



2. As per the brief facts of this matter, the Petitioner/Operational Creditor Mr. Fateh Bahadur Singh is a proprietor of Maa Sharda Traders. The Corporate Debtor had placed a work order dated 01.05.2018 to the Petitioner for the supply of WMM & Aggregated for the project, Development and Operation of Raebareli Ring Road in the State of Uttar Pradesh.
3. Thereafter, in lieu of the work order, the Petitioner had executed its obligation, but the corporate debtor did not release the payment to the petitioner. The petitioner had raised the Bills as per the terms and conditions mentioned in the work order. The corporate debtor has failed to make the payment to the Petitioner.
4. The Corporate Debtor is indebted to the petitioner for the principal amount of Rs. 62,75,848/- along with interest @ 24% p.a. upto 15.02.2020 of Rs. 15,10,330/-, having the total sum of debt amount of Rs. 77,86,178/- in respect of the material supplied by the petitioner to the Corporate debtor. Despite several reminders almost by all modes the corporate debtor is not willing to return the outstanding dues, and not giving any effective response.
5. Therefore, the petitioner had sent a demand notice dated 15.02.2020 as a last resort under section 8 of the I & B Code, 2016, demanding the pending dues. The CD has never raised any dispute and nor replied to the notice, upto the date of filing this petition. Therefore, the petitioner filed this petition before this Tribunal for the initiation of CIRP as provided in the Insolvency and Bankruptcy Code, 2016.

6. This petition prima facie holds no consideration as the Notification dated 24.03.2020 issued by the Central Government, enhanced the minimum default amount for filing cases under section 7, 9 and 10 of the Insolvency and Bankruptcy Code from one lac rupees to one crore rupees based on the proviso to Section 4 of the I & B Code.
7. The petitioner herein had filed this section 9 petition after the threshold limit has been increased by the Central Government to one crore rupees on 24.03.2020, the claim amount in the petition is less than one crore against the corporate debtor.
8. However, this Bench has already given enough clarity about the pecuniary jurisdiction of this Tribunal, with effect from 24.03.2020. In the previous order passed by this Bench having IB-30(PB)/2021 Titled **“Flight Lieutenant Rupa R. Gaur (Retd). Vs. M/s. Mode Advertising & Marketing Private Limited”** The relevant para(s) are reproduced as under:

*i. As to monetary jurisdiction, “class” is one, that is the class which crosses the threshold of one crore rupees to file cases. This sub-classification, applicable in other situations, is irrelevant to determination of monetary jurisdiction to file cases. If we take Section 7 as an illustration, in Section 7, it is obvious that the default date would be before 24.03.2020 at least for cases which were filed immediately after the date of notification i.e., 24.03.2020. In such a scenario, does it mean Section 7 petition could be filed after 24.03.2020*

*because the date of default was before 24.03.2020? Since the default with threshold limit is the cause of action for initiating insolvency petitions, the word “default” has come in section 4, but not to make default date without threshold as criteria for filing cases.*

*ii. The applicability of law will be one and the same regardless of nature of debt, Section 8 is only an additional safeguard to avoid frivolous cases where dispute is pre-existing, this cause of action is only a kind of filtering of disputed matters in relation to goods and services, it is no way concerned with filing cases.*

*iii. As to other argument that it is a delegated legislation, therefore it shall not have any retrospective effect, we, after careful consideration, are of the view that it is not a point for consideration whether it has retrospective effect or prospective effect, because its applicability has started from 24.03.2020, if date of issual of section 8 notice had been assumed as the date for filing case, the point of retrospective effect would come into picture. In the foregoing discussion, we have already made clear that threshold limit will become the criteria for determination for filing case, if by 24.03.2020 default is for one crore, it could be filed, if not, it will be hit by the notification. So, section 8 will in no way come in between in determination of monetary jurisdiction for filing cases, therefore filing date is the criteria but not receipt of section notice by the corporate debtor.*

iv. *Though it has no bearing on the issue, since the petitioner counsel raised a point that it is a delegated legislation, we must clarify that this notification is not a delegated legislation because the statute (section 4 proviso) itself contains within itself the whole legislation on the matter with which it deals, the only point left to the Government is a leverage to increase the amount of default up to one crore rupees. This one crore limit is also mentioned in the statute. If it had not been mentioned about the quantum of increase in the legislation, it could be understood that increase of threshold will become a policy decision to be taken up by the legislature. When the legislature frames law and leaves the change of quantum of threshold up to one crore to the Executive, the leverage to exercise monetary jurisdiction scale from one lakh to one crore is left to the Executive. This kind of legislation would be a conditional legislation. Conditional legislation is always to be construed as part of the parent legislation. When legislation has decided the scale of monetary jurisdiction, it is to be deemed as part of legislation, not a delegated legislation. Moreover, this conditional legislation will not have a recurring effect because the window for increase to one crore is notified. Non-recurring effect is one of the elements of conditional legislation.*

9. Before filing a case under insolvency jurisdiction, creditor shall meet the criteria prescribed in the Code. When case does not fall

within the ambit of IBC, it is always open to the creditor to proceed before the Civil Court.

10. Therefore, this Insolvency petition is hereby **dismissed as misconceived on the premise that it has not met the threshold limit of default as set out by notification dated 24.03.2020 issued under Section 4 of the I & B Code.**

**Sd/-**

**(B.S.V PRAKASH KUMAR)  
ACTG. PRESIDENT**

**Sd/-**

**(HEMANT KUMAR SARANGI)  
MEMBER (TECHNICAL)**