

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.134/BB/2022**  
**& I.A No. 124 of 2023**  
**& I.A No. 126 of 2023**  
**U/s. 9 of the IBC, 2016**  
**R/w Rule 6 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**NWCC Supply Chain Solutions Private Limited**

Represented through its Partner

Harjeet Singh Sachdeva

Registered Office at:

1002, Pragati Tower, 26, Rajendra Place,

New Delhi – 110 008.

... Petitioner/Operational Creditor

**Versus**

**Metro Cash and Carry India Pvt. Ltd,**

# 26/3, Industrial Suburbsward #9,

A Block, Subramanyanagar

Bangalore- 560 055

... Respondent/Corporate Debtor

**Order delivered on: 25<sup>th</sup> May, 2023**

**Coram:**

Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)

Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner

: Shri Gagan Chhabra, Shri Roshan Geroge Jacob  
And Mrs. Chanchal Chauhan, Advocates

For the Respondent

: Shri Vikas Dutta, Shri Pankaj Sharma and  
And Ms. Divya D. Shetty, Advocates.

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition is filed on 22.04.2022, under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules

2016, by M/s NWCC Supply Chain Solutions Private Limited. (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Metro Cash and Carry India Pvt. Ltd (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 1,91,92,730/- ( Rupees, One Crore Ninety – One Lacs Ninety – Two Thousand Seven Hundred and Thirty Only).

2. It is pertinent to mention here that this Tribunal in the order passed today has dismissed CP (IB) No. 133/2022 filed by the sister concern M/s North West Carrying Company, LLP against the same corporate debtor herein on the ground that the debt amount involved was below prescribed threshold limit of Rs. 1 crore mandated under the IBC.
3. The facts and issue to be considered are similar in both these petition and submissions made by both the counsels are also similar to the submissions made in CP (IB) No. 133 of 2022. Hence this tribunal is not detailing the facts and submissions made thereunder.
4. On 29.11.2022 this Tribunal directed that the date of default and limitation issue needs clarification. And after availing substantial time the learned counsel for the petitioner on 16.03.2023 submits that the date of default is 15.01.2016. on 23.02.2023 this Tribunal directed the petitioner to file three page note on threshold aspect along with the copies of judgment on which they are placing reliance and the same is complied vide diary No. 1299 dated 06.03.2023. In this note, it has been explained that when the first petition was filed under CP (IB) No. 107/BB/2019 on 21.03.2019; the threshold limit was Rs. 1 lakhs only; and since liberty was granted by the Tribunal to the petitioner to file a fresh Company petition, the same limit will apply.
5. The first issue to be considered in this petition is whether the threshold mandated under section 4 of the IBC is met or not. This

tribunal on perusal of the documents available observes that amount claimed as unpaid operational debt is Rs. 1,91,92,730/-, wherein the principal amount is only Rs. 72,35,714/-. Further on perusal of the account statement dated 28.02.2022, it seen that the petitioner has clubbed, Principal Amount of Rs. 72,35,714/-, Interest upto 28 Feb 2022 of Rs. 1,16,92,067/- and Cost of Assets of Rs. 2,64,949/- to arrive at the total amount of Rs. 1,91,92,730/.

6. The respondent in his objection submitted that there is no agreement between the parties wherein the respondent has ever agreed to pay any interest or cost of assets. Further, none of the invoices as claimed by the Applicant to be paid have any clause relating to the payment of interest. No documents have been filed by the petitioner to show that respondent has agreed to club the abovementioned charges to the principal amount.
7. Hence it is evident that the petitioner has intentionally clubbed these amounts with the principal amount to arrive at the minimum threshold of Rs.1 Crore for complying with the provisions of Section 4 of IBC.
8. The Hon'ble NCLAT in the matter of "*Prashat Agarwal v. Vikash Parasrampuria, Company Appeal (AT)(Ins) No. 690 of 2022 dated 15.07.2022*", held that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment in case it was clearly stipulated in the invoice.
9. It is clear from the judgment mentioned supra that in order to club other charges with the principal amount, express stipulation has to be incorporated in the invoice itself and in the absence of the same neither interest nor any other charges can be clubbed with the principal amount. Therefore this Tribunal observes that the threshold limit stipulated under section 4 of the Code is not met. The contention that old limit of Rs. 1 Lakhs should apply to this petition because of the liberty is not tenable. The order granting liberty dated 24.01.2020 stated as "*The Petitioner, if aggrieved by the order, is at liberty to file a fresh Company Petition, in accordance*

*with law*'. The fresh company petition was filed on 22.04.2022; and the law as it exists on this case prescribed the minimum threshold of Rs. 1 crore. Therefore, the petitioner's contention in this regard is devoid of merit.

10. The next issue for consideration that came up for this Tribunal is regarding limitation. On perusal of the documents produced it is seen that all agreements executed between the petition and respondent dated back to years 2011 to 2014. Further, all these agreements were terminated in the year 2014, wherein the last invoice produced by the Applicant in the present application is dated 10.11.2014. Moreover, the Learned Counsel for the Petitioner on 16.03.2023 submitted that the Date of Default is on 15.01.2016. Accordingly the same stood expired on 14.01.2019.
11. The first petitions filed by the Petitioner, being C.P (IB) No. 107 of 2019 was filed on 21.03.2019, and was subsequently withdrawn due to mistake made by the petitioner in sending legal notice, and liberty was granted to file fresh petition. Further, again petitioner filed CP(IB) No. 385 of 2019 on 14.09.2019, and order dated 24.01.2020, this tribunal directed the parties to mutually resolve the dispute between them. Once again, liberty was granted to file fresh Company petition as per law, if aggrieved.
12. It is seen that the date of default is 15.01.2016 and the limitation expired on 14.01.2019 and the petitioner filed Company Petition CP (IB) No. 107 of 2019 on 21.03.2019 which fall outside the purview of Limitation. And subsequently the petition was withdrawn due to mistake in sending legal notice, and the same was disposed off, with the liberty to file fresh petition duly following the provisions of the Code. Hence at the initial stage itself the petition was barred by limitation and liberty in filing fresh petition was to be exercised in accordance with law. It is noticed that the issue of limitation was raised in the proceedings in CP (IB) No. 385/BB/2019; along with the matter of pre-existing disputes, but the petition was decided with directions to the parties to resolve the matter.

13. Accordingly, this Tribunal is of consideration opinion that this petition is not a fit case for admission. The threshold stipulated u/s 4 of the Code is not met. As discussed above, the Principal amount in this case was only Rs. 72,35,714/- which only is to be considered for determining the fulfilment of requirement of threshold u/ 4 of IBC, 2016. Therefore, the petition CP (IB) No. 134 of 2022 is hereby **dismissed**. However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so advised. No order as to costs.

**I.A No. 124 of 2023**

1. The instant application is filed on 11.01.2023 by M/s NWCC Supply Chain Solutions Pvt Ltd, Petitioner in the present Company Petition inter alia seeking to Direct the Corporate Debtor, M/s Metro Cash and Carry to place on record all the Record/Documents pertaining to the Acquisition of the Respondent by M/s Reliance Retail Ventures Limited, Agreement/Agreement, which have been signed or Agreement which may be proposed to be signed between the said two parties.

2. However, this Tribunal in the order passed today in CP (IB) No. 134 /BB/2022 has dismissed the said petition since the minimum threshold requirement was not met. Hence the present I.A for direction the respondent to place on record documents related to its acquisition becomes infructuous.

**Hence I.A 124 of 2023 is disposed of as infructuous.**

**I.A No. 126 of 2023**

1. The instant application is filed on 20.02.2023 by M/s NWCC Supply Chain Solutions Private Limited, for condonation of delay of 67 days by the petitioner in filing the petition under section 9 of the Insolvency and Bankruptcy Code, 2016, Originally numbered as CP(IB) No. 107/BB/2019 titled as NWCC Supply Chain Solutions Private Limited Versus Metro Cash and Carry India Private Limited later on, filed with the leave of the Court and renumbered as CP (IB) No. 385/BB/2019 and subsequently, filed

with the leave of this Tribunal and renumbered as CP (IB) No. 134/BB/ 2019 by the Petitioner.

2. This application has been filed for condonation of delay in filing Company Petition CP (IB) No. 107 of 2019 on 21.03.2019. This Petition was withdrawn and disposed of by this Adjudicating Authority vide order dated 08.07.2019. Therefore, this I.A No. 126 of 2023 for condonation of delay of an application which is already disposed of cannot be decided now as it has become infructuous  
**Hence I.A 126 of 2023 is disposed of as infructuous.**

**-Sd-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**-Sd-**

**(T.KRISHNAVALLI)  
MEMBER (JUDICIAL)**