

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD



ITEM No.306
CP(IB)/73(AHM)2024

Under Section 9 IBC

IN THE MATTER OF:

PHENIX BUILDING SOLUTIONS PRIVATE LIMITED
Vs
MASCOT SURYAPUR LLP

.....Applicant

.....Respondent

Order delivered on: 30/10/2025

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-I, AHMEDABAD**

CP (IB) No.73/9/AHM/2024

(Petition 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: Mascot Suryapur LLP

Phenix Building Solutions Private Limited

CIN: U45201GJ2007PTC052112

Having registered office at:

M. B. House, 51, Chandroday Society,
Opp. Golden triangle, Stadium Road,
Ahmedabad, Gujarat, India, 380014

.... Applicant/ Operational Creditor

VERSUS

Mascot Suryapur LLP

Identification Number: LLPIN: AAX-7637

Having registered office at:

Block No. 86B, Resi: Puna Gam Village
Makhinga, Taluka Palsana,
Surat, Gujarat 394315.

.... Respondent/Corporate Debtor

Order Pronounced On: 30.10.2025

C O R A M :

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)



APPEARANCE:

For the Applicant/OC : Ms. Tanaya Shah, Advocate
For the Respondent/CD : Mr. Sneh R. Purohit, Advocate

ORDER **(Per: Bench)**

1. This Company Petition is filed on 06.02.2024 by the Applicant- Phenix Building Solutions Private Limited (hereinafter referred to as 'Operational Creditor') against the Respondent- Mascot Suryapur LLP (hereinafter referred to as 'Corporate Debtor') under Section 9 of the IBC, 2016 read with Rule 6 of the IB (AAA) Rules, 2016 for initiation of CIRP, appointment of IRP and declaration of moratorium for default in payment of operational debt of **Rs. 1,05,47,511/-** comprised of the principal amount of Rs. 72,22,947/- and interest amount of Rs. 33,24,564/- at 0.3% compound interest from 15 days of date of each outstanding invoice to 30.12.2023.
2. On Perusal of **Part-I of Form-5** revealed that the Applicant- Phenix Building Solutions Private Limited is having its registered address at M. B. House, 51, Chandroday Society, Opp. Golden triangle, Stadium Road, Ahmedabad, Gujarat,



India, 380014. The Applicant's Identification Number is U45201GJ2007PTC052112.

3. On Perusal of **Part-II of Form-5**, revealed that the Respondent – Mascot Suryapur LLP, having Identification Number: LLPIN: AAX-7637 is a Limited Liability Partnership incorporated on 13.07.2021 under the Limited Liability Partnership Act, 2008. The Respondent is having registered office at Block No. 86B, Resi: Puna Gam Village MakHINGA, Taluka Palsana, Surat, Gujarat 394315 with Total Obligation of Contribution of Rs. 1,00,000 as per the Master Data available on the website of the Ministry of Corporate Affairs dated 26.12.2023 which is annexed with the Petition as Annexure-A/1.
4. On Perusal of **Part-III of Form-5**, it is revealed that the Applicant has not proposed any name of IP or IPE for the appointment of IRP under Section 13(1)(c) of the IBC, 2016.
5. On perusal of **Part-IV of the Form-5** reveals that total operational debt as claimed by the Applicant the operational debt of **Rs. 1,05,47,511/-** comprised of the principal amount of Rs. 72,22,947/- and interest amount of Rs. 33,24,564/- at



0.3% compound interest from 15 days of date of each outstanding invoice to 30.12.2023.

6. The Applicant has placed the **facts** through this Petition in the following manner: -

- 6.1. It is stated that the Applicant, Phenix Building Solutions Pvt. Ltd. ("PBSPL"), is a Private Limited Company having its registered office at MB House, Stadium Road, Ahmedabad – 380014, Gujarat, engaged in the business of designing, manufacturing, and supplying customized pre-fabricated and pre-engineered building structures.
- 6.2. It is submitted that M&B Engineering Ltd. is a sister concern of Phenix Building Solutions Pvt. Ltd. (PBSPL), having common directors and shareholders. Its divisions, Phenix Construction Technology and Phenix Infra, are engaged in design, manufacture, supply, and installation of pre-fabricated/pre-engineered building structures.
- 6.3. It is submitted that the Respondent, Mascot Suryapur LLP ("Mascot"), is a Limited Liability Partnership having its registered office at Puna Gam Village, Makhinga Taluka, Palsana, Surat, Gujarat – 394315, as per the records of the Ministry of Corporate Affairs.
- 6.4. It is submitted that Mascot, being desirous of setting up a pre-engineered building at Mascot Industrial Park, Surat, approached the Applicant for the same. Pursuant to



discussions, PBSPL, the Applicant, submitted a techno-commercial proposal on 01.06.2021 to the Respondent for the supply of prefabricated buildings, followed by a final offer with a financial quote dated 29.06.2021 from M&B Engineering Ltd. (through its division Phenix Construction Technology) to the Respondent for the supply of prefabricated building as per Annexure-3.

6.5. Thereafter, PBSPL issued a revised proposal on 30.06.2021 to the Respondent, which included Clause 7 providing for interest at 18% per annum on delayed payments as per Annexure-3. The Respondent issued a Letter of Intent dated 30.06.2021 accepting the terms of the revised techno-commercial proposal dated 30.06.2021, including payment terms and interest at @ 0.3% per week on a compound interest basis on delayed payments as per Annexure-3.

6.6. Subsequently, a Purchase Order No. MSLLP/2021-22/001 dated 28.07.2021 was issued in favour of M&B Engineering Ltd. for the supply of prefabricated building, which was later revised due to reduction in steel prices. Accordingly, Mascot issued a revised Purchase Order No. MSLLP/2021-22/011(R1) dated 23.12.2021 and a Work Order dated 23.12.2021, in favour of PBSPL for supply and erection of the prefabricated building.

6.7. The copies of the Techno-Commercial Proposal dated 01.06.2021, Final Offer with Financial Quote dated



29.06.2021, Revised Techno-Commercial Proposal dated 30.06.2021, Letter of Intent dated 30.06.2021, Purchase Order dated 28.07.2021, and the Revised Purchase Order and Work Order both dated 23.12.2021 are annexed as Annexure 3 with the Petition.

6.8. It is submitted that due to a further reduction in steel prices and an increase in erection costs, Mascot issued (a) a final Purchase Order No. MSLLP/2021-22/011(R2) dated 06.01.2022 in favour of PBSPL for Rs. 9,72,96,539/-, and (b) a final Work Order dated 06.01.2022 bearing No. MSLLP/2021-22/012 in favour of M&B Engineering Ltd. for Rs. 93,21,410/-. The Copies of the said final Purchase Order and Work Order dated 06.01.2022 are annexed as Annexure 4 with the main petition.

6.9. It is submitted that PBSPL duly executed the supply of prefabricated building as per the final Purchase Order, and M&B Engineering Ltd. (through its division Phenix Infra) carried out the erection work at site in a timely manner under Mascot's supervision and to its satisfaction. Mascot accepted the work in stages without raising any dispute regarding quantity, quality, or timeliness and issued a Completion Certificate dated 15.03.2023 confirming successful completion of both the Purchase and Work Orders. The copy of the said Completion Certificate is annexed as Annexure 5 with the main petition.



6.10. It is submitted that invoices were raised on Mascot in accordance with stage-wise completion of supply and erection of the prefabricated building, all of which were duly received and never disputed by Mascot.

a. PBSPL raised 53 invoices between 17.02.2022 and 15.03.2023 for supply of prefabricated building materials totalling INR 9,73,90,511.

b. M&B Engineering Ltd. (through Phenix Infra) raised 3 invoices for erection totalling INR 93,21,410.

The copy of the 53 invoices raised by PBSPL along with a tabular summary is annexed as Annexure 6 collectively with the main petition.

6.11. It is submitted that, although Mascot had agreed to make stage-wise payments upon completion of each stage of supply/erection, they requested, and we agreed, to receive payment in lumpsum against the invoices raised. A table detailing the total value of invoices raised by PBSPL for supply and M&B Engineering Ltd. (through Phenix Infra) for erection, along with the lumpsum payments received to date, is as follows:

Name	Invoices Raised (in INR)	Payment Received (in INR)	Outstanding (in INR)
PBSPL (supply)	9,73,90,511	9,01,67,564	72,22,947
Phenix Infra (erection)	93,21,410	91,634 (@0.983% towards TDS for FY 2022-2023)	92,29,776



- 6.12. It is submitted that PBSPL maintained an account in its books in the name of Mascot, where payments received from Mascot were recorded on the credit side and invoices raised were recorded on the debit side. A copy of Mascot's account from PBSPL's general ledger, maintained in the ordinary course of business, is annexed as Annexure 7 with the main petition.
- 6.13. It is submitted that despite Mascot issuing a completion certificate for successful execution of the project under the final Purchase Order dated 06.01.2022 (PO No. MSLLP/2021-22/011(R2)) for supply and final Work Order dated 06.01.2022 (WO No. MSLLP/2021-22/012) for erection, Mascot has failed or neglected to pay PBSPL an amount of INR 72,22,947 towards supply and to M&B Engineering Ltd. an amount of INR 92,29,776 towards erection of the prefabricated building.
- 6.14. It is submitted that PBSPL issued a letter dated 20.06.2023 calling upon Mascot to clear the outstanding dues, followed by several reminders dated 12.07.2023, 28.07.2023, 17.08.2023, and 09.11.2023. The Copies of these letters are annexed as Annexure 8 collectively with the main petition.
- 6.15. It is submitted that Mascot has not responded to any of the aforementioned letters. Consequently, PBSPL issued a legal notice through its advocate dated 30.11.2023 demanding payment of the outstanding dues. The copy of



the legal notice is annexed as Annexure 9 with the main petition. However, no response or payment has been received from Mascot till the filing of the present petition.

- 6.16. It is submitted that for the pre-engineered building project at Mascot Industrial Park, Mascot issued a final Purchase Order dated 06.01.2022 (PO No. MSLLP/2021-22/011(R2)) to PBSPL for supply and a Work Order dated 06.01.2022 (WO No. MSLLP/2021-22/012) to M & B Engineering Ltd. for erection. The project was completed successfully, and Mascot issued a completion certificate without any dispute. Despite reminders and a legal notice, Mascot has failed to pay PBSPL Rs. 72,22,947/-.
- 6.17. It is submitted that PBSPL, under Section 8 of the IBC, 2016, issued a demand notice to Mascot dated 30.12.2023 for Rs. 1,05,47,511 (including principal amount of Rs. 72,22,947/- and interest Rs. 33,24,564/- calculated @ 0.3% per week on compound interest basis). The notice was sent to Mascot's email, registered office (returned), and head office (delivered). The Copies with proof of service are annexed as Annexure 11 with the main petition. Despite receipt, Mascot has neither paid the amount nor raised any dispute under Section 8(2) of the Code.
- 6.18. It is submitted that an unpaid operational debt of INR 72,22,947 (principal) and INR 33,24,564 (interest at 0.3% per week on compound basis from 15 days post-invoice till 30.12.2023), totalling INR 1,05,47,511, is due and payable



by Mascot, who has defaulted. The claim is within the period of limitation prescribed by law.

7. Pursuant to the order dated 17.09.2025, **Reply** was filed on 06.10.2025 vide Inward Diary No. D-6763 on behalf of the CD against the present petition denying all the averments made by the Applicant therein the petition. The contentions of the respondent are mentioned hereunder: -

7.1. It is submitted that Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") is not maintainable and is liable to be dismissed in limine due to following reasons:

- i. A pre-existing dispute exists;
- ii. The amount of debt claimed is less than Rs. 1,00,00,000/-;
- iii. No proof of default has been furnished.

7.2. It is submitted that the Respondent, engaged in constructing industrial and warehouse facilities, sought a pre-engineered building at Mascot Industrial Park, Surat for Amazon and issued a Purchase Order and Work Order to the Applicant and its division, M & B Engineering Ltd., on 06.01.2022.

• **THERE ARE PRE-EXISTING DISPUTES BETWEEN THE PARTIES**

7.3. It is submitted that the present Petition is liable to be rejected on the ground of pre-existing disputes. Prior to the demand notice, the Respondent had communicated via



emails regarding defects in the materials supplied by the Applicant. Out of 28 sidewall columns received, 20 were defective, with holes measuring 450 mm instead of the specified 470 mm, causing delays in erection. The Applicant's repeated mistakes were highlighted in an email dated 25.02.2022 (attached as Annexure-R1 with the main petition). These communications establish a pre-existing dispute, making the present petition meritless.

- 7.4. It is submitted that on 12.05.2022, the Respondent emailed the Applicant highlighting poor workmanship and defective materials in the Applicant's work. A copy of the email is annexed as Annexure-R2.
- 7.5. It is submitted that on 10.01.2023, the Respondent highlighted quality issues in the warehouse, which the Applicant failed to address.
- 7.6. It is submitted that on 17.02.2023 and 09.03.2023, CBRE, acting as mediator, urged the Applicant to expedite work, noting project delays affecting the handover date. Further, the Respondent lodged a complaint on 18.09.2023 regarding substantial leakage during the first monsoon. Despite a ten-year warranty and repeated reminders, the Applicant failed to rectify the issues related to IQ, OQ, PQ, and HOTO. Consequently, the Respondent had to resolve the leakage and complete pending work.
- 7.7. The Respondent has placed reliance on the following case laws:



- i. Sri Bajrang Wind Park Developers v. Inox Wind Infrastructure Services Ltd., 2023 SCC OnLine NCLT 1234
 - ii. Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, reported in AIR 2017 Supreme Court 4532
 - iii. Khimji Poonja Freight and Forwarders v. Ingram Micro India Pvt. Ltd., (2024) ibclaw.in 156 NCLAT
 - iv. Navin Madhavji Mehta v. Jaldhi Overseas Pte Ltd. and Ors., (2025) ibclaw.in 151 NCLAT
- **THE APPLICATION IS NOT MAINTANBALE AS THE APPLICANT HAS COMBINED THE PRINCIPAL AND INTEREST AMOUNTS TO REACH THE MINIMUM THRESHOLD LIMIT AS STIPULATED UNDER SECTION 04 OF THE INSOLVENCY AND BANKRUPTCY CODE OF 2016**

7.8. It is submitted that the petition is liable to be rejected for suppression of facts. The claimed amount of Rs. 1,05,47,511/- is artificially combined to meet the Section 4 threshold, while the Respondent has already paid 93% of the total. Further, the Applicant failed to provide the required Performance Bank Guarantee of Rs. 41,22,734/-, showing the petition is not filed with clean hands.

7.9. It is submitted that interest cannot be included to constitute "Operational Debt," and the Applicant was aware that the claimed amount does not meet the Section 9 threshold under the IBC, 2016. The Respondent states that the completion certificate issued on 15.03.2023 were coerced by the Applicant to obtain a stability certificate, despite significant pending work (emails dated 17.02.2023



and 09.03.2023). This demonstrates misuse of IBC proceedings to recover a disputed debt. Reliance has been placed in case of S. S. Engineers v. Hindustan Petroleum Corporation Ltd., reported in (2022)140 taxmann.com 524 (SC).

7.10. It is submitted that the Respondent is a going concern, paying its legitimate debts with strong commercial prospects. It is well-settled that before admitting an Insolvency Application, the Tribunal must ensure:

- i. There is no pre-existing dispute regarding the claimed debt.
- ii. The Respondent has lost its substratum and is unable to pay its debts.

8. Applicant filed their **rejoinder** to the reply of the CD on 14.10.2025 vide (Inward Diary No. D-6950). The Applicant has dealt with each and every subject as disputed items as under: -

8.1. It is submitted that the present Petition pertains solely to Purchase Order No. MSLLP/2021-22 dated 06.01.2022 issued by the Respondent to the Applicant for supply of prefabricated building materials. The Respondent had separately issued Work Order No. MSLLP/2021-22/012 to M&B Engineering Ltd. for erection of the said structure. The Applicant clarified that both contracts are distinct and independent with different scopes, obligations, and



payment terms, and that any correspondence relating to the erection work is irrelevant to the present Petition.

- 8.2. It is further submitted that the Applicant duly performed its contractual obligations and the Respondent issued an unqualified and unconditional Completion Certificate dated 15.03.2023 acknowledging satisfactory completion of supply. Accordingly, any email or correspondence relied upon by the Respondent, being prior to the said completion certificate and pertaining to the erection work, cannot be treated as a “pre-existing dispute” within the meaning of Section 5(6) of the Code.
- 8.3. It is also submitted that the email dated 18.09.2023 relied upon by the Respondent pertains to the warranty period and not to the payment of consideration for supply already completed and certified. The Applicant has contended that the alleged disputes have been raised for the first time in the Reply and are an afterthought, as no such disputes were raised in response to the Applicant’s reminder letters and legal notice demanding payment of dues.
- 8.4. It is further submitted that there is no denial of the operational debt by the Respondent; on the contrary, the Respondent’s own communications acknowledge the outstanding amount. The Applicant has also relied on judicial precedents to contend that the operational debt, including contractually agreed interest at 0.3% per week



on compound basis, exceeds the threshold prescribed under Section 4 of the Code, and hence, the Petition is maintainable.

9. Vide order dated 15.10.2025; both parties were directed to file their Purshis for compilation of judgement. Pursuant thereto, Purshis for compilation of judgement came to be filed on behalf of the Applicant on 14.10.2025 vide Inward Diary No. D-7010, and on behalf of the Respondent on 16.10.2025 which is reflecting on DMS Portal and have been duly taken into consideration.

10. We have heard the arguments of Counsel for the Applicant as well as the counsel for the Respondent and have perused the material available on record. In lieu of the same, we summarise the facts below and are of the following **opinion**: -

10.1. The Applicant, Phenix Building Solutions Private Limited, has filed this petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, claiming an outstanding operational debt of Rs. 1,05,47,511/- comprising principal amount of Rs. 72,22,947/- and contractual compound interest of Rs. 33,24,564/- at 0.3% per week from 15 days after the invoice dates until 30.12.2023.

10.2. On perusal of the records, it is evident that the Applicant had duly supplied prefabricated building materials as per



the purchase orders issued by the Respondent, Mascot Suryapur LLP. The erection work is carried out by MB Engineering Ltd., a sister concern of the Applicant, for which a separate purchase order was issued by the Respondent and that transaction has no linkage with the transaction under consideration.

- 10.3. The Respondent issued an unqualified Completion Certificate dated 15.03.2023, acknowledging that all works related to the supply and erection were satisfactorily completed. This certificate stands undisputed at the time of filing the petition.
- 10.4. As per the Applicant, the invoices raised by the Applicant for the supply amounting to Rs. 9,73,90,511/- were received and acknowledged by the Respondent but payments against the Applicant's invoices are outstanding to the amount of Rs. 72,22,947/- (principal), with claimed interest of Rs. 33,24,564/- totalling Rs. 1,05,47,511/-.
- 10.5. The Applicant issued a legal notice dated 30.11.2023 under Section 8 of the Code demanding payment of the operational debt. Despite receipt of the notice, the Respondent failed to respond or make payment till the institution of this petition.
- 10.6. The Respondent claims a pre-existing dispute based on alleged defects in the supplied materials, poor workmanship in erection, and subsequent leakage issues



during warranty period. The Respondent relies on emails and correspondence highlighting these issues prior to the demand notice.

- 10.7. However, this Tribunal observes that the alleged pre-existing disputes mainly pertain to erection work carried out by MB Engineering Ltd., which is a distinct contract with separate scope from the supply contract that is the subject matter of this petition.
- 10.8. The Completion Certificate was issued unconditionally for the supply contract, which estops the Respondent from raising such contentions as pre-existing disputes in regard to the supply contract. Further, there is nothing on record to demonstrate that payments were withheld by the Respondent due to any dispute connected to the supply of material.
- 10.9. Reliance is placed on the judgments of the Hon'ble Supreme Court in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. AIR 2017 SC 4532, which hold that a dispute must be real and existing prior to the receipt of the demand notice and must be regarding the debt claimed in the petition. Merely contentious or extraneous issues cannot be treated as a dispute. Therefore, we are not inclined to agree with the claim of existence of pre-existing disputes.



10.10. On the issue of admissibility of interest for the purpose of threshold computation under Section 4 of the Insolvency and Bankruptcy Code, 2016, it is pertinent to note that Clause 7 of the Techno-Commercial Proposal dated 01.06.2021 as well as the Revised Techno-Commercial Proposal dated 30.06.2021 (Annexure-3) stipulates that any overdue payment shall attract interest at the rate of 0.3% per week on a compounded basis, to be levied upon the Buyer (Respondent). However, a careful perusal of the record reveals that the said Clause 7 did not find place in the Final Offer Letter dated 29.06.2021 issued by the Applicant/Operational Creditor. Further, the LOI dated 30.06.2021 (para 6.5) explicitly defers terms to a future 'Contract Agreement', which was never executed, rendering Clause 7 non-binding. In fact, the Respondent never accepted or acknowledged the applicability of the said clause either through the Letter of Intent dated 30.06.2021 or through the subsequent Purchase Order dated 06.01.2022 (Annexure-4).

8.1. On the contrary, the Letter of Intent dated 30.06.2021 explicitly records the mutually agreed terms between the parties, which do not incorporate or make any reference to the imposition of interest at the rate of 0.3% per week on a compounded basis. This clearly indicates that the stipulation regarding interest, as contained in Clause 7 of the earlier proposals, was not part of the final contractual understanding between the parties and therefore cannot be relied upon by the



Applicant/Operational Creditor for the purpose of meeting the minimum threshold requirement prescribed under Section 4 of the Code. The relevant extract of the said Letter of Intent is as follows:

“We will issue a separate detailed Work Order in due course with details.

This letter is not an Official Purchase Agreement. All the terms and conditions of the proposed transaction would be stated in the Contract Agreement, to be agreed and executed by both parties. “

- 8.2. Along with the same, the 53 invoices (Attached as Annexure 6 with the Petition) raised by the Applicant/Operational Creditor are silent on “interest at 0.3% per week on a compounded basis on overdue payments”.
- 8.3. The principal outstanding amount claimed by the Applicant is Rs. 72,22,947/-, representing the value of goods supplied under 53 invoices raised during the period from 17.02.2022 to 15.03.2023, as detailed in Annexure-6. It is further observed that the Applicant has relied upon Clause 7 of the Techno-Commercial Proposal dated 01.06.2021 and the Revised Techno-Commercial Proposal dated 30.06.2021, which stipulate that any overdue payment shall attract interest at the rate of 0.3% per week on a compounded basis. However, the record shows the proposals were preliminary and neither signed nor incorporated into the final agreements. Consequently, the aforesaid clause cannot be deemed to form part of the concluded contract between the parties. Therefore, the claim for interest based thereon cannot be



sustained for the purpose of computing the default amount or determining the threshold under Section 4 of the Insolvency and Bankruptcy Code, 2016.

- 8.4. Rather, the Letter of Intent dated 30.06.2021 issued by the Respondent states that a separate detailed Work Order would be issued and that the Letter of Intent is not an Official Purchase Agreement with all terms and conditions to be stated in the Contract Agreement to be agreed and executed by both parties. Further, the Purchase Order dated 06.01.2022 also does not incorporate Clause 7 on interest. No Contract Agreement incorporating the interest clause was executed between the parties.
- 8.5. Further, the applicant has claimed an interest of Rs 33,24,564. The same is computed in the application at the rate of 0.3% per week for the period starting from 15 days after the invoice date and ending on 30.12.2023. As discussed above, there is no legal basis for this computation of interest. Additionally, the Applicant has not demonstrated by furnishing any document like raising of invoice for interest, accounting of interest in its annual financial statements (audited accounts), offering interest income for the purpose of computation of income for filing income tax return or payment of tax on the claimed interest, indicating that the claim is unsupported and unilateral.



- 8.6. Therefore, the claim of interest amounting to Rs.33,24,564/-, calculated at the rate of 0.3% per week from 15 days after the respective invoice dates until 30.12.2023, cannot be treated as forming part of the Operational Debt. This is for the reason that Clause 7 of the Techno-Commercial Proposal, under which such interest has been claimed, was never accepted or incorporated in the final contractual arrangement between the parties. The said clause does not find mention in either the Letter of Intent dated 30.06.2021 or the Purchase Order dated 06.01.2022, both of which govern the transaction between the Applicant and the Respondent. Accordingly, in the absence of any binding contractual stipulation regarding payment of interest, the said interest component cannot be taken into account for the purpose of determining the default amount or for satisfying the threshold requirement under Section 4 of the Insolvency and Bankruptcy Code, 2016.
- 8.7. The Hon'ble NCLAT in *Jai Narain Fabtech Pvt. Ltd. v. Cheema Spintex Ltd.*, (2025) ibclaw.in 238 NCLAT, decided on 04.04.2025 held that interest not accepted by the Respondent through signed agreements cannot be included in the operational debt for threshold purposes under Section 4 of the Insolvency and Bankruptcy Code, 2016. Wherein the Applicant claimed interest on unsigned invoices, the Appellate Tribunal excluded interest holding principal below Rs. 1,00,00,000/-



threshold and dismissed the petition as the interest clause was unilateral.

- 8.8. The judgments in Prashant Agarwal vs. Vikash Parasrampuria 2022 SCC Online NCLAT 3781, dated 15.07.2022 and Anuj Sharma vs. Rustagi Projects Pvt. Ltd. reported in 2023 SCC Online NCLAT 310, dated 04.07.2023 relied upon by the Applicant pertain to cases where interest was expressly incorporated in accepted agreements, which is not the case here.
- 8.9. The Letter of Intent dated 30.06.2021 and Purchase Order dated 06.01.2022 do not constitute a concluded binding contract incorporating the interest clause, as no separate Contract Agreement was executed. Thus, no concluded contract under Section 10 of the Indian Contract Act, 1872, incorporates the interest clause, rendering it unilateral and excludable (affirmed in *Jai Narain Fabtech Pvt. Ltd. Supra*).
- 8.10. The minimum amount of default under Section 4 of the Insolvency and Bankruptcy Code, 2016 is not met as the principal amount of Rs.72,22,947/- is below the threshold limit of Rs. 1,00,00,000/-.
- 8.11. As per the proviso to Section 4(1) IBC, the minimum amount of default is Rs. 1,00,00,000/-, computed on the principal debt plus any contractually stipulated interest. Here, absent a binding interest stipulation, only the principal qualifies as interpreted in ***Jai Narain Fabtech***



Pvt. Ltd. v. Cheema Spintex Ltd. (supra), excluding unilateral claims.

9. In view of the above, the petition does not satisfy the requirement under Section 4 of the Insolvency and Bankruptcy Code, 2016 as the minimum amount of default is not met.
10. Accordingly, **CP (IB) No.73/9/AHM/2024** is hereby **dismissed** for want of threshold limit.
11. It is observed that the Applicant has artificially aggregated the principal and interest amounts solely to meet the threshold limit prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016, and has sought to invoke the insolvency resolution process as a tool for recovery of dues rather than for bona fide resolution of insolvency. As discussed above, the claim of interest is unsupported and unilateral action and we consider that the sole purpose of computing the interest was to add it to the unpaid principal amount so as to cross the threshold of Rs one crore.
12. Such conduct amounts to an abuse of the process of law and misuse of the provisions of the Code, as the interest claim is



unsupported by any binding contractual term, rendering the aggregation mala fide as the artificial aggregation of un-agreed interest to circumvent the threshold constitutes abuse of process (**S.S. Engineers v. Hindustan Petroleum Corporation Ltd. & Ors., (2022) ibclaw.in 92 SC, supra**), with clear intent for recovery over resolution.

13. Accordingly, a penalty of **Rs. 5,00,000/-** is hereby imposed upon the Operational Creditor under Section 65 of the Insolvency and Bankruptcy Code, 2016, being a reasonable proportion of the artificial inflation of the unpaid amount.
14. The Applicant/Operational Creditor is directed to pay an amount of **Rs.5,00,000/-** (Rupees Five Lakh only) as penalty under Section 65 to the **“Gujarat State Legal Services Authority”** within seven days from the date of this order and proof of payment be filed before this Tribunal.
15. Re-list for reporting compliance of order on **14.11.2025**.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Jeel /LRA

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)