

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,**  
**HON'BLE TECHNICAL MEMBER**

**IA(IBC)No.298/JPR/2019**  
**& CP No. (IB)- 87/9/JPR/2018**

*(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:**

**MR. MAHENDRA KUMAR SHARMA**

73, Sahara Enclave, Thekra Road  
Borkhera, Kota, Rajasthan - 324001  
E-mail: [universus3000@gmail.com](mailto:universus3000@gmail.com)

**...Operational Creditor**

**VERSUS**

**SAMTEL GLASS LIMITED**

Regd. Office at: Village Naya  
Nohra, Tehsil Ladpura, District  
Kota, Rajasthan

*Through Satish Kumar Kaura*  
*(Managing Director)*

Samtel Glass Limited, 501,  
Corporate Duites, District Center,  
Jasola, New Delhi- 110025  
E-mail: [skkaura@samtelgroup.com](mailto:skkaura@samtelgroup.com)

**...Corporate Debtor**

**FOR PETITIONER (S) : Prabhansh Sharma, Adv.**  
**FOR RESPONDENT (S) : Abhishek Anand, Adv.**


**Order Pronounced On: 19.09.2023**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**




1. The Application has been filed by *Mr. Mahendra Kumar Sharma* ('Operational Creditor'/'Applicant') to initiate Corporate Insolvency Resolution Process ('CIRP') against *M/s Samtel Glass Limited* ('Corporate Debtor'), under Section 9 of the Insolvency and Bankruptcy Code ('IBC'/'Code'), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 alleging a default of Rs. 13,58,249/- (Rupees Thirteen Lakhs Fifty-Eight Thousand Two Hundred and Forty-Nine Only).
2. The Corporate Debtor is a Company incorporated on 24.07.1986 bearing CIN No. U26101RJ1986PLC008852 having registered office at Village Naya Nohra, Tehsil Ladpura, District Kota, Rajasthan. The details of the transactions leading to the filing of this application averred by the Applicant are as follows:
  - 2.1. The Corporate Debtor was involved in the business of producing quality products and for the same as many as 487 workmen were employed as permanent employees, apart from the hundreds of casual and contract workers. On 07.11.2012, the Corporate Debtor stopped its operations without any prior information, although the same has not been declared closure or laid off legally. The Applicant preferred notice to the Corporate Debtor and all concerned authorities against such illegal actions. It has been contended that the



Corporate Debtor had neither paid bonus since the year 2011-12; nor disbursed wages due to the Applicant since 2012; nor deposited PF with the concerned departments.

2.2. All of the workmen, including the Applicant, through their representative i.e. *Samtel Glass Works Samiti* demanded their dues time to time since November 2012. Owing to the demands and agitations of employees, the Additional District Magistrate (Kota) had organised a joint meeting of the Management Personnel of the Corporate Debtor with the Workers Representatives to solve the issues of the employees and the industry. Moreover, FIR was filed against the Management of the Corporate Debtor for not depositing the Provident Fund (P.F.) amount which was deducted from the monthly wages of the Workmen.

2.3. The matter was then put before the Labour Department of the Government of Rajasthan. The management of the Corporate Debtor could not reach an amicable settlement with the employees, hence, the dispute was referred to the Labour Tribunal, Kota for adjudication vide Notification dated 24.07.2013. During the pendency of the matter, the Management of the Corporate Debtor came forward with a settlement and mutual agreement took place on 14.03.2014. Taking the same on record, the Labour Tribunal, Kota



disposed the pending case by issuing Award on 20.03.2014 with the instructions to follow the Terms of the Mutual Settlement.

2.4. The Corporate Debtor failed to adhere to the terms of the mutual settlement and breached the agreement without any prior notice. Hence, the Applicant's representative approached the Labour Department, Government of Rajasthan by way of Application dated 15.10.2014 to take appropriate actions against the Company. The Additional Labour Commissioner/Labour Department, Government of Rajasthan sanctioned prosecution under Section 29 read with Section 34 of the Industrial Disputes Act, 1947 ('Act of 1947') *vide* Order dated 23.04.2015 against Nine (9) management personnel of the Corporate Debtor. The Chief Judicial Magistrate, Kota took appropriate action against the accused managerial personnel *vide* Order dated 16.09.2015 and the matter was pending adjudication at the time of filing this Application.

2.5. Meanwhile, the State Bank of India with other Banks and Financial Institutes approached the District Magistrate, Kota for recovery of their loans by preferring an Application under the SARFAESI Act, 2002. The Hon'ble District Magistrate, Kota ordered the attachment of the property of the Corporate Debtor *vide* Judgment dated 26.07.2016. Consequently, SBI invited tenders and received Rs. 19 Crores as advance amount.

2.6. Therefore, the Applicant preferred Demand Notice dated 14.09.2018 demanding full wages and statutory dues upto 31.08.2018 amounting to Rs. 13,58,249/- (Rupees Thirteen Lakhs Fifty-Eight Thousand Two Hundred and Forty-Nine Only). Moreover, it is mentioned that the Corporate Debtor has neither been declared closed nor declared lock-out, thereby entitling the workers/employees to full wages along with benefits.

2.7. The aforementioned details as reflected in Part IV of the Application are as follows:

**PART IV**

**PARTICULARS OF OPERATIONAL DEBT**

1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	Rs. 13,58,249/- (Rupees Thirteen Lakhs Fifty-Eight Thousand Two Hundred and Forty-Nine Only)  Date: 31.08.2018
2.	Amount claimed to be in default and the date on which the default occurred.	The total amount pending as mentioned in the computation table is Rs. 13,58,249/- (Rupees Thirteen Lakhs Fifty-Eight Thousand Two Hundred and Forty-Nine Only).*


*\* The Computation Table as mentioned by the Applicant is reiterated for reference:*



<b><u>Computation Table</u></b>			
<b><i>Mr. Mahendra Kumar Sharma</i></b>		<b><i>Employee Code–M01980</i></b>	
<b><i>Sr. No</i></b>	<b><i>Particular</i></b>	<b><i>Calculation</i></b>	<b><i>Amount (In Rupees)</i></b>
1.	<i>Upto 7<sup>th</sup> November 2012 Wage</i>	312582	<b>281818</b>
	<b><i>(Less)</i></b>		
	<i>Gratuity, Bonus etc. after deducting the 50% wage from 08 November 2012 to 11<sup>th</sup> April 2013</i>	30764	
2.	<i>From 8<sup>th</sup> November 2012 to 31<sup>st</sup> August 2018 i.e. 69 months &amp; 23 days (Calculation of 69 months @ 11758/- per month)</i>	811302	<b>821703.29</b>
	<b><i>(Plus)</i></b>		
	<i>Calculation of 23 days @ 11758/- per month or 452.23 Per Day)</i>	10401.29	
3.	<i>Bonus (8.33% Minimum)</i>	<i>31% of total wage Rs. (831703.29) (from 8<sup>th</sup> November to 31<sup>st</sup> August 2018)</i>	<b>254727.93</b>
	<i>Provident Fund (12%)</i>		
	<i>Gratuity (6.95%)</i>		
	<i>ESI (2.5%)</i>		
	<i>Other Benefits (Roughly 1.22%)</i>		
	<b><i>TOTAL (1+2+3)</i></b>		<b>1358249</b>
	<b><i>(Rupees Thirteen Lacks Fifty-Eight Thousand Two Hundred &amp; Forty-Nine Only)</i></b>		

3. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply vide Dairy No. 358/2019 dated 28.02.2019 averring as below:


3.1. The Corporate Debtor has questioned the invocation of jurisdiction of this Authority by submitting that for execution of an award passed by the Labour Tribunal, Kota dated 20.03.2014, the Applicant had the legal remedy to proceed for execution of the said award or for computation of dues/salary under Section 33C of the Act of 1947.



This Authority does not act as an executing court or recovery forum for the purposes of enforcing the award/settlement arrived at between the parties. Moreover, the Union already resorted to prosecution in case of breach of the award or settlement as provided under Section 29 read with Section 34 of the Act of 1947. The rights and liabilities regarding the payment of wages/dues/bonus etc has already been adjudicated by the Labour Court. Hence, the Applicant cannot be allowed to pursue two parallel remedies for the same cause of action.

3.2. Further, it was submitted that the present Application is barred by limitation under Section 238A of the Code of 2016. The Applicant is seeking payment of dues towards the salary/wages, Gratuity, Bonus etc from the year 2012 which is barred by the Law of Limitation. In the present case, the right to sue accrued in November 2012 i.e. when the payment of salary and other wages became due.


3.3. The Corporate Debtor contends that the Applicant is equally bound by the Settlement as the Corporate Debtor. It was mentioned under the settlement, that the salary/wages were payable in three instalments. The Corporate Debtor had already paid the first instalment of Rs. 95,00,000/- (Rupees Ninety-Five Lakhs Only) and the remaining 2 instalments were to be disbursed from the sale proceeds of the Corporate Debtor. However, the property could not



be sold due to stay orders granted by various forums which are enumerated below.

3.4. It has been alleged that in order to save the present application from delay and laches, the Applicant has referred to the dues from 08.11.2012 to 31.08.2018, whereas, the unit of the Corporate Debtor was declared as closed w.e.f. 11.04.2013 as per Section 25(O) of the Act of 1947. The act of the Applicant demanding payment of dues is not maintainable as the Corporate Debtor is not liable to make any payment after the unit has been closed down and the Union under the settlement had specifically considered this aspect and given up their claim towards salary/wages in future.


3.5. The Corporate Debtor has also described that since the year 1993-94, the property of the Corporate Debtor was mortgaged with the secured lenders (SBI, BOB, Canara Bank, RIICO and ICICI Bank) against financial assistance raised from time to time. Due to change in technology, the Corporate Debtor faced huge financial crunch resulting in reduced operations. Thereafter, the Corporate Debtor entered into a short joint venture association with *M/s Videocon Industries Ltd* allowing *Videocon* to take over the entire charge of running the Kota Plant; the manufacturing operations were re-started by the end of February 2012. Later *Videocon* withdrew support from running the entire manufacturing



activity which resulted in halt of the entire business activity of the Corporate Debtor 07.11.2012 onwards.

3.6. Consequently, a letter was preferred by the Corporate Debtor dated 06.11.2012 to the Joint Labour Commissioner, Kota informing about the abovesaid closure and information was put up on the notice board of the Factory on 16.11.2012. An application was also preferred to the State Government, Labour Department and Labour Commissioner under Section 25(O) of the Act of 1947 for closure of the Factory. Reference of the Application was given in Letter dated 21.01.2023 preferred by the Corporate Debtor. The Corporate Debtor relies on Section 25(O)(3) to submit that in case the appropriate government does not decide the pending application within a period of 60 days, then pending application is deemed to have been granted and Unit is considered closed. Hence, the Unit of the Corporate Debtor is deemed to have been closed w.e.f. 14.04.2013. Reference of the closure has been made by Additional Labour Commissioner and Secretary, Labour Department in respective letters dated 14.11.2014 and 17.11.2014.


3.7. In response to the FIR filed by the Representatives of the Applicant, it has been stated that the accused preferred a *Criminal Miscellaneous Petition* numbered as 263/2013 titled as “*Satish Kaura vs. State of Rajasthan*” for quashing the FIR registered for not



depositing the PF. The Hon'ble High Court stayed further proceedings in the FIR vide Order dated 05.02.2013. Also, the Hon'ble High Court vide order dated 09.02.2016 passed in *Criminal Misc. Petition No.6759/2015* titled as *Satish Kumar Kaura & Ors vs. State of Rajasthan* stayed the criminal proceedings initiated by the Chief Judicial Magistrate vide order dated 16.09.2015.


3.8. It has also been stated that due to non-payment of debt to the lenders, the Corporate Debtor's account was declared as NPA and thereafter, the secured creditors took action under Section 13(2) of SARFAESI, 2002. District Magistrate, Kota allowed the secured Creditors to take physical possession of the mortgaged assets vide Order dated 26.07.2016. Thereafter, SBI issued public notice on 11.07.2016 and invited tenders by e-auction on 19.08.2016. The auction was challenged by way of Writ Petition numbered as *S.B.Civil Writ Petition No. 11302/2016* titled as *Samtel Color Ltd vs. State Bank of India & Anr.* and subsequently stayed vide Order dated 26.08.2016. The matter was finally disposed off vide Order dated 17.10.2016 wherein the interim protection was extended for three weeks with the liberty to the Corporate Debtor to file Application under Section 17 of SARFAESI, 2002 before the DRT.

3.9. Later, the property was auctioned wherein the bid offer was received amounting to Rs. 19 Crores but before the confirmation of sale, the



Corporate Debtor offered a One Time Settlement ('OTS') to the consortium of banks which was duly accepted by SBI. Against this, the auction purchaser i.e. *M/s Shree Developers* filed a Writ Petition before the Hon'ble High Court in *S.B.Civil Writ Petition No. 22939/2017* which was dismissed vide Order dated 19.01.2018. The dismissal was challenged by the auction purchaser in *D.B. Special Appeal Writ No. 269 / 2018* titled as *Shree Developers vs. State Bank of India & Ors.* wherein the Hon'ble Division Bench vide Order dated 26.02.2018 passed an order to maintain status-quo. Due to pendency of the Appeal, the Corporate Debtor despite its best efforts, has not been able to undertake the sale of the property and make the payment of dues/salary of the employees.


- 3.10. The Corporate Debtor has also contended that in pursuance of the settlement made, the Corporate Debtor made a payment of the first instalment amounting to Rs. 95,00,000/- (Rupees Ninety-Five Crores Only) on or before the month of July 2014. The payment of the other 2 instalment was to be paid from the sale proceeds of the unit which was due to be auctioned.
4. The Applicant preferred a Rejoinder vide Diary No. 672/2019 dated 18.04.2019 contending as below:
- 4.1. The Corporate Debtor suddenly stopped its operations on 07.11.2012 without any prior notice to the Workmen or the Employees and the



Applicant on account of being a Permanent Workmen suffered immensely. The functions were neither considered closed nor laid off in terms of the provisions of the Act of 1947 and the Application for seeking permission for closure was filed dated 09.02.2013 which was neither considered within 60 days nor permission was granted for closure as per Section 25(O) of the Act of 1947.


4.2. Moreover, the pending dues of the Applicant are in the continuous course and fall under the ambit of “*Recurring cause of Action*”. Hence, Corporate Debtor is in recurring “Default” as per Section 3(12) of the Code. Also, the Applicant submits that the Application is not barred by the Limitation Act on account of various precedents of the Hon’ble NCLT and NCLAT stating that limitation to file the Application is to start from the date of inception of this Code i.e. 2016.


4.3. The Corporate Debtor neither declared retrenchment nor closure of the unit leaving the workmen with no clue whatsoever. The date of closure also was never clear. There was also no specified date with respect to the closure of the unit of the Corporate Debtor. In the Settlement, it was mentioned as 30.06.2013 in the name of ESI benefits whereas the Corporate Debtor has assumed another date i.e. 14.04.2013. Also on the date of reference i.e. 24.07.2013, there was no closure as per the terms of the Act of 1947. The Settlement also



does not mention any cut-off date. Hence, all the workers are entitled to get full wages and all benefits as they are in continued services till their retirement age.


- 4.4. It has further been mentioned that the settlement took place under circumstances when the workmen were facing acute financial crisis and more than a dozen workmen faced inappropriate death due to unexpected crisis. Further, the Applicant submits that the settlement is against the law and opposes Public Policy as the Employer and Workmen decided the issue of lockout/closure of the establishment which are binding with the rules of the Act of 1947 and Workman Compensation Act 1923. Mutual Settlement cannot surpass the law and rules, hence the settlement agreement is null and void.
- 4.5. Further, the Applicant submits that the Corporate Debtor was able to arrange a huge amount of money in the year 2017 for OTS with Banks and Financial Institutions dated 26.09.2017 without selling the immovable property. On the other hand, the Corporate Debtor has no intention to clear the dues of the workmen and the settlement with the workmen was only to divert the workers with a pre-planned scheme. Hence, the Applicant was left with no other remedy but to proceed against the Corporate Debtor under the clutches of the Insolvency and Bankruptcy Code.

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5. This Authority vide Order dated 10.05.2019 directed the Corporate Debtor to ensure presence of one of the Directors which was duly complied with. This Court vide Order dated 23.05.2019 recorded the presence of Mr. Satish Koura, the director of the Corporate Debtor and recorded the submission that that matter in connection with the property of the Corporate Debtor is pending before the Hon'ble High Court of Rajasthan at Jaipur and is listed for final hearing on 19.07.2019. Also, it was agreed that settlement was arrived at with the workers and employees and that the payable dues will be settled after the disposal of the immovable property which is subject-matter before the Hon'ble High Court of Rajasthan at Jaipur. Also, it was stated that as soon as the order from the High Court of Rajasthan is received, immediately the dues of the workers for settlement will be considered.
  6. An Additional Affidavit was preferred in pursuance to the abovesaid presence vide Diary No. 1000/2019 dated 31.05.2019. In the Affidavit, it has been mentioned that the immovable property situated in Kota is presently the subject matter of pending litigation in *Special Appeal Writ No. 269/2018* before the Hon'ble High Court of Rajasthan. It was also submitted that the dues of the workmen are determined under the award dated 20.03.2014 and shall be paid to them out of the sale proceeds within a period of 6 months from the date of sale of the said immovable property subject to the final decision of the Hon'ble High Court. The Affidavit also




states that as per the Award dated 20.03.2014, the payment of dues were to be made out of the sale proceeds of its immovable property and the same is binding on the parties to the case.

7. The Applicant filed a Counter Affidavit vide Diary No. 1525/2019 dated 08.08.2019 stating that on 14.03.2014 and even subsequently, the Corporate Debtor had sufficient funds and it distributed interest free loan of Crores of Rupees to its sister concerns/closely held companies, the details of which are available in the Balance Sheet annexed with the Affidavit. A letter dated 13.08.2015 has been annexed with the Counter Affidavit wherein it is mentioned that owing to shortage of funds, the Corporate Debtor has not been able to disburse the payment to the Workmen and it was decided that the due payment of workers shall be paid with interest by the union of provident fund, the maximum interest rate will be 8.5% which will be paid from 1<sup>st</sup> January 2015, the interest will be calculated till the date of its final payment.
8. The Corporate Debtor moved an Interlocutory Application bearing *IA No.298/JPR/2019* vide Diary No. 1852/2019 dated 11.09.2019 seeking condonation of delay in filing reply to the Counter Affidavit. In the reply to the Counter Affidavit, filed vide Diary No. 1853/2019 dated 11.09.2019, the Corporate Debtor has contended that the Award dated 20.03.2014 is binding upon the parties and the payment of dues is to be made out of the sale proceeds of the immovable property situated in Kota.



The Director of the Corporate Debtor denied signing the letter dated 13.08.2015. Moreover, the payments made by the Corporate Debtor reflected in the Balance Sheet were also explained while denying disbursement of interest free loan to other companies.

9. This Authority had vide Order dated 25.04.2022 directed the Corporate Debtor to submit all documents with regard to the matter pending before the Hon'ble High Court of Rajasthan. Compliance of the same was done vide Diary No. 2193/2022 dated 21.07.2022.
10. The Parties were further directed vide Order dated 06.12.2022 to file an Affidavit with regard to the amount due in respect of the Awards passed by the Labour Tribunal. The Applicant has filed an Affidavit annexing the Copy of the Award passed by the Labour Tribunal dated 20.03.2014 along with the calculation sheet vide Diary No. 686/2023 dated 16.03.2023. The Calculation Sheet mentions a total of Rs. 6,45,348.28/- (Rupees Six Lakhs Forty-Five Thousand Three Hundred Forty-Eight and Twenty Eight Paise) which includes settlement amount of Rs. 3,40,986/- (Rupees Three Lakhs Forty Thousand Nine Hundred and Eighty-Six Only) along with interest from January, 2015 to January, 2023 of Rs. 3,05,362.28/- (Rupees Three Lakhs Five Thousand Three Hundred and Sixty-Two and Twenty-Eight Paise). The Corporate Debtor filed an Affidavit vide Diary No. 707/2023 dated 20.03.2023 wherein it has reiterated the points taken in the Reply and submitted that the no amount is pending and due against




the Applicant. Reply Affidavit was also preferred by the Corporate Debtor vide Diary No. 862/2023 dated 03.04.2023 wherein it is mentioned that in accordance with the Settlement Agreement the Corporate Debtor had agreed to pay the settlement amount of INR 3,12,582/- (Rupees Three Lakhs Twelve Thousand Five Hundred and Eighty-Two Only) and the Corporate Debtor has made a payment of INR 28,404/- (Rupees Twenty-Eight Thousand Four Hundred and Four Only) to the Operational Creditor in July, 2014.

11. The Applicant has filed its Written Submissions vide Diary No. 1892/2023 dated 04.08.2023 wherein the settlement amount to be paid by the Corporate Debtor has been classified as below:

- 11.1. Complete Salary to the Employees from 01.10.2013 to 07.11.2012 along with;
- 11.2. Bonus for the period 2011-12 and 2012-13 @ 8.33% of the Salary;
- 11.3. Gratuity to be calculated on the basis of 11.04.2013 and paid accordingly;
- 11.4. Provident Fund and ESI to be paid as per norms;
- 11.5. 50% of the Salary from 08.11.2012 to 11.04.2013;


In relation to the same a Salary Slip was placed on record with the Application which states that the amount payable is Rs. 3,40,986/- (Rupees Three Lakhs Forty Thousand Nine Hundred and Eighty-Six Only).

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12. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder, written submissions and the documents enclosed with the application.
  13. There are multiple questions which need answers for determining whether this is a case in which CIRP against the Corporate Debtor can be initiated on the basis of an Operational Debt owed to the Operational Creditor and has become due and payable. Moreover, the existence of dispute, if any, between the parties also has to be determined so as to conclude the fulfilment of ingredients under Section 9 of the Code.
  14. First and foremost, we examine the multiplicity of litigation which is pending adjudication between the parties herein. It is apparent that certain applications were preferred by the *Samtel Glass Works Samiti* against the Corporate Debtor or its officials including multiple FIRs lodged against the Company Personnel/Management. The Applicant along with other employees through their representative i.e. *Samtel Glass Works Samiti* had demanded their dues on account of abrupt closure of the Factory.
  15. Initially, on account of the closure of the factory unit of the Corporate Debtor, the ADM, Kota organised a joint meeting of Management of the Corporate Debtor with that of the Workers Union to arrive at a settlement. On failure of outcome, the matter was referred to the Labour Department of Government of Rajasthan. The Department then referred the matter to the Labour Tribunal, Kota (Rajasthan) vide Letter/notification dated

24.07.2013. In the meantime, a mutual agreement took place between the parties on 14.03.2014 and on the basis of the same, an award was passed by the Labour Tribunal on 20.03.2014. The Award passed by the Labour Tribunal, Kota disposed off the matter and recorded the terms of the agreement in the Award dated 20.03.2014. The relevant excerpts of the Award enunciating some of the terms of the mutually decided agreement are as follows:

*The conditions of the settlement referred to by the parties in this compromise/settlement are as under:-*


- (1) *That as per List (1) which contains name of total 473 workmen shall be deemed as terminated from service due to closure of the establishment on 11.4.2013 and closure of the establishment shall be deemed final and complete.*
- (2) *That workmen would be lawfully entitled for acquired salary from 1 October 2012 to 7 November 2012 and after deducting statutory deductions the same shall be paid to them within 45 days from the date of settlement by selling the picture tubes/finished goods. Both the parties will extend cooperation each other in disposing of picture tubes. Employer shall be responsible to sell tubes. The selected authorised representative will obtain signature on individual settlement and consent from each workmen. Hence 15 March 2014 shall be termed as date of payment though the employer will try to make payment of salary from October 2012 to 7 November 2012 within 45 days.*
- (3) *The workmen shall be paid bonus @8.33% (Eight Decimal Thirty Three Percent) for the financial year 2011-12 and 2012-13.*
- (4) *That the workmen shall be entitled for compensation under Section 25(O) 8 of the Industrial Disputes Act which shall be equivalent to salary of fifteen days on one year complete service.*

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- (5) *That the workmen whose services have been terminated out of which those who are entitled for payment of gratuity as per Gratuity Payment Act, 1972 shall be paid gratuity. Calculation of the gratuity shall be made on the basis of rate of wages on 11 April 2013.*
- (6) *That period from 7.11.2012 to 11.4.2013 shall be termed as without salary leave (without CL and EL)*
- (7) *That besides above the workmen shall be paid amount equivalent to one month's salary and salary @50% for the period from 8 November 2012 to 11 April 2013. Both the said amount shall be termed as settlement amount. That the settlement is being entered in very difficult and critical situation, owing to closure both the parties are very hurt, at one side payment of due amount/amount agreed under this settlement is necessarily to be made to the workmen shortly and on other hand the Management has no fund for the said payment. **Requisite fund can be arranged from selling the property only.** The employer will try their level best to make payment from October 12 to 7 November 2012 to the workmen before 30 April 2014 and 80% of aggregate settlement amount before October 2014 and balance 20% before December 2014. The payment of salary of the aforesaid period October 12 and 7 November 12 would be possible from the consideration received from raw material/semifinished such as anode budget, 20 inch glass tube, cullet, soda ash, platinum steel, scrape etc. of Samtel Color Limited and Samtel Glass for which by entering a separate settlement with their workmen process of making the picture tube salable and its selling is going-on. Workmen of Samtel Glass Limited assures that will not obstruct in the aforesaid work of Samtel Colour and Samtel Glass and will extend full cooperation.*
- That apart from the above workmen shall be paid Ex-gratia amount equivalent to 15 days salary. ... ..*
- (8) .....
- (9) .....
- (10) *That whatever dispute and claim pertaining to service is pending between both the parties elsewhere the all are being*

*disposed off fully and finally under this settlement with this condition that complete payment of all the workmen shall be made by the Employer till November 2014.*


(11) .....

16. Thereafter, when the Corporate Debtor breached the settlement arrived at between the parties, the Addl. Labour Commissioner/ Labour Department, Government of Rajasthan issued an Order dated 23.04.2015 under Section 29 of the Industrial Disputes Act, 1947 to proceed further with criminal actions against *Mr. Satish K. Kaura* (CMD) and 8 other officials of the Corporate Debtor. The Chief Judicial Magistrate, Kota exercised power and consequently a criminal proceedings for the breach of mutual settlements were initiated. The accused preferred a Petition numbered as *Criminal Miscellaneous Petition No. 6759/2015* titled as *Satish K Kaura & Ors vs. State of Rajasthan* before the Rajasthan High Court wherein the Criminal Proceedings initiated by the CJM, Kota have been stayed.
17. Another FIR was filed against the Management personnel (Mr. Satish K Kaura and Ors.) of the Corporate Debtor for non-depositing the Provident Fund amount which was deducted from the monthly wages of the workmen. The accused preferred a Petition numbered as *Criminal Miscellaneous Petition No. 263/2013* titled as *Satish Kumar Kaura & Ors vs. State of Rajasthan* before the Rajasthan High Court wherein the Criminal Proceedings initiated by the CJM, Kota have been stayed. It is



noted that the FIRs filed against the management of the Corporate Debtor are separate from the present matter. The FIR was filed so as to report the violative acts of the management of the Corporate Debtor in not submitting the PF and not complying with the terms of the Mutual Settlement.

18. Thereon, the State Bank of India ('SBI') with other Banks and Financial Institutes approached the District Magistrate, Kota for the Recovery of their Loans by an Application under SARFEAESI, 2002. Pursuant to the decision, SBI invited Tenders by E-Auction on 19.08.2016 and received about Rs. 19 Crores as advance towards the sale proceeds of the property of the Corporate Debtor. The Auction was challenged before the Hon'ble High Court of Rajasthan wherein at first interim protection was granted and later, at the time of final disposal of the matter, the interim protection was extended for three weeks with the liberty to the Corporate Debtor to file Application under Section 17 of SARFAESI, 2002 before the DRT.
19. Subsequently, when the property was auctioned and bid offer amounting to Rs. 19 Crores was received, the bank accepted the OTS offered by the Corporate Debtor. This act of the bank was challenged by the Auction Purchaser before the Hon'ble High Court of Judicature of Rajasthan, but the same was dismissed. This dismissal was challenged by way of *Special Appeal Writ No. 269/2019* wherein order of status quo on 26.02.2018 has been passed. The same has been verified from the website of the Hon'ble



High Court of Rajasthan that the *Special Appeal Writ* is pending adjudication.

20. Now that we know about the pending litigations mentioned in the matter, we move on to the contentions of the parties in the case. To determine whether there exists a case to initiate CIRP, we have to determine whether there exists a valid debt which has become due and payable and is free from any dispute. First, when we talk about the existence of a valid debt. It is an admitted fact that on 07.11.2012, the factory of the Corporate Debtor discontinued its operations and dispute arose amongst the Workers and the Corporate Debtor. The dispute was referred to the Labour Tribunal and in the meantime, the Applicant through *Samtel Glass Works Samiti*, entered into a Settlement with the Corporate Debtor wherein the Workers agreed upon payment uptill 11.04.2013. It was on the basis of the Mutual Understanding between the parties that the Labour Tribunal passed the award on 20.03.2014 while recording the terms of the Settlement as reiterated above. Hence, it is clear that the parties to the case had entered into a settlement agreement wherein the Corporate Debtor acknowledged to pay the outstanding dues of the Workmen.
21. Decree means the formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. The Labour Tribunal on 20.03.2014 passed an award on the basis of mutual agreement arrived at

between the parties, thereby adjudicating upon the final rights of the parties to the case. Hence, it has attained finality and is binding on the parties to the case. The objection to the award by the Applicant is not tenable under law as it failed to challenge the validity of the same before any Court of Law.

22. The Hon'ble NCLAT in the matter of *Ugro Capital Ltd v. Bangalore Dehydration and Drying, Company Appeal (AT) (Insolvency) No. 984 of 2019* has observed as below:


*“Since the definition of word creditor in I&B Code includes decreeholder, therefore if a petition is filed for the realisation of decretal amount, then it cannot be dismissed on the ground that applicant should have taken steps for filing execution case in Civil Court.”*

23. Along with the same, the NCLAT in the matter of *Sushil Ansal vs. Ashok Tripathi & Ors 2020 SCC OnLine NCLAT 680* has observed that “A ‘decree-holder’ is undoubtedly covered by the definition of ‘Creditor’ under Section 3(10) of the ‘I&B Code’ but would not fall within the class of creditors classified as ‘Financial Creditor’ unless the debt was disbursed against the consideration for time value of money or falls within any of the clauses thereof as the definition of ‘financial debt’ is inclusive in character.”
24. The Applicant is a decree holder and therefore, cannot be excluded from the definition of Creditor under Section 3(10) of the Code. The Judgment of Hon'ble NCLAT in the matter of *Ashok Agarwal vs. Amitex Polymers*




Pvt Ltd 2021 SCC Online NCLAT 49 states that, “3. *Section 3(10) of The Insolvency and Bankruptcy Code 2016 defines ‘Creditor’ and even in the said definition a ‘Decree Holder’ cannot be excluded to file an Application under the Code. Going by the definition 3(10) of ‘Creditor’, it includes ‘Financial Creditor’, ‘Operational Creditor’.*” There is no bar on relying on an award or any decree to establish an Operational Debt. The earlier Mutual Settlement dated 14.03.2014 and subsequent decree dated 20.03.2014 clarify the nature of the debt as Workmen dues which will be, for the purposes of this Application, be considered as an Operational Debt under Section 9 of the Code and the Applicant as an Operational Creditor. Hence, in light of the aforementioned judgments read along with the ratio laid down by the Hon’ble Supreme Court in *Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr., Civil Appeal No.1650 Of 2020*, it is safe to presume that a claim can be based upon a decree/award.

25. Since, it has been established that the claim of the Applicant is based upon the decree passed by the Labour Tribunal dated 20.03.2014, the second question which arises is whether this Operational Debt has become due and payable. It is seen that the under the Terms of the Settlement, the Corporate Debtor had undertaken to make the complete payment before December 2014 (*Payment from October, 2012 to 07.11.2012 to the workmen before 30.04.2014 and 80% aggregate settlement amount before*




*October 2014 and balance 20% before December 2014*). It is pertinent to note that the debt became due and payable from the date of the Award itself i.e. 20.03.2014 and keeping in mind the payment schedule, the Corporate Debtor ought to have made the complete payment of the Applicant by the end of December 2014. From the records, it is seen that the Corporate Debtor had made the payment of the first instalment amounting to Rs. 95,00,000/- (Rupees Ninety-Five Lakhs Only) due to all the workmen including the Applicant on or before the month of July 2014, which has been acknowledged by the Applicant herein. The second instalment, as per the Corporate Debtor's statement was payable from the sale proceeds of the property of the Corporate Debtor which has been subject of various litigations.

26. The clause which is time and again relied upon for the payment of the 2<sup>nd</sup> instalment is clause (7) of the Award dated 20.03.2014 wherein it is mentioned that on account of lack of funds in the Corporate Debtor, the *“Requisite fund can be arranged from selling the property only”*. Therefore, the amount due to the Workmen was liable to be paid from the sale proceeds of the property of the Corporate Debtor. The Director of the Corporate Debtor has also undertaken in affidavit as well as in open court that the dues of the workmen shall be disbursed from the sale of the property which is currently the subject matter of the litigation pending before the Hon'ble High Court of Rajasthan.




27. The District Magistrate, Kota allowed the secured creditors to take possession of the property of the Corporate Debtor vide Order dated 26.07.2016 and subsequently, SBI issued public notice for inviting tenders by e-auction. The auction was challenged before the Hon'ble High Court of Rajasthan and interim protection was granted on 26.08.2016. Thereafter, the Hon'ble High Court vide Order dated 17.10.2016 finally disposed off the matter. Later, the property was auctioned and Rs. 19 Crores was received as advance towards the sale proceeds of the property of the Corporate Debtor but the Bank entered into OTS with the Corporate Debtor and the Auction Purchaser challenged the same through a Writ which was dismissed vide Order dated 19.01.2018. The order for dismissal was challenged before Division bench wherein the Order for maintaining the status quo was passed on 26.02.2018 which is still in existence.

28. The Corporate Debtor has time and again mentioned that the wages of the workmen including the Applicant shall be paid from the the requisite funds arranged from the sale of the property of the Corporate Debtor. The mutual agreement was dated 14.03.2014 and subsequently the award of the Labour Tribunal was passed on 20.03.2014. As seen above, the property has been a subject matter of various litigations starting from taking over the possession by the Bank vide order dated 26.07.2016 to the order of maintaining status quo dated 26.02.2018 which is still in




existence. Therefore, the Corporate Debtor has not been able to conduct sale of the property. The clause was inserted with the intention to ensure that the dues of the Workmen are disbursed from the Sale of the Property of the Corporate Debtor. In the present matter, while reading the Award arrived on the basis of the Settlement in its entirety, it is clear that time is not the essence herein. Since, the parties herein had not decided on a timeline, the debt is continuous till the payment from the sale proceeds of the property of the Corporate Debtor is disbursed to satisfy the dues of the Applicant and other workmen. The Corporate Debtor after the Award had admittedly disbursed the first instalment on or before July 2014 and thereafter the second instalment could not be disbursed as the property has been a subject matter of various litigations. Moreover, time and again the Corporate Debtor has admitted that the payment of the remaining sum was to be made from the sale proceeds of the Property of the Corporate Debtor.

29. Furthermore, the Corporate Debtor vide letter dated 13.08.2015 acknowledged that as soon as the Corporate Debtor is able to arrange funds, the same shall be disbursed against the debt of the Applicant and the interest will be calculated till the date of its final payment. This is a clear indication towards the arrangement of funds from the sale proceeds of the property of the Corporate Debtor. The Corporate Debtor has always maintained a stand that the debt will be paid to the Applicant upon receipt of money. It appears that the act of the Corporate Debtor in arranging the



funds is proportional to the sale of the property i.e. when the property is subject matter of auction, suddenly the funds are arranged by the Corporate Debtor to allow for settlement with the Banks whereas when the Property is subject matter of litigation and stay is in operation, the Corporate Debtor has no funds to settle the dues of the Applicant. Owing to the acknowledgement vide letter dated 13.08.2015 along with the continuous admission of the debt of the Corporate Debtor towards the Applicant, it is pertinent to note that the claim of the Applicant cannot be dismissed on the ground of limitation as sought by the Corporate Debtor. The right to sue accrued at the time of passing of the Award dated 20.03.2014 and has continued since the sale of the immovable property has not been conducted on account of stay by the Hon'ble High Court of Rajasthan dated 26.02.2018. Moreover, the Corporate Debtor has time and again acknowledged its liability towards the dues of the Workmen either via letter dated 13.08.2015, Statement in Open Court or the undertaking filed pursuant to the Statement in Open Court.

30. The Corporate Debtor on one hand has acknowledged that the debt owed to the Applicant and other workmen will be disbursed out of the sale proceeds of the property of the Corporate Debtor whereas on the other hand it is contending that the Applicant has been filed after the litigation period has concluded. It seems that the Corporate Debtor is trying to blow hot and cold at the same time. The Corporate Debtor did not conduct sale




of the immovable property within time to pay its dues to the Workmen and now when the property is subject matter of litigation, it is trying to get away by contending that the Application has been filed after the limitation period concluded. The relevant part of the undertaking is being produced hereunder:

*“6. That the said immovable property of the Corporate Debtor is situated at Kota and is presently the subject matter of the pending Special Appeal Writ No. 269/2018 before the Hon’ble High Court Rajasthan, Bench Jaipur. The Hon’ble High Court has passed an order of Status quo regarding the said immovable property on account of which the Corporate debtor is not able to sell the property and make payment of dues of the applicants. The matter is being listed before the Hon’ble High Court for final hearing on 19.07.2019.*


*7. that the undersigned submits that the dues of the applicants/workman, who are present before the Hon’ble Tribunal, as determined under the award dated 20/03/2014 shall be paid within a period of six months from the date of sale of the said immovable property subject to final decision of the Hon’ble High Court in pending appeal.”*

31. The Corporate Debtor has contended that the present petition is barred by limitation as the wages were demanded till 07.11.2012 and the petition was filed after the expiration of the right to sue accrued and since the Applicant has already exhausted its remedy before the Labour Tribunal, it shall not be eligible to pursue its case here. With every contention, the Corporate Debtor is trying to negate the claim of the Applicant while mentioning that the parties to the settlement are bound by it. The contention that the right to sue accrue in November 2012 is invalidated



with the fact that the parties to the case had entered into a mutually agreed upon settlement wherein the Corporate Debtor itself agreed to pay the dues of the Workers including the Applicant. Moreover, any contention challenging the Award dated 20.03.2014 does not hold ground as there is no challenge to the Award passed by the Labour Tribunal on the basis of the Settlement Agreement.

32. With respect to the quantum of claim it is observed that at first the Applicant in PART IV of the Application mentioned an amount of Rs. 13,58,249/- (Rupees Thirteen Lakhs Fifty-Eight Thousand Two Hundred and Forty-Nine Only) as total amount pending whereas from the Salary Slip, annexed at Page 67 of the Application, it is apparent that the amount payable to the Applicant was Rs. 3,40,986/- (Rupees Three Lakhs Firty Thousand Nine Hundred and Eighty-Six Only). Thereafter, it was clarified in subsequent Affidavit that the Applicant was liable to be paid Rs.6,45,348.28/- (Rupees Six Lakhs Forty-Five Thousand Three Hundred Forty-Eight and Twenty Eight Paise) which included the principal amount of Rs. 3,40,986/- (Rupees Three Lakhs Forty Thousand Nine Hundred and Eighty-Six Only) along with interest. Later, the Corporate Debtor clarified that a payment of Rs. 28,404/- (Rupees was already disbursed to the Applicant in July 2014. Hence, it is clear that the amount payable by the Corporate Debtor to the Applicant is Rs. 3,12,582/- (Rupees Three Lakhs Twelve Thousand Five Hundred and Eighty-Two Only) along with



interest from the date of the Labour Tribunal Award dated 20.03.2014 till final payment date. Even though the Corporate Debtor has denied signing the letter dated 13.08.2015, it has failed to provide any evidence to substantiate its contention.

33. With regard to the fact of undisputed debt, it is observed that the Corporate Debtor has time and again acknowledged the payment due to the Workmen and no challenge to the Labour Tribunal Award dated 20.03.2014 has been made. There is no dispute as to the outstanding liability of the Corporate Debtor towards the Operational Creditor. The contentions raised by the Corporate Debtor stating that no money is due to the Applicant fall short of proof.
34. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as follows: -

*“34. 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 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 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. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

35. Therefore, to initiate CIRP in the present matter the conditions have to be satisfied. At this juncture it is also important to quote the judgment of the Hon’ble Supreme Court in *M/s S.S. Engineers & Ors. vs. Hindustan Petroleum Corporation Limited*, which reads as follows:


*“32. .... On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”*

36. It has very well been established that under Section 9 of the Code, to initiate CIRP proceedings, the Applicant is required to prove that the debt is due, it has not been paid and the debt is an undisputed debt. We are of the view that in the present matter, all the ingredients laid out under Section 9 are fulfilled.
37. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional (‘IRP’) but it is not obliged to do so. In the instant case, the Operational Creditor has not proposed that any



person may be appointed as IRP. Hence, this bench can appoint the RP from the pool of RPs empanelled with the IBBI.

38. In view of this Mr. Jai Prakash Rawat, duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-001/IP-P-01969/2020-2021/13039 (email: [ipjprawat@gmail.com](mailto:ipjprawat@gmail.com)), is hereby appointed as the IRP. The said IRP is directed to file her written consent to act as a resolution professional in Form-2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.
39. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder. It is directed to the Interim Resolution Professional /Resolution Professional to check the genuineness of the claim while admitting the operational dues of the Applicant.
40. Consequences of initiation of CIRP shall be inter-alia as follows:
- 40.1. The IRP appointed by the Adjudicating Authority, *Mr. Jai Prakash Rawat*, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by her under the provisions of Code including issue of publication in



widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.

40.2. Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.

40.3. The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray her expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.



- 40.4. In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.
41. Accordingly, CP No. (IB)-87/9/JPR/2018 is admitted. In view of the foregoing pending applications, if any, shall stand disposed off.
42. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the parties along with the RP nominated herein.

**-Sd-**  
**DEEP CHANDRA JOSHI,**  
**JUDICIAL MEMBER**

**-Sd-**  
**ATUL CHATURVEDI,**  
**TECHNICAL MEMBER**