

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 536 of 2024

(Arising out of Judgement and order dated 20.02.2024 passed by the National Company Law Tribunal, Chandigarh in CP (IB) No.273 of 2021 Napin Impex Ltd. Vs Kirtiman Cements and Packaging Industries)

In the matter of:

Jatinder Oberoi

Erstwhile Director of M/s Kirtiman
Cements and Packaging Inds Ltd
(Corporate Debtor)
R/o 461-R, Model Town,
Yamuna Nagar.

Appellant

Vs.

1. **Narendra Singh Chhabra,**
J-114, Second Floor, Natraj Road,
Kirti Nagar, Near Cabana Restaurants,
New Delhi 110015.
IRP of
M/s Kirtiman Cements and Packaging Inds Ltd.
2. **Napin Impex Ltd,**
H-1419, Basement DSIIDC,
Narela,
New Delhi-110040.

Respondents

Present:

For Appellant: **Mr. Aalok Jagga, Mr. Nipun Gautam, Mr. APS Madaan,
Ms. Vibhu Agarwal, Mr. Sahil Lohan, Advocates.**

For Respondents: **Mr. Narendra Singh Chhabra, RP.**
**Mr. Dhananjaya Sud, Ms. Swechcha Mishra, Advocates
for R-1.**
**Mr. Avneesh Arputham, Mr. Ankit Sharma, Advocates
for R-2.**

With

Cont'd..../

**Contempt Case (AT) No.25 and 26 of 2024
In
Company Appeal (AT)(Ins) No.536 of 2024**

In the matter of

Jatinder Oberoi

Appellant

Vs.

Narendra Singh Chhabra

Respondent

Present:

**For Appellant: Mr. Aalok Jagga, Mr. Nipun Gautam, Mr. APS Madaan,
Ms. Vibhu Agarwal, Mr. Sahil Lohan, Advocates.**

**For Respondent: Mr. Narendra Singh Chhabra, RP.
Mr. Dhananjaya Sud, Ms. Swechcha Mishra, Advocates.**

J U D G M E N T

(17th December, 2025)

INDEVAR PANDEY, MEMBER (T)

This appeal has arisen from the order dated 20.02.2024 passed by the National Company Law Tribunal, (**Adjudicating Authority**) Chandigarh Bench in CP(IB) No. 273/CHD/CHD/2021. The Adjudicating Authority admitted the petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**Code**') filed by **M/s Napin Impex Ltd., the Operational Creditor** of the M/s Kirtiman Cements and Packaging Industries Limited (**Corporate Debtor**). The Adjudicating Authority vide the impugned order directed the initiation of the Corporate Insolvency Resolution Process (CIRP) against M/s Kirtiman Cements & Packaging Industries Limited, the Corporate Debtor (**CD**). Mr. Narendra Singh Chhabra was appointed as

Interim Resolution Professional and he was later confirmed as Resolution Professional (RP). He is the Respondent No.1 in this appeal.

2. The **Appellant Sh. Jatinder Oberoi, the suspended director of the Corporate Debtor**, has preferred this appeal challenging the admission order on the grounds that the petition was entertained despite serious disputes regarding the existence and quantum of debt, fabrication and inconsistency in the documents relied upon, contradictions in the alleged dates of default, and non-fulfilment of mandatory statutory requirements under the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor, represented through its **Resolution Professional, Mr. Narendra Singh Chhabra, is the Respondent No.1** herein.

3. The brief facts of the case are as given below:

(i) M/s Napin Impex Ltd./ Operational Creditor and Respondent No.2 herein is an agent of ONGC Petro Additions Limited (**OPAL**) appointed vide Domestic Channel Partner Agreement for Consignment Stockist Agent (**CSA**) dated 11.04.2017 and vide Domestic Channel Partner Agreement for Del Credere Agent (**DCA**) dated 11.04.2017.

(ii) The Corporate Debtor issued a request letter dated 04.09.2017 to OPAL seeking registration as a customer through its DCA, *Napin Impex Ltd.*, and the Corporate Debtor executed Annual MOU Schemes (AMS) for FY 2018–19 and 2019–20 with OPAL. Corporate Debtor had approached Operational Creditor for the purchase of polymer raw material manufactured by OPAL, for which the Operational Creditor acted as an

authorized agent of OPAL under a Consignment Stockist Agent (CSA) Agreement and a Domestic Channel Partner Agreement (DCA), both dated 11.04.2017. The DCA is also referred to as Del Credere Agreement.

- (iii) Based on these arrangements, the Operational Creditor supplied polymer raw materials to the Corporate Debtor between 21.09.2017 and 04.10.2019 under various invoices, against which, only part payments were made by the Corporate Debtor to Respondent No. 2/ Operational Creditor
- (iv) Corporate Debtor vide email dated 30.10.2019, unambiguously and unequivocally admitted that a sum of Rs.1,11,71,649 was due and payable to the Petitioner as on 30.10.2019.
- (v) The Respondent No.2 issued a demand notice dated 25.02.2020 to the Corporate Debtor and its directors, through speed post on 27.05.2020 and vide email dated 01.06.2020, and received undated replies from the Corporate Debtor, wherein issues were raised by the Corporate Debtor to evade its liability, in contrast to its own admitted accounts dated 30.10.2019. As per the Operational Creditor, an outstanding principal amount of Rs.1,05,07,692/- remained due and payable as on 25.10.2019, along with interest at 27% per annum. Consequently, a demand notice dated 25.05.2020 was issued to the Corporate Debtor under Section 8 of the Code.
- (vi) The Operational Creditor filed a petition under Section 9 of the Code before the Ld. NCLT, Chandigarh, being C.P. (IB) No. 273/Chd/2021, seeking initiation of CIRP against the Corporate Debtor.

(vii) The Adjudicating Authority on 21.02.2024, admitted the Section 9 petition, thereby initiating CIRP against the Corporate Debtor. The present appeal arises from the aforesaid order. Mr. Narendra Singh Chhabra was appointed as Interim Resolution Professional, who was subsequently confirmed as Resolution Professional.

4. Aggrieved by the impugned order Mr. Jatinder Oberoi, Suspended Director of the Corporate Debtor has filed this Company Appeal (AT) (Ins.) No. 536 of 2024 in which the following order was passed on 15.03.2024:

“15.03.2024: The Learned Counsel for the Appellant submits that Operational Creditor had no right to initiate the proceedings under Section 9 of the IBC since the supplies was made by the company and the agreement dated 11.04.2017 the Operational Creditor had no authority to initiate Section 9 proceedings.

The Learned Counsel for the Respondent refuted the submissions and submits that it was the duty of the agent to collect the amount from the Corporate Debtor and return to the company. The Corporate Debtor having not made the payment, the Operational Creditor has every right to initiate the Section 9 application.

Submissions needs scrutiny.

The Learned Counsel for the Respondent prays for and is allowed to file Reply Affidavit within two weeks. Rejoinder, if any, may be filed within two weeks, thereafter.

List on 23.04.2024.

Subject to Appellant depositing the entire principal amount i.e. Rs.1,11,71,649/- within one month from today and the Fixed Deposited receipt may be submit before the Registrar of NCLAT.

No further steps shall be taken in pursuance to the impugned order.

This deposit is without prejudice to rights and contentions of both the parties.”

5. However, the appellant did not deposit the FDR in terms of aforesaid order dated 15.03.2024. Accordingly, this Tribunal vide order dated 19.07.2024 vacated the interim order dated 15.03.2024. The relevant order dated 19.07.2024 is extracted below:

“19.07.2024: Counsel for Appellant seeks time to file the rejoinder. Be filed within three weeks from today. The FDR has not been deposited in terms of order dated 15.03.2024. In the circumstances, the stay stands vacated. List for hearing on 27.08.2024.”

6. Aggrieved by the aforesaid order of this Appellate Tribunal the appellant filed a Civil Appeal No. 8156 of 2024 in Hon’ble Supreme Court of India in which the following order was passed on 09.08.2024:

“ORDER

The appeal is admitted.

Heard the learned counsel appearing for the parties. The learned counsel appearing for the appellant, on instructions, states that the appellant is willing to immediately comply with the condition imposed by the order dated 15th March, 2024 by which stay was granted.

He states that the Fixed Deposit Receipts are ready. The condition incorporated in the order dated 15th March, 2024 reads thus:

"Subject to Appellant depositing the entire principal amount i.e. Rs. 1, 11,71,649/- within one month from today and the Fixed Deposited receipt may be submit before the Registrar of NCLAT. No further steps shall be taken in pursuance to the impugned order."

If the appellant complies with the said condition to the satisfaction of the Registrar of the National Company Law Appellate Tribunal

(NCLAT) within a period of three weeks from today. the order of stay granted on 15th March. 2024 by NCLAT shall stand revived. On the failure of the appellant to make compliance within three weeks, the order of stay shall not revive.

The appeal is accordingly partly allowed on the above terms.”

7. Pursuant to the aforesaid order of Hon’ble Supreme Court of India the following order was passed by this Appellate Tribunal on 27.08.2024 which is extracted below:

“27.08.2024: We have perused the order dated 09.08.2024 passed by Hon’ble Supreme Court of India in Civil Appeal No. 8156 of 2024 wherein it has been held as under: ...

“If the appellant complies with the said condition to the satisfaction of the Registrar of the National Company Law Appellate Tribunal (NCLAT) within a period of three weeks from today, the order of stay granted on 15th March, 2024 by NCLAT shall stand revived. On the failure of the appellant to make compliance within three weeks, the order of stay shall not revive.”

It is submitted by the learned Counsel for the Appellant FDRs have since been deposited in terms of the order dated 15.03.2024, hence, the stay order dated 15.03.2024, granted by this Tribunal, stands revived. Directed accordingly.

Hard copy of the Rejoinder be filed.

Pleadings are complete. List the matter for arguments on 4th October, 2024.”

8. Sh. Jatinder Oberoi, Erstwhile Director of CD and appellant herein filed a Contempt Petition No. 25 & 26 of 2024 on 03.09.2024 for alleged violation of the orders of this Tribunal dated 15.03.2024 and 27.08.2024 and the orders of Hon’ble Supreme Court in Civil Appeal No. 8156 of 2024 against the

RP Mr. Narendra Singh Chhabra for not handing over the possession of the Corporate Debtor's property. On 04.10.2024 the matter was taken up by this Tribunal. The relevant extracts of the order are given below:

"4.10.2024 - This is an Application for contempt of the Order dated 15th March, 2024 as well an Order dated 9th August, 2024 of the Hon'ble Supreme Court in Civil Appeal No.8156 of 2024 as well an Order dated 27th August, 2024 passed by this Tribunal.

2. Admittedly on 15.3.2024, an order was passed directing the Appellant to deposit the entire principal amount of Rs.1,11,71,649/- within a month and in case of deposit, no further steps were to be taken in pursuance of the impugned Order.....

x

x

11. Since there is a controversy as to when the factory premises of the Company was taken over by the RP, it would be appropriate he should file an Affidavit giving the dates relevant to the issue as to when he was appointed; the date of seizure of the possession of the factory premises; other relevant dates from initiation of the CIRP process within two weeks from today."

9. The matter was subsequently taken up on 22.11.2024 where the following order was passed:

"22.11.2024: The affidavit as was required to be filed by RP vide para 11 of the order dated 04.10.2024 is not on record. Let the affidavit be brought on record and response, if any, may also be filed to such affidavit.

2. Since there is a controversy as to if the factory was already closed or that the workers and management were not visiting the factory and being incidents of theft in neighbouring

factories as on the date of closer on 24.07.2024, but allegedly the RP has put locks on the factory to preserve it.

3. However, Learned counsel for Appellant submits that u/ Section 25 of IBC, it was the duty of RP not only to preserve the assets of the Corporate Debtor but to continue operations of the Corporate Debtor.

4. It is submitted since the factory is closed; it is difficult to continue the business operations of the Company. In the circumstances, RP is directed to immediately unlock the factory premises to see the operations of the Corporate Debtor are continued with the assistance of erstwhile management and personnel of the Corporate Debtor under the guidance of CoC.

List the matter on 10.01.2025.”

10. On 10.01.2025 a final order was passed vide which the possession of the Corporate Debtor premises was ordered to be handed over to the appellant. The relevant paras 1 & 4 of the order are extracted below:

“1. This order be read in continuation of order dated 4th October, 2024 and order dated 22.11.2024 passed in Contempt Case (AT) No. 25 and 26 of 2024.

4. On our query we find by 15.3.2024 the possession of the premises was taken over by the RP and guards were placed there. The CoC was also formed by then. However, the appellant submits they were the one who were running the factory even as on 15.03.2024. It is submitted in case the appellant are allowed to run the factory they shall provide weekly reports to the RP and shall also provide documents as were required by the RP and in case the RP/ CoC finds the assets are being siphoned off, they shall report the same to this Tribunal. In these circumstances let the appellants be allowed the entry to the factory premises and be allowed to run the factory/business forthwith. If any documents are required by the RP the same be provided to him.”

11. On the subsequent date 28.03.2025 this Tribunal urged the parties to find a possibility of settlement. However, in view of unwillingness of parties, the matter was decided to be heard of merits.

Submission of the Appellant

12. The Learned Counsel for the Appellant submitted that the present Appeal arises out of the impugned order dated 20.02.2024 passed by the Learned National Company Law Tribunal, Chandigarh Bench ("Ld. NCLT") in CP (IB) No. 273/Chd/2021, whereby the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "the Code") by Napin Impex Limited ("Respondent No. 2" / "Operational Creditor") was admitted against the Corporate Debtor, M/s Kirtiman Cements and Packaging Industries Limited.

13. Ld. Counsel further submits that the impugned order is unsustainable for three primary reasons: (i) there exists no "operational debt" within the meaning of Section 5(21) of the IBC, as the invoices and supplies were made by ONGC Petro Additions Ltd. (OPAL) and not by the Petitioner; (ii) the Petitioner, being only a collection agent under the Del Credere Agreement, had no right to receive payment or to institute proceedings under Section 9 of the IBC; and (iii) the impugned order is a wholly unreasoned and non-speaking order, passed without considering the detailed objections and statutory non-compliances pointed out by the Corporate Debtor.

14. It is the submission of the appellant that the Respondent No.2/Applicant in the Section 9 petition cannot be treated as an Operational

Creditor under Section 5(21) of the IBC. The invoices dated 17.03.2018 to 27.09.2019, relied upon in the petition, were issued by ONGC Petro Additions Ltd. (OPAL) as the seller and supplier, with the Corporate Debtor shown as the buyer. OPAL collected GST at 18%, confirming that it was the actual supplier and owner of the goods. The Respondent No. 2's name appears only as an agent at the bottom of the invoices and not as the seller or supplier. Therefore, Respondent No. 2 has no right to claim payment or file a petition under Section 9 of the IBC.

15. The appellant submits that the Respondent/Applicant is not the seller or supplier of the goods in question. The purchase orders annexed to Section 9 petition were issued by the Corporate Debtor directly to ONGC Petro Additions Ltd. (OPAL), clearly showing OPAL as the seller. No purchase orders were ever issued in favour of Respondent No. 2, nor has Respondent No. 2 issued any invoices to the Corporate Debtor. The price circular, determining the price of the goods, was also issued by OPAL, confirming that sales were made by OPAL to the Corporate Debtor. It is undisputed that Respondent No. 2 neither owned nor supplied the goods, nor was entitled to payment from the Corporate Debtor; it merely collected payments on behalf of OPAL and received commission as per Clauses A to D and Clause 6 of the Del Credere Agreement dated 11.04.2017.

16. It is submitted that under the Del Credere Agreement, the Respondent/Applicant is only authorized to market and distribute the goods of OPAL and has no right to initiate any legal proceedings without OPAL's specific written authorization (Clause 2 and 3). To clarify who can file a

Section 9 petition, Regulation 2B of the IBBI (CIRP) Regulations, 2016 mandates that an Operational Creditor must file Form GSTR-1, GSTR-3B, and the e-way bills along with the application. These documents can only be filed by the actual supplier of goods under the GST Act. In the present case, the products are taxable, GST @18% has been charged, and OPAL, and not the Respondent No.2 has filed the returns.

17. The checklist filed by the Respondent before the NCLT (Serial No. 21 & 22) expressly shows that GSTR-1, GSTR-3B, and e-way bills were not filed, because the Respondent is not the supplier. Under the CGST Act and Rules (Sections 37, 39 and Rule 59, Rule 138), only the registered supplier who sells the goods and collects GST can issue GST returns and e-way bills. OPAL issued the invoices and the e-way bills; therefore, OPAL is the actual supplier/operational creditor, and the Respondent cannot claim the status of an Operational Creditor under Section 9 of the IBC.

18. Ld. Counsel further submits that the Domestic Channel Partner Del Credere Agreement dated 11.04.2017 clearly establishes the following:

- i. Respondent No. 2 is not the owner or supplier of the goods sold to the Corporate Debtor; OPAL is the owner and supplier (Clauses A–D).
- ii. Respondent No. 2 is not authorized to file any petition on behalf of OPAL, and no authorization is granted under the agreement (Clause 4(d); Clause 3(b)).
- iii. Respondent No. 2 acts solely as a delivery and collection agent on behalf of OPAL, which issues the invoices and effects the sale (Clauses A–B; Clauses 2 and 3; Clause 4(a) & (b); Clause 7).

- iv. Respondent No. 2 is required to deposit all collected payments with OPAL and is only entitled to receive a commission (Clause 6).

19. Ld. Counsel argues that the NCLT erred in treating the letter dated 04.09.2017 as a tripartite agreement. The letter is only a request sent to OPAL to register the Corporate Debtor as a customer through Respondent No. 2. It is not signed by all parties, does not contain any agreed terms, and clearly indicates that OPAL, not Respondent No. 2, is the supplier. Therefore, it cannot be regarded as a tripartite agreement.

20. Ld. Counsel submits that the judgment relied on by the NCLT in *Madras Chemicals and Polymers vs. Vijay Aqua Pipes Pvt. Ltd, Company Appeal (AT) CH(INS) No. 298 of 2021* is distinguishable. In that case, the invoices clearly stated that the payment must be made only to the agent, and the Del Credere Agreement expressly authorized the agent to initiate legal proceedings on behalf of the supplier, including recovery proceedings. In contrast, in the present case, neither the invoices nor the agreement contains any such condition, and Clause 3(b) expressly prohibits Respondent No. 2 from acting as a legal representative or initiating proceedings on behalf of OPAL. Thus, the legal basis on which the NCLAT allowed the petition in that case does not exist here.

21. Ld. Counsel submits that Respondent No. 2 has never filed a Section 9 petition on behalf of the supplier, nor is there any authority letter, power of attorney, or provision in the agreement authorizing Respondent No. 2 to initiate legal proceedings on behalf of OPAL. Reliance is placed on the

judgment of the Hon'ble Supreme Court in *Union of India & Ors. vs. Future Gaming Solutions Pvt. Ltd. (Civil Appeal Nos. 4289–4290 of 2013)*, decided on 11.02.2025, wherein the Court held that merely describing a party as an “agent” does not make it an agent in law unless it acts on behalf of the principal. Where the so-called agent purchases goods from the supplier and resells them at its own profit, it is treated as a buyer; whereas if it only earns commission and does not act on behalf of the principal, it is merely an intermediary and not a seller. Applying this test, Respondent No. 2, who only earns commission and does not issue invoices or create debt, cannot be considered an Operational Creditor.

22. Ld. Counsel submits that the Hon'ble NCLAT, Chennai in *Sterling and Wilson Pvt. Ltd. vs. Embassy Energy Pvt. Ltd. (CA (AT) (CH) (INS) No. 161 of 2022)*, held that where no goods or services are supplied directly by the applicant to the corporate debtor, no operational debt arises under Section 5(21) of the IBC. The NCLAT clarified that even if a third party gives an assurance to make payment, such assurance does not convert the liability into an operational debt.

23. Ld. Counsel submits that the right to recover or collect money does not make the petitioner an Operational Creditor under Section 9 of the IBC. Only the person who actually supplied goods, issued invoices, and is shown as the creditor in the Corporate Debtor's books can file a Section 9 petition. Here, OPAL is the supplier and creditor, while the petitioner was only a Del Credere Agent authorized to collect payments on behalf of OPAL. Thus, the petition is not maintainable.

24. Ld. Counsel finally submits that the impugned order is liable to be set aside as it is a non-speaking order. The impugned order, thus being mechanical, unreasoned, and non-speaking, stands vitiated in law and is

25. In light of the above submissions, counsel for the Appellant respectfully prays that this Hon'ble Tribunal be pleased to allow the present appeal and set aside the impugned order dated 20.02.2024 passed by the Ld. NCLT, Chandigarh Bench in CP (IB) No. 273/Chd/2021.

Submission of the Respondent No.1/RP

26. The Ld. Counsel for Resolution Professional/ Respondent No.1 submits that the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor commenced pursuant to the order of the Adjudicating Authority dated 20.02.2024, whereby Mr. Narendra Singh Chhabra was appointed as the Interim Resolution Professional (IRP). The IRP assumed charge and initiated the process in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

27. The Ld. Counsel further submits that, in compliance with Regulation 6 of the CIRP Regulations, the IRP published Form-A on 23.02.2024, inviting claims from all creditors of the Corporate Debtor. The IRP thereafter collated the claims received, which cumulatively amount to Rs.54,64,25,424/- (Rupees Fifty-Four Crores Sixty-Four Lakhs Twenty-Five Thousand Four Hundred and Twenty-Four only). The category-wise details of the claims collated are as under:

S. No.	Particular of Creditor	Amount of Claim
<u>Financial Creditors</u>		
1.	State Bank of India	50,02,68,810
2.	Oxyzo Financial Services Limited	1,78,75,249
<u>Operational Creditors (Other than Workmen and Employees)</u>		
3.	Surya Synpax Private Limited	2,01,851
4.	Napin Impex Limited	2,27,80,965
5.	SPCX Private Limited	49,89,483
<u>Operational Creditor (Government Dues)</u>		
6.	Employees State Insurance Corporation Limited	3,09,066
	Total amount of claims submitted	54,64,25,424/-

28. The Ld. Counsel further submits that the CIRP Cost incurred up to 30.06.2025 stands at Rs. 47,78,491/-.

Submission of Respondent No.2/ Operational Creditor

29. Ld. Counsel for Napin Impex Ltd./ Respondent No.2 states that the Appellant has challenged the order dated 20 February 2024, whereby the Hon'ble NCLT, Chandigarh, admitted the Section 9 petition filed by Respondent No. 2 for an undisputed operational debt owed by the Corporate Debtor, Kirtiman Packaging and Cements Limited. The Ld. Counsel submits that the present appeal is wholly misconceived and deserves to be dismissed.

30. Ld. Counsel for Respondent No. 2 submits that in 2017, the Corporate Debtor voluntarily engaged Respondent No. 2 (Napin Impex Pvt. Ltd.) for the procurement of polymer raw materials manufactured by ONGC Petro Additions Limited (OPAL). At the relevant time, Napin was acting as OPAL's authorized Del Credere Agent under the Del Credere Agency Agreement dated 11 April 2017. Acting upon this arrangement, the Corporate Debtor got itself registered as an OPAL customer through Napin, thereafter placed orders, received and utilized the goods without any dispute, and regularly made payments to Respondent No. 2, who in turn, duly remitted all such payments to OPAL in accordance with the agreed mechanism.

31. Ld. Counsel submits that for over two years, the Corporate Debtor regularly purchased goods under the Del Credere arrangement and made timely payments through Respondent No. 2. However, in 2019, the Corporate Debtor stopped making payments and defaulted on its outstanding dues, despite repeated follow-ups and reminders issued by Respondent No. 2. Consequently, having no alternative remedy, Respondent No. 2 was compelled to initiate proceedings under Section 9 of the Insolvency and Bankruptcy Code before the Hon'ble NCLT, Chandigarh.

32. It is submitted that the Appellant, has not disputed any of the essential facts viz., supply of goods, utilisation of such goods without objection, or the admitted non-payment of the outstanding amounts. Thus, the existence of "debt" and "default" remains undisputed. The only defence belatedly raised by the Appellant is that Respondent No. 2 is not an "Operational Creditor";

however, this plea is wholly untenable and contrary to the contractual arrangement and the conduct of the parties.

33. Ld. Counsel submits that Section 5(20) of the Insolvency and Bankruptcy Code defines an “Operational Creditor” as a person to whom an operational debt is owed, and also includes a person to whom such debt has been legally assigned or transferred. Therefore, once it is shown that the payment for goods supplied is owed to Napin, it squarely falls within the statutory definition of an Operational Creditor.

34. Ld. Counsel further submits that under the DCA Agreement, Respondent No.2 was responsible for collecting payment from the Corporate Debtor and sending it to OPAL. If the Corporate Debtor failed to pay, Napin had to pay OPAL from its own funds. Clause 7 clearly states that Napin guarantees the payment of the price of goods, must deposit the sale proceeds immediately, maintain daily accounts, and is liable to pay the outstanding amount (with interest) if the Corporate Debtor defaults. Therefore, Napin took full financial responsibility and became the party to whom the Corporate Debtor owed money.

35. The Respondent No.2 submits that by letter dated 04.09.2017, the Corporate Debtor unequivocally accepted Napin’s role as the Del Credere Agent by requesting OPAL to register it as a customer “through our DCA Napin Impex Limited.” Having availed goods and enjoyed commercial benefits under this arrangement, the Corporate Debtor is estopped from now disputing its payment obligations to Napin.

36. The Ld. Counsel submits that the Corporate Debtor itself understood Napin to be the Operational Creditor, as it regularly made payments to Napin without any protest. Hence, the present objection is merely an afterthought. Having received and utilised the goods, the Corporate Debtor now wishes to evade payment altogether. Even in its reply to the Demand Notice issued under the Insolvency Code, the Corporate Debtor did not dispute Napin's status as an Operational Creditor and, in fact, offered to make payment. Thus, the Corporate Debtor always admitted that the operational debt was owed to Napin.

37. In light of the above, the Ld. Counsel submits that even assuming that the operational debt originally belonged to OPAL, Section 5(20) of the Insolvency and Bankruptcy Code expressly provides that an Operational Creditor also includes any person to whom such operational debt has been assigned or transferred. Therefore, Napin clearly qualifies as an Operational Creditor, and the present appeal deserves to be dismissed.

38. He therefore submitted that the appeal filed by the Appellant deserves to be dismissed with costs, and the admission order passed by the Adjudicating Authority ought to be upheld in the interest of justice.

Contempt Case (AT) No.25 and 26 of 2024

Jatinder Oberoi Vs. Narendra Singh Chhabra

39. In the same appeal a Contempt Petition has been filed by the appellant vide I.A No. 6580 & 6581 of 2024 dated 12.09.2024 against Sh. Narender Singh Chhabra, Resolution Professional of the CD and Respondent No.1 in

the main appeal. The contempt petition has been filed against the Respondent/RP for willfully and intentionally disobeying the interim orders of this Tribunal dated 15.03.2024 and 27.08.2024. The interim order dated 15.03.2024 was revived pursuant to the orders of Hon'ble Supreme Court dated 09.08.2024 in Civil Appeal No. 8156 of 2024. The appellant deposited the required Fixed Deposit Receipt of the principal sum to the satisfaction of Registrar NCLAT on 14.08.2024.

40. It is the submission of the appellant that despite being duly informed of the orders of Hon'ble Supreme Court, the Respondent continued to retain the possession and control of the CD's premises and operations and refused to handover the same to the appellant. The petitioner further submits that the stay order dated 15.03.2024 was vacated by NCLAT on 19.07.2024. The RP thereafter took possession of Corporate Debtor on 23.07.2024 but he stopped all operations of the CD in violation of Section 20 (1) of the Code causing serious financial loss and leaving the labour unpaid for over 45 days. Even after this Appellate Tribunal reiterated the orders of Hon'ble Supreme Court the Respondent did not handover possession to the appellant. This action of Resolution Professional shows blatant disregard of judicial orders amounting to contempt of court. Accordingly, the petitioner prays that the contempt proceeding be initiated against the respondent.

41. The Respondent/Resolution Professional ("RP"), Mr. Narendra Singh Chhabra, categorically denies all allegations, asserting that the Applicant has suppressed material facts, approached the Tribunal with unclean hands, and is pressuring the RP to unlawfully hand over possession despite the ongoing

CIRP and absence of any judicial direction terminating the RP's mandate. The RP states the CIRP was initiated on 20.02.2024 by the NCLT, Chandigarh, appointing the Respondent as the Interim Resolution Professional. In compliance with the Code, the RP issued a public announcement, verified claims, constituted the Committee of Creditors on 12.03.2024, and took control and custody of the Corporate Debtor's assets under Sections 17 and 18 of the IBC. The suspended Director/appellant also issued an undertaking on 04.03.2024 acknowledging the RP's lawful control. Pursuant to the stay order dated 15.03.2024, the RP maintained status quo until the stay was vacated on 19.07.2024, after the Applicant failed to deposit the required FDRs. Thereafter, the RP resumed CIRP duties and again took possession of the premises on 24.07.2024, convened the CoC meeting on 31.07.2024, and was confirmed as the Resolution Professional by 96.55% voting share. He further states that the Supreme Court's order dated 09.08.2024 was *conditional*, stating that the stay would revive only upon satisfaction of the Registrar of NCLAT. The order did *not* direct the RP to hand over possession or terminate the CIRP. The RP submits that mere submission of FDRs does not automatically revive the stay unless the Registrar records satisfaction, and no communication to that effect was received. Hence, from 19.07.2024 to 27.08.2024, the RP was legally bound to continue CIRP duties. Although this Tribunal revived the stay on 27.08.2024, the issue of whether possession should be returned remains pending before NCLAT through the RP's clarification application filed on 03.09.2024.

42. The RP further submits that the Applicant has been harassing him with repeated complaints to the local police and issuing contempt notices without any legal basis. RP submits that no act of disobedience or wilful violation of any judicial order has occurred, as the RP has acted strictly in accordance with the IBC, CIRP Regulations, NCLT's admission order dated 20.02.2024, and the orders of this Appellate Tribunal. The RP has also taken steps to preserve the Corporate Debtor as a going concern, and any allegation of non-compliance is false and baseless. Therefore, the Contempt Application is fundamentally misconceived, not maintainable, and liable to be dismissed.

43. The contempt case arises from the main appeal i.e., Comp. App. (AT) (Ins.) No. 536 of 2024 and accordingly these are being dealt together.

Analysis and findings:

44. We have carefully examined the record of the case, including the pleadings, documents placed on record, written submissions, and have heard the Ld. Counsel for both sides at length. The contesting respondent in the present appeal is Respondent No. 2 / Operational Creditor (Napin Impex Pvt. Ltd.). Respondent No. 1, represented through the RP, is only a proforma party to the main appeal. In the Contempt Petition Sh. Narendra Singh Chhabra, RP is the alleged contemnor and Respondent.

45. The Appellant, the suspended director of Corporate Debtor of M/s Kirtiman Cements and Packaging Industries Limited, has primarily challenged the impugned order on the grounds that Respondent/Applicant did not qualify as an Operational Creditor because the invoices, supply of

goods, GST returns, and entitlement to payment all belonged to OPAL, while Respondent No. 2 functioned only as a Del Credere agent earning commission. In the absence of any supply of goods or legal authorization to initiate proceedings, the Section 9 petition was not maintainable in Law.

46. The Appellant's case is that no operational debt exists between Respondent No. 2 and the Corporate Debtor because: (i) all invoices for supply of polymer raw material were issued by OPAL; (ii) Respondent No. 2 was only a Del Credere Agent and merely collected payments on behalf of OPAL; and (iii) the Respondent was neither authorized nor entitled to initiate any proceedings under Section 9 of the Code. The Appellant further argues that the Corporate Debtor had raised several disputes before the NCLT, including alleged inconsistencies in documents, incorrect account details, and the absence of GST returns and e-way bills from Napin. It is contended that these objections were ignored, and a non-speaking order was passed.

47. Respondent No. 2 (Napin), however, contends that the Del Credere Agreement dated 11.04.2017 placed full financial responsibility upon Napin to collect payment from customers and to remit the same to OPAL. Clause 7 of the Agreement expressly imposes liability on Napin to make good any default by the Corporate Debtor. Thus, upon failure of payment by the Corporate Debtor, the debt became due and payable to Napin itself. Respondent No. 2 further demonstrates that: (i) the Corporate Debtor voluntarily registered itself as a customer "through Napin Impex Limited" vide letter dated 04.09.2017; (ii) payments were consistently made to Napin for over two years without any objection; and (iii) even in its reply to the demand

notice under Section 8, the Corporate Debtor never disputed Napin's status as an Operational Creditor.

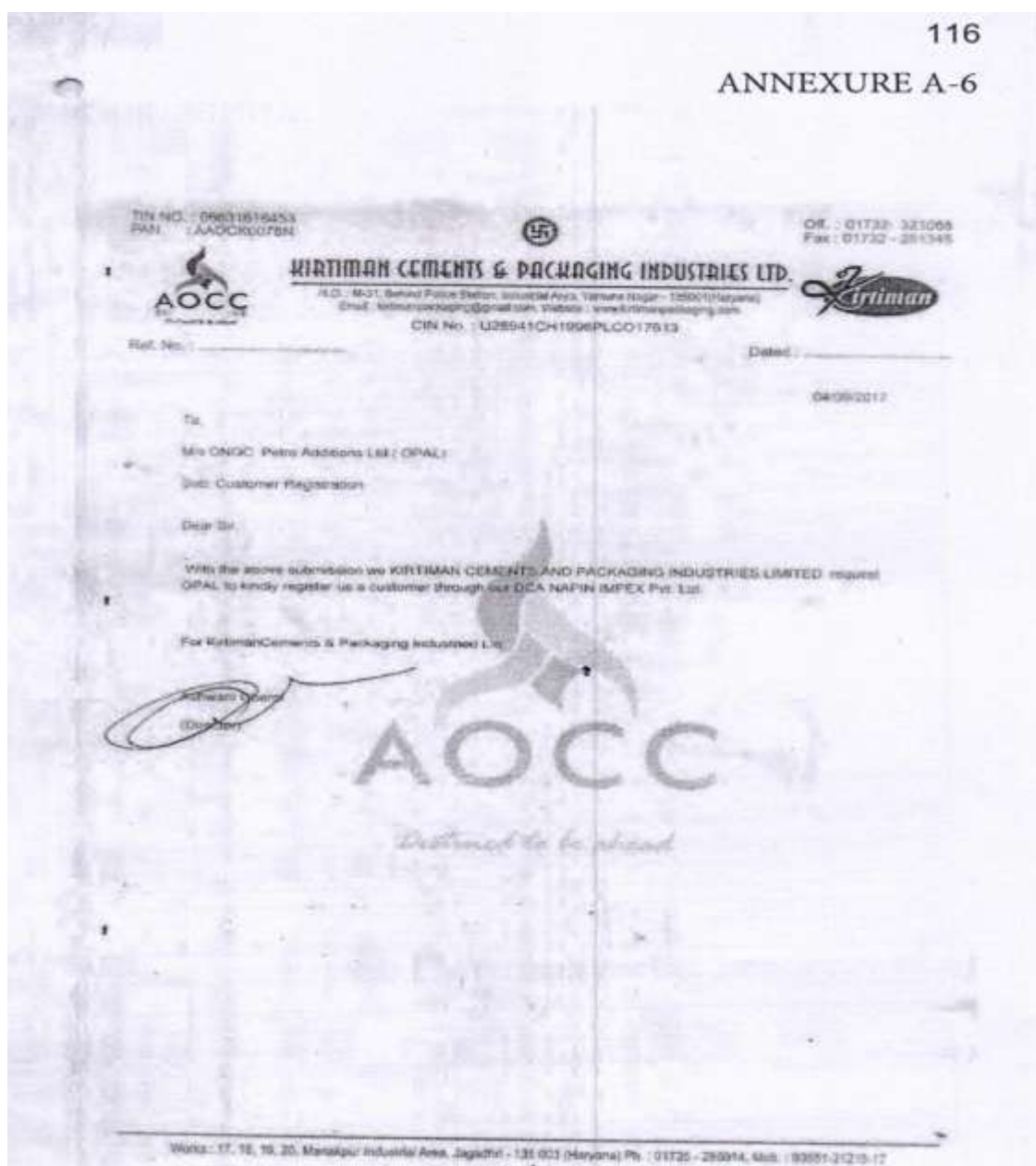
48. Respondent No. 2 further relies upon Section 5(20) of the IBC, which expressly recognizes that an Operational Creditor includes any person to whom an operational debt has been legally assigned or transferred. Thus, even assuming that the debt originally belonged to OPAL, once Napin became contractually responsible to pay OPAL and was entitled to collect payments from the Corporate Debtor, the debt stood assigned to Napin.

49. In the present case, the material facts are undisputed. For over two years, the Corporate Debtor purchased goods under the established arrangement and made regular payments to Napin. However, in the year 2019, the Corporate Debtor defaulted in its payment obligations, and despite repeated demands issued by Napin, the dues remained unpaid. Consequently, Napin was constrained to file the underlying petition under Section 9 of the Insolvency and Bankruptcy Code, 2016. Hence, the Appellant, in fact, raises no dispute regarding the supply, quality, or receipt of goods from Respondent No. 2, and equally does not deny the non-payment of the admitted dues.

50. The central issue for consideration in this appeal is whether the debt claimed by Napin Impex Pvt. Ltd. constitutes an "operational debt" under Section 5(21) of the Insolvency and Bankruptcy Code, 2016, and whether Napin qualifies as an "Operational Creditor" entitled to initiate proceedings under Section 9 of the Code. Closely connected to this issue is the Appellant's contention that OPAL, and not Napin, was the real supplier of goods, and

therefore only OPAL could file a Section 9 application. Appellant also claims that there is no privity of contract between him and Respondent No.2.

51. The first document in this matter relates to request by CD to OPAL regarding supply of polymer raw materials supplied by OPAL through Napin Impex Pvt. Ltd., vide the letter dated 04.09.2017, which is extracted below:



52. The aforesaid letter dated 04.09.2017 has been addressed to M/s ONGC Petro Additions Ltd. (OPAL) by the Corporate Debtor requesting for their registration as customer of OPAL through their DCA Napin Impex Pvt. Ltd. This letter clearly indicates that the Corporate Debtor became a customer of OPAL through the Respondent No.2 after the acceptance of their request by OPAL. This has been admitted by both parties.

53. We now have a look at relevant provisions of Domestic Channel Partner Agreement for DEL CREDRE AGENT ("DCA") dated 11.04.2017. We first have a look at Clause 4 (b) of the agreement, the same is extracted below:

"4. PROCEDURE

(b). Company shall make available to the DCA a format of indent/order for securing order from the Customer. The Customer shall fill in and sign the indent/order and submit the same to Company through the DCA along with relevant proof of payment of adequate value. Subject to the production and availability of the said Products Company at its discretion shall raise necessary delivery challans and invoices and other documents on the customers for the sale of the said Product. The DCA shall be solely responsible for collection of all p[payments to Company in respect of the bills/invoices raised by company against the above indents. The DCA shall keep company indemnified at all times from any loss arising out of non realization of payments or non fulfillment of statutory obligations by customers."

54. We note that Clause 4 (b) of the DCA Agreement lays down the procedure for supply of goods by the company (OPAL) to any customer

through the DCA (Napin Impex Pvt. Ltd./ Respondent No.2). The key activities in this regard are:

- (i) Indent format to be made available by the company to DCA for procuring orders for customers;
- (ii) Company (OPAL) to raise delivery challans and invoices and other documents on the customer through DCA;
- (iii) DCA made solely responsible for collections of all payments to the company in respect of bills/ invoices raised; and
- (iv) DCA to keep company indemnified at all times due to any loss occurring due to non-realisation of payments from the customers.

55. The corresponding payment obligations are laid down in Clauses 6 & 7 of DCA Agreement. The same are extracted below:

“6.COMMISSION

a. In respect of the orders procured by the DCA under this agreement, Company shall pay to the DCA a commission at Rs.400 per MT (subject to deduction of rates, taxes and duties, as applicable) or at such rate as may be decided by Company from time to time. However, in case of Deemed Export business, Company shall pay to the DCA a commission at Rs.400 per MT (subject to deduction of taxes, as applicable) or at such rate as may be decided by Company from time to time.

b. Commission is payable only in respect of such invoices where full value has been received by Company towards full and final settlement of the invoice. Commission will not be accrued till the full value of the Products along with interest due thereon if any, is realized by Company.

c. Commission shall be payable to the DCA on monthly basis after deduction of taxes, levies and any other statutory deduction, as applicable.

7. REALISATION

- a. The DCA undertakes to remit to Company the value of the Products immediately on realization. The DCA guarantees and undertakes that the buyers of the said products will fulfil their obligation to Company in respect of the sales affected. The DCA further guarantees the payment of the said price due and payable for the said Products and in the event of default by the buyers or the customers in paying the prices within the due date, the DCA undertakes to pay the same and/ or Company shall have the right to realize the price for the said Products from the cash deposit/invoke the Bank Guarantee.*
- b. The DCA shall submit daily accounts to Company of the collections received by it under this Age Agreement. The DCA shall send/ transfer the sale proceeds collected as per the instructions of Company.*
- c. If the sale proceeds are not received by Company within its due date from the customers, such outstanding shall be payable by the DCA together with interest and charges at such rates, as may be decided by Company from time to time, as if the said amount is due and payable by the DCA.”*

56. With regard to the Clause 6 of the agreement it is the submission of the appellant that for all the activities being undertaken by Respondent No.2 as DCA he is being paid a commission as laid down in Clause 6 of the DCA Agreement. So, effectively DCA is acting as commission agent for the company

(OPAL) and by no stretch of imagination he can be considered as the Operational Creditor.

57. The appellant on the other hand invites our attention to the Clause 7 of the DCA Agreement which provides the following:

- (i) DCA to remit the payment to the company immediately on reliasation;
- (ii) DCA to provide guarantee on behalf of customers to fulfill their obligations with regard to sales;
- (iii) DCA to further guarantee that in the event of default by the buyers/ customers in payment within due date, the DCA to make outstanding payment;
- (iv) In case of failure by the DCA to make outstanding payment the company would have a right to realise the same from the cash deposit/ bank guarantee provided by the DCA; and
- (v) In case of delay payment by the customer, the DCA shall make payment of the entire outstanding along with interest and charges at such rates as decided by the company from time to time.

58. The Clause 17 of the DCA agreement further indemnifies the company by placing the burden of compliance with all laws, statutes and regulations upon the DCA who would be responsible for such compliance including compliance with tax laws. The Clause 17 is extracted below:

“17. RULES AND REGULATIONS

The DCA will comply with the requirements of all the statutes, Laws and regulations and shall exclusively be liable for the collection and payment of sale proceeds of said Product. The DCA shall at all times indemnify and keep Company indemnified from and against all losses that may be incurred by Company for products sold under this agreement including collection of all statutory sales tax forms etc and expenses of whatsoever nature.”

59. We now have a look at the definition of Operational Creditor in terms of Section 5 (20) of the 'Code'. An 'Operational Creditor', is defined, meaning, a 'Person to whom 'Operational Debt', is 'owed', and includes any 'Person' to whom, such 'Debt', has been 'legally assigned or transferred'.

60. The 'Operational Debt' is defined in Section 5 (21) of the I & B Code, 2016, and it means, a 'Claim', in respect of the provision of Goods or Services', including 'employment' or a 'Debt', in respect of the 2[Payment] of dues, arising under any 'Law', for the time being in force, and payable to the 'Central Government', any 'State Government' or any 'Local Authority', it means a 'Operational Debt'.

61. It is clear from the above Clauses of the DCA Agreement that the company (OPAL) has transferred its entire responsibility for procurement of orders, supply of goods, issue of invoices and receipt of payment from the customers to the Respondent No.2/Napin Impex Ltd.. In effect the company through the DCA Agreement has transferred all the operations and related risks to the DCA. Company has also transferred the entire responsibility

towards compliance with all the statutory laws/ rules/ regulations upon the DCA and company is indemnified by the DCA for losses if any arising out of such sales due to any reason. In case of delayed payments by the purchaser, the Del Credere Agent has to pay interest and penalty to the principal i.e. OPAL here. This transfer of all the responsibility and risks associated with business to the DCA/ Napin Impex Ltd. makes them in effect the 'Operational Debtor' of the CD. We note from the definition of the Operational Creditor in the Code that a person to whom the Operational Debt is assigned is also an Operational Creditor. The DCA/Napin Impex Ltd. takes the role of Operational Creditor for the customer/ buyer which is Corporate Debtor in this case.

62. The Corporate Debtor had earlier expressly acknowledged and accepted this arrangement by requesting OPAL, vide letter dated 4th September 2017, to register it as a customer through its DCA, Napin Impex Limited. Having procured and utilized the goods on the basis of Napin's role as DCA, the Corporate Debtor is now estopped from denying or evading its corresponding payment obligations towards Napin.

63. This understanding is further reinforced by the conduct of the Corporate Debtor. For nearly two years, all payments for the goods supplied were made directly to Napin Impex Ltd., and at no point during this period did the Corporate Debtor raise any objection regarding Napin's role or its entitlement to receive payments. The Corporate Debtor's consistent dealings with Napin, coupled with its express request for registration through Napin, establish beyond doubt that the Corporate Debtor treated Napin as the party

responsible for payment collection and as the entity to whom its liabilities were owed under the Del Credere arrangement.

64. The Appellant's reliance on the absence of GST returns and e-way bills filed by Napin is also misplaced. The requirement under Regulation 2B of the CIRP Regulations is procedural and assists in verifying the operational debt. In the present case, the invoices, delivery documents, payment records, and the Corporate Debtor's own admissions sufficiently establish both the supply of goods and the resulting liability. Further, once the Del Credere Agreement made Napin financially liable to OPAL in the event of the Corporate Debtor's default, the consequent right of Napin to recover these sums falls squarely within the ambit of Section 5(20) and 5(21) of the Code.

65. It is the submission of the appellant that on 11.04.2017 two agreements were signed between OPAL and Respondent No.2 the first agreement is called Domestic Channel Partner Agreement for Consignment Stocking Agent (CSA) (in short CSA agreement) and second Domestic Channel Partner Agreement for Del Credere Agent (DCA) (in short DCA Agreement). Both agreements have similar clauses which bar institution of legal proceedings on behalf of company (OPAL) by the CSA /DCA (Napin Impex Ltd.) The relevant Clauses of the respective agreements (CSA Agreement Clause 4) and (DCA Agreement clause 3) are extracted below:

“CSA Agreement

4. OBLIGATIONS

(d) Is expressly agreed and declared that the relationship between the Parties that CSA is just one of the Domestic

Channel Partners of the Company for the Territory under the terms of this Agreement. Nothing herein shall constitute or be deemed to authorize the CSA to act as the legal representative of agent except to the extent authorized by this Agreement nor shall the CSA have the right or authority to assume, create and/or incur any liability and/or obligation, express or implied, against, in the name of or on behalf of the Company without prior permission of the Company.”

“DCA Agreement

3. OBLIGATIONS

(b) It is expressly agreed and declared that the relationship between the Parties that DCA is just one of the Domestic Channel Partners of the Company for the Territory under the terms of this Agreement. Nothing herein shall constitute or be deemed to authorize the DCA to act as the legal representative or agent except to the extent authorized by this Agreement nor shall the DCA have the right or authority to assume, create and/or incur any liability and/or obligation, express or implied, against, in the name of, or on behalf of the Company without prior permission of the Company.”

66. It is the submission of the appellant that all the purchase orders were addressed to the OPAL; the invoices for the supply were made by the OPAL; the relevant GST forms were also in the name of OPAL and the Respondent was not allowed to institute any legal proceedings on behalf of OPAL. It is submitted by the appellant that no legal proceedings could be initiated against them on behalf of OPAL by the Respondent No.2 in view of the specific provisions in the CSA and DCA agreement as mentioned above. The

Respondent on the other hand has stated that he has not filed the Section 9 petition on behalf of OPAL, but on his own as he was responsible for collecting the purchase orders, ensuring the supply to the CD; submission of invoices to the CD; receiving the payment from CD; and ensuring transfer of same to OPAL.

67. We note that at no stage has Respondent No.2/Napin pleaded that they have filed the petition under Section 9 on behalf of OPAL which is not permitted as per Clause 4 (d) of CSA Agreement and Clause 3 (b) of DCA Agreement. The petition has been filed by the Respondent No.2 in its capacity of Operational Creditor of the CD which comes out very clearly from the various clauses of DCA Agreement as discussed above.

68. The issue about privity of contract raised by the appellant is also not relevant as it is on the request of the appellant that the Respondent No.2 who was an Del Credre Agent of OPAL was notified by OPAL for dealing with appellant. It is also seen from the DCA Agreement that OPAL has assigned all authority and responsibility for undertaking business with appellant to the Respondent No.2. Since the appellant has himself requested for appointing Respondent No.2 as Del Credre Agent for dealing with him, he would be aware of terms and conditions of such an agreement. This arrangement makes it a tri-partite agreement between OPAL, Appellant and Respondent No.2. The conduct of parties over a period of time also proves the same.

69. In *Madras Chemicals and Polymers versus Vijay Aqua Pipes Private Limited.*, [Company Appeal (AT) (CH) (INS) 298/2021] a coordinate Bench of this Tribunal in para 44 of the Judgment held as follows:

“44. It is not out of place for this 'Tribunal', to make a pertinent mention that Agents', are not normally liable for the 'Dues', from the 'Creditors', and such 'liability' will arise, only if the 'Agent', is a 'Del Credere Agent'. Furthermore, this "Tribunal", aptly points out the decision of the Madras High Court in Jayakrishna Trading Co., rep. by Partner K.T.K. Venkatesan and Ors. v. Kandasamy Weaving Factory, rep. by Mrs. Suryam Prabha, Komarapalayam, Salem, reported in (1995) 1 Law Weekly, Page 230 at Spl. Pg.: 231, wherein, at Paragraphs 23 and 24, it is observed as under:

“In other words, a Del Credere Agent is one who, in consideration of extra remuneration called del credere commission, undertakes that persons with whom he enters into contract on principal's behalf will be in a position to perform that duties. The extra remuneration is charged for the risk of bad debts. In this case the Ist defendant is not at all liable as del credere agent.”

70. The Appellant's claim in this case is that Respondent No.2 is a commission agent who gets paid from OPAL on completion of every order, therefore, such an agent is not eligible to file a petition under Section 9 for initiation of CIRP as Operational Creditor. It is clear from the above that a Del Credere Agent is on a very different footing from a commission agent who is paid a commission on every transaction; as the Del Credere Agent also bears the risk of bad debts.

71. In subsequent para 64 of *Madras Chemicals* (supra) this Tribunal held as follows:

“64. Be that as it may, the very fact that the Del Credere Agency Agreement'. dated 04.04.2017, between "M/s. Chemplast Sanmar Limited' ('Company') and the Appellant/Petitioner' ('Madras Chemicals & Polymers - Firm), mentions that 'M/s.

Chemplast Sanmar Limited' ('Company'), which manufactures 'PVC Resin', and for selling the Said Products, through 'Agent', had appointed the 'Appellant'/ 'Petitioner', as its 'Agent', going by the 'Product Description', in the Invoices' (vide Pages 95 to 101 of the Appellant's Paper Book - Diary No.822 dated 24.09.2021). Considering the spirit and tenor of the Del Credere Agency Agreement', dated 04.04.2017, this Tribunal, comes to a clear cut conclusion that in the instant case, the 'Default', arose in relation to the supply of 'PVC Suspension Resin (Goods)', to the 'Respondent/Corporate Debtor', and as such, the amount 'Claimed', to be in 'Default', by-the 'Corporate Debtor', as on 20.07.2019, amounting to Rs.1,23,14,186.94/- (vide Part - IV' of the 'Application', under 'Particulars of Financial Debt'), is an Operational Debt', and for the said 'Operational Debt', only an Application', under Section 9 of the 'Code', will 'apply', as opined by this 'Tribunal'"

72. The Judgment supra clearly support the position of the Respondent No.2 that he as Del Credere Agent is an Operational Creditor of the CD. The contention of the appellant differentiating the Judgment on the grounds that in the present case Respondent No.2 was not authorized to initiate legal proceedings on behalf of OPAL does not hold any water, as we can see from the DCA Agreement that Respondent No.2 was in effect an assignee of operational debt arising out of the transactions of OPAL (Principal) with CD and such assignment arose from the DCA agreement itself.

73. The appellant has further cited the Judgment of Hon'ble Supreme Court in '*Union of India & Ors v. Future Gaming Solutions Private Limited and Anr. (Civil Appeal No. 4289-4290 of 2013)*'. We note that this judgment dealt exclusively with the taxability of lottery operations and the legislative

competence to impose service tax, and the observations regarding “agency” and the distinction between an agent and a buyer-for-resale were made in that limited context to determine the nature of the transaction for the purpose of taxation. The issue in the present case, however, arises under Section 9 of the Insolvency and Bankruptcy Code, 2016, where the central question is whether Respondent No. 2 (Napin Impex Ltd.) qualifies as an Operational Creditor and whether an operational debt exists between the parties. The aforesaid Judgment is not relevant to the core issue in the present case i.e. whether such a person becomes an “operational creditor” under Section 5(20)/(21) of the IBC, nor does it address authority to initiate insolvency proceedings. Therefore, the ratio of Future Gaming Solutions is inapplicable to the present case.

74. The appellant has also cited the Judgment of this Tribunal in ‘*Sterling and Wilson Private Limited Versus Embassy Energy Private Limited*, [Comp. App. (AT)(CH)(Ins) No. 161/2022]’. The issue in *Sterling and Wilson* (supra) related to filing of the Section 9 petition by the sub-contractor to the main supplier. It was held by this Tribunal that the Section 9 petition was not maintainable because there was no privity of contract, no invoices, and no direct supply of goods or services by the Operational Creditor to the Corporate Debtor. The Tribunal found that a mere assurance or letter of comfort from the Corporate Debtor could not create an “operational debt” under Section 5(21) of the IBC, especially when the governing contract (Clause 6.1.4) expressly stated that sub-contractors had no right to raise claims against the owner. This case on the other hand relates to Section 9 petition by the Del Credere Agent, who stands on a very different footing from

a sub-contractor in view of risk being borne by him due to bad debts. Such Del Credere Agents have been held to be Operational Creditors as decided in the case of Madras Chemicals (supra) and specific nature of Del Credere Agreement. Therefore, the ratio laid down Sterling and Wilson (supra) is not applicable to the present case.

75. It is evident from the record that the Corporate Debtor procured goods for over two years through Napin Impex Ltd. under the Del Credere Agreement, made regular payments to Napin without objection, and later defaulted on the outstanding dues. Clause 7 of the DCA clearly makes Napin financially liable for buyer defaults, thereby entitling Napin to recover unpaid amounts from the Corporate Debtor. This Tribunal in Madras Chemicals & Polymers vs. Vijay Aqua Pipes Pvt. Ltd. (supra), had categorically held that where the corporate debtor had failed to pay the principal amount for certain goods to the del credere agent, such an amount would qualify as an operational debt and a CIRP application under Section 9 of the Code would be maintainable. In view of the facts of the case and legal precedents, we have no doubts in our mind that the debt in the instant matter qualifies as 'Operational Debt' and Respondent No.2 is the Operational Creditor.

76. We further note that the Respondent No.1/RP has collated the claims against the Corporate Debtor and claims of the Financial Creditors to the tune of Rs.51.81 crore have been admitted by the RP. This includes a claim of Rs. 50.02 crores of State Bank of India. In addition there are claims of Operational Creditor including Napin Impex Ltd. for approximately Rs. 3 crores.

77. We now take up the matter relating to the Contempt Case filed by the appellant against RP for violation of orders of this Tribunal dated 15.03.2024 and 27.08.2024 and the orders of Hon'ble Supreme Court dated 09.08.2024. The contention of the appellant is that inspite of clear orders of this Tribunal and Hon'ble Supreme Court the RP did not hand over possession of the CD back to the suspended management. The RP also failed to run the Corporate Debtor as a going concern. The submission of the alleged Contemnor/RP is that immediately after orders of Hon'ble NCLT initiating the CIRP on 20.02.2024 the RP issued the public announcement, collated and verified the claims of various creditors and constituted the Committee of Creditors on 12.03.2024. He also took control of the CD's assets under Section 17 & 18 of IBC. This was also acknowledged by the suspended Director/ Petitioner here on 04.03.2024. Subsequent to the stay order dated 15.03.2024, the RP maintained status quo till the stay was vacated on 19.07.2024. The RP thereafter resume the CIRP process and took possession premises on 24.07.2024. A CoC meeting was held on 31.07.2024 wherein the CoC approved him as Resolution Professional by 96.55% voting share.

78. The Respondent further submits that the orders of Hon'ble Supreme Court dated 09.08.2024 was conditional upon the payment of balance amount by the appellant and vacation of the stay was conditional upon satisfaction of Registrar NCLAT. It is his submission that he was awaiting the communication from the Registrar NCLAT regarding his satisfaction. Subsequently, this Tribunal revived the stay on 27.08.2024 but the issue of whether possession should be returned to the suspended Director remained

pending before NCLAT though the RPs clarification application in this regard was filed on 03.09.2024.

79. The contempt matter was taken up by us and on 04.10.2024 and the following order was passed:

“4.10.2024 - This is an Application for contempt of the Order dated 15th March, 2024 as well an Order dated 9th August, 2024 of the Hon’ble Supreme Court in Civil Appeal No.8156 of 2024 as well an Order dated 27th August, 2024 passed by this Tribunal.

x

x

11. Since there is a controversy as to when the factory premises of the Company was taken over by the RP, it would be appropriate he should file an Affidavit giving the dates relevant to the issue as to when he was appointed; the date of seizure of the possession of the factory premises; other relevant dates from initiation of the CIRP process within two weeks from today.”

80. The RP was asked to file an affidavit regarding the chronology of event after the admission of CD into CIRP vide the order dated 04.10.2024 as there was a dispute regarding takeover of the CD by the RP. The matter was again taken up on 22.11.2024 where the following order was passed:

“22.11.2024: The affidavit as was required to be filed by RP vide para 11 of the order dated 04.10.2024 is not on record. Let the affidavit be brought on record and response, if any, may also be filed to such affidavit.

2. Since there is a controversy as to if the factory was already closed or that the workers and management were not visiting the factory and being incidents of theft in neighbouring

factories as on the date of closer on 24.07.2024, but allegedly the RP has put locks on the factory to preserve it.

3. However, Learned counsel for Appellant submits that u/ Section 25 of IBC, it was the duty of RP not only to preserve the assets of the Corporate Debtor but to continue operations of the Corporate Debtor.

4. It is submitted since the factory is closed; it is difficult to continue the business operations of the Company. In the circumstances, RP is directed to immediately unlock the factory premises to see the operations of the Corporate Debtor are continued with the assistance of erstwhile management and personnel of the Corporate Debtor under the guidance of CoC.

List the matter on 10.01.2025.”

81. The matter was again taken up on 10.01.2025 when the final order was passed vide which the possession of the Corporate Debtor premises was ordered to be handed over to the appellant. The relevant paras 1 & 4 of the order are extracted below:

“1. This order be read in continuation of order dated 4th October, 2024 and order dated 22.11.2024 passed in Contempt Case (AT) No. 25 and 26 of 2024.

4. On our query we find by 15.3.2024 the possession of the premises was taken over by the RP and guards were placed there. The CoC was also formed by then. However, the appellant submits they were the one who were running the factory even as on 15.03.2024. It is submitted in case the appellant are allowed to run the factory they shall provide weekly reports to the RP and shall also provide documents as were required by the RP and in case the RP/ CoC finds the assets are being siphoned off, they shall report the same to this Tribunal. In these circumstances let the appellants be allowed the entry to the factory premises and be allowed to run the

factory/business forthwith. If any documents are required by the RP the same be provided to him.”

82. It can be seen from the above that there was a dispute about the taking over the factory by RP. It seems that possession was taken up by the RP prior to 15.03.2024 of the properties of the CD but the promoters continued to run the business. The RP took total control of the CD with effect from 19.07.2024 when the stay was vacated by this Court. Consequent to the Judgment of Hon’ble Supreme Court on 09.08.2024 and order of this Tribunal on 27.08.2024 the RP sought certain clarifications from this Tribunal vide his application dated 03.09.2024. The final decision on his application was taken on 10.01.2025 by this Tribunal which allowed the appellant to run the operations of the CD keeping RP in the loop for all major decisions of the CD. Based on the above, we find that clarifications sought by the RP were bonafide and no case of contempt can be made out in such a situation.

83. In view of the findings above, we do not find any infirmity in the impugned order. The appeal is accordingly dismissed. The linked Contempt Case (AT) Nos.25 & 26 of 2024 are also dismissed. No order as to costs. Pending I.As, if any, are also closed.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

SA