NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 649 of 2024

IN THE MATTER OF:

Leo Creations Pvt. Ltd. **...Appellant**

Versus

ASR Logistics India Pvt. Ltd. **...Respondent**

Present:

For Appellant	:	**Mr. Akhil Krishan Maggu, Ms. Oshin Maggu & Mr. Aryan Nagpal, Advocates.**
For Respondent	:	**Mr. Mohil Chaudhary, Mr. Raghav Dikshit & Mr. Nakshtra Shandilya, for R-1.** **Mr. Rishi Singhal, Mr. Anurag Goel, for R-2/ IRP.**

O R D E R
(Hybrid Mode)

[Per : Justice Rakesh Kumar Jain (Oral)]

21.07.2025 This appeal is directed against the order dated 08.03.2024 by which an application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (‘**Code**’) by Respondent No. 1 against the Corporate Debtor, namely, M/s Leo Creations Pvt. Ltd. for the resolution of an amount of Rs. 6,47,780/- along with 18% interest per annum has been admitted.

2. In brief, the application under Section 9 was filed by the Operational Creditor after the notice was issued under Section 8 of the Code on 31.10.2018. According to the Operation Creditor, the Corporate Debtor was liable to pay a sum of Rs. 13,97,780/- on the basis of 10 invoices which was raised for the period between 13.07.2016 to 31.10.2018. The said invoices are reproduced as under :-

Sl. No.	Invoice No.	Invoice Date	Invoice Due Date	3 Years Limitation
1.	ASR/DEL/FF/0106	13.07.2016	20.07.2016	20.07.2019
2.	ASR/DEL/FF/149	17.08.2016	24.08.2016	24.08.2019
3.	ASR/DEL/FF/148	17.08.2016	24.08.2016	24.08.2019
4.	ASR/DEL/FF/198	09.09.2016	16.09.2016	16.09.2019
5.	ASR/DEL/FF/197	09.09.2016	16.09.2016	16.09.2019
6.	ASR/DEL/FF/230	20.10.2016	27.10.2016	27.10.2019
7.	ASR/DEL/FF/246	31.10.2016	07.11.2016	07.11.2019
8.	ASR/DEL/FF/247	31.10.2016	07.11.2016	07.11.2019
9.	ASR/DEL/FF/248	31.10.2016	07.11.2016	07.11.2019
10.	CHA Bill No. 2	31.10.2016	07.11.2016	07.11.2019

3. Learned Tribunal has found that the Corporate Debtor has already paid Rs. 7,50,000/- out of Rs. 13,97,780/-, therefore, the application was filed by the Operational Creditor for a sum of Rs. 6,47,780/-.

4. The application was admitted and Shri Anurag Goel was appointed as the IRP who was ordered to be paid Rs. 1 Lakh by the Operational Creditor.

5. Aggrieved against the order of admission, the present appeal has been filed by the Suspended Director of the Corporate Debtor.

6. Counsel for the Appellant has submitted that since the application under Section 9 was filed on 30.10.2019, therefore, six invoices i.e., dated 13.07.2016, 17.08.2016, 17.08.2016, 09.09.2016, 09.09.2016 and 20.10.2016 were all time barred in view of Article 137 of the Limitation Act, 1963 as the application under Section 9 was filed after three years on 30.10.2019.

7. He has further submitted that four invoices were within the period of limitation which were raised by the Operational Creditor on 31.10.2016. It is further submitted that if the amount of the four invoices is calculated then it would come to Rs. 1,30,447/-.

8. It is further submitted that the Learned Tribunal has erred in not taking into consideration the payment already made by the Corporate Debtor on 15.05.2016, 16.06.2016, 18.06.2016 of a sum of Rs. 86,250/-, Rs. 18,597/-, Rs. 22,545/- which comes to Rs. 1,27,392/- and had only taken into consideration the payment made by the Appellant on 05.08.2016, 22.08.2016, 23.09.2016, 26.09.2016 & 29.03.2017 of Rs. 2,50,000/- Rs. 3,00,000/-, Rs. 1,00,000/-, Rs. 1,00,000/- which comes to Rs. 7,50,000/- and has been deducted out of the total outstanding of Rs. 13,97,780/- while admitting the application filed by the Operational Creditor for a sum of Rs. 6,47,780/-.

9. It is submitted that if Rs. 1,27,392/-, having been paid on 15.05.2016, 16.06.2016 & 18.06.2016, is also taken into consideration and deducted out of the total outstanding of the four invoices raised on 31.10.2016, then the balance amount would reduce to less than Rs. 1 Lakh i.e., less than the threshold limit provided in Section 4 of the Code and hence, the application under Section 9 could not have been filed and maintained.

10. Counsel on behalf of the Respondent could not deny the fact that the amount having been paid by the Appellant is reflected in his own ledger dated 01.04.2016 to 29.03.2017 which is also reproduced as under :-


LEO CREATIONS PRIVATE LIMITED

Asr India Pvt Ltd

Ledger Account

1-Apr-2016 to 29-Mar-2017

Page 1

Date	Particulars	Vch Type	Vch No.	Debit	Credit
15-6-2016	To PUNJAB NATIONAL BANK	Payment	39	80,250.00	
16-6-2016	To PUNJAB NATIONAL BANK	Payment	40	18,597.00	
18-6-2016	To PUNJAB NATIONAL BANK	Payment	41	22,545.00	
5-8-2016	To PUNJAB NATIONAL BANK	Payment	62	2,50,000.00	
22-8-2016	To PUNJAB NATIONAL BANK	Payment	71	3,00,000.00	
23-9-2016	To PUNJAB NATIONAL BANK	Payment	91	1,00,000.00	
26-9-2016	To PUNJAB NATIONAL BANK	Payment	94	1,00,000.00	
29-3-2017	By Shipping Line Charges	Journal	21		8,77,392.00
				8,77,392.00	8,77,392.00

11. In such circumstances, we have no doubt in our mind that the Learned Tribunal has committed an error in not taking into consideration the evidence brought on record by the Appellant in regard to the amount already paid to the extend of Rs. 8,77,392/- out of which if Rs. 7,50,000/- is deducted then it comes to Rs. 1,27,392/- which has to be taken into consideration while setting off the amount having been paid by the Corporate Debtor.

12. Thus, the Tribunal has committed an error in admitting the application against the Appellant. The appeal is thus allowed and the Impugned Order is set aside.

13. At this stage, Counsel appearing on behalf of Respondent No. 2 has submitted that the Operational Creditor is liable to pay not only the fee of the IRP but also the expenses incurred by him during this period.

14. In this regard, we observe that Respondent No. 2 may avail his remedy in accordance with law by filing an appropriate application before the Tribunal.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sim/RR