IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI

IB NO. 599/(ND)/2024

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

IN THE MATTER OF:

VISHNU TRADERS, A PROPRIETORSHIP CONCERN OF MR. AJAY GOEL
GROUND FLOOR, KH. NO. 156/288
INDUSTRIAL AREA, VILLAGE – POORTH KHURD,
NORTH DELHI, DELHI 110039

...OPERATIONAL CREDITOR

Versus

SHIVAM COAL CARRIERS PVT. LTD.
2162/T-10, GURU ARJUN NAGAR,
MAIN ROAD, WEST PATEL NAGAR,
NEW DELHI, 110008

...CORPORATE DEBTOR

Order Delivered on: 21.11.2025

CORAM:

SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Arjun Syal, Mr. Shreyan Das, Mr. Rohit Kumar Along with Naman Verma, Advs.
For the Respondent:

ORDER

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ***('the Code')*** read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 through Mr. Ajay Goel, Proprietor of the firm **Vishnu Traders, a proprietorship concern of Mr. Ajay Goel *('Operational Creditor')*** for initiation of Corporate Insolvency Resolution Process ***('CIRP')*** against **M/s Shivam Coal Carriers Pvt. Ltd. *('Corporate Debtor')***.
2. **Vishnu Traders, a proprietorship concern of Mr. Ajay Goel** (Operational Creditor), having its office at Ground Floor, Kh. No. 156/288, Industrial Area, Village – Pooth Khurd, North Delhi, Delhi 110039. **M/s Shivam Coal Carriers Pvt. Ltd.** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- U60231DL1997PTC091085], having its registered office at 206, Palco House, 2162/T-10, Guru Arjun Nagar, Main Road, West Patel Nagar, New Delhi 110008.
3. The present petition was filed on 17.07.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**"Code'**). The total amount claimed is Rs. 13,770,840.48/- (including interest due as on 31.05.2024), which includes a principal amount of Rs. 8,001,379.00/-, and interest of Rs. 5,769,461.53/- from the alleged date of default i.e. 31.05.2024.
4. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor***.
   a) The Operational Creditor is in the business of inter alia supplying biochemical products. The Corporate Debtor has been soliciting business from the Operational Creditor since 2021. The Corporate Debtor has been issuing Purchase Orders from time to time through telephonic conversations for the supply and upon demand of the Corporate Debtor, the Operational Creditor consequently supplied material to the Corporate Debtor from time to time.
   b) The Operational Creditor has been supplying material i.e. bio chemical products to the Corporate Debtor since 2021. The instant application pertains to the transactions in the period between October 2021-March 2022. During

the said period, the Operational Creditor supplied material to the Corporate Debtor, and raised corresponding invoices. In terms of the understanding between the parties, the Invoices carried as maximum credit period as stipulated in the invoices. The parties have maintained running accounts inter se and the Corporate Debtor has made ad-hoc part payments to the Operational Creditor from time to time.

c) The first invoice in respect of which the Corporate Debtor continues to remain in default is dated 04.10.2021, in respect of which default occurred on 15.11.2021. Invoices issued by the Operational Creditor since 04.10.2021 continue to remain unpaid and remains in default, as only ad-hoc payments has been made by the Corporate Debtor. The last of such invoices is dated 30.03.2022, and default in respect thereto occurred on 15.04.2022.

d) After adjusting for all ad-hoc payments received from the Corporate Debtor, the Corporate Debtor continues to remain in default for a principal amount of Rs. 8,001,379.00/- in respect of the said invoice. The total operational debt claimed stands at Rs. 13,770,840.48/- as on 31.05.2024, comprising a Principal amount of Rs. 8,001,379/- and interest of Rs. 5,769,461.53/-. (Calculated at 18% per annum, as per industry norms and agreed terms, detailed in Annexure-6 of the Petition at page 267).

e) A statutory Demand Notice under Section 8 of the IBC was issued on 04.06.20 24 demanding payment of the aforesaid amount. No reply or notice of dispute was received from the Corporate Debtor within the statutory period of 10 days or thereafter. It is further stated that there was no preexisting dispute between the parties.

Declaration of Corporate Debtor as ex-parte

5. This Adjudicating Authority vide its order dated 23.09.2024 directed the Applicant to issue notice to the Respondent by all means and in light of the same the Operational Creditor had served the Respondent through email and speed post and filed the proof of service vide affidavit dated 15.10.2024. Despite the same,

none appeared on behalf of the Respondent on 18.11.2024, 03.01.2025. Ld. Counsel on behalf of the Operational Creditor appeared before us on 14.02.2025 and sought liberty to serve the Respondents through substituted mode of service. This Adjudicating Authority vide its order dated 14.02.2025 directed the Applicant to issue notice to the Respondent through paper publication and in light of the same, the Operational Creditor had served the Respondent through publication and filed the proof of publication vide affidavit dated 18.03.2025. Despite communications to the Corporate Debtor by the Financial Creditor, none appeared on behalf of Corporate Debtor on 25.03.2025, 02.05.2025. Therefore, vide order dated 30.05.2025 the Corporate Debtor was set as ex-parte.

Analysis & Findings

6. We have heard the Learned Counsels for the Operational Creditor, and further perused the averments made in the petition and written submissions presented by the Operational Creditor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.
7. It is to be noted that the 'Operational Creditor' had sent a demand notice dated 04.06.2024 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues. As per the requirement of Section 8(2) of the IB Code, 2016, the Corporate Debtor is required to file reply to the demand notice within 10 days of the Receipt of the Demand Notice. However, in the present case, no such reply has been placed on record before us.
8. The instant application pertains to the transactions from October 2021-March 2022 for supply of bio chemical products for which the invoices were raised by the Operational Creditor to the Corporate Debtor. The parties have maintained running accounts inter se and the Corporate Debtor has made ad-hoc part

payments to the Operational Creditor from time to time. The total operational debt as claimed by the Applicant stands at Rs. 13,770,840.48/- as on 31.05.2024.

9. In the present case the default amount i.e. Rs. 1,37,70,840.48/ as on 31.05.2024 as alleged by the Operational Creditor is based on the following two categories:
    a) Principal amount: Rs. 80,01,379.00/-
    b) Interest: Rs. 57,69,461.53/- (calculated at 18% per annum, as per industry norms and agreed terms) (detailed in Annexure-6 of the Petition at page 267).

10. It is noted that the invoices raised by the Operational Creditor, ledger statements maintained by the Operational Creditor qua the Corporate Debtor and a copy of the Bank Statements of the Operational Creditor for the period between 01.10.2021-22.05.2024 is placed on record as Annexure-2, Annexure-3 and Annexure-5. On perusal of the same, we observe that the Principal Amount i.e. Rs. 80,01,379.00/- as claimed by the Operational Creditor, forms parts of the bill amount as raised in the invoices by the Operational Creditor to the Corporate Debtor. However, with respect to the interest amount i.e. Rs. 57,69,461.53/-, there is no document placed on record by the Operational Creditor to substantiate the fact that the interest was agreed by both the parties. The claim of the Operational Creditor with respect to the calculation of interest at the rate of 18% is solely on the basis of the fact that the same was mentioned in the invoices.

11. In this regard the Hon'ble NCLAT in **Company Appeal (AT) (Insolvency) No. 386 of 2025 – M/s SNJ Synthetics Ltd. vs. M/s PepsiCo India Holdings Pvt. Ltd.** decided on 07.05.2025, has observed that where interest was sought on delayed payments on the basis of invoices there has be an element of mutual consent and mutual understanding regarding the agreed interest between the parties. The relevant extract of the said judgment is reproduced hereunder:

    "12. Since there has been no amendment of the Agreement, the terms agreed between the parties in the Supply Agreement prevail over unilateral invoices. ***Even though invoices can play a crucial role in defining the rights and obligations between parties, however, there has to be an element of mutual consent, which can be discernible from conduct.***

When the ingredient of levy of interest on delayed payment is absent in the written contract, stipulation of interest payment in invoices can override the written contract only if there is mutual consent and mutual understanding between the parties in this regard which in the present case has not been demonstrated by conduct and practice*. There is no evidence of payment of interest by the Respondent which has been substantiated by the Appellant. We are therefore inclined to agree with the Adjudicating Authority that unilaterally generated invoices signed by only one party cannot overrun or recast the terms of bi-partite agreements and create binding obligations on the other party to pay interest.*

13. In this regard attention has been adverted by the Respondent to the judgement of this Tribunal in ***Krishna Enterprises vs. Gammon India Limited in CA (AT) (Ins) No. 144 of 2018*** *wherein it* ***has been held therein that if no interest was payable, in terms of the contractual agreement, then only the principal amount would constitute the claim, basis which Section 9 application can be filed.*** *We find the ratio of the above judgment to be squarely applicable to the facts of the present case and for easy reference reproduce the relevant portion of the said judgment as below:*

> *"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims****. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principle amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.***

12. The Hon'ble NCLAT in **Rishabh Infra Through Hari Mohan Gupta v. Sadbhav Engineering Ltd.** [2024 SCC OnLine NCLAT 1262] in Company Appeal (AT) (Insolvency) No. 1881 of 2024 decided on 04.11.2024, has observed the following:

*"9. **We are of the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest.***

10. There is nothing to substantiate that the Corporate Debtor has accepted the obligation to pay the interest @24% per month, as claimed by the Operational Creditor…."

13. In light of the aforementioned judgments of Appellate Tribunal, we are of the view that in the instant case the interest amount i.e. Rs. 57,69,461.53/- which is calculated at the rate of 18% per annum is solely on the basis of the fact that it was mentioned in the invoices. The Operational Creditor in the instant case has failed to place on record any document/Agreement between the parties to substantiate the fact that the Corporate Debtor had consented to the interest for delayed payments. We are of the view that merely because the interest is mentioned in the invoices it cannot be operated against the Corporate Debtor if there is no document to show that the Corporate Debtor has accepted the obligation to pay the interest, then especially the interest amount claimed cannot be considered for the purpose of threshold.
14. We further conclude that if no interest was payable in terms of the contract, then only the principal amount would constitute the claim. Therefore, in the instant case the default amount with respect to the tune of Rs. 57,69,461.53/- i.e. the interest amount, does not stand substantiated. The remaining default amount as claimed by the Operational Creditor i.e. the principal amount would constitute the claim. In the instant case the Principal Amount/Default Amount is only to the tune of Rs. 80,01,379.00/-, which fails to meet the pecuniary threshold limit of Rs. 1 Crore as required under Section 4 of the Code
15. In the light of the above observation with respect to the pecuniary threshold as prescribed under the Code, the instant application bearing **CP (IB) No. 599/ND/2024** filed by, **M/s Vishnu Traders, a proprietorship concern of Mr.**

Ajay Goel, (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Shivam Coal Carriers Pvt. Ltd.** (Corporate Debtor) is liable to be dismissed and is, accordingly **dismissed.**

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)