. The matter was taken up on 28.04.2025. However, no representation was made on behalf of the Applicant. In the interest of justice, the matter was adjourned. On 22.05.2025, this Adjudicating Authority heard the matter and the Applicant was directed to file an Affidavit on maintainability specifically addressing the issue of threshold and the particulars of debt within a week time, arising out of the Section 10A period, along with supporting judicial precedents. Since, the registered office of the Respondent/ Corporate Debtor is in Delhi, this Adjudicating Authority is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.
7. The first instance, to determine whether the impugned amount claimed by the Operational Creditor would fall under the ambit of Operational



Debt, it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under the said section, 'Operational Debt' is defined as:

*"A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority".*

8. On perusal of the case file, we note that the Operational Creditor is a firm engaged in the business of manufacturing and dealing in electrical goods. The Corporate Debtor was a regular customer of the Operational Creditor, to whom the latter supplied various electrical goods in bulk from time to time in accordance with the requirements and demands raised by the Corporate Debtor.
9. We note that as per part IV of the Application, the Operational creditor has submitted that Corporate debtor has defaulted upon an amount to **Rs. 1,75,70,725.08** (One Crore Seventy-Five Lacs Seventy Thousand Seven Hundred and Twenty-Five Only) which comprises of **Principal amount of Rs. 58,30,366/-** (Fifty-Eight Lacs Thirty Six) with an **additional amount of interest** comprising of Interest @ 24% per annum commencing from 08 May 2020 till 31 August 2024 **Rs. 1,17,40,359.00.**
10. Before we proceed further, it would be relevant to refer to Section 10A of the Code which read as under:

*"10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a*



*corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

*Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.]”*

- 11.** The Applicant has relied upon the judgment of Hon’ble NCLAT in ***Prashant Agarwal Vs Vikash Parasrampuria & Anr. in Company Appeal (AT) (Ins) No. 690 of 2022 decided on 15.07.2022***, wherein this Tribunal has held that the total amount which includes both principal debt and interest on delayed payment as was stipulated in the invoices itself will become the total debt outstanding as per the requirements of Section 4 IBC in a Section 9 Application. The facts of each case are different. We note contrasting judgments relied upon by the Applicant. The Respondent has relied upon the judgment of Hon’ble NCLAT in ***Rishabh Infra Through Hari Mohan Gupta Vs. Sadbhav Engineering Ltd in Company Appeal (AT) (Insolvency) No. 1881 of 2024 decided on 04.11.2024***, wherein it held that in the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest.



- 12.** In the present case, it is observed that no formal agreement exists between the parties. The Applicant's claim for interest rests solely upon unilateral invoices, which neither bear the acknowledgment or signatures of the Respondent/Corporate Debtor nor demonstrate any consensus ad idem with respect to the terms of interest. On this basis, this Adjudicating Authority cannot accept the claim of the Operational Creditor for claiming interest in a Section 9 Application filed by the Operational Creditor.
- 13.** Upon exclusion of the invoices falling within the purview of the Section 10A period, it is observed that out of the total principal amount of ₹58,30,366/- as claimed by the Applicant, a sum of ₹36,89,091.86/- pertains to such barred period and, therefore, cannot be reckoned for the purposes of computation of default.
- 14.** It is further observed that the minimum threshold limit of Rs. 1 Crore as laid down under Section 4 of the Code is the statutory requirement which has to be mandatorily complied with and no person shall be entitled to have the privilege of not complying with the statutory requirements. Therefore, the present petition has failed to meet the minimum threshold amount of Rs. 1 crore. Hence, the present petition is not maintainable and is liable to be dismissed on this ground alone.
- 15.** In view of the observations made herein, and the judicial pronouncements, it is accordingly, hereby ordered that the application bearing **CP (IB) NO. 239 of 2025** filed by M/s. Mittal & Brothers ('Operational Creditor') under Section 9 of the Code read with rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating



Authority) Rules, 2016 for initiating CIRP against M/s. Jazzcon Engineers Pvt. Ltd. ('Corporate Debtor') is not maintainable and is liable to be dismissed and accordingly, the same stands dismissed, however without cost.

- 16.** However, this order shall not preclude the Applicant from seeking remedies, if so advised, under other laws that may be applicable in the facts of the case. The parties are at liberty to approach the civil court or any other appropriate forum and may explore other legal remedies available as per law.

**Sd/-**

**ATUL CHATURVEDI**  
**MEMBER (TECHNICAL)**

**Sd/-**

**MANNI SANKARIAH SHANMUGA SUNDARAM**  
**MEMBER (JUDICIAL)**