

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P2.

C.P. (IB)/710(MB)2025

CORAM:

**SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)**

**SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF HEARING (HYBRID) DATED 12.01.2026

NAME OF THE PARTIES: **Nilesh Rathi (Proprietor of Venkateshwara
Steels)**
Vs
R Nutan Builders Private Limited

Under Section 9 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//VM//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI

CP (IB) No. 710/MB/2025

*[Under Section 9 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

Nilesh Rathi Proprietor of Venkateshwara

Steels

[PAN No. AAHPR1187L]

Registered Office: 314 Loha Bhavan, P.D.

Mello Road Masjid Bunder (E) Mumbai- 400009.

...Operational Creditor/(OC)

Vs.

R Nutan Builders Private Limited

[PAN NO. AAKCR4876N]

Registered Office: Shop No. 3 Nutan

Annexe 277 Jawahar Nagar Road No. 3

Near Suvidha Hospital Goregaon West,

Mumbai, Maharashtra 400063.

...Corporate Debtor/(CD)

Pronounced On: 12.01.2026.

CORAM:

SHRI NILESH SHARMA, MEMBER (JUDICIAL).

SHRI SAMEER KAKAR, MEMBER (TECHNICAL).

Hearing: Hybrid.

Appearances:

Operational Creditor: Adv. Mr. Manoj Mishra i/b Mishra Legal

Corporate Debtor: Adv. Mr. Ameya Wadkar i/b Wisdom Legal

ORDER
[PER: BENCH]

1. BACKGROUND

- 1.1 This Company Petition No. C.P. (IB) 710/MB/2025 (Application) was filed on 12.07.2025 under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('AA Rules') by Nilesh Rathi Proprietor of Venkateshwara Steels, the Operational Creditor (OC), for initiating Corporate Insolvency Resolution Process (CIRP) of R Nutan Builders Private Limited, the Corporate Debtor (CD).
- 1.2 The total amount of default alleged is Rs. 1,10,99,035/- (Rupees One Crore Ten Lakhs Ninety-Nine Thousand and Thirty-Five only) along with interest @ 24% p.a. till the date of payment/realization.
- 1.3 As stated in Part IV of the application, the date of default is stated as 06.01.2024.

2. CASE OF THE OC:

- 2.1 The Operational Creditor is a registered as an MSME having Udyog Regn. No. UDYAM-MH-19-009090630 and the Corporate Debtor is a Private Limited Company incorporated on 05.10.2020.
- 2.2 It is submitted that the project was commenced by the Corporate Debtor in April 2023, in respect of which the Company required TMT bars.

2.3 It is further submitted that the Respondent used to place orders with the Applicant for the supply of TMT bars through WhatsApp communications, which were sent by the Respondent's Director, Mr. Ritesh Seth. A copy of the entire WhatsApp communication exchanged between the Proprietor of the Applicant and Mr. Ritesh Seth, Director of the Respondent, is annexed as Exhibit "MMM".

2.4 Accordingly, the Applicant would procure the TMT bars from VRU Steel Industries ("Reseller"), which, in turn, resold goods manufactured by M/s Jaideep Metallics & Alloys Private Limited ("Factory"), and thereafter supplied the same to the Corporate Debtor.

2.5 Therefore, the Applicant had been supplying TMT bars to the Respondent on a regular basis, in accordance with the orders placed by the Respondent, thereby constituting the Applicant as the "Operational Creditor" and the Respondent as the "Corporate Debtor" within the meaning of the IBC.

2.6 Since the inception of the business relationship, the payment terms were mutually agreed as 30 (thirty) days from the date of supply or the invoice date. The due date was consistently mentioned on each invoice. Furthermore, the trailer was weighed by the Factory's representative at the time of loading the material and was again weighed by the Respondent's site personnel at the time of unloading, as part of the standard procedural requirements. Accordingly, the trailer number is reflected in all the invoices, delivery challans, e-way bills, and weight slips.

2.7 Further, the Respondent has never raised any dispute with respect to the quality or quantity of the goods supplied by the Operational Creditor, nor has

it disputed the outstanding amount due and payable to the Operational Creditor at any point in time.

2.8 Therefore, there are a total of 6 (six) invoices that remain fully or partly outstanding, in the following manner:

Invoice No.	Invoice Amount	Receipt	Balance In (INR)
VVS067/23-24	15,15,530/-	3,49,900/-	11,65,450/-
VS077/23-24	16,03,540/-		16,03,540/-
VS079/23-24	14,05,174/-		14,05,174/-
VS085/23-24	14,50,488/-		14,50,488/-
VS086/23-24	14,64,271/-		14,64,271/-
VS094/23-24	16,45,692/-		16,45,692/-
Total	90,84,515/-	3,49,900/-	87,34,615/-

2.9 Details of all the 6 invoices are mentioned below:

- I. 1st Invoice: that the Applicant had supplied certain TMT Bars to the Respondent, against which the Applicant had raised invoice bearing no. VVS06/23-24 for an amount of Rs. 15,15,350/- dated 10.10.2023.
- II. 2nd Invoice: that the Applicant has supplied certain TMT bars to the Respondent, which the Applicant had raised invoice bearing no. VS077/23-24 for an amount of Rs. 16,03,540/- dated 27.10.2023.
- III. 3rd Invoice: that the Applicant has supplied certain TMT bars to the Respondent, which the Applicant had raised invoice bearing no. VS079/23-24 for an amount of Rs. 14,05,174/- dated 28.10.2023.

- IV. 4th Invoice: that the Applicant has supplied certain TMT bars to the Respondent, which the Applicant had raised invoice bearing no. VS085/23-24 for an amount of Rs. 14,50,488/- dated 17.11.2023.
- V. 5th Invoice: that the Applicant has supplied certain TMT bars to the Respondent, which the Applicant had raised invoice bearing no. VS086/23-24 for an amount of Rs. 14,64,271/- dated 19.11.2023.
- VI. 6th Invoice: that the Applicant has supplied certain TMT bars to the Respondent, which the Applicant had raised invoice bearing no. VS094/23-24 for an amount of Rs. 16,45,692/- dated 08.12.2023.

2.10 It is pertinent to note that the Respondent has also confirmed the outstanding amounts pertaining to all 6 (six) invoices through a Confirmation of Accounts for the period from 01.04.2023 to 31.03.2024, duly signed and stamped by the Corporate Debtor, which is annexed as Exhibit “BBB”.

2.11 Further, the Respondent had also sent an email dated 29.08.2024, wherein the Corporate Debtor attached its Ledger for FY 2023–2024, thereby confirming the outstanding amounts owed to the Petitioner. A copy of the email sent by the Corporate Debtor on 29.08.2024, along with the ledger is annexed as Exhibit “CCC”.

2.12 The Applicant has placed reliance on its Ledger Account of the Corporate Debtor for the period from 01.04.2023 to 15.12.2024, as maintained in the books of the Operational Creditor, which is annexed as Exhibit “DDD”.

2.13 It is submitted that the Corporate Debtor has already availed the benefits of CGST, SGST, and TCS on sales in respect of all the 6 (six) invoices, thereby demonstrating its admission of the outstanding debt owed to the Applicant.

2.14 The Applicant placed the following documents:

- 1) FORM GSTR-1 & FORM GSTR-3B for Tax Period October of FY 2023-24, which is annexed as Exhibit "FFF".
- 2) FORM GSTR-1 & FORM GSTR-3B for Tax Period November of FY 2023-24, which is annexed as Exhibit "GGG".
- 3) FORM GSTR-1 & FORM GSTR-3B for Tax Period December of FY 2023-23, which is annexed as Exhibit "HHH".

2.15 The Operational Creditor sold material described as TMT bars to the Corporate Debtor, the payment for which became due 30 days after the respective invoices were raised.

2.16 Since the Corporate Debtor failed to make payment of the dues under each of the 6 (six) invoices within 30 days from the date of the said invoices, interest has been calculated on the outstanding amount, aggregating to Rs. 23,64,420/-. Interest is chargeable for the following reasons—

2.17 It was specifically mentioned in Clause 2 (Terms & Conditions) of all 6 (six) invoices that interest at the rate of 24% per annum would be charged in the event the dues were not paid within 30 days from the date of the invoice(s). The relevant clause is extracted below:

"2) Interest @ 24% p.a. will be charged if this Tax Invoice is not paid on the Due Date. UDYAM REGISTRATION NUMBER: UDYAM-MH-19-0090630"

2.18 Further, the Applicant is an MSME, and therefore, the Respondent was required to make payment of the dues owed to the Petitioner within the agreed period of 30 days. Upon failure to do so, the Petitioner becomes entitled to interest in accordance with Sections 15, 16, and 17 of the Micro, Small and Medium Enterprises Development Act, 2006, which are extracted below:

“15. Liability of buyer to make payment.-Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf. before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable.-Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force. be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or as the case may be. from the date immediately following the date agreed upon. at three times of the bank rate notified by the Reserve Bank.

17. Recovery of amount due.-For any goods supplied or services rendered by the supplier. the buyer shall be liable to pay the amount with interest thereon as provided under section 16. ”

2.19 As per the “***Mode/Terms of Payment***” clause mentioned in all 6 invoices, the payment was required to be made within “30 days” from the date of said invoices. The invoice dates and due dates i.e., expiry of 30 days from the invoice dates in respect of all 6 (six) invoices are mentioned below:

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Invoice No.	Invoice Date	Due Date (Invoice Date+ 30 days)
VVS067/23-24	10.1.2023	08.11.2023
VS077/23-24	27.10.2023	25.11.2023
VS079/23-24	28.10.2023	26.11.2023
VS085/23-24	17.11.2023	16.12.2023
VS086/23-24	19.11.2023	18.12.2023
VS094/23-24	08.12.2023	06.01.2024

2.20 The last invoice, bearing No. VS094/23-24 dated 08.12.2023, provided a period of 30 days for making payment, which expired on 06.01.2024. Accordingly, the date of default is 06.01.2024.

2.21 It is submitted that the Corporate Debtor defaulted on 06.01.2024, being the due date i.e., 30 days from the date of the last invoice.

2.22 Therefore, the Applicant, through its Advocate, issued a Demand Notice/Invoice Demanding Payment in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to the Corporate Debtor on 04.01.2025, whereby the Corporate Debtor was called upon to repay the entire outstanding amount within 10 (ten) days from the date of receipt of the said Notice. The said demand was delivered to the Respondent through speed post on 10.01.2025 the tracking report is attached at page no. 163.

2.23 The Corporate Debtor has, till date, failed to clear the outstanding dues payable to the Applicant. Further, the aforesaid Form 3 notice has elicited no response from the Respondent till date.

2.24 Despite the Applicant's follow-ups and complete cooperation, the Respondent, with a mala fide intent, abruptly stopped responding to the Applicant's repeated requests for release of payment. The deliberate failure of the Respondent to discharge its legitimate dues is wholly contrary to the basic tenets of law and amounts to a clear breach of trust.

2.25 The Applicant submits that the Corporate Debtor has failed to honour its payment obligations and has wrongfully withheld the outstanding amount of Rs. 1,10,99,035/- as on 04.01.2025, along with applicable interest. The Petitioner is therefore entitled to seek relief before this Tribunal under the IBC, 2016.

2.26 The Corporate Debtor has neither cleared the outstanding dues nor raised any dispute to the Applicant's Form 3 Demand Notice.

2.27 The Petitioner has not received any payment from the Corporate Debtor after issuance of the Demand Notice under Section 8 of the IBC, 2016.

2.28 Prior to the issuance of the Demand Notice, the Corporate Debtor had never raised any dispute regarding the unpaid operational dues owed to the Applicant.

2.29 Hence, this Application.

2.30 The Applicant has attached the following documents with the Application:

- I. A Copy of the MSME Registration Certificate of the Petitioner having registration number as UDYAM-MH-19-0090630.
- II. A copy of the PAN Card and Aadhar Card of the Proprietor of the Applicant.
- III. A copy of the Company Master Data of the Corporate Debtor.
- IV. A copy of the calculation of outstanding and interest.

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- V. Copy of Invoice bearing no. VVS067/23-24 for amount of Rs. 15,15,350/- dated 10.10.2023.
- VI. Copy of e-Way Bill No. 251659648525 for Outward-Supply Transportation.
- VII. Copy of Delivery Challan bearing D.C. No. VS067/23-24 as acknowledged by the Corporate Debtor.
- VIII. Copy of Weight slip at the point of loading the material at the factory site.
- IX. A Copy of Tax Invoice by Jaideep Metallics & Alloys Private Limited/Factory along with e-Way Bill.
- X. Copy of Tax Invoice by VRU Steel Industries/Reseller.
- XI. A Copy of Weight slip at the point of unloading the material.
- XII. A Copy of Invoice by Transporter demonstrating proof of actual delivery of goods by Petitioner to the Respondent, dated 20.11.2023.
- XIII. A Copy of Invoice bearing no. VS086/23-24 for amount of Rs. 14,64,271/- dated 19.11.2023.
- XIV. A Copy of e-Way Bill No. 201678279075 for Outward-Supply Transportation.
- XV. A Copy of Delivery Challan bearing D.C. No. VS086/23-24 as acknowledged by the Corporate Debtor.
- XVI. A Copy of Weight slip at the point of loading the material at the factory site.
- XVII. A Copy of Tax Invoice by Jaideep Metallics & Alloys Private Limited/Factory along with e-Way Bill.

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- XVIII. A Copy of Tax Invoice by VRU Steel Industries/Reseller.
- XIX. A Copy of Weight slip at the point of unloading the material.
- XX. A Copy of Invoice by Transporter demonstrating proof of actual delivery of goods by Petitioner to the Respondent
- XXI. A Copy of Invoice bearing no. VS094/23-24 for amount of Rs. 16,45,692/-dated 08.12.2023.
- XXII. A Copy of e-Way Bill No. 291688169057 for Outward-Supply Transportation.
- XXIII. A Copy of Weight slip at the point of loading the material at the factory site.
- XXIV. A Copy of Tax Invoice by Jaideep Metallics & Alloys Private Limited/Factory along with e-Way Bill.
- XXV. A Copy of Tax Invoice by VRU Steel Industries/Reseller.
- XXVI. A Copy of Invoice by Transporter demonstrating proof of actual delivery of goods by Petitioner to the Respondent dated 09.12.2023.
- XXVII. A Copy of the Confirmation of Accounts signed and stamped by the Corporate Debtor for the period from 01.04.2023 to 31.03.2024, thereby acknowledging outstanding amount of all the 6 (six) invoices.
- XXVIII. A copy of the email sent by the Corporate Debtor dated 29.08.2024 along with the ledger.
- XXIX. A Copy of the Ledger Account of the Corporate Debtor from 01.04.2023 to 15.12.2024 in the books of the Operational Creditor.
- XXX. A copy of the FORM GSTR-1 for Tax Period October of FY 2023-24.
- XXXI. A copy of the FORM GSTR-3B for Tax Period October of FY 2023-24.

XXXII. A copy of the FORM GSTR-1 & FORM GSTR-3B for Tax Period November of FY 2023-24.

XXXIII. A copy of the FORM GSTR-1 & FORM GSTR-3B for Tax Period December of FY 2023-24.

XXXIV. A copy of Demand Notice dated 04.01.2025.

XXXV. A copy of the Statement of Account of the CC Account of the Applicant.

XXXVI. A copy of the entire Whastapp communications between the Proprietor of the Petitioner and Mr. Ritesh Seth, the Director of the Respondent.

XXXVII. Copy of affidavit on behalf of the Operational Creditor in compliance of Section 9(3)(b) of the Code.

XXXVIII. Copy of record of default in Form C.

2.31 An additional affidavit dated 05.08.2025 filed by the Applicant following document has been attached:

- I. A copy of NeSL Form D. The status of authentication is "Deemed to be Authenticated" and the amount of default is Rs. 1,10,99,035/-.

3. REPLY BY THE CORPORATE DEBTOR:

3.1 Notice was issued to the Respondent vide order dated 30.07.2025. Affidavit of service was filed which is dated 25.08.2025 showing that Respondent was served on 16.08.2025.

3.2 This tribunal in its order dated 25.09.2025 records as follows:

Ld. Counsel Ms. Femina Janodia appears on behalf the Respondent and states that the reply dated 23.09.2025 has been e-filed and a physical copy of the same was shown to us. It has been observed from the same that there is

no affidavit accompanying the reply. The reply is reflecting on DMS as defective.

Upon being pointed out, Ld. Counsel for the Respondent seeks liberty of this Tribunal for filing another reply affidavit and seeks further extension of the order dated 26.08.2025 by a period of 7 days from the date of this order.

The Respondent's Counsel is allowed to file the reply with appropriate affidavit duly notarized within a period of 7 days subject to deposit of cost in the Prime Minister's National Relief Fund (PMNRF) within a period of 7 days. The proof of the same will be attached along with the reply

3.3 Order dated 27.10.2025, the Ld. Counsel for the Respondent states that the CD, due to financial difficulties, is unable to pay the cost levied by this Tribunal. As the Respondent has disobeyed the orders of this Tribunal qua the cost, the reply again filed on 27.09.2025 is struck off from the record. It is also noted that the reply which was re-filed on 27.09.2025 continues in to be defective stage.

3.4 In view of the above, we hereby close the right of the Respondent to file reply in the matter.

4. REJOINDER BY THE APPLICANT

4.1 As right to file reply of the CD has been closed by this Tribunal. We cannot consider the Rejoinder dated 25.10.2025 filed by the Applicant.

5. WRITTEN SUBMISSION OF THE APPLICANT

5.1 The Applicant has relied on the following judgments:

- i. Hon'ble High Court of Karnataka in Jyothi Ltd. vs Boving Fouress Ltd., (2001) 106 Comp Cas 380

- ii. Hon'ble Bombay High Court in Jatin Koticha v. VFC Industries Pvt. Ltd., 2007 SCC OnLine Bom 1092.
- iii. Hon'ble NCLAT, New Delhi in Mr. Prashat Agarwal, Member of Suspended Board of Bombay Rayon Fashions Limited v. Vikash Parasramuria & Anr., (Company Appeal (AT) (Insolvency) No. 690 of 2022).
- iv. Hon'ble NCLAT, New Delhi in Krishna Enterprises v. Gammon India Ltd, (Company Appeal (AT) (Insolvency) No. 144 of 2018).

6. WRITTEN SUBMISSION OF THE CD

6.1 The CD has contended that the debt amount as claimed in the Form 5 of the application is incorrect and the correct calculation would render the application as not maintainable under Section 9 of the Code and therefore the application filed by the Applicant is infructuous.

6.2 It is submitted that the quantum of debt claimed by the Petitioner is inflated, as it wrongfully includes interest calculated at 24% per annum, despite no such agreement between the parties. It is contended that the Corporate Debtor's liability, if any, is restricted only to the principal amount, which, on its own, does not meet the minimum threshold of ₹1 crore as mandated under Section 4 of the Insolvency and Bankruptcy Code, 2016. Consequently, the present petition is not maintainable before this Hon'ble Tribunal. The Corporate Debtor therefore denies and rejects the Petitioner's computation of the alleged debt in its entirety.

6.3 Moreover, the Corporate Debtor states that no agreement or contract containing any clause for payment of interest was ever executed between the parties. Accordingly, the imposition of an exorbitant rate of interest by the Petitioner is arbitrary, unlawful, and devoid of any contractual or statutory basis. The alleged

interest component is, therefore, expressly denied and rejected by the Corporate Debtor.

6.4 Hon'ble NCLAT in ***Krishna Enterprises v. Gammon India Ltd. [vide Order dated 27.07.2018 in Company Appeal (AT) (Insolvency) No. 144 of 2018*** and Hon'ble NCLAT order in ***SNJ Synthetics Limited V/s. M/s Pepsi Co India Holdings Private Limited, [vide Order dated 07.05.2025 in Company Appeal (AT) (Insolvency) No. 386 of 2025]***, rejected the section 9 application filed by an MSME operational creditor on the ground that the amount of default (excluding interest accrued as per sec 15 and 16 of MSMED Act) was less than the limit stipulated under section 4 that triggers IBC proceedings.

6.5 The Respondent further relies upon the order passed by the NCLT, Mumbai Bench, wherein the Tribunal, while considering a claim of interest raised by an Operational Creditor, held that neither the purchase orders nor the several invoices contained any stipulation regarding levy of interest for delayed payment. In that case, the Tribunal observed that the Operational Creditor had sought to justify its claim for interest solely on the basis of its status as an MSME entity. Although the MSMED Act mandates payment of interest on delayed payments. However, it is now settled in the context of the Code that if interest is not agreed upon between the parties, it cannot form a part of 'operational debt' within the meaning of Section 5(21) of the Code and that no such interest can be claimed in an application under Section 9 of the Code. The correct forum for such claims is the MSEFC. It is settled that NCLT is not a forum to resolve the disputes pertaining to interest claims of a MSME entity.

6.6 The Operational Creditor has deliberately suppressed material correspondence which clearly demonstrates that the underlying transactions do not give rise to

any cause of action for maintaining the present Application. The issues raised between the parties involve disputed questions of fact that require a detailed trial and examination of evidence.

6.7 The NeSL Record of Default relied upon by the Operational Creditor is not authenticated by the Information Utility. Further, the information was uploaded only on 28 February 2025, long after the alleged date of default stated in Form-5. Hence, the said record cannot be treated as valid proof of default under the Code.

7. ANALYSIS AND FINDINGS

7.1 We have perused all the documents; pleadings of the Applicant and Written Submissions of both the parties as placed before us and have heard both the sides.

7.2 The Operational Creditor has filed the present application asserting that an operational debt amounting to Rs. 1,10,99,035/- is due and payable by the Corporate Debtor. The claim consists of principal amount of Rs. 87,34,615/- and remaining amount is Rs. 23,64,420/- towards interest.

7.3 The OC is engaged in supply of TMT bars, and holds a valid MSME Registration (UDYAM-MH-19-009090630). The CD is a private limited company undertaking a construction project commenced in April 2023, requiring consistent supply of TMT bars.

7.4 The record shows a continuous commercial relationship wherein: (a) orders were placed through Whatsapp communications by Mr. Ritesh Seth, Director of the CD (Exhibit MMM). (b) the OC procured goods from VRU Steel Industries (reseller), which purchased from Jaideep Metallics & Alloys Pvt. Ltd. (factory), and delivered them to the CD.

7.5 Further, the Applicant has raised six invoices between 10.10.2023 and 08.12.2023, totalling Rs. 90,84,515/-. Out of this, only Rs. 3,49,900/- was paid, leaving an outstanding principal of Rs. 87,34,615/-.

7.6 The Applicant sold the material to the CD which fell due after 30 days of the invoices being raised. Since the CD failed to pay the dues of each 6 invoices within 30 days from the date of said invoices, the interest has been calculated outstanding for an amount aggregating to Rs. 23,64,420/- for the following reasons:

(a) It has been mentioned in the term and condition clause no. 2 of all 6 invoices (all invoices are attached at Page Nos. 55, 65, 75, 85, 95 & 105 with the application) that interest would be charged @ 24% p.a. if the dues are not paid within the period of 30 days from the date of invoice/s, relevant term/clause as per the invoices is as stated below:

“2) Interest @ 24% p.a. will be charged if this Tax Invoice is not paid on the Due Date. UDYAM REGISTRATION NUMBER: UDYAM-MH-19-0090630”

7.7 Therefore, the CD owes an amount of Rs. 1,10,99,035/- as on 04.01.2025 along with interest @ 24% p.a. till the date of payment/realization as mentioned below:

Sr. No.	Particulars	Amount (Rs.)
1.	Principal Amount	87,34,615/-
2.	Interest as on 04.01.2025	23,64,420/-
	Total	1,10,99,035/-

7.8 Since the last invoice bearing No. VS094/23-24 dated 08.12.2023 provided period of 30 days to make payment, which has expired on 06.01.2024, the date of default is 06.01.2024 i.e., due date/ 30days from the date of last invoice.

7.9 The Corporate Debtor has contended that the amount claimed by the Applicant does not meet the minimum threshold of Rs. 1 Crore prescribed under Section 4 of the IBC, 2016.

7.10 The CD in its written submission stated that the claim has been artificially inflated by adding interest @ 24% per annum, which was never contractually agreed between the parties and denied liability towards the interest.

7.11 To ascertain whether interest shall be included in the outstanding claimed in the Application for the purpose of meeting the threshold of Rs. 1 Crore as per Section 4 of IBC, 2016, the following three factors must be examined:

- I. Whether any prior/past payments of interest have been made;
- II. Whether there exists a written agreement stipulating payment of interest;
and
- III. Whether the Corporate Debtor has, either expressly or impliedly, acknowledged or agreed to the liability to pay interest.

7.12 Further, the Applicant highlighted Sections 15, 16 and 17 of the MSMED Act, stressing that they necessitate the payment of MSMED interest by the buyer. According to this argument, irrespective of any prior agreements or prevailing laws, MSMED interest is obligatory under the statute. This interpretation according the Applicant is reinforced by Notification 5622 (E) dated November 2, 2018, issued by the Ministry of Corporate Affairs which is reproduced as under-

S.O. 5622(E). —In exercise of powers conferred by Section 9 of the Micro, Small and Medium Enterprises Development Act, the Central Government hereby directs that all companies who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers

exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of the Act, shall submit a half yearly return to the Ministry of Corporate Affairs stating the following:

- a) *The amount of payments due; and*
- b) *The reasons of the delay.*

7.13 Upon perusal of the above, the next issue that comes up is whether interest can be claimed by the Operational Creditor as an MSME. This Bench while deciding the fate of operational creditors claiming interest amounts due in terms of the MSMED Act, has relied on the order of Hon'ble NCLAT in the matter of **SNJ Synthetics Ltd. v. PepsiCo India Holdings Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 826 of 2022]** wherein in para 17, Hon'ble NCLAT has held as below:

“17. We also notice that the Appellant has relied on the provisions of other laws like MSME Act or Interest Act to justify their claim of interest payment. Without making any observation on the merits of their contention, we would only like to add that neither the Adjudicating Authority nor this Appellate Tribunal is the appropriate forum for making any such determination on the liability of the Respondent Corporate Debtor to pay interest under the MSME Act or Interest Act.”

7.14 In view of the above order, we are of the view that for determination of liability of the Respondent to pay interest under the MSME Act, this Tribunal is not the appropriate forum and therefore, the interest claim of the Applicant under the MSME Act, cannot be considered unless there is an order by an appropriate authority under the provisions of the MSME Act.

7.15 We find that no written agreement, loan document, purchase order, or correspondence has been produced by the Applicant to demonstrate the

existence of any agreed rate of interest. It is noted that the Operational Creditor has failed to produce any formal or contractual agreement, or acknowledgment wherein the Corporate Debtor had expressly agreed to pay interest on the outstanding principal amount. There is no evidence of any acceptance or acknowledgment of such terms by the Corporate Debtor at the time of supply or in the course of subsequent correspondences. The invoices relied upon are unilateral in nature, and do not reflect acknowledgment or acceptance of any interest clause by the Corporate Debtor.

7.16 It is also pertinent to note that the Corporate Debtor has not, on any occasion made payment towards the interest component claimed in the invoices raised by the Operational Creditor. There is no documentary evidence placed on record to suggest that the Corporate Debtor has at any point in time either explicitly agreed to the levy of the interest or made any part payments towards such interest.

7.17 The Operational Creditor has sought to rely on the judgment of ***Prashant Agarwal v. Vikash Parasrampuria [Company Appeal (AT) (Insolvency) No. 690 of 2022]***, which states that for maintainability of claim the principal debt amount as well as interest on delayed payment, which is clearly stipulated in the invoices, will be included and in case the total debt including said interest meets the threshold of Rs. 1 crore, the Application under Section 9 shall be maintainable. However, the three members Bench of Hon'ble NCLAT in ***SNJ Synthetics Limited vs. PepsiCo India Holdings Pvt. Ltd. Company Appeal (AT) Insolvency No. 386 of 2025*** vide order dated 07.05.2025 has held that though invoices can play a crucial role in defining the rights and obligations

between parties, however, there has to be an element of mutual consent, which can be discernible from conduct.

7.18 As such, the applicant has failed to produce any agreement or purchase order, which stipulate the obligation of the CD to pay interest as claimed by the Applicant and its claim is totally based on the clause mentioned in the invoices for payment of interest @ 24% p.a. if the bills are not paid within 30 days.

7.19 The said unilateral mentioning of the interest rate on the invoices with no evidence attached to the Application as to acceptance of the said obligation by the CD does not create any legal obligation on the CD for payment of the interest. The same is based on the judgments cited by the CD as referred to above and also the following recent judgments passed by three members Bench of Hon'ble NCLAT:

i. ***Rishabh Infra v. Sadbhav Engineering Ltd, [(2024) ibclaw.in 707]***

wherein vide order dated 04.11.2024, it was held as below:

“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. 10. There is nothing to substantiate that the Corporate Debtor has accepted the obligation to pay the interest @24% per month, as claimed by the Operational Creditor. The entire Principal Amount having been paid, the Adjudicating Authority did not commit any error in rejecting the Section 9 Application filed by the Operational Creditor. There is no merit in the Appeal.”

ii. ***Shitanshu Bipin Vora v. Shree Hari Yarns Pvt. Ltd. And Mr. Rajan Garg in Company Appeal (AT) (Insolvency) No. 2204 of 2024***, in which vide order dated 16.04.2025, it was held as below:

"46. The Respondent has also relied upon the judgment of this Tribunal in Prashant Agarwal Vs. Vikash Parasrampuria & Anr. In Company Appeal (AT)(Insolvency) 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 Respondent. The Appellant has relied upon the Judgment of this Tribunal 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 this Tribunal has 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 at para 9,. On this basis, this Tribunal has not accepted claim of the Operational Creditor for claiming interest in a Section 9 Application filed by the Operational Creditor.

47. Similarly, the Appellate Tribunal in the case of SS polymers vs Kanodia Technoplast Limited, had held that relying on the invoices to

raise claims for payment of interest is against the principle of the Code.

Relevant extracts from this judgment are reproduced hereinbelow:

"4 The Learned Counsel for the appellant relied on 'invoices' to suggest that in the 'invoices,' the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'.

5. Admittedly, before the admission of an application under Section 9 of the Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the Code."

48. The Appellant has relied upon the judgments of this Appellate Tribunal in Krishna Enterprises vs. Gammon India Ltd [supra] wherein vide order dated 27.07.2018 it was held that 'debt' in terms of the Code does not include interest, unless payable in terms of any agreement among parties. The relevant extract of the judgment passed by the Appellate Tribunal is reproduced below:

"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principle amount is to be treated as the

debt which is the liability in respect of the claim which can be made from the Corporate Debtor.

(emphasis supplied)

51. *In the above background, we find that the claim of the Operational Creditor with respect to the interest is not maintainable and, in that situation, the claim does not meet the threshold for admitting Section 9 Application*

7.20 In regard to the above, it is relevant here to state in case of conflicting judgements by Benches of equal strength, the later will prevail over the earlier. It is settled law that in the case of conflicting judgments of co-equal Benches, the later judgement will prevail. The Hon'ble Karnataka High Court in D.V. Lakshmana Rao v. State of Karnataka & Ors. in Writ Petition No. 25795 of 2000, has held as below:

“14. It is now well settled that if there are two conflicting judgment of the Supreme Court, of benches with equal number of Judges, then the later will prevail over the earlier...”

7.21 The above two judgments, which are subsequent to the Prashant Agrawal Judgment (supra) relied upon by the Applicant and are also delivered by three Members Bench of Hon'ble NCLAT, clearly state that invoices containing the term of interest cannot be operated against the CD unless there is an agreement for interest or any other documents showing that the CD has accepted the obligation for interest. The Shitanshu Bipin Vora judgement has also considered the judgement in Prashant Agrawal matter and after considering the same the above stated legal position has been held by Hon'ble NCLAT.

7.22 The Corporate Debtor relied on the judgement of Hon'ble NCLAT in the matter of **SNJ Synthetics Limited vs. PepsiCo India Holdings Pvt. Ltd.** Company Appeal (AT) Insolvency No. 386 of 2025, wherein it was held that:

“Furthermore, there is no previous instance of payment of interest by the Corporate Debtor. Even in the reconciliation sign-off dated 12.06.2018, which was signed by both parties, no reference to interest was made.

12. Since there has been no amendment of the Agreement, the terms agreed between the parties in the Supply Agreement prevail over unilateral invoices. Even though invoices can play a crucial role in defining the rights and obligations between parties, however, there has to be an element of mutual consent, which can be discernible from conduct. When the ingredient of levy of interest on delayed payment is absent in the written contract, stipulation of interest payment in invoices can override the written contract only if there is mutual consent and mutual understanding between the parties in this regard which in the present case has not been demonstrated by conduct and practice. There is no evidence of payment of interest by the Respondent which has been substantiated by the Appellant. We are therefore inclined to agree with the Adjudicating Authority that unilaterally generated invoices signed by only one party cannot overrun or recast the terms of bi-partite agreements and create binding obligations on the other party to pay interest.

13. In this regard attention has been adverted by the Respondent to the judgement of this Tribunal in Krishna Enterprises vs. Gammon India Limited in CA (AT) (Ins) No. 144 of 2018 wherein it has been held therein that if no interest was payable, in terms of the contractual agreement, then only the principal amount would constitute the claim, basis which Section 9 application can be

filed. We find the ratio of the above judgment to be squarely applicable to the facts of the present case and for easy reference reproduce the relevant portion of the said judgment as below:

“4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principle amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.

5. In the present appeals, as we find that the principle amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer.”

(Emphasis supplied)

“.....

14.....

There is nothing to substantiate that the Respondent has accepted the obligation to pay interest on delayed payment.

.....

17. We also notice that the Appellant has relied on the provisions of other laws like MSME Act or Interest Act to justify their claim of interest payment. Without making any observation on the merits of their contention, we would only like to add that neither the Adjudicating Authority nor this Appellate Tribunal is the appropriate forum for making any such determination on the liability of the

Respondent-Corporate Debtor to pay interest under the MSME Act or Interest Act."

7.23 We are supported by the decision of Hon'ble NCLAT in its judgment in **SS Polymers vs Kanodia Technoplast** in Company Appeal (AT) (Insolvency) No. 1227 of 2019 [(2019) ibclaw.in 193 NCLAT], wherein it has been held that relying on the invoices to raise claims for payment of interest is against the principle of the Code. Relevant extracts from this judgement are reproduced hereinbelow:

"4. The Learned Counsel for the Appellant relied on 'Invoices' to suggest that in the 'Invoices', the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'.

7.24 Further, the decision of Hon'ble NCLAT in the case of **H2O Aquarius Pvt. Ltd. v. SLS Power Corporation Ltd. [Company Appeal (AT) (Insolvency) No. 1070 of 2022]**, is also relevant here wherein it is held that where there is no written agreement or established course of dealings indicating acceptance of interest, the Operational Creditor cannot unilaterally impose interest and seek to cross the statutory threshold under Section 4 by including such interest. The relevant para of the Judgement is produced hereunder:

"A pointed query was made by this Bench to the Appellant with respect to the fact that the Operational Creditor had claimed an outstanding amount of Rs. 1.17 Cr. and even if the purported payment of Rs. 11 lakhs by the Corporate Debtor is squared off, even then the outstanding amount would still be exceeding Rs. 1 Cr. In their defence, the Ld. Counsel for the Appellant submitted that the principal amount claimed has always been Rs. 1.01 Cr. However, the Operational Creditor has added Rs. 15 lakhs unilaterally towards interest liability.

This amount has been added by the Operational creditor on their own and therefore needs to be disregarded. It was further asserted that the interest amount was not payable since there was no contract between the two parties which contemplated interest liability. Nor has the Corporate Debtor ever paid interest to the Operational Creditor in the past in relation to these transactions.

*In the absence of provision of interest in the contract and no practice of interest payment having been demonstrated by the Operational Creditor, we are inclined to agree with the Appellant that the Operational Creditor had tried to cleverly add interest liability to cross the Section 4 threshold criteria. If the payments made by the Corporate Debtor after 12.05.2023 are factorised, the debt due to the Operational Creditor was clearly below the prescribed minimum threshold limit of Rs. 1 Cr. and hence the Section 9 application of the Operational creditor was not maintainable. Triggering of CIRP in the present facts of the case where, *prima-facie*, the outstanding liability is below the threshold limit is unwarranted.”*

7.25 The Applicant has relied on the judgments on ***Hon'ble High Court of Karnataka in Jyothi Ltd. vs Boving Fouress Ltd., (2001) 106 Comp Cas 380*** stating that the interest can be awarded on the basis of a provision in a bill/invoice, if it is supported by an agreement or promise or admission to pay interest by the purchaser. In the present application, the case of the applicant stands in lesser following footing to the observations of the Karnataka High Court since the applicant has no purchase order or written contract showing payment of interest obligation on the part of the Corporate Debtor. In the judgment of Hon'ble Bombay High Court in ***Jatin Koticha v. VFC Industries Pvt. Ltd., 2007 SCC OnLine Bom 1092*** wherein it was observed that the invoices contained the terms and conditions and that the defendants accepted delivery of the goods along with the invoice without any demur or suggestion that they do not accept

any of the terms whether pertaining to the rate, price, quantity etc. thus it makes no difference therefore that the invoices are not signed by both the parties and therefore the invoices must be treated as a written contract. We are of the view that the judgment relied upon by the Applicant pertains to summary suit and is not applicable to proceedings under the IBC. In the present case, the claim for interest is disputed, as the alleged clause is unsupported by any explicit contract or clear understanding between the parties, and Hon'ble NCLAT in a number of judgments cited above has clearly held that interest in such situation will not be considered part of the dues claimed for meeting the threshold under Section 4 of IBC, 2016. For the said reason, the said judgment cited by the Applicant is not relevant.

7.26 In light of the above legal precedents and upon analysing the claim of the Operational Creditor, it is evident that the principal amount of the alleged default is below the mandatory threshold limit of 1 crore as prescribed under Section 4 of the Code. The interest component having been unilaterally imposed without any contractual agreement or written acknowledgment cannot be included for the purpose of determining the total debt amount. Therefore, the claim, to the extent it exceeds the principal amount, is not legally sustainable under the provisions of the Code.

7.27 Accordingly, this Adjudicating Authority holds that the petition under Section 9 of the Code is not maintainable as the principal operational debt which is Rs. 87,34,615/- falls below the prescribed threshold limit. Further, the Operational Creditor has failed to establish any legal or contractual entitlement to interest as required under law. The petition is thus liable to be dismissed on this ground alone. The principal amount being less than Rs. 1 Crore, the Application fails to

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satisfy the mandatory requirement under Section 4 and is therefore not maintainable.

7.28 **Accordingly, CP (IB)/710(MB)2025 stands rejected.**

7.29 A certified copy of this order has to be given to the Applicant and the Corporate Debtor as per Section 9.

Sd/-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

Sd/-

**NILESH SHARMA
MEMBER (JUDICIAL)**

//C.Sarkar and VM//