



**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**NEW DELHI, COURT – V**  
**DIVISION BENCH**  
**C.P.(IB)/567/ND/2024**

*[Under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

**In the matter of:**

**M/s AIKYA ENTRPRISES LLP**

(Through its Designated Partner)  
Plot No. 19, 1<sup>st</sup> Floor, Sai Krishna  
Devaraya Nagar, Yellareddgudu,  
Hyderabad – 500073.

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

**VERSUS**

**M/s NBCC (INDIA) LIMITED**

NBCC Bhawan, Lodhi Road,  
New Delhi – 110003

**Respondent/Corporate Debtor**

**Order Delivered on: 09.10.2025**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL,**  
**HON'BLE MEMBER (JUDICIAL)**

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

**PRESENT:**

**For the Applicant** : Mr. Anoop Prakash Awasthi, Adv.

**For the Respondent** : Mr. Bharat Bhushan Sethi, Adv.



## ORDER

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Mandava Raja Gopal, Designated partner of **M/s Aikya Enterprise LLP (‘Operational Creditor’)** duly authorized for initiation of Corporate Insolvency Resolution Process (**‘CIRP’**) against **M/s NBCC (India) Limited (‘Corporate Debtor’)**.
2. **M/s Aikya Enterprise LLP** (Operational Creditor) is a company, having its office at Plot no. 19, 1<sup>st</sup> Floor, 8-3-677/19, Sri Krishnadevaraya Nagar, Yellareddyguda, Hyderabad, Telangana, India- 500073. **M/s NBCC (INDIA) Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [L74899DL1960GOI003335], having its registered office at NBCC Bhawan, Lodhi Road, New Delhi, 110003.
3. The present Petition was filed by Mr. Mandava Raja Gopal, the partner of the Operational Creditor’s entity, duly authorized to initiate Corporate Insolvency Resolution Process (**‘CIRP’**) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**). The total amount claimed is Rs 1,68,49,362/- (Rupees One Crore Sixty-Eight Lakh Forty-Nine Thousand Three Hundred and Sixty-Two Only). The date of default is stated to be 11.01.2022.
4. ***Submissions Submission by the Learned Counsel appearing on behalf of the Operational Creditor:***
  - a) The Operational Creditor received a Letter of Award dated 14.01.2021 from the Corporate Debtor M/s NBCC(India) Limited for Tender No. NIQ/Yadadri/NDCT-1/PKG-1/Supply of RMC/1 dated 21.12.2020 for the work of supply/providing of concrete (RMC) Various Grade for Ring Raft of NDCT- 1 of package-1 including cost of Labour Materials (unless otherwise specified in specification) and equipment BOQ/Contract for handling, transportation, batching and mixing with mechanized equipment like Batching Plant, Transit mixer and all accessories including de-mobilization of the same after completion of work etc. for



SX800 MW Yadadri TPP for BHEL/TSGENCO, Nalgonda (Dist), Telangana, pursuance of which the Operational Creditor had made supply & delivery of ready-mix concrete at Yadadri, Telangana. As per the terms of the order it was payable on Rs. 60,62,696/- without interest, this amount was not paid.

- b) Further, the Operational Creditor received a Supply Order from M/s. Sangeeta Engineering & Contracts (P) Ltd. ("M/s. Sangeeta") for supply of Ready Mix Concrete for the "Civil Works (NDTC Package) CT-1-at 5 X 800 MW Yadadri Thermal Power Plant, Veerlapalem (V), Dameracherla (Md), Nalgonda (Dist), Telangana pursuant to which the Operational Creditor had supplied ready-mix concrete to M/s. Sangeeta. Further, the Corporate Debtor had assured that the if M/s. Sangeeta fails to release the payment, the same will be paid by the Corporate Debtor to the Operational Creditor. As per the terms of the order it was payable on Rs.68,13,839 without interest, this amount was not paid by M/s. Sangeeta Engineering & Contracts (P) Ltd. As Sangeeta has failed to release payment accordingly it has become the liability of M/s NBCC (India) Limited in terms of the law of contract of guarantee with S. 126, 127-128 of the Contract Act, 1872 read together.
- c) Further, the Operational Creditor received a Supply Order from M/s. Backbone Construction Pvt Ltd. ("M/s. Backbone") for supply of Ready Mix Concrete for the "Civil Works (NDTC Package) CT-11-at 5 X 800 MW Yadadri Thermal Power Plant, Veerlapalem (V), Dameracherla (Md), Nalgonda (Dist), Telangana pursuant to which the Operational Creditor had supplied ready-mix concrete to M/s. Backbone. Further, the Corporate Debtor had assured that the if M/s. Backbone fails to release the payment, the same will be paid by the Corporate Debtor to the Operational Creditor. As per the terms of the order it was payable on Rs.39,72,827/- without interest, this amount was not paid by M/s. Backbone Construction Pvt Ltd. As Backbone has failed to release payment, accordingly, it has become the liability of M/s NBCC(India)



Limited in terms of the law of contract of guarantee with S. 126, 127-128 of the Contract Act, 1872 read together.

- d) The Operational Creditor had supplied the RMC to the Corporate Debtor, M/s. Sangeeta and M/s. Backbone and raised invoices thereafter, for the supply. However, only part amount of the invoices has been paid by the Corporate Debtor. Copies of invoices raised on the Corporate Debtor as well as on M/s. Sangeeta and My. Backbone have been enclosed with the Petition. Copies of the computation sheet are also enclosed with the Petition.
- e) The Corporate Debtor has repeatedly made false assurances and promises to pay the outstanding amount, i.e. Rs 2,61,52,056.33/-. Further, the applicant issued a demand notice dated 04.12.2023 under Section 8 of the Insolvency and Bankruptcy Code, 2016, the same was delivered to the Corporate Debtor on 08.12.2023. However, the applicant did not receive any reply with respect to the demand notice raised by the applicant. Hence the present application.

**5. *Submission by the Learned Counsel appearing on behalf of the Corporate Debtor:***

- a) As per Section 8 of IBC, it is mandatory to deliver a demand notice of unpaid Operation Debt. Section 8 uses the word “deliver”, which would mean that the Operational Creditor has to ensure delivery of the notice to the Corporate Debtor. The service of the Demand notice under Section 8 of the Code is a sine qua non of an application under Section 9 of the IBC. In the present case no Demand Notice in terms of Section 8 of the Petition was served on the Corporate Debtor/ respondent. The Demand Notice attached is a manufactured document.
- b) The Demand Notice in the instant case was issued by the person who did not have the authority to issue the same. It is submitted that Form no.5, as filed is defective and the applicant has not complied with Sections 8 and 9 of the IBC Code and related regulations and provisions thereof.



- c) The Present petition is not maintainable as the respondent can neither be treated as a 'Corporate guarantor' under Section 5 (5A) of the IBC and neither can the present nature of the debt can be regarded as an operational debt under Section 5(21) of the IBC. The Corporate Debtor cannot be treated as a Corporate debtor/ corporate guarantor within the framework of law as stated or otherwise. All the invoices raised on the respondent for the goods supplied by the operational Creditor to the respondent are duly and fully paid.
- d) The Respondent has already discharged all its obligations under the Letter of Award dated 14.01.2021. The entire amount payable for the Ready-Mix Concrete (RMC) supplied to the Respondent has been duly paid. Details of invoices and payments have been annexed (Annexure R-5), clearly establishing that no operational debt is due from the Respondent.
- e) The Debt, if any, is owed by the third party (SEPL, BCPL, HCEPL, etc.), not by the Respondent. In cases where disputes arose with the third parties, such as HCEPL and BCPL-SEPL (JV), the Respondent, without any legal obligation, facilitated payments to the Operational Creditor pursuant to indemnity bonds. This was done purely to resolve disputes and not as an assumption of liability.
- f) Copies of the invoices raised on SEPL and BCPL by the operational creditor is denied for want of Knowledge as the operational creditor never ever shared with the respondent any work order or letter of Award or purchase order issued by BCPL or any of these invoices. It is stated that the respondent never ever gave assurance to release payment to the operational creditor in case of SEPL or BCPL fails to make payment.
- g) Further, it is submitted that the last payment towards the amount due by the respondent for the goods supplied by the operational creditor directly was made on 30.07.2021. The payment of Rs 50,00,000/- ( Rupees Fifty Lacs) made on 11.01.2022, to the operational creditor, from the amount outstanding and payable by the respondent to M/s



Hayagrev Civil Engineering Pvt. Ltd. (HCEPL) cannot, by no stretch of imagination, be considered as the date of default.

h) It is submitted that the various invoices raised by the Operational Creditor (Anneure-3 and 10 at Pg. 67 and Pg. 118 of the petition) against works/ services performed for the Corporate Debtor in terms of the letter of Award dated 14.01.2021 have been paid. Hence, no due is payable to the Operational Creditor. Thus, the petition is liable to be dismissed.

### **Analysis & Findings**

6. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition and reply filed by the Corporate Debtor, rejoinder filed by the Operational Creditor and written submissions presented by both the Operational Creditor and the Corporate Debtor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal has territorial jurisdiction as the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.
7. The Operational Creditor (Petitioner) in Part IV of the Petition has stated that total Original Amount of Debt is Rs. 1,68,49,362/- (Rupees One Crore Sixty-Eight Lakh Forty-Nine Thousand Three Hundred and Sixty-Two Only) as on 11.01.2022 which is due towards the supply of ready-mix concrete ("RMC") by the Operational Creditor to the Corporate Debtor.
8. The Petitioner has stated that in terms of Letter of Award dated 14.01.2021, they have supplied Ready Mix Concrete (RMC) to the Corporate Debtor and also to other entities which are Corporate Debtor's sub-contractors i.e. Third Parties.
9. The Corporate Debtor, on the other hand has stated that they are not liable to pay the amount which fell due for the supply made to third parties and invoices raised in third party name. In order to examine this issue, we may refer to the pleading of the Operational Creditor.

### **Amount stated to be due towards supply made to third parties**



10. The Operational Creditor itself in their Petition in Part IV in respect of column, **Details of Transactions on account of which debt fell due.** In para 2 thereof has categorically stated that they have received a Supply Order from **M/s. Sangeeta Engineering & Contracts (P) Ltd.** ("M/s. Sangeeta") for supply of Ready Mix Concrete. The Invoices were also raised in the name of **M/s. Sangeeta Engineering & Contracts (P) Ltd.** It is the case of the Operational Creditor that the Corporate Debtor had assured that if M/s. Sangeeta fails to release the payment, the same will be paid by the Corporate Debtor to the Operational Creditor.
11. The Petitioner in the Petition has enclosed copy of computation Sheet showing details of invoices raised and amount received and the balance amount in respect of M/s. **Sangeeta Engineering & Contracts (P) Ltd** dated 13.04.2021, 14.09.2021, 09.09.2021, 02.12.2021, 12.01.2022 as ANNEXURE A-4. The amount due is shown as Rs. 6813839. The computation (annexure A-4 is extracted below:

**ANNEXURE A-4** 68

Sangeeta Engineering & Contracts Private Limited Billing Details								Payment Details				
Period	Invoice Date	Invoice No	QTY	Rate	Total	GST 18%	Total Invoice Value	Date	Cheque	Received Amount	Balance	Remarks
01.03.2021 to 31.03.2021	12.04.2021	TS011/2021-22	16.00	2100	33600	6048	39648	13.04.2021	Online	500000		
01.03.2021 to 31.03.2021	12.04.2021	TS012/2021-22	96.00	2100	201600	36288	237888	14.09.2021	Online	1000000		
01.04.2021 to 30.04.2021	04.05.2021	TS027/2021-22	110.20	2286	251917	45346	297263	09.09.2021	Online	1179041		
01.05.2021 to 31.05.2021	03.06.2021	TS047/2021-22	93.00	2286	212598	38268	250866	02.12.2021	Online	2500000		
01.06.2021 to 30.06.2021	03.07.2021	TS058/2021-22	736.00	2286	1682496	302850	1985346	12.01.2022	Online	3000000		
01.07.2021 to 31.07.2021	02.08.2021	TS075/2021-22	21.00	2100	44100	7938	52038	12.01.2022	Online	2000000		
01.07.2021 to 31.07.2021	02.08.2021	TS076/2021-22	36.00	2100	75600	13608	89208					
01.07.2021 to 31.07.2021	02.08.2021	TS077/2021-22	1139.00	2286	2603754	468675	3072429					
01.08.2021 to 31.08.2021	03.09.2021	TS089/2021-22	78.00	2100	163800	29484	193284					
01.08.2021 to 31.08.2021	03.09.2021	TS090/2021-22	270.00	2100	567000	102060	669060					
01.08.2021 to 31.08.2021	03.09.2021	TS091/2021-22	1913.50	2286	4374261	787366	5161627					
01.09.2021 to 30.09.2021	04.10.2021	TS111/2021-22	2.50	2100	5250	945	6195					
01.09.2021 to 30.09.2021	04.10.2021	TS112/2021-22	272.00	2100	571200	102816	674016					
01.09.2021 to 30.09.2021	04.10.2021	TS113/2021-22	1093.00	2286	2498598	449748	2948346					
01.10.2021 to 31.10.2021	02.11.2021	TS129/2021-22	64.00	2100	134400	24192	158592					
01.12.2021 to 31.12.2021	03.01.2022	TS150/2021-22	189.00	2100	396900	71442	468342					
			249.50	2286	570357	102664	673021					
01.12.2021 to 31.12.2021	03.01.2022	TS151/2021-22	23.02	650	14963	748	15711					River Sand Bill
<b>Total Billing Details</b>			<b>6401.72</b>		<b>14402394.00</b>	<b>2590486</b>	<b>16992880</b>			<b>10179041</b>	<b>6813839</b>	

12. Similarly, in para 3 of **Details of Transactions on account of which debt fell due,** the Operational Creditor has stated that the Operational Creditor received a Supply Order from **M/s. Backbone Construction Pvt Ltd.** ("M/s.



Backbone") for supply of Ready Mix Concrete for the "Civil Works (NDTC Package) CT-11-at 5 X 800 MW Yadadri Thermal Power Plant, Veerlapalem (V), Dameracherla (Md), Nalgonda (Dist), Telangana pursuant to which the Operational Creditor had supplied ready-mix concrete to M/s. Backbone. Invoices were also raised in the name of M/s. Backbone Construction Pvt Ltd. It is the case of the Operational Creditor that the Corporate Debtor had assured that the if M/s. **Backbone Construction Pvt Ltd.** fails to release the payment, the same will be paid by the Corporate Debtor to the Operational Creditor.

13. The Petitioner has also enclosed copy Computation Sheet showing details of invoices raised and amount received and the balance amount in respect of M/s. Backbone as ANNEXURE A-5. The amount due is shown as Rs 3972827. The computation sheet Annexure A-5 is extracted below:

Backbone Constructions Billing Details								Payment Details				
Period	Invoice Date	Invoice No	QTY	Rate	Total	GST 18%	Total Invoice Value	Date	Cheque	Received Amount	Balance	Remarks
01.01.2022 to 02.02.2022	02.02.2022	TS167/2021-22	123.00	2100	258300	46494	304794					
			1359.80	2286	3108503	559531	3668033					
Total Billing Details			1482.80		3366803	606025	3972827				3972827	

**Whether Corporate Debtor owes a debt on account of supply of goods made to third parties?**

14. Admittedly, the Operational Creditor received a Supply Order from M/s. Sangeeta Engineering & Contracts (P) Ltd. and the goods were also supplied to them and Invoices have also been raised in the name of M/s Sangeeta Engineering & Contracts (P) Ltd. Similarly, the Operational Creditor received a Supply Order from M/s. Backbone Construction Pvt Ltd. And supply was also made to them and Invoices were also raised in the name of M/s. Backbone Construction Pvt Ltd.
15. We may refer to the definition of 'Operational Debt' and 'Corporate Debtor' as defined in Section 3(8) and 5(21) of the Insolvency and Bankruptcy Code, 2016. Under said Section, the 'Operational Creditor' and 'Operational Debt' is defined as:



Section “3(8) “corporate debtor” means a corporate person who owes a debt to any person;”

Section “5(21): operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”

it has become the liability of M/s NBCC(India) Limited in terms of the law of contract of guarantee with S. 126, 127-128 of the Contract Act, 1872 read together.

16. As the supply of RMC was not made to the Corporate Debtor i.e. M/s NBCC(India) Limited, but to the third parties, the Operational Creditor has relied upon email communication between the Operational Creditor and Corporate Debtor and has stated that it has become the liability of M/s NBCC(India) Limited in terms of the law of contract of guarantee with S. 126, 127-128 of the Contract Act, 1872.

17. The issue which needs to be considered is, whether by virtue of the email communication, the Corporate Debtor has become Guarantor in terms of provisions contained in the Contract Act 1872.

18. Section 126 of the Indian Contract Act, 1872 defines the term ‘contract of guarantee’ and other related terms. Section 126 read as under:

126. **‘Contract of guarantee’, ‘surety’, ‘principal debtor’ and ‘creditor’:**-A ‘contract of guarantee’ is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the ‘surety’; the person in respect of whose default the guarantee is given is called the ‘principal debtor’, and the person to whom the guarantee is given is called the ‘creditor’. A guarantee may be either oral or written.”

19. The Kerala High Court in **P.J. Rajappan v. Associated Industries (Pvt.) Ltd., 1989 SCC OnLine Ker 312** has observed that “A contract of guarantee is a tripartite agreement involving the principal debtor, surety and creditor.”.



20. Hon'ble Supreme Court in **Phoenix ARC Pvt. Ltd. Vs Ketulbhai Ramubhai Patel**, (CIVIL APPEAL NO.5146 of 2019) in their judgment dated 03.02.2021 while considering case under the IBC, after referring Section 126 of the Indian Contract Act, 18712 has stated that "A contract of guarantee contains a guarantee "to perform the promise or discharge the liability of third person in case of his default". Thus, key words in Section 126 are contract "to perform the promise", or "discharge the liability", of a third person."
21. Thus, the Contract of Guarantee is a tripartite agreement wherein guarantor undertakes to perform the promise or discharge the liability of third person in case of default.
22. We now examine the documents relied upon by the Operational Creditor to substantiate that Corporate Debtor has given a Guarantee to pay the debt of third parties.
23. The Operational Creditor has referred to Email dated 18.09.2021 (page 65/71) and Comfort letter dated 28.12.2021 (page 81) to substantiate that these communications made the Corporate Debtor as Guarantor.
24. The email dated 18.09.2021 (page 65) is from NBCC to the Operational Creditor acknowledging the receipt of payment outstanding statement as per details given therein. The said detail indicates the payment outstanding with NBCC and other contractors including M/s Sangeeta and M/s Backbone. In the email, NBCC has stated, "*Regarding other payments of RS.1,62,44,727 we will arrange to pay to you from the respective agencies within two weeks (eligible due) & VMB is not working under NBCC.*" The Corporate Debtor has not undertaken to pay the debt due to M/s Sangeeta and M/s Backbone. The NBCC (CD) in their email dated 18.09.2021 has merely stated they will arrange to pay. There is no promise to pay in case of default by the third parties. Therefore, this email cannot be treated as guarantee agreement under Section 126 of the Contract Act, 1872.
25. The Comfort Letter dated 28.12.2021 (p. 81) merely provides:

*If M/s BCPL-SEPL fails to release your payment within the stipulated date from the date of invoice of bill as per mentioned in*



*the PO, you will inform us the same for release from our end with certificate from M/s BCPL-SEPL (JV) for the amount due.*

*NBCC (India) Ltd will be release the pending amount to M/s Aikya Enterprises LLP pending amount if any of M/s BCPL-SEPL(JV) with NBCC (I) Ltd.”*

- 26.** The Karnataka High Court in ***United Breweries (Holding) Ltd. v. KSIIDC Ltd., 2011 SCC OnLine Kar 4012*** has considered the scope of ‘comfort letter’ and has observed as under:

*11. In this context, we may usefully refer to the definition of “letter of comfort”, as found in P. Ramanatha Aiyar's Advanced Law Lexicon, which reads thus:*

*“Letter of comfort.—A document that indicates one party's intention to try to ensure that another party complies with the terms of a financial transaction without guaranteeing performance in the event of default.”*

**6.** *The said letter of comfort nowhere reveals that the appellant stood as guarantor for the loan disbursed by respondent No. 1 in favour of respondent No. 2. It merely states that the associate company (debtor company) will meet the financial and contractual obligations and that the appellant herein undertakes all reasonable steps to ensure that the debtor company conducts its operations efficiently to meet its obligations in the usual course of business. The comfort letter is more in the nature of recommendatory letter. If a person has not stood as guarantor or surety, he cannot be treated a guarantor or surety without there being a specific undertaking by him that he would discharge the liability of the third person, in case of his default. In this context, it is relevant to note the provisions of section 126 of the Indian Contract Act, 1872, which read thus:*

*“126. ‘Contract of guarantee’, ‘surety’, ‘principal debtor’ and ‘creditor’.....*

**7.** *From the above, it is clear that the contract of guarantee is a contract to perform the promise or discharge the liability of a third*



*person in case of his default. If the entire document in question, i.e., exhibit P14 is read as a whole, the same nowhere reveals that the appellant has entered into a contract or an agreement with respondent No. 1 to discharge the liability of respondent No. 2 herein (principal debtor) in case of its default.”*

27. The co-ordinated Bench of this Tribunal (Court-6) in the matter of **M/s Shapoorji Pallonji and Company Pvt. Ltd. Vs ASF Insignia SEZ Pvt. Ltd. (IA 1247/2022 in C.P (IB) 197/ND/2022)**, has examined the ‘comfort letter’ and has taken a view that:

*“The contract of guarantee is a separate, independent contract by itself whereby Surety consciously agrees & accepts the repayment obligation and as such obligations cannot be levied by placing reliance upon the terms of the Comfort letter. **In fact, this Adjudicating Authority is also of the considered view that a letter of Comfort cannot be equated with a ‘contract of guarantee’....”***

28. In the light of abovementioned judicial precedent and provision of Section 126 of the Indian Contract Act, 1872, if we examine the Comfort letter dated 28.12.2021 (Pg. 81), it is found that there is no guarantee undertaken by the Corporate Debtor to discharge the financial liability of third parties. As mentioned in para 25 above, in the Comfort Letter, the Corporate Debtor clearly states that in case M/s BCPL-SEPL fails to release Operational Creditor payment within the stipulated date from the date of invoice of bill as per mentioned in the PO, Operational Creditor will inform the Corporate Debtor for release from their end with certificate from M/s BCPL-SEPL (JV) for the amount due. It is further stated in the Comfort Letter that Corporate Debtor will release the pending amount to M/s Aikya Enterprises LLP if there is any pending amount if any of M/s BCPL-SEPL(JV) with NBCC (I) Ltd. The Operational Creditor has neither submitted any certificate from the M/s BCPL-SEPL (JV). The Corporate Debtor in their reply has categorically submitted that there is no amount of M/s BCPL-SEPL (JV) pending/outstanding with NBCC. Contrary to that M/s BCPL-SEPL (JV) owes



amount to Corporate Debtor. Further, the Comfort Letter was also not signed by all the three parties i.e. principal debtor, surety and creditor.

29. Taking into account contents of the Comfort Letter, in view of the provisions contained in Section 126 of the Indian Contract Act, 1872 and law laid down, Corporate Debtor cannot be treated as Guarantor. Therefore, for the purpose of supply of RMC to M/s. **Sangeeta Engineering & Contracts (P) Ltd** and to M/s **Backbone Construction Pvt Ltd** for which Invoices were also raised in the name of those entities, NBCC (Corporate Debtor herein) cannot be considered a corporate person who owes a debt to Operational Creditor. Thus, amount of Rs 68,13,839/- claimed towards invoices raised in the name of M/s. **Sangeeta Engineering & Contracts (P) Ltd** and amount of **Rs. 39,72,827/-** claimed towards invoices raised in the name of M/s. **Backbone Construction Pvt Ltd**. Therefore, Total Rs 1,07,86,666/- cannot be considered default amount for the purpose of initiation of CIRP against the Corporate Debtor herein.

**Amount stated to be due towards supply made to NBCC i.e. Corporate Debtor-**

30. It is the case of the Operational Creditor that it has supplied the goods to the Corporate Debtor and raised invoice as follows:

Invoice No.	Amount raised in the Invoice (Rs.)	Amount received by the Applicant (Rs.)	Balance
TS055/20-21	4880491	1500000	
TS074/20-21	4981948	2489383	
TS08/21-22	6080799	3300000	
TS025/21-22	2810218	200000	
TS049/21-22	1946225	8858511	
TS088/21-22	5001914	3208702	
TS110/21-22	930524	1012827	
<b>Total</b>	<b>26632119</b>	<b>20569423</b>	<b>6062696</b>



31. However, it is the Contention of the Corporate Debtor that the Invoice No. TS055/20-21, TS074/20-21, TS08/21-22, TS025/21-22 and TS049/21-22 raised by the Applicant have been fully paid by the Corporate Debtor. On perusal of the documents placed on record, it is pertinent to note that the Corporate Debtor has paid the dues raised by the Applicant through the said invoices, and the same is not disputed by the Operational Creditor.
32. Further, it is the contention of the Corporate Debtor that the goods corresponding to the invoice numbers TS088/21-22 and TS110/2021-22 were never supplied to the Corporate Debtor, and the same were supplied to a third party, i.e. M/s Hayagrev Civil Engineering Pvt. Ltd (HCEPL). However, in this regard, Corporate Debtor has not filed any document to substantiate that on receiving these Invoices they have intimated to the Operational Creditor about the fact that Invoices were raised in wrong name and the NBCC is not liable to pay. Thus, it is a disputed fact whether the raw material was supplied to the Corporate Debtor directly, which remains unclear in the absence of documents placed on record.
33. **Even otherwise, as per the Operational Creditor case, the principal amount due for supply made to NBCC is Rs 60,62,696/- is below the threshold of Rs One Crore provided in Section 4 of the IBC.** For claim of Interest amount, it may be stated that Interest can only be claimed if there is agreement between the parties to that effect. In the present case, the Operational Creditor has not placed on record any agreement between the Operational Creditor and Corporate Debtor which provide for interest on delayed payment. Even the Invoices filed with the Petition do not mention anything about payment of Interest.
34. Hon'ble NCLAT in the case of **Rishabh Infra Vs. Sadbhav Engineering ltd., CA (AT) (Ins) No. 1881 of 2024** has held that the Operational Creditor cannot add interest with the principal amount on the basis of unilaterally raised invoices in the absence of any agreement for interest admission of interest by the Corporate Debtor or any other document. In **Shitanshu Bipin Vora Vs. Sh. Haree Yarns Pvt. Ltd., CA (AT) (Ins) No. 2204 of 2024**, Hon'ble NCLAT has held that without there being any agreement for



interest, the obligation of payment of interest on the basis of the condition in the invoice cannot be accepted. Therefore, in absence of any agreement, Operational Creditor is not entitled to claim Interest.

- 35.** In light of the above observation, we conclude that no case is made out to initiate the CIRP against the Corporate Debtor, i.e. M/s NBCC (INDIA) Limited.
- 36.** According, this Adjudicating Authority is of the view that the present application filed by M/s Aikya Enterprises LLP (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s NBCC (INDIA) Limited (Corporate Debtor) is liable to be dismissed and is, accordingly dismissed.

Resultantly, the present application, i.e. Company Petition No.: **567/ND/2024 stands dismissed** with the terms above. Let a copy of the order be served to the parties.

**Sd/-**

**(ANU JAGMOHAN SINGH)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**