

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1



ITEM No.303 & 304
C.P.(IB)/245(AHM)2024
&
I.A./1512(AHM)2024

Proceedings under Section 9 IBC

IN THE MATTER OF:

M/s Bell Imprx
V/s
Rexsona Tiles Pvt. Ltd

.....Applicant

.....Respondent

Order delivered on: 06/12/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

→SD←

SAMEER KAKAR
MEMBER (TECHNICAL)

—SD—

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-I, AHMEDABAD**

**CP(IB) No. 245 of 2024
&
IA/1512(AHM)2024**

[Petition 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. Bell Impex

A Partnership Firm registered under
Indian Partnership Act, 1932

Having Registered Address at:

Shop No. 37, Arihant Complex, Opp. Old ST Stand,
Morbi, Rajkot, Gujarat - 363642

.... Operational Creditor/Applicant

Versus

M/s. Rexsona Tiles Private Limited

(CIN: U26960GJ2014PTC078547)

Having Registered Address at:

Office No. 2020, 2nd Floor, Near Bhaktinagar
Circle, Morbi-Rajkot Road, Morbi
Gujarat - 363641

.... Corporate Debtor/Respondent

Order Pronounced on: 06.12.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER(TECHNICAL)

For the Applicant

: Mr. Jaimin R. Dave, Advocate
a/w Ms. Hirva Dave, Advocate

For the Respondent

: Mr. Yuvraj Thakore, Advocate



ORDER

Per Bench

1. The Present Application was filed on 04.03.2022 by **M/s. Bell Impex** (hereinafter referred to as “**the Applicant/Operational Creditor**”) against **M/s. Rexsona Tiles Private Limited** (hereinafter referred to as “**the Respondent/Corporate Debtor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (in short “**CIRP**”) against the Respondent for having defaulted in payment of its outstanding dues of **Rs.1,28,70,360.15ps.**
2. On perusal of **Part-I** of the Form-V reveals that the Applicant is one M/s. Bell Impex, a partnership firm. The registered Address of the Applicant is situated at Plot No. 38, Shakti Industrial Estate, Nr. Radhe Hotel, At. Trajpar, Morbi-363642, Gujarat, India and the GST No. of the Applicant is 24AAKFB0869L127. A copy of GST registration



certificate of the Operational Creditor are annexed in the application as **ANNEXURE – A**.

3. On perusal of **Part-II** of the Form-V reveals that the Respondent is one M/s. Rexsona Tiles Private Limited having CIN No.U26960GJ2014PTC078547. The registered office of the Respondent/Corporate Debtor is situated at City Mall, Office No. 2020, 2nd Floor, Near Bhaktinagar Circle, Morbi-Rajkot Road, Morbi, Gujarat - 363641, India. A copy of Master Data of the Corporate Debtor is annexed in the application as **ANNEXURE – B**.
4. Affidavit dated 23.04.2024 affirming this application is signed by one Shri Amitbhai Pravinbhai Ghodasara, Partner and Authorized Signatory of the Applicant. A copy of the Authority Letter dated 09.02.2024 authorizing Shri Amitbhai Pravinbhai Ghodasara is annexed in the application as **ANNEXURE - C**.
5. On perusal of **Part-III** of the Form-V reveals that the Applicant has not proposed the name of any person to be appointed as Interim Resolution Professional.



6. On perusal of **Part-IV** of the Form-V reveals that total dues as claimed by the Applicant is Rs.1,28,70,360.15ps.consisting of Rs.1,07,00,906.60 ps. being Principal Amount and amount of Rs.21,69,453.55 ps. as an interest at the rate of 8% p.a. till 31.01.2024 along with further running interest from 01.02.2024 till the date of realization..

7. The averments made by the Applicant in its application are summarized hereunder: -

a) It is submitted by the applicant that M/s. Bell Impex [herein after referred to as "Operational Creditor"] is a partnership firm duly registered with Registrar of Firms in accordance with the relevant provisions of the Indian Partnership Act, 1932. The Operational Creditor is inter alia engaged in the business of manufacturing and supplying of input goods required in a tile manufacturing unit. The Operational Creditor has supplied different types of input goods to M/s. Rexsona Tiles Private Limited [herein after referred to as "the Corporate Debtor"] from time to time as per the requirements of the Corporate Debtor. A copy of registered deed of partnership along with certificate of Registrar of Firms is marked and annexed as **ANNEXURE - D**.

b) It is stated that the Operational Creditor has supplied various input goods to the Corporate Debtor as per their requirement and in pursuance thereto, had raised invoices from time to time. The Operational Creditor has supplied the requisite input goods to the Corporate Debtor till the month of March 2022. That between the period of 01.03.2021 to 14.03.2022, the



Operational Creditor has inter alia supplied the following products/goods:

- i) Lapato abrasive;
 - ii) Sharp diamond wheel dry 250 mm;
 - iii) Resig bond cutters;
 - iv) 92% alumina ball; and
 - v) Chamfering wheel.
- c) It is stated that the Corporate Debtor has duly received the said input goods supplied by the Operational Creditor from time to time without raising any kind of dispute and/or demur. Not only that, the Corporate Debtor has also consumed/ utilized the said input goods supplied by the Operational Creditor. Further, as per the mutual understanding between the parties, the Corporate Debtor was liable to make payments within 30 (thirty) days from the date of receipt of input goods, failing which the Operational Creditor was entitled to claim interest at the rate of 8% per annum.
- d) It is stated that the Corporate Debtor used to make on account payment to the Operational Creditor on ad hoc basis, pursuant to the supplies made by the Operational Creditor, from time to time. That last such on account payment was made by the Corporate Debtor on 06.12.2023 for an amount of Rs. 50,00,000/- (Rupees Fifty Lacs Only). A copy of the ledger account of the Corporate Debtor maintained in the books of the Operational Creditor is marked and annexed in the application as **ANNEXURE - E**.
- e) It is submitted that however, thereafter, not a single penny has been paid by the Corporate Debtor to the Operational Creditor towards its admitted outstanding dues. In view whereof, all the invoices raised by the Operational Creditor between the period of



01.03.2021 to 14.03.2022 are still outstanding and payable. As on today, a total number of 45 (Forty- Five) invoices amounting to Rs.1,07,00,906.60ps. (Rupees One Crore Seven Lacs Nine Hundred Six and Sixty Paisa Only) remains outstanding and payable. The copies of outstanding invoices along with e-way bills as well as Form GSTR-1 and Form GSTR-3B are marked and annexed in the application as **ANNEXURE - F Colly**.

Sr. No.	Invoice No.	Invoice Date	Invoice Due Date
1.	GST3660	01/03/2021	31/03/2021
2.	GST3692	03/03/2021	02/04/2021
3.	GST3733	06/03/2021	05/04/2021
4.	GST3783	12/03/2021	11/04/2021
5.	GST3863	18/03/2021	17/04/2021
6.	GST3943	25/03/2021	24/04/2021
7.	GST3975	30/03/2021	29/04/2021
8.	GST/2122/66	05/04/2021	05/05/2021
9.	GST/2122/129	12/04/2021	12/05/2021
10.	GST/2122/164	14/04/2021	14/05/2021
11.	GST/2122/204	20/04/2021	20/05/2021
12.	GST/2122/244	24/04/2021	24/05/2021
13.	GST/2122/256	26/04/2021	26/05/2021
14.	GST/2122/420	15/05/2021	14/06/2021
15.	GST/2122/456	21/05/2021	20/06/2021
16.	GST/2122/498	27/05/2021	26/06/2021
17.	GST/2122/544	03/06/2021	03/07/2021
18.	GST/2122/586	09/06/2021	09/07/2021
19.	GST/2122/621	14/06/2021	14/07/2021
20.	GST/2122/622	14/06/2021	14/07/2021
21.	GST/2122/693	21/06/2021	21/07/2021
22.	GST/2122/704	21/06/2021	21/07/2021
23.	GST/2122/786	29/06/2021	29/07/2021
24.	GST/2122/803	01/07/2021	31/07/2021
25.	GST/2122/905	08/07/2021	07/08/2021
26.	GST/2122/942	12/07/2021	11/08/2021
27.	GST/2122/977	15/07/2021	14/08/2021
28.	GST/2122/984	15/07/2021	14/08/2021
29.	GST/2122/1029	20/07/2021	19/08/2021
30.	GST/2122/1054	22/07/2021	21/08/2021
31.	GST/2122/1093	26/07/2021	25/08/2021
32.	GST/2122/1094	26/07/2021	25/08/2021
33.	GST/2122/1294	13/08/2021	12/09/2021
34.	GST/2122/1326	16/08/2021	15/09/2021

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35.	GST/2122/2551	27/12/2021	26/01/2022
36.	GST/2122/2656	07/01/2022	06/02/2022
37.	GST/2122/2704	17/01/2022	16/02/2022
38.	GST/2122/2719	17/01/2022	16/02/2022
39.	GST/2122/2790	27/01/2022	26/02/2022
40.	GST/2122/2861	07/02/2022	09/03/2022
41.	GST/2122/2902	14/02/2022	16/03/2022
42.	GST/2122/2947	21/02/2022	23/03/2022
43.	GST/2122/3014	03/03/2022	02/04/2022
44.	GST/2122/3050	08/03/2022	07/04/2022
45.	GST/2122/3087	14/03/2022	13/04/2022

- f) It is stated that all the aforementioned invoices are duly accepted by the Corporate Debtor. That despite consuming/ utilizing the products/ goods supplied by the Operational Creditor, the Corporate Debtor miserably failed to discharge its admitted liability.
- g) It is submitted that as per the mutual understanding between the parties, in case where the Corporate Debtor failed to make payments beyond 30 (thirty) days of supply of the goods, the Corporate Debtor was liable to pay interest at the rate of 8% per annum. Accordingly, the Operational Creditor is entitled to the claim to the tune of Rs.21,69,453.55ps. (Rupees Twenty-One Lacs Sixty-Nine Thousand Four Hundred Fifty-Three and Fifty-Five Paise Only) towards interest on the outstanding invoices calculated till 31.01.2024. A copy of the summary of invoices along with computation of interest in tabular form is marked and annexed in the application as **ANNEXURE - G**.
- h) It is stated that accordingly, a total amount of Rs. 1,28,70,360.15ps. (Rupees One Crore Twenty-Eight Lacs Seventy Thousand Three Hundred Sixty and Fifteen Paise Only) admittedly and undisputedly remains outstanding and payable by the Corporate Debtor to the Operational Creditor as on 31.01.2024.



- i) It is stated that the Operational Creditor has, time and again, reminded and requested the Corporate Debtor to release the payments towards the undisputed outstanding dues. However, the Corporate Debtor has turned a complete blind eye to all such requests and reminders of the Operational Creditor.
- j) It is stated by the applicant that on 12.02.2024, the Operational Creditor was compelled to issue a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 calling upon the Corporate Debtor to pay an aggregate amount of Rs. 1,28,70,360ps. (Rupees One Crore Twenty-Eight Lacs Seventy Thousand Three Hundred and Sixty Only) in full within 10 (ten) days from the date of receipt of the said notice. The said Demand Notice was duly served upon the Corporate Debtor through Registered Post Acknowledgement Due on 20.02.2024 as well as through an E-mail on 13.02.2024. A copy of the Demand Notice dated 12.02.2024 along with proof of service of the said Demand Notice is annexed in the application and marked as **ANNEXURE - H**.
- k) However, till date, the Corporate Debtor has not even bothered to reply to the said Demand Notice dated 12.02.2024. Moreover, the Operational Creditor has not received any payments within the statutory period of 10 (ten) days of receipt of the said Demand Notice.
- l) Therefore, the Operational Creditor is constrained to file the present application before this Hon'ble Adjudicating Authority for initiating Corporate Insolvency Resolution Process against the Corporate Debtor in accordance with the relevant provisions of the Insolvency and Bankruptcy Code, 2016.

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8. The present matter was first listed for hearing on 30.07.2024, during which this Tribunal heard the submissions advanced by the counsel for the Applicant and issued notice to the Respondent, directing the Respondent to file a reply within seven days from the date of receipt of the said notice. This Tribunal further directed the Applicant to file a rejoinder within seven days thereafter from the date of filing of the reply by the Respondent.

9. The matter was subsequently listed for hearing on 14.08.2024, during which the service report was taken on record. It was observed by this Tribunal that, despite service of notice upon the Respondent, no reply had been filed by the Respondent, nor had any appearance been made on their behalf. Accordingly, this Tribunal, in the interest of justice, granted the Respondent an extended period of two weeks to appear and file their reply, if any. However, despite being afforded an extended opportunity, the Respondent failed to file any reply or make an appearance. Consequently, this Tribunal, vide order dated 30.08.2024, recorded that the opportunity for the Respondent to file a reply had lapsed.



10. Subsequent to the aforesaid developments, an Interlocutory Application, bearing IA No. 1512 of 2024, was filed by the Respondent on 23.09.2024, vide Inward Diary No. E2363, seeking condonation of a delay of 15 days in filing the reply to the main Company Petition. This Tribunal considered the said Interlocutory Application and, in the interest of justice, condoned the delay subject to the imposition of costs amounting to ₹5,000/- upon the Respondent. The following are the averments made by the Respondent in the **reply** through the abovementioned IA:-

- a) It is submitted that the Application filed by the Operational Creditor is not maintainable in view of the fact that the claim of the Operational Creditor is beyond the period of Limitation. It is submitted that invoices raised by the Operational Creditor are starting from March 2021 to March 2022. It is submitted that the present Petition is filed on 09.07.2024 Thus invoices prior to 10.07.2021 are barred by the law of limitation. The details of such invoices are as follows:-

Invoice Date	Invoice No.	Invoice Due Amount
01/03/2021	GST3660	88306.00
03/03/2021	GST3692	97350.00
06/03/2021	GST3733	214099.00
12/03/2021	GST3783	186416.00
18/03/2021	GST3863	1642914.00
25/03/2021	GST3943	233640.00
30/03/2021	GST3975	157176.00
05/04/2021	GST/2122/66	315202.00
12/04/2021	GST/2122/129	235764.00
14/04/2021	GST/2122/164	265075.00
20/04/2021	GST/2122/204	125741.00
24/04/2021	GST/2122/244	387701.00



26/04/2021	GST/2122/256	423667.00
15/05/2021	GST/2122/420	529159.00
21/05/2021	GST/2122/456	558470.00
27/05/2021	GST/2122/498	157176.00
03/06/2021	GST/2122/544	283766.00
09/06/2021	GST/2122/566	330070.00
14/06/2021	GST/2122/621	233640.00
14/06/2021	GST/2122/622	157176.00
21/06/2021	GST/2122/693	194700.00
21/06/2021	GST/2122/704	392940.00
29/06/2021	GST/2122/786	22656.00
01/07/2021	GST/2122/803	587640.00
08/07/2021	GST/2122/905	157176.00

- b) It is submitted that the Invoices amounting to Rs. 79,77,575/- are barred by the law of Limitation from the total amount of Rs. 1,07,00,906.60ps. It is submitted that the Application filed by the Operational Creditor is beyond the period of limitation of 3 years as prescribed under Article 137 of the Limitation Act, 1963 read with Section 238A of the Insolvency and Bankruptcy Code, 2016. It is submitted that the Application ought to have been filed within the period of limitation to be maintainable under law.
- c) The respondent has further relied on following judgments to support his contentions:-
- i. *B.K. Educational Services Private Limited vs. Parag Gupta and Associates* reported in (2019) 11 SCC 633 (Hon'ble Supreme Court).
 - ii. *K. Sashidhar vs. Indian Overseas Bank* reported in (2019) 12 SCC 150 (Hon'ble Supreme Court).
- d) It is therefore submitted that the present Application of the Operational Creditor is not maintainable in view of the fact that the debt of the Operational Creditor is barred by the law of limitation.
- e) It is submitted that the present Petition is filed based on some supply of raw material for which payment is already made and



thus there is no outstanding and no debt is due and payable. The present petition is thus not maintainable in view of the provisions of Section 5(21) of the IBC, as the amount due from Consent Decree is not a debt as per Section 5(21) of the IBC Code, 2016.

- f) It is submitted that the Corporate Debtor has already made an amount of Rs. 50,00,000/- on 06.12.2023 and therefore now no debt is due and payable. It is submitted that as the debt has been paid the present Petition deserves to be dismissed in *limine*
- g) It is submitted that the Operational Creditor has no cause of action to file the present application against the answering Corporate Debtor; hence it is liable to be dismissed with costs. It is submitted that the application under reply is filed with the objective to harass the Corporate Debtor without any just cause. Thus, the application is an attempt to cause mental agony to the Corporate Debtor which is liable to be thwarted away by this Hon'ble Tribunal in the interests of justice.
- h) It is submitted that the Operational Creditor has not approached this Tribunal with clean hands and has suppressed vital facts vis-a-vis existence of debt from the knowledge of the Tribunal, hence the application under reply is liable to be rejected forthwith. It is humbly submitted that the documents annexed with the present application under reply are firmly disputed by the Corporate Debtor.
- i) It is submitted that the application under reply is just a pack of lies and has been instituted just to harass the Corporate Debtor and thus for want of any just cause of action the present application is liable to be dismissed with heavy costs.
- j) It is submitted that the application filed by the Operational Creditor is an attempt to malign the good reputation of the



Corporate Debtor. The Corporate Debtor it has earned from all across the world by putting in immense hard work. It is further submitted that the Operational Creditor has frivolously filed the present application to tarnish the image of the Corporate Debtor for no good reason and therefore, the present application is liable to be rejected in limine.

- k) It is submitted that the contents of the instant application are manufactured, frivolous, vexatious in nature and reveal no cause of action. Hence, the present application is devoid of any legal merit and is an abuse of the process of law and therefore, is liable to be dismissed.
- l) It is submitted that in the present case the goods supplied was of sub-standard quality and was not marketable goods. It is submitted that various oral communication took place between the parties regarding the sub-standard quality of the goods. Thus, there is a dispute between the parties in regards to the quality of the goods.
- m) It is further submitted that the Corporate Debtor has already made payment of Rs. 50,00,000/- and therefore now no debt is due and payable.
- n) Without prejudice to whatever stated above, it is submitted that the Corporate Debtor is going through rough patch of business as the competition in the business has increased. It is submitted that the Corporate Debtor is going through financial crunch, the amount due and payable could not be paid. It is submitted that because of operational cost and low yield of final product, the Corporate Debtor is unable to make payment to the Petitioner Company.
- o) It is submitted that as the present proceedings are summary in nature, the Petition deserves to be dismissed as the Petition is



filed with an intention of recoveries of monies, which is not the intention of the legislature. Thus, the present Petition deserves to be dismissed.

11. In response to the above averments, the Applicant has filed its **rejoinder** on 21.10.2024 vide Inward Diary No. D7956 wherein certain objections were raised by the respondent which are mentioned as follows: -

- a) It is submitted that the Applicant herein used to maintain a running account for the invoices raised by the Applicant from time to time and payments received from the Respondent Corporate Debtor on ad hoc basis in pursuance to the invoices so raised by the Applicant herein. The said fact is clearly evident from the ledger account produced by the Applicant herein at ANNEXURE-E (Page Nos. 51 to 55) along with the captioned application. Further, it is not even the case of the Respondent Corporate Debtor that the payments were made by the Corporate Debtor against each invoice so raised by the Applicant herein.
- b) Thus, by virtue of provisions contained under Section 19 of the Limitation Act, 1963, when a part payment is made before the expiration of the prescribed period of limitation by the person liable to pay the debt, a fresh period of limitation is to be computed from the time when payment was made. The same is also confirmed by the Hon'ble National Company Law Appellate Tribunal, New Delhi in the case of *Jayprakash Vyas vs. Prabhat Steel Traders Pvt. Ltd.* reported in 2020 SCC OnLine NCLAT 606 as well as in the case of *S. M. Ghogbhai vs. Schedulers Logistics India Pvt. Ltd.* reported in 2022 SCC OnLine NCLAT 216.

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- c) That in the instant case, the outstanding invoices are raised by the Applicant herein between the period of March 2021 to March 2022, against which, the Respondent Corporate Debtor has admittedly made partial payments till 06.12.2023 i.e., within the prescribed period of limitation of 3 (three) years. Under the circumstances, as per Section 19 of the Limitation Act, 1963, a fresh period of limitation is to be computed from the date of such last partial payment i.e., from 06.12.2023. The receipt of last payment as on 06.12.2023 is also evident from the bank statements produced by the Applicant herein (*refer Page No. 258 of the application*). Hence, the instant application filed on 09.07.2024 before this Adjudicating Authority is well within the period of limitation.
- d) Without prejudice to the above, in view of an order passed by the Hon'ble Supreme Court of India on 10.01.2022 in *Re: Cognizance for Extension of Limitation in Miscellaneous Application No. 21 of 2022* in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020, which extended the limitation period up to 90 (ninety) days from 01.03.2022 in cases where the limitation would have expired between 15.03.2020 to 28.02.2022, the present application is even otherwise well within the limitation period.
- e) It is submitted that the Respondent/Corporate Debtor has miserably failed to demonstrate in the said reply, existence of any prior disputes between the parties and had vaguely averred that there are disputes with regards to the quality of goods supplied by the Applicant herein. Though, there is not a single document worth a name to suggest and/or support such bald and baseless assertion. On the contrary, at paragraph no. 25 of the said reply, the Respondent - Corporate Debtor has affirmed that it is going through a rough patch of business and also that



it is facing financial crunch, owing to which the payments could not be made to the Applicant herein. That once having admitted its inability to pay the debts, the Respondent Corporate Debtor is not entitled to blow hot and cold at the same breath and raise frivolous disputes/ allegations against the claim of the Applicant herein, which are otherwise not even in existence.

- f) Owing to the aforementioned scenario, it is just, necessary and imperative to initiate Corporate Insolvency Resolution Process against the Respondent Corporate Debtor, failing which, the creditors of the Corporate Debtor shall be left entirely high and dry.
- g) In addition to the above, it is submitted that the Record of Default ("RoD") filed with National E-Governance Services Limited ("NeSL") for unpaid operational debt was "Deemed to be Authenticated" on 22.04.2024. A copy of the RoD is duly produced at ANNEXURE 1 (*Page Nos. 230 to 235*) along with the captioned application.
- h) In this regard, reliance is placed on an order dated 16.03.2022 passed by this Adjudicating Authority in the case of *Teco Industries vs. Superdrawn Wire Industries Pvt. Ltd.* being C.P.(IB) No. 177 of 2020.
- i) With respect to Paragraph No. 4, it is submitted that the averments made therein are denied being false and baseless. It is denied that the present petition is misconceived and baseless, devoid of any merits. It is further denied that the present petition is liable to be rejected. That the present application is a fit case for admitting the Respondent Corporate Debtor in Corporate Insolvency Resolution Process for the facts and reasons enumerated in the memo of application as well as in the present Affidavit in Rejoinder.



- j) With respect to Paragraph Nos. 6 to 10, it is submitted that the averments made therein are denied in toto. It is vehemently denied that the claim of the Applicant herein is beyond the period of limitation and that the invoices prior to 10.07.2021 are barred by the law of limitation. It is further denied that the invoices amounting to Rs. 79,77,575/- (Rupees Seventy-Nine Lacs Seventy-Seven Thousand Five Hundred and Seventy-Five Only) are barred by the law of limitation from the total principal amount of Rs. 1,07,00,906.60ps. (Rupees One Crore Seven Lacs Nine Hundred Six and Sixty Paise Only). It is denied that the application filed by the Applicant herein is beyond the period of limitation of 3 (three) years as prescribed under Article 137 of the Limitation Act, 1963 read with Section 238A of the Insolvency and Bankruptcy Code, 2016. It is also denied that the present application is not maintainable in view of the fact that the debt of the Applicant herein is hopelessly barred by the law of limitation.
- k) The Applicant herein begs to place reliance on Paragraph Nos. 4 to 8 stated herein above, in order to demonstrate that the instant application is preferred well within the period of limitation. Further, the reliance placed by the Respondent Corporate Debtor on the judgements of the Hon'ble Supreme Court of India in the cases of B. K. Educational Services Private Limited vs. Parag Gupta and Associates reported in (2019) 11 SCC 633 and K. Sashidhar vs. Indian Overseas Bank reported in (2019) 12 SCC 150 in order to make out that the provisions of the Limitation Act, 1963 are applicable to the present proceedings is highly misconceived, in as much as the Applicant herein has not even for once claimed that the provisions of the Limitation Act, 1963 would not apply to the instant case.



- l) With respect to Paragraph Nos. 11 and 12, it is submitted that the averments made therein are denied being false and baseless. It is pertinent to submit that making partial payments on ad hoc basis does not ipso facto imply that there is no debt due and payable on the part of the Respondent Corporate Debtor against the goods/materials so supplied by the Applicant herein. Thus, it is rigorously denied that the present petition is filed based on some supply of raw material for which payment is already made and thus there is no outstanding and no debt is due and payable.
- m) It is further denied that the present petition is not maintainable in view of the provisions of Section 5(21) of the Insolvency and Bankruptcy Code, 2016, as amount due from Consent Decree is not a debt as per Section 5(21) of the Insolvency and Bankruptcy Code, 2016. It is of great relevance to submit that the Applicant herein has not even for once relied upon any Consent Decree in the entire application. Hence, it shall not be out of place to submit that the Respondent Corporate Debtor has completely lost sight of the facts of the instant case. Thus, it is submitted that such averments made by the Respondent Corporate Debtor are highly misplaced under the facts and circumstances of the present case.
- n) It is further denied that now no debt is due and payable on account of payment of Rs. 50,00,000/- (Rupees Fifty Lacs Only) on 06.12.2023 by the Respondent Corporate Debtor. It is denied that as the debt has been paid, the present petition deserves to be dismissed in limine. It is reiterated that the payment to the tune of Rs. 50,00,000/- (Rupees Fifty Lacs Only) made by the Respondent Corporate Debtor on 06.12.2023 was only a part payment and the instant application is filed after adjusting the receipt of the same.



- o) That even after receipt of the said part payment on 06.12.2023, a principal amount to the tune of Rs. 1,07,00,906.60ps. (Rupees One Crore Seven Lacs Nine Hundred Six and Sixty Paisa Only) and interest thereon to the tune of Rs. 21,69,453.55ps. (Rupees Twenty- One Lacs Sixty-Nine Thousand Four Hundred Fifty-Three and Fifty- Five Paisa Only) is still outstanding and payable against the 45 (forty-five) invoices annexed along with the instant application. That the instant application is filed qua the said outstanding invoices only (please refer ANNEXURE G at Page No, 214 of the application). Accordingly, the Respondent - Corporate Debtor is put to strict proof to show that the entire outstanding debt of the Applicant herein has been repaid by the Respondent Corporate Debtor.
- p) It is submitted that no notice of existence of any dispute has ever been received by the Applicant herein and hence, the contention of the Respondent - Corporate Debtor qua dispute regarding the quality of the goods/ materials supplied is a patently feeble legal argument, which is even otherwise unsupported by any evidence. Further, it is relevant to submit that the Hon'ble Supreme Court of India has also held that "*It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.*" in the case of *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.*, reported in (2018) 1 SCC 353.
- q) Under the circumstances, it is denied that the goods/ materials supplied was of sub-standard quality and was not marketable goods/ materials. It is also denied that various oral communication took place between the parties regarding the sub-standard quality of the goods/ materials. It is further denied that there is a dispute between the parties in regards to the quality of the goods/ materials.



- r) With respect to Paragraph No. 24, it is reiterated that making partial payments on ad hoc basis does not ipso facto imply that there is no debt due and payable on the part of the Respondent Corporate Debtor against the goods/ materials so supplied by the Applicant herein. Thus, it is once again vehemently denied that now no debt is due and payable. The Applicant herein place reliance on the memo of the application as well as foregoing paragraphs to show that debt is indeed due and payable and the same is in default. That the submissions qua the same are not reiterated in the present paragraph with a view to avoid repetition.
- s) With respect to Paragraph No. 25, it is submitted that the Respondent Corporate Debtor has duly agreed and admitted that it is unable to make payments to the Applicant herein on account of financial crunch. Therefore, the present application is liable to be admitted on this sole count.
- t) It is relevant to submit that one, M/s. Pearl Industries had also preferred an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 being C. P. (I.B.) No. 272 of 2024 before this Adjudicating Authority for the outstanding operational debt receivable from the Respondent Corporate Debtor. However, the same is withdrawn with a liberty granted to M/s. Pearl Industries to file a fresh application by this Adjudicating Authority vide an order dated 08.10.2024. Thus, the said fact clearly shows that the Respondent Corporate Debtor has also defaulted qua the dues owed to other creditors as well.
- u) Moreover, in the said reply, the Respondent - Corporate Debtor has even admitted its inability to repay the debts of the Applicant herein. Thus, it is reiterated that it is just, necessary and imperative to initiate Corporate Insolvency Resolution Process against the Respondent Corporate Debtor, failing which,



the creditors of the Corporate Debtor shall be left entirely high and dry.

12. It is pertinent to note that both parties were directed to file a summary of their respective submissions pursuant to the order dated 16.10.2024. However, the applicant and the respondent have filed their written submissions belatedly on 18.11.2024, approximately one month after the initial compliance order was issued.

13. Subsequent to the submission of the written synopsis, the matter was taken up for final hearing on 18.11.2024, during which this Tribunal heard the arguments advanced by the learned Counsel for the applicant as well as the learned Counsel for the respondent and perused the material on record.

14. **Observation and Findings of this Tribunal:**

A. It is observed that the Applicant, an Operational Creditor, issued a demand notice to Rexsona Tiles Private Limited on 12.02.2024, requiring payment of the outstanding dues, which was never responded to by the Respondent/Corporate Debtor.



- B. It is further noted that the principal outstanding amount claimed in respect of the goods allegedly supplied to the Corporate Debtor amounts to Rs. 1,07,00,906.60ps. However, an additional sum of Rs. 21,69,453.55ps. has been claimed as interest, which has been calculated at 8% interest *per annum*.
- C. Furthermore, it is pertinent to note that the Respondent filed its reply through an Interlocutory Application, bearing **I.A. No. 1512 of 2024**, accompanied by an application seeking condonation of a delay of 15 days in filing the reply. This was done despite the fact that this Tribunal had, on prior occasions, afforded the Respondent two distinct opportunities to file a reply during the course of the proceedings.
- D. In the interest of justice and to ensure fair representation of both parties, this Tribunal deems it appropriate to allow the application for condonation of delay filed by the Respondent through I.A. No. 1512 of 2024. Accordingly, the delay of 15 days in filing the reply is condoned.

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Hence, **I.A. No. 1512 of 2024** in **CP(IB) 245 of 2024** is hereby **allowed**.

E. It is further observed that the respondent contended that part of the claim is barred by limitation as invoices dated before 10.07.2021 amounting to ₹79,77,575 are beyond the prescribed three-year period. For computation of the limitation period, the consolidated invoices which has been annexed as Annexure-G in the application (Pg. 214) has been reproduced below:-

Invoice Date	Invoice No.	Invoice Due Amount	Invoice Due Date	Over Due On Date	Over Due Days	Over Due Interest @ 8% P.A.
01/03/2021	GST3660	88306.00	31/03/2021	31/01/2024	1036	20051.51
03/03/2021	GST3692	97350.00	02/04/2021	31/01/2024	1034	22062.44
06/03/2021	GST3733	214099.00	05/04/2021	31/01/2024	1031	48380.51
12/03/2021	GST3783	186416.00	11/04/2021	31/01/2024	1025	41679.76
18/03/2021	GST3863	1642914.00	17/04/2021	31/01/2024	1019	366932.46
25/03/2021	GST3943	233640.00	24/04/2021	31/01/2024	1012	51823.27
30/03/2021	GST3975	157176.00	29/04/2021	31/01/2024	1007	34690.68
05/04/2021	GST/2122/66	315202.00	05/05/2021	31/01/2024	1001	69154.46
12/04/2021	GST/2122/129	235764.00	12/05/2021	31/01/2024	994	51364.26
14/04/2021	GST/2122/164	265075.00	14/05/2021	31/01/2024	992	57633.84
20/04/2021	GST/2122/204	125741.00	20/05/2021	31/01/2024	986	27173.84
24/04/2021	GST/2122/244	387701.00	24/05/2021	31/01/2024	982	83446.00
26/04/2021	GST/2122/256	423667.00	26/05/2021	31/01/2024	980	91001.35
15/05/2021	GST/2122/420	529159.00	14/06/2021	31/01/2024	961	111456.83
21/05/2021	GST/2122/456	558470.00	20/06/2021	31/01/2024	955	116996.19
27/05/2021	GST/2122/498	157176.00	26/06/2021	31/01/2024	949	32692.61
03/06/2021	GST/2122/544	283766.00	03/07/2021	31/01/2024	942	58587.96
09/06/2021	GST/2122/586	330070.00	09/07/2021	31/01/2024	936	67714.09
14/06/2021	GST/2122/621	233640.00	14/07/2021	31/01/2024	931	47675.36
14/06/2021	GST/2122/622	157176.00	14/07/2021	31/01/2024	931	32072.52
21/06/2021	GST/2122/693	194700.00	21/07/2021	31/01/2024	924	39430.75
21/06/2021	GST/2122/704	392940.00	21/07/2021	31/01/2024	924	79578.42
29/06/2021	GST/2122/786	22656.00	29/07/2021	31/01/2024	916	4548.58
01/07/2021	GST/2122/803	587640.00	31/07/2021	31/01/2024	914	117721.20
08/07/2021	GST/2122/905	157176.00	07/08/2021	31/01/2024	907	31245.73
12/07/2021	GST/2122/942	157176.00	11/08/2021	31/01/2024	903	31107.93



15/07/2021	GST/2122/977	104784.00	14/08/2021	31/01/2024	900	20669.72
15/07/2021	GST/2122/984	175230.00	14/08/2021	31/01/2024	900	34565.92
20/07/2021	GST/2122/1029	235764.00	19/08/2021	31/01/2024	895	46248.50
22/07/2021	GST/2122/1054	78588.00	21/08/2021	31/01/2024	893	15381.72
26/07/2021	GST/2122/1093	157176.00	25/08/2021	31/01/2024	889	30625.64
26/07/2021	GST/2122/1094	96288.00	25/08/2021	31/01/2024	889	18761.65
13/08/2021	GST/2122/1294	9204.00	12/09/2021	31/01/2024	871	1757.08
16/08/2021	GST/2122/1326	77880.00	15/09/2021	31/01/2024	868	14816.40
27/12/2021	GST/2122/2551	253782.60	26/01/2022	31/01/2024	735	40883.33
07/01/2022	GST/2122/2656	175584.00	06/02/2022	31/01/2024	724	27862.54
17/01/2022	GST/2122/2704	153636.00	16/02/2022	31/01/2024	714	24042.98
17/01/2022	GST/2122/2719	131688.00	16/02/2022	31/01/2024	714	20608.27
27/01/2022	GST/2122/2790	263376.00	26/02/2022	31/01/2024	704	40639.28
07/02/2022	GST/2122/2861	65844.00	09/03/2022	31/01/2024	693	10001.07
14/02/2022	GST/2122/2902	109740.00	16/03/2022	31/01/2024	686	16500.09
21/02/2022	GST/2122/2947	109740.00	23/03/2022	31/01/2024	679	16331.72
03/03/2022	GST/2122/3014	87792.00	02/04/2022	31/01/2024	669	12872.95
08/03/2022	GST/2122/3050	135936.00	07/04/2022	31/01/2024	664	19783.34
14/03/2022	GST/2122/3087	144078.00	13/04/2022	31/01/2024	658	20778.81
						2169453.55
						10700906.60

From the above computation, it is seen that the first date of the invoice raised is 01.03.2021 and the last invoice raised is dated 14.03.2022. The Hon'ble Supreme Court, in its order dated 10.01.2022 in *Re: Cognizance for Extension of Limitation* (Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in *Suo Motu Writ Petition (C) No. 3 of 2020*), provided the following directions relevant to the present case:

"The period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.



In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."

Applying the above directions, the present application, filed on 09.07.2024, is well within the extended limitation period, considering the exclusions granted for the COVID-19 pandemic and subsequent extensions provided by the Hon'ble Supreme Court.

F. Moreover, the Applicant demonstrated partial payment of Rs.50,00,000/- on 06.12.2023, which, under Section 19 of the Limitation Act, 1963, extends the limitation period.

Section 19 of the Limitation Act, 1963 states that:

"19. Effect of payment on account of debt or of interest on legacy. *Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made."*



Hence, the present application filed on 09.07.2024 is within the extended limitation period.

G. Now, the appropriation of payment of Rs.50,00,000/- which was made on 06.12.2023 is to be considered, it is contended by the applicant that the Applicant used to maintain a running account for the invoices raised by them from time to time and payments received from the Respondent Corporate Debtor on ad-hoc basis in pursuance to the invoices so raised by the Applicant. The ledger of the same is reproduced below:-

Bell Impex
8-A, National Highway
Near Radhay Hotel
Morbi, Gujarat, State Code - 24
REXSONA TILES PVT. LTD.
Ledger Account
NR. AMARDHAM TEMPLE,
MATEL ROAD, WANKANER
1-Apr-23 to 10-Dec-23

55

Date	Particulars	Vch Type	Vch No.	Debit	Credit
1-Apr-23	To Opening Balance			2,18,20,907.00	
19-Jul-23	By HDFC BANK	Bank Receipt	RTGS		45,00,000.00
28-Aug-23	By HDFC BANK	Bank Receipt	RTGS		16,20,000.00
6-Dec-23	By HDFC BANK	Bank Receipt	RTGS		50,00,000.00
				2,18,20,907.00	1,11,20,000.00
	By Closing Balance			2,18,20,907.00	2,18,20,907.00

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From the ledger it is seen that the applicant has adjusted the said amount of Rs.50,00,000/- to the overall



outstanding balance and thereafter the closing balance aggregated to the amount of Rs.1,07,00,907/- which is the Principal amount due in this case.

H. According to Section 60 of the Indian Contract Act, 1872, it states that:-

“60. Application of payment where debt to be discharged is not indicated.—Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.”

In the present matter, the Respondent has not placed on record intimation or specific instructions regarding the appropriation of the said payment. Therefore, the Applicant, exercising its lawful discretion, has rightly adjusted the payment against the running account of the Respondent.

I. Further in its reply, the Respondent/Corporate Debtor, in a feeble and unsubstantiated manner, raised the contention of a pre-existing dispute, allegedly



communicated through oral and verbal exchanges between the parties. However, no documentary evidence has been annexed to the reply to demonstrate that such a dispute was raised prior to the issuance of the demand notice under Section 8 of the Code. In our view, respondent's contentions regarding the dispute are nothing but a moonshine defence and the same are rejected.

J. In our view the application is complete in terms of Section 9 of the Code. As the Applicant/Operational Creditor has proved that there is debt and despite service of notice under Section 8, the same was not paid by the Respondent/Corporate Debtor. We have also seen that the amount defaulted is more than Rs. 1.00 Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.



15. In light of the above background, this Tribunal holds that the present petition being **CP(IB) No. 245 of 2024** is ***allowed*** and ***admitted***.

16. Accordingly, in light of the above, it is, hereby ordered as under:-

- (i) The Respondent/Corporate Debtor **M/s Rexsona Tiles Private Limited** is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:
 - (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under



the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
 - (e) The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be. However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be.



- (v) As the Applicant/Operational Creditor has not named any IRP in the matter, we hereby appoint **Mr. IqbalSingh Gandhi**, Registered Insolvency Professional having registration number as **IBBI/IPA-001/IP-P-02365/2021-22/13524**, email-ID: iqbalsingh2659@yahoo.co.in under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP). The IRP shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate



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

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the



Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

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

17. Accordingly, the present Petition **CP(IB)/245/AHM/2024** is ***admitted***. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

—SD—

SAMEER KAKAR
MEMBER (TECHNICAL)
HG

—SD—

SHAMMI KHAN
MEMBER (JUDICIAL)