



IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-I, CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **14.02.2025** THROUGH VIDEO CONFERENCING

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**PRESENT:** HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**IN THE MATTER OF** : Overdrive Electronics Pvt. Ltd.  
Vs  
Ceme Electric Lighting Products India Pvt. Ltd.

**MAIN PETITION NUMBER** :CP(IB)/173/CHE/2023

**(IA/MA) APPLICATION NUMBERS**

Ivn.P(IBC)/1(CHE)/2025

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**ORDER**

**Ivn.P(IBC)/1(CHE)/2025**

Present: Shri. S. Sathyanarayanan, Ld. Counsel for the Applicant.  
Shri. Anuj Solanki, Ld. Counsel for the Operational Creditor.

Vide separate order pronounced in the Open Court, the application is dismissed.

**CP(IB)/173/CHE/2023**

Present: Shri. Anuj Solanki, Ld. Counsel for the Petitioner.  
None for the Respondent/Corporate Debtor.

Vide separate order pronounced in the Open Court, the petition is admitted.  
CIRP is initiated against the Corporate Debtor M/s. Cema Electric Lighting  
Products India Pvt. Ltd.

Shri. Tharuvai Ramachandran Ravichandran is appointed as the IRP.

**IA(IBC)/2297/CHE/2024**

List this application for hearing on **20.03.2025**.

-Sd/-

**VENKATARAMAN SUBRAMANIAM**  
**MEMBER (TECHNICAL)**

Sd/-

**SANJIV JAIN**  
**MEMBER (JUDICIAL)**

VS



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, CHENNAI**

**CP/IB/173(CHE)/2023**

*(filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6  
of the Insolvency and Bankruptcy(Application to Adjudicating Authority),  
Rules,2016)*

*In the matter of M/s. CEMA Electric Lighting Products India Private Limited*

**M/s. Overdrive Electronics (P) Ltd.,**

**CIN: U72200DL2005PTC136715**

C-1/1621, Vasant Kunj

New Delhi-110070

*...Applicant/Operational Creditor*

-vs-

**M/s. Cema Electric Lighting Products India Private Limited.,**

**CIN: U31501TN2007PTC061950**

No.5 Nehru Nagar, Second Street

Adyar, Chennai-600020

*... Respondent / Corporate Debtor*

*Order Pronounced on 14<sup>th</sup> February, 2025*

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKAT RAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Applicant* : Anuj Kumar Solanki, Advocate  
*For Respondent* : S.Raghunathan, Advocate



## ORDER

### (Hearing conducted through hybrid mode)

1. This Application has been remanded back from the Hon'ble National Company Law Appellate Tribunal (NCLAT) vide order dated 24.09.2024, to hear the matter afresh after considering the rival contentions and particularly in the context of the pleading which has been raised qua the claim which is subject matter of consideration and decide the same on its merit.
2. The relevant findings of the Hon'ble NCLAT judgment is extracted herebelow:

*"at Page 6*

*...The Appellant further contends that the Respondent has failed to give credit to the tune of Rs.4.53 Lakhs even while accepting the return of defective goods during the period of Jan/Feb 2024, which was subsequent to filing of Section 9 Application, and that the Respondent No.1 should have been asked to reconcile the accounts prior to passing of the Impugned Order, initiating proceedings under Section 9 of the I & B Code."*

3. The applicant herein also filed an Appeal against the NCLAT order dated 24.09.2024 before the Hon'ble Supreme Court. The Hon'ble Supreme Court via order dated 22.11.2024 held that they have reservations against the Order of NCLAT and directed this Tribunal to deal with the present case in an expeditious manner without any way of being influenced by the



previous order of this Tribunal, the NCLAT order and the Supreme Court order.

### **Applicant's Contention**

4. This Application has been filed by the Operational Creditor viz. *M/s. Overdrive Electronics Private Limited* against the Corporate Debtor viz. *CEMA Electric Lighting Products India Private Limited*. under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC', 2016) read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

5. Part – I of the Application provides that the Operational Creditor (*Hereinafter OC*) is a Private Limited Company. Part – II of the Application sets out the details of the Corporate Debtor that, the Corporate Debtor was incorporated on 04.01.2007 and the Registered office of the Corporate Debtor is situated at No.5 Nehru Nagar Second Street Adyar, Chennai-600020. In Part III of the application, the Operational Creditor has not proposed the name of the Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the same.

6. Part – IV of the Application states that the Corporate Debtor is liable to pay to the Operational Creditor a principal amount of Rs.1,80,02,528 (INR One Crore Eighty Lakhs Two Thousand Five Hundred Twenty Eight Only) and Interest thereon up-to 07.09.2023 at the rate of 18% per annum i.e Rs.40,01,206 (INR Forty Lakhs One



Thousand Two Hundred Six Only) totalling to an amount of Rs.2,20,03,735 (INR Two Crores Twenty Lakhs Three Thousand Seven Hundred Thirty Five Only). It is stated that the date of default is 45 days after the Date of Invoice, thus the first date of default is on 18/04/2022.

7. It is stated that, the Operational Creditor is engaged in the business of Manufacture, design, assemble, prepare, fabricate, produce, install, equip, maintain and run, buy, sell, import and export of energy-efficient lighting products like LED lights, etc. Further it is stated that, the Operational Creditor supplied various LED light products such as LED Bulbs, LED down lighter, etc., to the Corporate Debtor. (The copies of the unpaid tax invoices and courier receipts are annexed with this Application and marked as **ANNEXURE 5.**)

8. It is stated that, the Operational Creditor in compliance with the requirements stipulated under Regulation 2B of IBBI(Insolvency process for Corporate Persons) Regulations, 2016 has filed the copies of extracts/screenshots of FORM – GSTR-1, Form GSTR-3B, and E-way Bills. (The copies of the same are annexed in this Application as *Annexure 6.*)

9. It is stated that, the Operational Creditor made several telephonic communications, email, etc. from time to time, but the Corporate Debtor under one pretext or another avoided the payment and made false commitment to the Operational Creditor. (True Copy of the exchange of Emails between the Operational Creditor and



Corporate Debtor demanding the payment of outstanding dues is collectively annexed as **Annexure 7)**

10. It is stated that, the Operational Creditor raised several tax invoices against Corporate Debtor and the same are reflected in FORM 2A/2B in Corporate Debtor's GST Account on GST website. It is averred that, all of the goods have been accepted by the Corporate Debtor without any objections.

11. It is stated that, the business between the Operational Creditor and the Corporate Debtor commenced on 31.03.2014. It ran smoothly till February,2022, despite some acceptable delay in payment; thereafter the Corporate Debtor stopped/delayed to make payment to the Operational Creditor for the supplied goods with mala-fide intention to grab the hard-earned money of the Operational Creditor. (Copy of the ledger from the date of unpaid tax invoices and complete ledger from the date of start of business between the Operational Creditor and the Corporate Debtor maintained by the Operational Creditor in its Books of Accounts are annexed and marked as **Annexure 8)**

12. It is stated that as the Corporate Debtor defaulted and failed to clear the outstanding amount, the Operational Creditor sent a demand notice along with relevant documents dated 08.09.2023 to Corporate Debtor under Section 8 of the IBC, 2016. (The copy of demand notice dated 08.09.2023 sent by OC to CD is annexed as **Annexure 9)**

13. It is stated that, after sending the demand notice under Section 8 of the IBC, 2016, the Corporate Debtor gave its reply dated 17.09.2023



to the demand notice dated 08.09.2023. It is averred that, the Corporate Debtor has made vague, frivolous, and baseless statements/objections that were never raised before the demand notice was sent. (The reply to the demand notice is annexed and marked as **Annexure 10** with this Application.)

14. The reply is extracted as under:



CEMA ELECTRIC LIGHTING PRODUCTS INDIA PVT. LTD.  
Reg. Office : No. 5, Nehru Nagar, Second Street, Adyar,  
Chennai - 600 020  
www.cemalighting.com

Annexure 10  
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TO,  
M/s Overdrive Electronics Pvt Ltd  
C-1/1621, Vasanthkunch,  
New Delhi -110070  
CIN - U72200DL2005PTC136715

17<sup>th</sup> September 2023

CC:

ANUJ SOLANKI, Advocate

ANUJ SOLANKI & ASSOCIATES, NEW DELHI

Reply send via RPAO & email

Sub : Reply to Form 4 Demand Notice dated 08/09/2023 Under Rule 5 of the Insolvency Bankruptcy (Application to Adjudicating Authority) Rules, 2016

Dear Sir,

With respect to Form 4 Demand Notice dated 08/09/2023 Under Rule 5 of the Insolvency Bankruptcy (Application to Adjudicating Authority) Rules, 2016 , received on 14<sup>th</sup> Sep 2023 at our Office We would like to inform you that, there is discrepancy in the amount demanded and also there are defectives under warranty returned from the market lying in our various warehouses which we are quantifying and we will inform the value through debit note.

Please confirm

Truly Yours

  
Nandakumar C

Director.



————— A SARATOGA USA GROUP COMPANY —————

Corp. Office : #34/389 C, Mullassery, Padivattom, Edappally Po, Cochin - 682 024, T : + 91 484 2809 341/42, F : + 91 484 2803 573  
Factory : Malwada Road, Limbasi - 387 520. Tal. : Matar, Dist. : Kheda (Gujarat) India, T : + 91 2694 283 692/137, F : + 91 2694 283 611



15. It is stated that, an Affidavit in support of the present Application has been filed by the Operational Creditor to the effect that the Corporate Debtor had not sent any notice or raised any dispute regarding unpaid operational debt until receiving the demand notice dated 08.09.2023 under Section 8 of the IBC, 2016. (The Affidavit is marked and annexed as **Annexure-11**)

**Reply/Counter filed by the Corporate Debtor**

16. It is stated by the Corporate Debtor through its Reply/Counter that, the Application filed by the Operational Creditor is wholly vexatious, premature and contrary to law. Further, the allegations set out in the application filed by the Operational Creditor are denied in their entirety.

17. It is stated that, the Corporate Debtor Company placed orders on the Operational Creditor for the manufacture and supply of LED Bulbs based on the purchase orders from time to time. The Operational Creditor extended a warranty for a period of 30 months from the date of sale of the products supplied by it to the Corporate Debtor.

18. It is stated that, upon receipt of the said products from the Operational Creditor, the Corporate Debtor had to sell the same to its distributors/retailers, who in turn were finally to sell to their end user/customers. It is further averred that, as per the trade practice in the lighting industry, in the event of the said product failing to perform during the warranty period, the same is liable to be replaced by the Operational Creditor on the basis of the manufacturer's warranty. In the event of end consumer finding the said product



defective, he returns the defective product to the distributor of Corporate Debtor. The said defective products are then returned to Corporate Debtor which in turn would collect and consolidate in the ware house belonging to Corporate Debtor. Further, the authorized representative of Operational Creditor would inspect the said defective products along with Corporate Debtor's representative and issue credit notes in favour of Corporate Debtor to the value of the said defective products.

19. It is stated that, upon receipt of the said credit notes issued by Operational Creditor for the defective products, after adjusting the value of the said credit notes to the outstanding, the Corporate Debtor would only then be liable. It is further stated that, in the absence of carrying out the inspection of the defective products, this Application is not maintainable.

20. It is stated that, the Corporate Debtor had from time to time made *ad hoc* payments to the Operational Creditor towards the value of the products but not on invoice to invoice basis. Further in the absence of inspection and reconciliation of accounts between the Operational Creditor and Corporate Debtor, it would be presumptuous on the part of the Operational Creditor to unilaterally assume that the amount claimed in this Application is an admitted liability.

21. It is stated that, the Corporate Debtor, without prejudice to the rights of the Corporate Debtor, is ready and willing to cooperate with the Operational Creditor in fixing a date for the inspection and



examination of the defective products and for carrying out the reconciliation of accounts.

**Rejoinder filed by the Operational Creditor**

22. It is stated by the Operational Creditor that, the Corporate Debtor has filed the reply through Mr. Nandakumar without any authorization or Power of Attorney. Mr. Nandakumar has failed to file any documents, board resolution or power of attorney authorizing him to appear, sign, reply and file any documents on behalf of the Corporate Debtor. It is averred that, the reply of Corporate Debtor is liable to be rejected and not to be taken on record in the absence of any authorization provided by the Corporate Debtor.

23. It is stated that, the Corporate Debtor in its reply neither denied about the receipt of goods from the Operational Creditor nor denied the default of payments towards the supply of goods, which prima facie establishes the fact that there exists a debt and default from the Corporate Debtor.

24. It is stated that, the Corporate Debtor availed the GST input deposited by the Operational Creditor on entire amount of Tax invoices in favour of Corporate Debtor which establishes that there is no dispute of amount between the parties. It is clear from the reply that the Corporate Debtor failed and defaulted to make payment.

25. It is stated that, the Corporate Debtor has taken feeble, vexatious spurious defense of reconciliation of accounts just to avoid liability of Corporate Debtor and never raised any issue of reconciliation of



account before sending of demand notice under Section 8 of the IBC,2016.

26. It is stated that, the Corporate Debtor has raised false, vexatious defense that it has returned defective goods to the operational creditors. It is averred that, the Corporate Debtor never raised any debit note for the alleged defective goods.

27. It is stated that, the Corporate Debtor acknowledged the debt amount by availing the GST input deposited on invoices which is more than the threshold under the IBC,2016 and the debt is defaulted as admitted in the reply filed by the Corporate Debtor. Further it is averred that, there is no preexisting dispute between the parties.

**Memo Filed by the Corporate Debtor dated 15.03.2024**

28. Pursuant to the order dated 30.01.2024 by this Tribunal, the Corporate Debtor filed a memo on 15.03.2024. It is stated that, the Corporate Debtor wanted to reconcile the accounts but the Operational Creditor failed to conduct the inspection of the defective products. The Corporate Debtor submitted that the claim amount is speculative and notional given that the inspection needs to be done and the reconciliation of the accounts is an ongoing process.

29. It is stated that, the Operational Creditor after filing this Application has given credit to a sum of Rs.4,53,941(Four Lakhs Fifty Three Thousand Nine Hundred And Forty One) for the defective products, which is evident to show that the claim is notional, speculative and premature.



**Written Submission filed by Operational Creditor dated 20.12.2024**

30. The Operational Creditor stated that, the Corporate Debtor filed an appeal against this Tribunal's Order dated 09.07.2024, admitting the Application under Section 9, IBC, before the Hon'ble NCLAT. The Hon'ble NCLAT remanded back the case to this Tribunal.

31. The Operational Creditor states that there was no preexisting dispute prior to filing this case.

32. It is stated that the CD has taken a feeble and vexatious defence of reconciliation of accounts to avoid liability of Corporate Debtor to make payment of it to operational creditor.

33. It is stated that, the IRP appointed vide order dated 09.07.2024 in this Application had accepted the full claim of Rs.2,44,33,511/- (including interest up to 08.07.2024) of the operational creditor based on the records and the inspection of books of accounts maintained by the Corporate Debtor.

34. It is stated that, almost all the stock of the Corporate Debtor is outdated and no longer under any warranty period. The CD has taken false and spurious defense of reconciliation of accounts.

**Written Submission of Corporate Debtor filed dated 23.12.2024 vide SRNo.6217**

35. It is stated that, the amounts claimed by the Operational Creditor are notional and bereft of material particulars, besides being premature.



36. It is stated that, pursuant to an Order dated 30.01.2024 by this Tribunal to reconcile accounts, the Corporate Debtor had collected the said defective lamps and provided a credit for a sum of Rs.4,53,941/- (Rupees Four Lakhs Fifty Three Thousand Nine Hundred and Forty One Only).

37. It is stated that, the claim is a disputed one and owing to the defects that are under warranty which have not been taken into account.

38. It is stated that, the claim of the Operational Creditor is a notional one. The Operational Creditor had given credit for a sum of Rs.4,53,941/- during the pendency of this Company Petition. It is further stated that, this would clearly lead to an irrefutable presumption that there exists a pre-existing dispute between the parties.

39. It is stated that, the Corporate Debtor attempted multiple times to have a joint inspection and reconcile the accounts with the Operational creditor, but the Operational Creditor failed to have a joint inspection.

40. It is stated that, the amount claimed by the Operational Creditor is not crystalized as the Operational Creditor itself had given credit to a sum of Rs. 4,53,941/- after filing of this Application.

#### **Observations of this Tribunal**



41. We have heard the Counsel for both the parties afresh. We have also given careful considerations to the pleadings, records and written submissions filed by both parties.

42. In this case, the Operational Creditor has claimed a principal amount of Rs. 1,80,02,528 (One Crore Eighty Lakhs Two Thousand Five Hundred and Twenty Eight Rupees) and Interest thereon up to 07.09.2023 at the rate of 18% per annum i.e., Rs.40,01,206 (Forty Lakhs One Thousand Two Hundred and Six Rupees) totaling to Rs. 2,20,03,735 (Two Crores Twenty Lakhs Three Thousand Seven Hundred and Thirty Five Rupees) against the invoices for goods supplied to the Corporate Debtor. The Operational Creditor has annexed the copy of computation of unpaid amount with interest thereon as **Annexure 4** along with this Application. The date of default as per the invoice is 45 days from the date of invoice. The first date of default is stated to be 18.04.2022.

43. It is the case of the Operational Creditor that it has raised the Invoices to Corporate Debtor against which GST input was availed by Corporate Debtor wholly without any dispute. The Operational Creditor has annexed the Copy of FORM- GSTR 1, Form GSTR-3B and E way Bills as **Annexure 6**.

44. It is the case of the Operational Creditor that it had demanded the payment from the Corporate Debtor through various modes of communication but the Corporate Debtor on one pretext or another delayed the payment and made false commitment to the Operational



Creditor. Further, the Operational Creditor sent a demand notice dated 08.09.2023 under Section 8 of IBC, 2016 to Corporate Debtor.

45. It is stated that there were no preexisting disputes relating to unpaid operational debt between the Operational Creditor and the Corporate Debtor prior to sending the demand notice dated 08.09.2023. The Corporate Debtor sent a reply dated 17.09.2023 to the demand notice and stated that there is discrepancy in the amount demanded and there are defective products under warranty returned from the market need to be quantified.

46. The Corporate Debtor has filed its reply/counter affidavit and stated that there are defective products and reconciliation of accounts needs to be done. It is the case of the Corporate Debtor that, the Operational Creditor has to do the inspection of damaged goods that are in the warehouse of Corporate Debtor; once the defective goods are quantified, the Operational Creditor will provide the credit note which will be adjusted with the alleged outstanding payable to the Operational Creditor.

47. It is observed that the Corporate Debtor in its counter affidavit has not denied the existence of debt. Moreover, the Corporate Debtor has not shown any documents to prove that there were preexisting dispute in relation to the operational debt between the parties.

48. In the rejoinder filed by the Operational Creditor, it is contended that Mr. Nandakumar has filed the affidavit on behalf of Corporate Debtor without placing any authorization from the Corporate Debtor's company and thus, the reply/counter affidavit filed by Corporate



Debtor needs to be rejected. Nonetheless, in the reply/counter affidavit filed by the Corporate Debtor, a verifying affidavit has been filed by Mr. Nandakumar swearing in that he is the director of the Corporate Debtor and the authorized person appointed by the Board Resolution of the Corporate Debtor to file this reply/counter affidavit. Thus, the reply/counter affidavit filed by Corporate Debtor is taken on record.

49. The Operational Creditor has contended that there was no preexisting dispute between the parties prior to sending the Demand notice dated 08.09.2023 under Section 8 of IBC,2016. Further, the Corporate Debtor never raised a debit note for the alleged defective products before sending the Demand notice.

50. It is recorded in the order dated 30.01.2024 by this Tribunal that, the Respondent has shown interest to settle the dues. Thus, this Tribunal ordered via said order to reconcile the accounts with the Operational Creditor.

51. Pursuant to the order dated 30.01.2024 the Corporate Debtor filed a memo on 15.03.2024 stating that, the Operational Creditor did not conduct the inspection to reconcile the accounts. Per contra, the counsel for the Operational Creditor stated that there was no pre-existing dispute between the parties and no debit note was raised for the alleged defective products prior to the Demand Notice dated 08.09.2023 under Section 8 of IBC.

52. The Corporate Debtor filed a memo dated 23.12.2024 and stated that, the Operational Creditor had given credit note for a sum of Rs.4,53,941/-(Four Lakhs Fifty Three Thousand Nine Hundred Forty



One). The said credit note was given for the defective products returned to the Operational Creditor.

53. At this juncture after having heard learned Counsels for the Applicant and the Corporate Debtor and after having given due weightage to the aforesaid submissions, we quote the relevant observations made by the Hon'ble Supreme Court in the landmark case of *Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software Pvt. Ltd., reported in MANU/SC/1196/2017*

*Para 25 - Therefore, the adjudicating authority, when examining an application Under Section 9 of the Act will have to determine:*

*(i) Whether there is an "operational debt" as defined exceeding Rs. 1 lakh? (See Section 4 of the Act)*

*(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And*

*(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?*

*If any one of the aforesaid conditions is lacking, the application would have to be rejected.*

.....

*Para 40 –*

*..... the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an*



*assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.*

54. In the present case,

a) Firstly, the Operational Creditor has shown that there is a debt i.e., principal amount of Rs.1,80,02,528 (INR One Crore Eighty Lakhs Two Thousand Five Hundred Twenty Eight Only) and Interest thereon up to 07.09.2023 at the rate of 18% per annum i.e Rs.40,01,206 (INR Forty Lakhs One Thousand Two Hundred Six Only) totaling to an amount of Rs.2,20,03,735 (INR Two Crores Twenty Lakhs Three Thousand Seven Hundred Thirty Five Only) which is exceeding the threshold limit of 1 crore and the Corporate Debtor has defaulted the payment.

b) Secondly, the Operational Creditor has shown the documentary evidence of raising multiple invoices in the name of Corporate Debtor. Moreover, the Corporate Debtor has availed the GST Input deposited by the Operational Creditor on the entire amount of Tax invoices.

c) Thirdly, the Corporate Debtor has neither shown any proof of preexisting dispute nor denied the existence of debt



towards the operational creditor. It was only upon receipt of demand notice under Section 8 of IBC,2016, the Corporate Debtor raised a spurious defense of pre-existing dispute.

55. The sum in default is more than Rs. 1 crore which is above the threshold limit to file a Application under Section 9 of IBC. Moreover, by looking at the date of default, it is clear that the Corporate Debtor is ineligible to take shelter under Section 10A of IBC, 2016.

56. We also quote the observation of Hon'ble National Company Law Appellate Tribunal, Chennai Bench in *Nandamuri Meenalatha vs. Quality Steels and wire products and others MANU/NL/0614/2023*

*Para 87-*

*It must be borne in mind that an 'Exact Sum of Claim' of an 'Operational Creditor', is not relevant for an 'Admission' of an 'Application', of course , during the course of 'Corporate Insolvency Resolution Process', the exact 'Claim Amount', can be determined, by an 'Interim Resolution Professional'/'Resolution Professional', and in the instant case, 'Parties', are free to approach the 'Interim Resolution Professional'/'Resolution Professional', in the course of 'Corporate Insolvency Resolution Process*

57. In regards to the contention of Corporate Debtor in relation to credit notes for defective products, we are of the view that the exact sum of claim in precise need not be ascertained at this stage.

58. It is the case of the Corporate Debtor that, the Operational Creditor has not given credit note for the defective products. Assuming that contention to be true, the Corporate Debtor has neither



raised any debit note for the defective products nor has made any averments to the extent that reducing the value of defective products will bring the debt amount to less than one crore, which is the threshold limit to initiate CIRP under Section 9 of IBC, 2016. In the present case, the Operational Creditor claims a principal amount of Rs.1,80,02,528 (INR One Crore Eighty Lakhs Two Thousand Five Hundred Twenty Eight Only).

59. Further, the Corporate Debtor never asked the Operational Creditors for reconciliation of accounts and inspection before receiving the demand notice under Section 8 of IBC, 2016.

60. We believe that the warranty is a separate contract that can exist independently of the raised invoices. Additionally, the Corporate Debtor has not provided any documents or contracts to prove that the invoices would only be paid after deducting the credit value for defective products under warranty. Thus, the defence taken by the Corporate Debtor is held as spurious and illusory.

61. It is observed that, the Corporate Debtor had shown willingness to settle the dues provided the Operational Creditor reconciles the accounts; consequently, this Tribunal vide order dated 30.01.2024 directed the Corporate Debtor to contact the Operational Creditor and reconcile the accounts.

**Record of daily order dated 30.01.2024 is extracted below:**



**ORDER**

Ld. Counsel Shri. Anuj Kumar Solonki for the Petitioner.

Ld. Counsel Ms. Sharanya Vaidhiyanathan for the Respondent.

Reply / Counter along with cost filed.

Rejoinder also filed by the Petitioner.

Pleadings are complete.

Ld. Counsel for the Respondent submits that the bulbs supplied by the Petitioner carry warranty. Respondent wants to reconcile the accounts and settle the dues provided the Petitioner replaces the defective bulbs under warranty.

Considering the submissions made above, Respondent is directed to contact the Petitioner, reconcile the accounts within two weeks from today.

List the petition for reporting settlement if any / hearing on

**15.03.2024.**

62. Pursuant to the order dated 30.01.2024, the Operational Creditor gave credit note to the tune of Rs.4.53 lakhs. The contention of the CD is that the Operational Creditor has not given credit to the said amount in the claim. Be that as it may, it is seen that even after providing credit to 4.53 lakhs, the claim of the Operational Creditor would still exceed the threshold limit of 1 crore to file an Application under Section 9 of IBC,2016.

63. It is unambiguous that, the corporate Debtor has not denied the receipt of goods. Further, the Corporate Debtor has also availed the input deposited by the Operational Creditor on entire amount of tax



invoices in favour of Corporate Debtor. This solidifies the claim of the Operational Creditor.

64. It is clear that, the Corporate Debtor's contentions of defective products under warranty has been raised only after the demand notice under Section 8(1) of IBC, 2016, was issued by the Operational Creditor.

65. The Corporate Debtor claims that there exists a warranty contract for 30 months for the products supplied by the Operational Creditor. However the Corporate Debtor failed to show the existence of any contractual terms to prove that, the payment for the goods received will be made only after the completion of warranty period of 30 months. Therefore the contention of the Corporate Debtor that, the products are under warranty and there exists a dispute prior to filing this application does not hold any good. Consequently we hold that, there exists no dispute prior to sending a demand notice by Operational Creditor.

66. We are therefore of the considered view that the Operational Creditor has successfully demonstrated and shown the existence of debt and the default committed by the Corporate Debtor. Hence the Application, as filed by the Operational Creditor, is required to be **admitted** under Section 9(5) of the IBC, 2016. We order accordingly. The Operational Creditor has not named any Insolvency Resolution Professional in Part – III of the Application. Thus, this Tribunal orders the appointment of Mr. Tharuvai Ramachandran Ravichandran, IRP



with registration number IBBI/IPA-002/IP-N00241/2017-18/10692 (AFA valid upto 31.12.2025), to act as Interim Resolution Professional for the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15, 17, 18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

67. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

68. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.



- (3) The provisions of sub-section (1) shall not apply to
  - (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
  - (b) a surety in a contract of guarantee to a corporate debtor.

69. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

70. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/- (Two Lakh Rupees)** to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of



India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

71. Based on the above terms, the Application **CP/IB/173(CHE)/2023** stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named is also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
Member (Technical)

**-Sd-**

**SANJIV JAIN**  
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**Ivn.P(IBC)/1(CHE)/2025 in CP(IB)/173(CHE)/2023**

*(filed under Section 9 r/w 60(5) of the Insolvency and Bankruptcy Code, 2016, R/w, RULE 11 of the  
NCLT Rules, 2016)*

*In the matter of M/s. Cema Electric Lighting Products India Private Limited.*

**GE Employees Union, Trade Union,**

M/s. Cema Electric Lighting Products India Pvt Ltd

No. 5, Nehru Nagar, Second Street,

Adyar, Chennai – 600 020

Rep. by Mr. Ashim Kumar Roy

President of Workmen Trade Union –

GE Lighting Employees Union

*... Applicant*

*-Vs-*

**1. M/s. Overdrive Electronics (P) Ltd.,**

(CIN: U72200DL2005PTC136715),

C-2 / 2621, Vasantkunj,

New Delhi – 110 070.

**2. M/s. Cema Electric Lighting Products India Private Limited**

(CIN: U31501TN2007PTC061950)

No. 5, Nehru Nagar, Second Street,

Adyar, Chennai – 600 020.

*... Respondents*

**Present:**

*For Applicant*

*: Dr. S. Sathiyarayanan, Advocate  
Bathrinarayan, Advocate*

*For Respondent*

*: Anuj Kumar Solanki, Advocate for R1  
V. Sharanya, Advocate for R2*

***Order Pronounced on 14<sup>th</sup> February, 2025***



**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

**ORDER**

*(Heard through Hybrid Mode)*

GE Employees Union, Trade Union of M/s. Cema Electric Lighting Products Pvt Ltd, has filed an application Inv/P.No. 01 of 2025 in CP/IB/173(CHE)/2023, under Section 9 read with Section 60(5) of IBC seeking intervention in CP/IB/173(CHE)/2023.

2. The case of the Applicant is that this Tribunal on an application filed under Section 9 of IBC by M/s. Overdrive Electronics Pvt Ltd, initiated the CIRP against the Corporate Debtor Cema Electric Lighting Products Pvt Ltd vide order dated 09.07.2024 and appointed Mr. Sushil Kumar Singhal as the IRP. The IRP, issued the public announcement on 13.07.2024 inviting the claims from the creditors of the Corporate Debtor. The RP collated the claims and constituted the CoC. The list of the creditors forming part of CoC is as under.



S.No	Name of the Creditor	Amount admitted (in Rs. )	Voting %
1	Halonix Technologies Private Limited	5,06,90,050	3.60%
2	Override Electronics Private Limited	2,44,33,511	1.74%
3	Venture Lighting India Limited	4,71,43,000	3.35%
4	SL Lighting India Pvt. Ltd	2,85,50,000	2.03%
5	The Commissioner of Commercial Tax, Government of West Bengal	58,66,091	0.42%
6	Income Tax Department Government of India -Chennai	47,27,570	0.34%
7	Vindhyavasini Mining & Granites Ltd.	44,40,707	0.32%
8	Bajaj Electricals Limited	24,36,129	0.17%
9	Ananya Trade Combines	21,84,254	0.16%
10	Lastmile Transtech Pvt Ltd	20,15,286	0.14%
11	Universal Packaging	11,81,467	0.08%
12	Gajjar Diecast &Engineers	7,19,479	0.05%
13	Micronic Engineers	6,05,750	0.04%
14	Shreerangam Packaging Pvt Ltd	5,86,253	0.04%
15	Shree Giriraj Trading Co	2,40,595	0.02%
16	Diya Tours And Travels	1,54,723	0.01%
17	Baroda Industrial Distributors	1,02,048	0.01%
18	Royal Traders & Suppliers	5,551	0.00%
19	Representative of by Employees	5,93,11,066	4.22%
20	Representative of Workmen (Union)	1,17,09,66,216	83.26%
	<b>TOTAL</b>	<b>1,40,63,59,746</b>	<b>100%</b>

3. It is stated that the Suspended Director of the Corporate Debtor had preferred an appeal before Hon'ble NCLAT against the order of CIRP and the Hon'ble NCLAT vide its order dated 24.09.2024 quashed the CIRP order and remitted back the application to the Tribunal for fresh consideration. The



operational creditor went in appeal against the order of Hon'ble NCLAT before Hon'ble Supreme Court and the Hon'ble Supreme Court vide its order dated 22.11.2024 closed the appeal with direction to the Tribunal to pass an order on merits without being influenced by the earlier proceedings / appeals. After the remand, the application is pending before this Tribunal for adjudication.

4. It is stated that there arose an industrial dispute between the Corporate Debtor and the workmen represented by the trade union. The Corporate Debtor preferred an application under the Industrial Dispute Act 1947 for the closure of the unit but the same was rejected on 24.08.2017. The review application was also rejected on 24.08.2018. Since the company was facing financial losses and unable to run its manufacturing activities due to disconnection of electricity, it stopped its units on 19.01.2018. The workers were not paid since February 2018. The Company decided to sell its assets. That move was opposed by the workmen. Protracted negotiations were held during the pendency of LPA. No. 1079 of 2018 filed by the union and LPA No. 34901 of 2018 filed by the Company before the Hon'ble Gujarat High Court. The parties agreed to enter into a settlement dated 25.03.2019. A committee was formed to negotiate with the interested parties, evaluate the offers and



effect the sale. As per the settlement, the sale proceeds were to be deposited in an escrow account to be jointly operated by the Union and the Company to satisfy the dues and the benefits of the workers. The Division Bench of the Hon'ble High Court recorded the settlement and directed the parties to abide by the terms and conditions of the settlement which was made part of the Court order dated 29.03.2019. The parties also agreed that the amounts due as above shall be treated as a secured creditor and the workmen shall have exclusive lien on the sale proceeds.

5. It is stated that the Corporate Debtor in discussion with the Union entered into a MoU with SM Enterprises on 23.10.2023 for sale of the property. An EMD of Rs. 8.0 Crores was received and used for part payment of dues of the workmen. The MoU was the time bound agreement and in case of failure the amount was required to be repaid to SM Enterprises. In the meantime, this Tribunal passed an order for CIRP. It is stated that due to the CIRP order and consequent moratorium, the sale could not happen. It is stated that the Corporate Debtor is not a going concern and any order of CIRP would not benefit anyone as the operation was stopped way back. The process could at the most delay the realization of assets. It is stated that the assets of the Corporate Debtor are not sufficient to cover the amount due.



6. It is stated that the Applicant / Labour Union is a necessary party to the proceedings.

7. The Corporate Debtor also filed an affidavit vide SR. No. 625 dated 13.02.2025 wherein it reiterated the facts as stated in para 4 above. It is stated that in addition to receipt of Rs. 8.0 Crores as EMD from M/s. SM Enterprises, additional amounts were received which have been utilized to discharge the dues of the employees. It is stated that in fact the sale of the property may not be able to entirely cover the amounts payable to the workers.

8. We have heard Ld. Counsel for the Applicant, Ld. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor and perused the record.

9. In the instant case, the CIRP was initiated against the Corporate Debtor on an application filed by the Operational creditor under Section 9 of IBC vide order dated 09.07.2024. The IRP invited the claims and constituted the CoC. The Applicant also submitted the claim as seen from the list of creditors forming part of the CoC where the Applicant had 83.26% voting. As seen from the application, the unit of the Corporate Debtor stopped w.e.f. 19.01.2018 and the workers were not paid the salary since then. During the



pendency of LPA before the Hon'ble High Court, the parties entered into a settlement on 25.03.2019. The Hon'ble High Court recorded the settlement and directed the parties to abide the terms and conditions of the settlement vide order dated 29.03.2019. It was agreed upon between the union and the Corporate Debtor that the amounts due shall be treated as the secured creditor and the workmen shall have exclusive lien on the sale proceeds. It is seen from the list of claims that after the earlier order of CIRP, the RP had admitted the claims filed by the workmen / Applicant.

10. It may be true that unit was closed on 19.01.2019 and the workmen were not paid salary w.e.f. February 2019, but from the list of creditors we find that there are other creditors of the Corporate Debtor including M/s. Overdrive Electronics Pvt Ltd, the defendant Creditor/Applicant in CP(IB)/173(CHE)/2023. The debt amount in respect of Overdrive Electronics Pvt. Ltd. is Rs. 2,44,33,511/- which is more than the threshold limit of Rs. 1.0 Crore as defined under Section 4 of IBC. There was a default in the payment of debt. M/s. Overdrive Electronics Pvt Ltd has already initiated the IBC proceedings against the Corporate Debtor by filing the application under Section 9 of IBC. The earlier order for CIRP was 09.07.2024. On the basis of



the order, the Applicant / Trade Union had filed the claim which the IRP had also admitted.

11. Similarly, if the application of M/s. Overdrive Electronics Pvt Ltd is allowed under Section 9 of IBC, the Applicant / Trade Union will have an opportunity to file the claim before the IRP and include it in the list of creditors. It may be true that the unit of the Corporate Debtor is closed and there are minimal chances of revival of the Company but the Corporate Debtor has to go into the process of CIRP. The assets of the Corporate Debtor are to be distributed among the stakeholders / creditors under section 53 of IBC.

12. Since the IBC provides for filing of claims by the Applicant / Trade Union in respect of its dues against the Corporate Debtor, we do not find any reason to permit the Applicant to intervene in the application filed under Section 9 of IBC.

13. The Application is accordingly **dismissed** with no orders as to cost.

-Sd-

(VENKATARAMAN SUBRAMANIAM)  
MEMBER (TECHNICAL)

-Sd-

(SANJIV JAIN)  
MEMBER (JUDICIAL)