

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB)/867/MB/2022**

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*

**Alliance Spaces Private Limited**, having its Registered Office: C/o. Market City Resources Pvt Ltd, RR Hosiery Building, Shree Laxmi Wollen Mills Estate, Opposite Shakti Mills, Off Dr. E. Moses Road, Mahalaxmi, Mumbai-400 011.

**..... Applicant/ Operational Creditor**

**Versus**

**Maharashtra Bio Fertilisers (India) Pvt. Ltd.**, having its registered office at: - Siraj Dokadia Road, Near Udhog Bhavan, Shivaji Nagar, Narayan Nagar, Latur-431 512.

**.... Corporate Debtor**

**Order Delivered on :- 03.04.2024.**

***Coram:***

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

***Appearances (in Hybrid Mode):***

For the Operational Creditor: Adv. Nausher Kohli i/b Adv. Nidhi Chheda.

For the Corporate Debtor: Adv. Shreya Parikh a/w Adv. Riddhi Wagle  
i/b Vishal Shriyan.

**ORDER**

***Per: - Shri. Anil Raj Chellan, Member (Technical)***

1. This Company Petition is filed by M/s. Alliance Spaces Private Limited (hereinafter referred to as "Operational Creditor") through its Authorised Representative Mr. Deepesh Muni, praying for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Samarth Softech Solutions Private Limited (hereinafter referred to as the "Corporate Debtor") under Section 9 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Company Petition was filed on 29.06.2022 claiming an outstanding amount to be in default of INR 2,97,66,480/- (Rupees Two Crores, Ninety-Seven Lakhs, Sixty-Six Thousand, Four Hundred and Eighty Only), the break-up and bifurcation of which is given in the table

below. The Operational Creditor has filed the present petition as the Corporate Debtor defaulted in paying the license fees since June, 2020 in respect of the licensed premises let out to the Corporate Debtor by the Operational Creditor for a period of 60 months from 15.01.2019 to 14.01.2024.

<b>MBF OS with int till 30-Apr-22</b>	
<b>Particulars</b>	<b>Amount</b>
Outstanding as on 31 <sup>st</sup> Dec 2021	9,722,262
Interest as on 30 <sup>th</sup> APR 2022	3,559,611
LICENSE FEES (Unraised Invoices and balance Lock-in period form 1 <sup>st</sup> Oct 2021 to 14 <sup>th</sup> Jan 2024)	19,806,543
Less: - Security Deposit	- 3,321,936
<b>Net Recoverable with Interest till 30-Apr-22</b>	<b>29,766,480</b>

3. Facts of the Case as per the Applicant are briefly stated as follows:

- a) The Corporate Debtor and the Operational Creditor entered into a registered Leave and License Agreement dated 30.11.2018, for licensing of the premises situated at Unit No.01, 09<sup>th</sup> Floor, Fountain Head-Tower 1, Taluka: Haveli, Dist: Pune, admeasuring approximately 352.6 sq.mtrs.
- b) The tenure of the licensed premises is 60 months from 15.01.2019 to 14.01.2024. The Lock-in period is also 60 months from the commencement date i.e. 15.01.2019 or the date of handover of the licensed premises, whichever is earlier. As per Clause VI of the said Agreement, the Operational Creditor had executed Fit Out Works as required by the Corporate Debtor the expenses of which was agreed to be amortized; the Corporate Debtor had deposited an amount of Rs. 29,96,256/- towards the security deposit of monthly license fees and Rs. 3,25,680/- towards the security deposit of Common Area

Maintenance (CAM) charges both aggregating to a sum of Rs. 33,21,936/-.

- c) As per the contractual clauses of the Leave and License Agreement dated 30.11.2018, the license fee was payable at Rs. 92/- per sq. ft. per month on chargeable area of the licensed premises amounting to Rs. 4,99,376/- p.m. in advance to the Licensor. Further, after every 12 months, the license fees shall stand escalated by 5%. The license fee was payable in advance on or before 7<sup>th</sup> day of each and every month without demand. As per the terms and conditions of the aforesaid Agreement, the Licensee (i.e. the Corporate Debtor) shall be liable to pay arrears along with the interest at the rate of 18% p.a. and if such arrears remain outstanding beyond 30 days, then the Licensee shall be liable to pay such arrears together with interest thereon at the rate of 24% p.a. for each financial accounting period, till the date of payment. The computation of interest shall be on the basis of 360 days a year comprising of 12 months of 30 days each.
- d) According to the Leave and License Agreement, if the Licensee (i.e. the Corporate Debtor) terminates this agreement during the license term i.e. the lock-in period, the Licensee shall be liable to pay the license fee for the balance license term i.e. unexpired lock-in period. The Agreement further stipulates that if the Licensor terminates this agreement for reasons of material breach on the part of the Licensee during the license term/lock-in period, then in such a case, the Licensor (i.e. the Operational Creditor) shall be entitled to adjust the Security Deposit against all the unpaid dues and claim the License Fee for the balance Lock-In period.

- e) The Corporate Debtor started defaulting in payment of monthly license fees to the Operational Creditor since the month of June, 2020. Therefore, the Operational Creditor addressed a Notice dated 05<sup>th</sup> March, 2021 to the Corporate Debtor stating that by not paying the license fees beyond 60 days, the Corporate Debtor has committed a material breach of the contract and therefore, the Licensor (i.e. the Operational Creditor) is entitled to terminate the contract and adjust the security deposit as well as claim license fees for the balance unexpired period from the Corporate Debtor. On 06.09.2021, the Corporate Debtor addressed an email to the Operational Creditor communicating its intent to vacate the licensed premises before 30<sup>th</sup> September, 2021. Thus, the Operational Creditor has not only adjusted the security deposit towards the arrears of invoices but also claimed license fees for the balance remaining unexpired license period from 01<sup>st</sup> October, 2021 to 14<sup>th</sup> January, 2024. Thus, the amount claimed to be in default is Rs. 2,97,66,480/-, the break-up and bifurcation of which has been given hereinabove.
- f) Statutory Demand Notice dated 03.03.2022 has been served by the Operational Creditor upon the Corporate Debtor, to which the Corporate Debtor has replied vide Letter dated 17.03.2022. The Corporate Debtor not only failed to pay the arrears despite the service of demand notice but also disputes its liability to pay. Since the default in repayment of operational debt subsists despite service of the Demand Notice u/s 8 of the Code, the Applicant/Operational Creditor has chosen to file the present petition seeking to initiate the Corporate Insolvency Resolution Process of the Corporate Debtor. Hence this petition.

4. **Reply and Contentions of the Corporate Debtor:** The Corporate Debtor has filed its reply on Affidavit dated 06.01.2023. The reply and contentions of the Corporate Debtor are briefly capitulated below:

- i. The Corporate Debtor objects to the maintainability of the petition on the ground that the application does not comply with mandatory requirement of Section 9(3)(b) of the Code. In other words, the Applicant has failed to furnish an affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt.
- ii. The Corporate Debtor further contends that the petition is not maintainable as the subject license agreement is a subject matter of a suit pending before the Court of Small Causes, Pune and the same was communicated to the Applicant while replying to the Demand Notice. However, despite the pre-existing dispute, the Applicant has filed the present petition and hence, the present petition deserves to be dismissed on the ground of pre-existing dispute u/s 9(5)(ii)(d) of the Code.
- iii. The Corporate Debtor states in its reply that the present Petition is barred by Section 10-A as the defaults have been committed by the Corporate Debtor during the period between 25.03.2020 to 24.03.2021 which is squarely covered u/s 10-A of the Code owing to which no petition is maintainable if the defaults have occurred in the said period.
- iv. The Operational Creditor is claiming amounts under unraised invoices for license fees for the balance lock-in period amounting to Rs. 1,98,06,543/-, which is clearly in the nature of penal liquidated damages and such claims in the nature of damages

cannot be and ought not be enforced in law without adjudication by a competent civil court. The Corporate Debtor contends that no monies can be claimed by the Operational Creditor in respect of the services which were never rendered.

- v. If the claim in respect of damages and defaults during the period covered u/s 10-A of the Code are excluded, the present petition fails to meet the minimum threshold of Rs. 1 crore which is required to trigger CIRP against the Corporate Debtor. Hence, the present petition filed by the Applicant against the Corporate Debtor u/s 9 of the Code be dismissed.

**5. Rejoinder of the Applicant/Operational Creditor:**

- a. With regard to the contention of the pre-existing disputes as raised by the Corporate Debtor, the Operational Creditor submits that the Applicant was unaware of such proceedings until the Corporate Debtor replied to the Statutory Demand Notice vide its Letter dated 17<sup>th</sup> March, 2022. The Applicant submits that after the receipt of the said reply, the Applicant was shocked and surprised to learn for the first time that a suit had been filed by the Respondent against the Applicant of which the Applicant had no notice nor was any summons issued or served upon the Applicant in respect thereof.
- b. The Suit was filed on 24.09.2021 but came to be registered on 07.04.2022, i.e. after the Demand Notice was received by the Corporate Debtor. The Writ of Summons was served upon the Applicant only on 21.05.2022 which is again after the date of Demand Notice. Thus, the plea of pre-existing dispute has been completely fabricated by the Corporate Debtor to escape from the CIRP under the Code.

- c. The Operational Creditor states that the claim of Rs. 1,98,06,543/- is not in the nature of damages, but it is a part of operational debt as the same is part of the contractual obligations of the Leave and License Agreement executed between the parties herein.

**6. Submissions advanced on behalf of the Operational Creditor:**

- a. In response to the argument that the rent towards the lock-in period is not an operational debt, Counsel for the Applicant has relied upon the following rulings:
- i. NCLT Mumbai Bench in the case of Hotel Horizon Private Limited v/s PCK Corporation LLP- CP(IB) No. 1281/MB/IV/2020, decided on 16.06.2023, wherein it has been held that license fees for the unexpired Lock in period is not in nature of liquidated damages but is a license fees falling under the Operational Debt.
  - ii. NCLAT in the case of M/s. Smartworks Coworking Spaces Private Limited v/s. M/s. Turbot HQ India Private Limited, decided on 23<sup>rd</sup> May, 2023- wherein it has been held that unpaid license fees arising out of early termination of the Agreement during the lock-in period is also an operational debt. Counsel for the Petitioner submits that though the above quoted judgment has been stayed by the Hon'ble Supreme Court of India vide its Order dated 10.07.2023, the stay is only against the operation of the order and not on the law laid by the judgment. Hence, the law on the subject still remains in force.
- b. As regards the argument of pre-existing disputes, Counsel for the Applicant submits that the defence of pre-existing dispute taken by the Corporate Debtor is nothing but a sham and moonshine defense

that has been fabricated to obstruct the Operational Creditor from adopting his rightful remedies. Counsel for the Applicant drew our attention to the fact that for the first time the Corporate Debtor expressed his inability to pay the license fees vide email dated 06.09.2021 on account of the Covid-19 pandemic and consequent losses due to the pandemic. There was no issue between the parties that existed at that point of time. Counsel for the Petitioner submits that it is only when the Operational Creditor started demanding payments in terms of the Agreement, that the Corporate Debtor has created a façade of disputes or so-called pre-existing disputes.

- c. Counsel for the Applicant further submits that even in suit filed by the Corporate Debtor in the Court of Small Causes, Pune, the liability to pay license fees has not been contested. Rather, the suit has been filed by the Corporate Debtor, *inter-alia*, to allow the Corporate Debtor to enter the suit property and to take all its belongings; and therefore, the filing of the suit neither has any impact or bearing on the liability to pay the unpaid license fees nor does it have any implication on payment of license fees for the unexpired license period on account of termination due to material breach of the contract. Thus, in the opinion of the Ld. Counsel for the Operational Creditor, filing of the suit in the present case cannot be construed as pre-existing dispute.

**7. Submissions advanced on behalf of the Corporate Debtor**

- a. Counsel for the Corporate Debtor submits that the present petition is not maintainable as there is a pre-existing dispute between the parties with respect to the licensed premises. Counsel for the

Corporate Debtor further submits that the Corporate Debtor had filed a suit against the Operational Creditor bearing Suit No. 441 of 2021 on September 24, 2021 in the Court of Small Causes at Pune before issuance of statutory demand notice. Hence, there is a pre-existing dispute between the parties herein and the present petition is, thus, liable to be dismissed.

- b. Counsel for the Corporate Debtor contends that the present Petition shall be rejected as it violates the provisions of Section 9(3)(b) of the Code. In the present case, the Operational Creditor has not filed along with the application an affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt. Counsel for the Corporate Debtor drew our attention to the fact that the Corporate Debtor, while replying to the statutory Demand Notice u/s 8, had mentioned about the filing of the suit and despite having notice of dispute, the Applicant proceeded to file this application u/s 9 of the Code. Hence, the present petition is liable to be dismissed u/s 9(5)(ii)(d) of the Code.
- c. Counsel for the Corporate Debtor submits that the amount of Rs. 1,98,06,543/- claimed by the Operational Creditor in respect of the license fees from October, 2021 to January, 2024, is not an operational debt as it does not relate to provision of a service. Counsel for the Corporate Debtor states that it is an admitted position that the Corporate Debtor vacated the premises towards the end of the September/beginning of October, 2021. Therefore, the Ld. Counsel for the Corporate Debtor contends that no monies can be claimed by the Operational Creditor in respect of the services which were never rendered. Further, it is the contention of the Corporate Debtor that the said claim is in the nature of

damages/penalty and the liability for the same cannot be crystallised until it is adjudicated by a competent civil court.

- d. Counsel for the Corporate Debtor vehemently contends that out of the 29 invoices enlisted in the petition, the invoices from serial no. 01 to 10 relate to a period covered u/s 10-A of the Code. Hence, the Petition cannot be filed in respect of those invoices and if the claim of 1,98,06,543/- is also excluded for the reasons afore-stated, then the Petition fails to meet the minimum threshold of Rs. 1 crore as prescribed u/s 4 of the Code and thus, it is liable to be dismissed.

### **ANALYSIS AND FINDINGS**

8. We have heard the learned Counsel for the Operational Creditor and the Corporate Debtor and we have examined the records. We have also given our careful consideration to the matter and weighed the rival submissions canvassed across the bar by the learned Counsel for the Operational Creditor and the Corporate Debtor.
9. In the present case, the Operational Creditor is seeking to initiate CIRP of the Corporate Debtor as the Corporate Debtor has failed to pay the license fees in respect of the licensed premises belonging to the Operational Creditor. On perusal of the working annexed by the Applicant at page no. 468 of the Application, we find that the default to the tune of Rs. 87,41,818/- has been committed in respect of the claim of the Operational Creditor arising out of the Invoice Nos. 42, 57, 74, 88, 104, 121, 138, 155, 172 and 189 during the period commencing from 08.06.2020 to 08.03.2021. As per the provision of Section 10A of the Code read with notifications issued thereunder, no application for initiation of CIRP of a corporate debtor shall be filed,

for any default arising during the period from 25.03.2020 to 24.03.2021. Therefore, by virtue of Section 10A of the Code, the defaults in respect of the above-mentioned invoices cannot be considered for triggering the CIRP against the Corporate Debtor. Hence, the default to the tune of Rs. 87,41,818/- is to be excluded from the total amount claimed to be in default of Rs. 2,97,66,480/-.

10. After having considered the issue of Section 10-A, we shall now dwell upon the issue as to whether the claim of Rs. 1,98,06,543/- in respect of unexpired license period/unexpired lock in period amounts to operational debt or not. The Counsel for the Corporate Debtor has contended that the aforesaid claim is in the nature of damages and the same is not an operational debt as defined under Section 5(21) of the Code until the liability in respect of such damages is determined by a competent civil court. Per Contra, the Operational Creditor averred that it is strictly as per the terms of the Leave and License Agreement and hence is a debt and not in the nature of damages. In support of the above contention, the Counsel for the Operational Creditor placed reliance on the decision of *NCLT Mumbai Bench in Hotel Horizon Pvt Ltd v/s. PCK Corporation LLP [CP(IB) No. 1281/MB-IV/2020, decided on 16.06.2023]* wherein it was held that license fees for the unexpired lock-in period is not in the nature of liquidated damages but is a license fees falling under the operational debt. In another case, the Hon'ble NCLAT (*M/s. Smartworks Coworking Spaces Pvt Ltd v/s. M/s. Turbot Hq India Pvt Ltd [Company Appeal (AT)(Insolvency) No. 772/2022, decided on 23.05.2023]*) had set-aside the impugned order passed by the Adjudicating Authority which held that amount claimed by

Operational Creditor for the lock in period is not an Operational Debt. The Counsel for the Corporate Debtor apprised the Tribunal that the Order passed by the coordinate bench of this Tribunal (i.e. NCLT, Mumbai Bench) has been stayed by the Hon'ble NCLAT in Company Appeal (AT)(Insolvency) No. 1347 of 2023 vide Order dated 18.10.2023 and the Hon'ble Supreme Court of India has stayed the Hon'ble NCLAT's Judgment in M/s. Smartworks Coworking Spaces Pvt Ltd v/s. M/s. Turbot Hq India Pvt Ltd (supra), in Civil Appeal No. 4089/2023 vide Order dated 10.07.2023 and, therefore, requested not to rely on those decisions. It is well settled that the order of stay does not obliterate the ratio laid down in the judgements.

11. It is to be noticed in the present case that the Corporate Debtor has, in unequivocal terms, agreed under the Leave and License Agreement to pay license fee for the entire term of license i.e., 60 months notwithstanding the termination of license by either party as evident from the contractual clauses which are reproduced below:

“XIV. CONSEQUENCES OF TERMINATION AND/OR EXPIRY:

1. *If the LICENSEE terminates this Agreement during the License Term i.e. Lock-in Period, the LICENSEE shall be liable to pay the License Fee for the balance License Term i.e. Lock-in Period.*
2. *If the LICENSOR terminates this Agreement for reasons of Material Breach of the LICENSEE during the License Term i.e. Lock-in Period, in such a case, the LICENSOR shall be entitled to adjust the Security Deposit against all the unpaid dues, claim the License Fee for the balance Lock-in Period.”*

The reason for stipulating the entire license period under lock in period and thereby creating an obligation to pay license fee for the entire lock

in period, irrespective of early termination or not, is also evident from other terms of Leave and License Agreement. At the time of execution of Leave and License Agreement, the Operational creditor agreed to execute Fit Out Works (*as defined therein*) as specified and approved by the Corporate Debtor and incur additional expenses to the extent of Rs.94,90,000/- to make the Licensed Premises suitable for the requirements of the Corporate Debtor. The parties have also agreed to amortize the expenses incurred towards Fit Out Works, over the leave and license period of 60 months. This commercial consideration, as reflected by the terms, created an obligation to pay license fee for entire license period/lock in period. When the Corporate Debtor addressed an email dated 06.09.2021 to the Operational Creditor intimating its intention to vacate the licensed premises before 30<sup>th</sup> September 2021 despite the lock-in period, the obligation to pay the license fees for the remaining license period has inevitably become due and payable immediately. In other words, on termination of Leave and License Agreement, remaining license fee crystalized into a debt. Having examined the various terms of the Leave and License Agreement and considering the nature of obligation created under the Leave and License Agreement, we are unable to agree that the license fees for the unexpired period owing to the early termination of the contract is in the nature of damages or penalty and does not constitute operational debt.

12. Counsel for the Corporate Debtor has also opposed the maintainability of the petition on the ground of non-compliance with Section 9(3)(b) of the Code by the Petitioner. Counsel for the Corporate Debtor contends that the Applicant has failed to furnish an affidavit to

the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt and hence, the present petition is liable to be dismissed. It is significant to notice that the Hon'ble Supreme Court of India has, in the case of *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.*, (2018) 2 SCC 674: 2017 SCC OnLine SC 1493: (2018) 2 SCC (Civ) 706 at page 696 held as under:

*“15. When we come to Section 9(3)(b), it is obvious that an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt can only be in a situation where the corporate debtor has not, within the period of 10 days, sent the requisite notice by way of reply to the operational creditor. In a case where such notice has, in fact, been sent in reply by the corporate debtor, obviously an affidavit to that effect cannot be given.”* (Emphasis Supplied)

Further, the Hon'ble NCLAT in *Sangeeta Goel v/s Roidec India Chemicals Pvt Ltd* [Judgment dated 17<sup>th</sup> March, 2020 in Company Appeal (AT)(Insolvency) No. 17 of 2020], held as follows:

*“15. .... Given the law laid down by Hon'ble Supreme Court in the abovementioned case, it is clear that only in a situation where the Corporate Debtor within 10 days of the receipt of demand notice, has not sent the reply to the Operational Creditor, then only, an affidavit to that effect can be submitted in terms of Section 9(3)(b) of the Code. But in a case where such notice has been sent, in reply to the demand notice by the Corporate Debtor 'an affidavit to that effect cannot be given'.”* (Emphasis Supplied)

Accordingly, we hold that it is not necessary that an affidavit under Section 9(3)(b) of the Code be filed in all cases. In cases where there are disputes raised in response to a notice under Section 8 of the Code, the creditor may refrain from filing such an affidavit and it is open to such a creditor to contend that the dispute so raised is a moonshine.

13. It is further contended by the Counsel for the Corporate Debtor that the present petition should be dismissed on the ground of pre-existing dispute as the Corporate Debtor had filed a suit bearing Suit No. 145/2022 (filing no. 441/2021) in the Court of Small Causes, Pune in respect of the licensed premises before the issuance of Demand Notice. Per contra, the learned Counsel for the Applicant controverted this fact by stating that the Applicant was not aware of the court proceedings as the Applicant came to know of the suit for the first time only when the Corporate Debtor gave a reply vide letter dated 17.03.2022 to the statutory Demand Notice dated 03.03.2022. The learned Counsel for the Applicant brought to our notice that neither the summons was served upon the Applicant nor the factum of suit was otherwise brought to the notice of the Applicant by the Corporate Debtor until the date of issuing statutory Demand Notice under Section 8 of the Code. Further, the Applicant has stated in its rejoinder that though the Suit was filed on 24.09.2021, it got registered only on 07.04.2022 which is after the Statutory Demand Notice dated 03.03.2022 received by the Corporate Debtor. The Applicant has further stated in its rejoinder that the Writ of Summons was served upon the Applicant on 21.05.2022 only after the suit was numbered or registered, which too is after the date of statutory Demand Notice. It is noticed that the facts placed on record by the Applicant in its rejoinder have not been controverted or denied

by the Corporate Debtor. Furthermore, it is noticed that the reliefs sought in the suit are as under:

*“Wherefore, the Plaintiff most humbly pray that this Hon’ble Court be pleased to pass judgement and decree against the Defendants for the following reliefs:*

- a. The Leave and License Agreement dated 30/11/2018 be declared as duly cancelled/terminated and Rescission of Leave and License Agreement may kindly be adjudged.*
- b. Mandatory injunction to allow the Plaintiff to enter the suit property and to take all its belongings more particularly described in para 13 hereinabove from the suit property.*
- c. Mandatory injunction to direct the Defendant to provide the bill as well a a detailed item wise statement of total investments in the project against Bill of Quantity duly certified by a Chartered Accountant.*
- d. Interim orders in terms of prayers (b) and (c) may kindly be passed.*
- e. Appropriate Compensation may be awarded to the Plaintiff.*
- f. Direct the Defendants to pay the cost of the legal proceedings.*
- g. Any other just and equitable order may kindly be passed.*

It is seen from the aforesaid prayers that the Corporate Debtor has not contested the liability to pay the license fees and no relief or mandatory injunction is sought with respect to the license fee, which is the subject matter of the claim of the Operational Creditor in the present Petition. Mere filing or pendency of a suit against the Operational Creditor cannot be construed as pre-existing dispute relating to the claim/debt. Since the suit filed by the Corporate Debtor against the Operational Creditor has no bearing or impact on the amount of license fees payable by the Corporate Debtor to the Operational Creditor, the same, in our considered view, does not amount to pre-existing dispute.

14. On perusal of working provided by the Applicant at Exhibit 'O' of the Application, it is evident that the Applicant has computed the simple interest on the arrears as per the contractual clause in the Leave and License Agreement executed between the parties herein and therefore, the interest on arrears of license fee also constitutes operational debt. As discussed hereinbefore, the invoices falling due in respect of which the default has been committed in the period covered by Section 10A cannot be considered for the purpose of initiating CIRP of the Corporate Debtor. However, even if the said invoices (including interest) of Rs. 87,41,818/- are excluded, then too the amount in default far exceeds the minimum threshold of Rs. 1 crore, as prescribed under Section 4 of the Code, to initiate CIRP of the Corporate Debtor. The Applicant has adjusted security deposit of Rs. 33,21,936/- towards the arrears of license fees, however, the Applicant has not provided invoice-wise bifurcation of such adjustment. Hence, we presume that the said deposit has been adjusted towards the invoices in chronological order and accordingly, the default committed by the Corporate Debtor in payment of license fees due and payable to the Operational Creditor amounts to Rs. 2,43,46,598/-. Even if the security deposit is adjusted otherwise, the amount of default far exceeds the minimum threshold of Rs. 1 crore. In any case, the present Application filed by the Applicant under Section 9 of the Code is well above the minimum threshold of Rs. 1 crore and thus, we conclude that the instant Application passes the muster of Section 4 of the Code.
15. No other contentions have been raised on behalf of the Corporate Debtor.

16. The invoices taken into consideration for the purpose of computing the default in payment of operational debt by the Corporate Debtor have been raised in the period from 01.04.2021 to 30.09.2021 which fell due between 08.04.2021 and 07.10.2021. As regards the license fees of Rs. 1,98,06,543/- for the unexpired period, the same fell due the moment Corporate Debtor addressed an email dated 06.09.2021 communicating its intent to vacate the licensed premises before 30<sup>th</sup> September, 2021. Since the present Petition/Application has been filed on 29.06.2022, which is within three years from the date of default, it is held to be within the period of limitation.
17. From the above discussion, it emerges that the Petitioner has established that the operational debt is due and payable to the Applicant/Operational Creditor and its default has been committed by the Corporate Debtor, and further that the present Application has been filed within the period of limitation as prescribed under Article 137 of the Schedule to the Limitation Act, 1963. Under the circumstances, this Adjudicating Authority is left with no option but to admit the application under Section 9 of the Code and order the initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. It is ordered accordingly in the following terms:

**ORDER**

- (a) The petition bearing **CP(IB)-867/MB/2022** filed by **ALLIANCE SPACES PRIVATE LIMITED**, the Operational Creditor, under Section 9 of the IBC, 2016 read with rule 6 of the Insolvency &

Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor M/s. **MAHARASHTRA BIO FERTILISERS (INDIA) PRIVATE LIMITED** [CIN: U24120MH2003PTC140320] is hereby **admitted**;

(b) There shall be a moratorium under Section 14 of the IBC, in regard to the following:

- (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium-

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended

or interrupted during the moratorium period;

- ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
  - (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
  - (f) **Ms. Sonu Gupta**, an Insolvency Professional having registration No. **IBBI/IPA-001/IP-P-02261/2021-2022/13534**, (email: [rpsonugupta@gmail.com](mailto:rpsonugupta@gmail.com)), is hereby appointed as **Interim Resolution Professional** to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
  - (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession

and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Operational Creditor shall deposit a sum of ₹ 1,00,000/- (Rupees One Lakh only) with the IRP towards the initial **CIRP costs** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

Sd/-

**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**