

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.38/ALD/2023

(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy Rules, 2016.)

IN THE MATTER OF:

M/S Paragon Packagings
(Through its Partner Sh. Sanjay Gupta)

Having its Registered Address at:

Plot No. 30, Gali No. 2e, Saróorpur Industrial Area Sohna
Ballabgarh Road, Faridabad, Haryana – 121005.

.....Applicant/Operational Creditor
Versus

Rasik Products Private Limited
(CIN: - U22211UP1998PTC024053)

Having its Registered Address at:

141 K.M. Delhi Agra Bye Pass, Near Alwer Railway Bridge,
Krishna Nagar, Mathura, Uttar Pradesh- 281004

.....Respondent/Corporate Debtor
Order Pronounced on: 08.09.2025

Coram:

Mr. Praveen Gupta : *Member (Judicial)*

Mr. Ashish Verma : *Member (Technical)*

Appearances:

Sh. Rishabh Govila, Adv. : *For the Operational Creditor*

Sh. Mohd. Nazim Khan, Adv. : *For the Corporate Debtor*

-Sd-

-Sd-

ORDER

1. The present Application was filed on 13.03.2023 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “the Code/IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as “the Rules”) by M/s Paragon Packagings (hereinafter referred as “Operational Creditor”) through its partner Sh. Sanjay Gupta to initiate the Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against M/s Rasik Products Private Limited (hereinafter referred as "Corporate Debtor") due to its failure to pay the total outstanding operational debt of Rs. 1,47,62,820.80/- to the Operational Creditor. The date of default, as stated in the application, is 05-09-2022.
2. The Operational Creditor, has been engaged in the business of supplying packaging products and since 2021, it is supplying packaging products to the Corporate Debtor which is in the business of manufacturing Decorative films & Foils, Hologram base materials and Holographic / Metallized. The Operational Creditor has been supplying large quantities of packaging products to the Corporate Debtor for which invoices were being issued by the Operational Creditor and on account payments were being made by the Corporate Debtor from time to time, details of which are provided in a

-Sd-

-Sd-

tabular format attached with the Section 9 Application from its page no.48 to 61.

3. It is submitted that the Operational Creditor has raised several invoices with an express condition to clear the payment within 30 days for supplying the packaging products from the date of the said invoices issued by the Operational Creditor to the Corporate Debtor, however the Corporate Debtor has not been complying with the terms of payment as decided between the parties. It is specifically stated in the Application that the Corporate Debtor has not been making payments to the Operational Creditor since 05-09-2022. As per the terms and conditions, the Operational Creditor is entitled to recover applicable interest on the unpaid and delayed amounts.
4. As no payment was being made by the Corporate Debtor, the Operational Creditor approached Corporate Debtor over several telephonic calls and followed up by various WhatsApp messages, asking it to clear the dues outstanding as on that date coming to Rs. 1.15 crores or to at least make partial payment to restore some faith of the Operational Creditor in the Corporate Debtor. Despite, multiple attempts to communicate through different mediums, the Corporate Debtor did not pay any heed to constant requests made by the Operational Creditor.

-Sd-

-Sd-

5. On failure of the Corporate Debtor to pay the entire outstanding debt, the Operational Creditor issued a demand notice dated 01-11-2022 in Form 3 under Section 8 of the Code, demanding payment of the outstanding default amount of Rs. 1,72,62,820/- with the date of default mentioned therein being 05.09.2022. The said notice was duly served upon the Corporate Debtor on 01.11.2022. On issuing of the demand notice, only an amount of Rs. 25,00,000/- has been paid by the Corporate Debtor out of the total outstanding amount of Rs. 1,72,62,820.80/-, thus the total outstanding amount of Rs. 1,47,62,820.80/- still remained to be unpaid. Aggrieved by the delay in clearing of the debt by the Corporate Debtor and its continued failure to clear the outstanding dues, the Operational Creditor filed the present Application under section 9 of the Code, praying for initiation of CIRP against the Corporate Debtor.
6. Consequent to filing of the present application u/s 9, notice was issued by this Tribunal to the Corporate Debtor calling for its response to the present application but no reply was filed by the Corporate Debtor and also, nobody appeared for the Corporate Debtor to make representation on its behalf. Therefore, in terms of the order dated 11.08.2023, the Respondent/ Corporate Debtor was set ex-parte. Consequently, an IA No.429/2023 was moved on behalf of the Corporate Debtor for recalling of the said order, and to permit the Corporate Debtor to join to make submission in the

-Sd-

-Sd-

proceedings of the present matter. The reply/ objection on behalf of the Corporate Debtor to the main application filed U/s 9 of the Code, has also been attached along with the said IA 429/2023 which was taken on record and thus, IA 429/2023 was disposed off vide order dated 06.10.2023 and reply of the Corporate Debtor attached with the said IA has been taken on record and considered.

7. The Respondent/Corporate Debtor in response to the averments made by the Petitioner, vehemently denies them and contends that:

- i. It has been pleaded that part of the debt claimed to be due and payable falls during the suspension period of 25th March 2020 to 24th March 2021 mentioned in the provision of section 10A of the Code, therefore as per the first proviso of section 10A, no petition u/s 9 can ever be filed
- ii. It has been further pleaded that the present Petition is not maintainable in view of the provisions contained in Section 69 of the Partnership Act, as the Petitioner has been alleged to be a Partnership firm, wherein one Sh. Sanjay Gupta has been alleged to be one of the partners of the Petitioner Firm. While the Petitioner has filed a copy of the Partnership deed of 2001, evidencing the fact that the Petitioner is a Partnership Firm, the said document is improperly registered and notarized. The relevant provision of Section 69(2) is reproduced hereunder: -

-Sd-

-Sd-

“Section 69 EFFECT OF NON-REGISTRATION

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.”

- iii. The present petition is not maintainable as there is no Authority Letter or GPA or any other document filed on record, which shows that Sh. Sanjay Gupta has any authority from the firm or other partners of the firm to sign and institute the present petition.
- iv. The date of default i.e. 05.09.2022 mentioned in the petition is wrong as the last sale by the Petitioner to the Respondent, has been shown to be on 26.08.2022. Since the payments were to be made within 30 days after receipt of the material/Invoice, then the cause of action could accrue only after 26.09.2022. Further, in the last entry in date of default sheet annexed as A-6, the date of default has been mentioned as 26.09.2022.
- v. The Debt claimed in the present Petition is in variance with the demand notice as some amount has been paid by the Respondent subsequent to the issuance of legal notice. The Respondent made more payment to the Petitioner on 31.12.2022 and as such, the Petitioner could not have maintained in the petition that the date of debt was still 05.09.2022.
- vi. The Petition suffers from misjoinder of cause of action as each Invoice raised by the Petitioner is a separate and distinct cause of action in as much as each Invoice gives a period of 30 days to the Respondent to pay the outstanding amount, thus making each and

-Sd-

-Sd-

every Invoice, having different date of default. Also, in the present case, no mutual current and running account was being maintained by the parties. The Petitioner has mentioned different dates of defaults in front of each and every Invoice, which is 30 days from the date of raising of the Invoice.

- vii.** The Demand Notice issued is not in conformity with the provisions of the Code as there is no proper and valid Demand Notice. The relevant Section 8(1) of the IBC read with Rule 5 of the IBC Rules provides for the issuance of Demand Notice either in Form 3 or Form 4. The applicability of Form 3 or Form 4 depends on whether the invoices were generated during the transaction or not and it is not at the convenience of the party issuing Demand Notice. In the present matter given the nature of transaction between the parties, Petitioner is under the contractual obligation to issue invoices to the Respondent, and therefore, if there is any undisputed outstanding payment due under the said invoices, the Petitioner ought to have issued the Demand Notice under Form 4 and not under Form 3. Therefore, the Demand Notice issued by the Petitioner under Form 3 is not valid and proper.
- viii.** The Demand Notice was issued concealing material facts such as various disputes between the parties related to quality and quantity of the material allegedly supplied by the petitioner alongwith Debit Notes issued by the Respondent to the Petitioner indicating pre-existing dispute between the parties.
- ix.** The debt stated in the petition does not qualify as an “Operational debt” as per Section 5(21) of the Code because the amount claimed by the Petitioner cannot be termed as “operational debt”, as there is

-Sd-

-Sd-

no occurrence of a default in terms of the provisions of Section 3(12) of the Code read with other relevant provisions of the Code. There are discrepancies in the invoices, documents, and averments made by the Petitioner in the Petition which indicates that the amounts being claimed by the Petitioner is neither validated as per the contractual agreement nor crystalized.

- x. The Respondent also raised certain debit notes on the Petitioner, which the Petitioner has neither mentioned nor deducted from the alleged amount due. The alleged statement of account, filed on record is illegal, defective, manipulated and fabricated. The said statement of account contains several Invoices, which were never raised and no material was supplied under the same.
- xi. While the Petitioner states that various Invoices were raised by him on the Respondent for supply of packaging products between 02.06.2022 to 26.08.2022 worth Rs. 1,47,23,284/- and the Respondent, during the said period, made payment of Rs. 1.70 Crores to the Petitioner on the following dates- payment of Rs. 20.00 lacs was made on 16.06.2022; Rs. 50.00 lacs on 22.06.2022, Rs. 15.00 lacs on 08.07.022; Rs. 35.00 lacs on 14.07.2022; Rs. 15.00 lacs on 29.07.022; Rs. 10.00 lacs on 05.09.2022 and Rs. 25.00 lacs on 31.12.2022. The receipt of the aforesaid amount is reflected in the statement of account filed by the Petitioner itself. Therefore, no amount, on any account, whatsoever, is due and payable by the Respondent to the Petitioner
- xii. The date 05.09.2022 mentioned as date of default is not the date of default as the statement of Account annexed at Annexure A-113, of the petition, shows the last sale by the Petitioner to the Respondent,

-Sd-

-Sd-

to be on 26.08.2022. As per the Petitioner's claim, payment was to be made within 30 days after receipt of the material/Invoice. However, the claim of payment under the said Invoice, would accrue only after 26.09.2022.

8. The Applicant filed a rejoinder to the reply filed by the Corporate Debtor alongwith affidavit vide diary no. 2926 dated 07.11.2023 and submitted the following averments:

- i. The Operational Creditor is a registered partnership firm vide partnership deed dated 20.06.2001, executed between Mr. Sanjay Gupta and Mr. Dinesh Gupta and after successful business ventures, the partners got this partnership firm registered with Registrar of Firm, Haryana, on 26.02.2007. However, due to an inadvertent oversight, the registered partnership deed could not be annexed with the main petition filed by the Operational Creditor. A petition under section 9 of the Code can be filed even by an unregistered partnership firm since, such a petition cannot be treated as a suit and therefore the bar stipulated under section 69(2) of the Partnership Act is not attracted to proceedings under the Code, 2016. Reliance has been placed upon the judgement of Hon'ble National Company Law Appellate Tribunal ("NCLAT"), in the matter of Rourkela Steel Syndicate Vs. Metistech Fabricators Pvt. Ltd, CA (AT) INS. No. 924 of 2022, wherein the Hon'ble NCLAT observed as under:

“6. An application under Section 9 of IBC cannot be said to be a suit and analogy of Hon'ble Supreme Court judgment in Hargovind bhai Dave's case, supra, is fully applicable to the application filed under Section 9 IBC also. Further, also it is well

-Sd-

-Sd-

settled by the judgment of the Hon'ble Supreme Court in B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019) 11 SCC 633 that provision of Section 5 Limitation Act are also fully applicable in Section 7 & 9 IBC applications. Section 5 Limitation Act is not applicable in a suit which is also a clear indication that Application under Section 7 & 9 are not a suit.”

- ii. Therefore, it is stressed by the Operational Creditor that even though the Operational Creditor is a registered partnership firm, it is a settled law that an application under section 7 or section 9 of the Code can be filed even by unregistered partnership firms and in such a scenario, the bar under section 69(2) of the Partnership Act would not be applicable.
- iii. The business relationship between the Operational Creditor and the Corporate Debtor commenced in 2019, with the former regularly supplying goods as requested by the latter. The parties maintained a running, non-mutual account wherein the value of goods supplied was debited and payments made by the Corporate Debtor were credited. A copy of computation of debt and interest provided at pages 48–61 of the petition. It is further explained by pointing out to the entries of payments made by the Corporate Debtor as recorded in the Ledger Account that the Corporate Debtor never specified at the time of remittance as to against which invoices the said payments would have to be adjusted, and accordingly in line with standard business practice, payments were therefore appropriated against the earlier outstanding dues debited against the goods supplied from time to time until that outstanding dues are wiped off. Consequently, even though several payments were made after 02.06.2022, they

-Sd-

-Sd-

were adjusted against the supplies of goods made prior to that date and still lying outstanding. The ledger further shows that the Corporate Debtor did not settle invoices contemporaneously but made intermittent payments while goods were being supplied continuously, thereby establishing the existence of a running but non-mutual account between the parties.

- iv. It is also submitted that Mr. Sanjay Gupta always held an authorization dated 28.08.2022 in his favour on behalf of the partnership firm. It is pertinent to mention that even in the affidavit filed along with petition under section 9 of the Code, Mr. Sanjay Gupta has affirmed that he is duly authorized representative of the petitioner firm and competent to file the present petition. The non-filing the, authorization is explained to be only an inadvertent oversight and a clerical error. Copy of the authorization letter dated 28.08.2022 has been annexed as Annexure C-2 with the rejoinder.
- v. With regard to the defective demand notice, it is submitted that the total of Rs. 1,82,62,820.80/- was due and payable by the Corporate Debtor as on 26.08.2022 after issuance of the last invoice and thereafter, this outstanding due was liable to be paid within a period of 30 days from 26.08.2022. The Corporate Debtor made a part payment only Rs. 10,00,000/- (Rupees Ten Lakhs Only) on 05.09.2022, which falls within the period of 30 days between 26.08.2022 to 26.09.2022, thereby committing a default in part payment of Rs. 1,72,62,820.80/- on 05.09.2022. In this regard, reliance has been placed on the definition of “debt” and “default” given in sections 3(11) and 3(12) respectively of the Code.

-Sd-

-Sd-

- vi. It is further submitted that the demand notice under section 8 of the Code was sent by the Operational Creditor on 01.11.2022 which provided that the total amount of default committed by the Corporate Debtor as Rs. 1,72,62,820/- with date of default as 05.09.2022, and requiring the Corporate Debtor to state any pre-existing dispute or make payment in respect of the defaulted amount. However, in response to this Demand Notice, no notice of dispute was filed by the Corporate Debtor as per section 8(2)(a) of the Code, rather the Corporate Debtor vide email dated 01.11.2022, admitted the total amount due as per the demand notice and requested for two months' time to make the payment and thereafter, a payment of only Rs. 25,00,000/- was made which further established the admission of default by the Corporate Debtor. Further, the minimum threshold limit of over 1 Crore has been reached even after the payment of Rs. 25,00,000/- by the Corporate Debtor.
- vii. With regard to the present Petition suffering from misjoinder of cause of action, it is submitted that the business relationship between the Operational Creditor and the Corporate Debtor began in the year 2021 and the supply of goods by the Operational Creditor was frequent and regular as per the request by the Corporate Debtor. Additionally, due to the frequent and regular supply by the Operational Creditor, the parties maintained a Running and Non-Mutual Account between them, wherein, when the good were sold by the Operational Creditor, the value of goods was debited in the debit column and when the amounts were paid by the Corporate Debtor, they were entered in the credit column. Therefore, on account of this running and non-mutual account maintain between the parties, the present petition is maintainable.

-Sd-

-Sd-

- viii.** With regard to Demand notice not being in conformity with the provisions of the Code, it is submitted that upon the occurrence of default, if the demand notice is sent in Form 3, then the Operational Creditor has to submit the document to prove the existence of operational debt and the amount in default along with the notice. The said document may either be invoice or any other document to prove the existence of the operational debt and the amount in default. In view of the above, it is stated here that when the Operational Creditor issued Demand Notice in Form- 3, it had annexed relevant documents in order to prove the existence of operational debt and also had clearly stipulated the amount in default along with the date of default. Further, upon being in receipt of the demand notice under Form - 3 through email dated 01.11.2022, the Corporate Debtor had verified the said information and documents with the notice and replied vide email dated 01.11.2022 that they will make the payment within the two months' time.
- ix.** With regard to the point of existence of any pre-existing dispute, it is submitted that the Operational Creditor had annexed relevant and necessary documents to establish an operational debt and therefore, after being in receipt of the same, not only did the Corporate Debtor admitted its liability towards the stipulated operational debt by sending an email dated 01.11.2022 in response to the said Demand Notice , it also made a payment of Rs.25,00,000/- on 31.12.2022 after it had already received the demand notice on 01.11.2022 without mentioning any pre-existing dispute or repayment of debt as now being claimed in the reply.

-Sd-

-Sd-

- x. It is submitted that the standard business practice is that it is never stipulated at the time of remittance as to against which invoices the said payment would be adjusted. The amounts credited from time to time were utilised to adjust against pre-existing debt against the good supplied from time to time. So even though several payments were made by the Corporate Debtor after 02.06.2022, all such payments were adjusted against the dues on account of supplies made by the Operational Creditor prior to 02.06.2022 also which remained outstanding.
- xi. It is also submitted that the Corporate Debtor in order to avoid the initiation of the CIRP proceedings, had raised the dispute regarding the quality of the goods supplied after filing of the present application u/s 9. Placing reliance on the judgement of *Mobilox Innovations Private imited v/s. Kirusa Software Private Limited (2018) 1 SCC 353*, it has been pointed out that the Hon'ble Supreme Court had held that in the absence of any evidence of any 'Pre-Existing Dispute' prior to the filing of Section 9 Application, the claim of the Corporate Debtor of existence of a dispute regarding the quality of the goods supplied, shall be rejected.
9. In this case, it is also important to consider that during the proceeding held on 13.09.2024, it was pointed out by the Ld. Counsels for both the parties that as against the same very Corporate Debtor, an admission order has been passed by this Adjudicating Authority in CP (IB) No.67/ALD/2021 vide order dated 14.06.2024. It was further pointed out that a Company Appeal had been filed before the Hon'ble NCLAT vide Company Appeal

-Sd-

-Sd-

(AT) (Insolvency) No.1216 of 2024, wherein the matter is stated to have finally been settled and disposed off accordingly in terms of an order dated 05.07.2024 passed by the Hon'ble NCLAT. Thereafter, on proceeding held on 11.10.2024, it was pointed out by the Ld. Counsels representing the parties that though the matter before the Hon'ble NCLAT was listed for hearing on 28.10.2024, however that was only limited to the point of the full payment of the settlement amount as according to the Corporate Debtor a part payment has been made in that matter. Ld. Authorized Representative for the Corporate Debtor also stated that in the present matter also, they are in talk with the Operational Creditor and some part payment to the extent of Rs.50,00,000/- has been made on 07.06.2024, and they are in serious dialogue with the Operational Creditor to settle the amount in this case also. On previous dates of hearings also i.e. on 23.02.2024 and 18.03.2024, the Ld. Counsel for the Corporate Debtor informed that the settlement talk are underway with the Operational Creditor However, Ld. Counsel representing the Operational Creditor on hearing held on 23.10.2024 stated that there were no settlement talks underway as submitted by the Corporate Debtor on the previous occasions, and hence finally the matter in this case has been heard.

-Sd-

-Sd-

FINDINGS AND ORDER

10. We have heard the arguments of the Learned Counsels appearing for both parties, Applicant/Operational Creditor and Respondent/Corporate Debtor and perused the pleadings, records, and exhibits/annexures marked thereto. Having heard the Learned Counsels appearing for the parties, and on perusal of the records, exhibits/annexures and after considering the arguments advanced by respective Learned Counsels, we find that the following issues are for consideration to be decided for admissibility or otherwise of this Application u/s 9 of the Code.
- a. Whether the Application filed is within the limitation
 - b. Whether there is a Debt and Default
 - c. Whether there is a Pre-Existing Dispute

LIMITATION

11. It has been observed that the present application was filed under Section 9 of the Code on 13.03.2023 before this Tribunal, with the date of default being declared as 05.09.2022 in Part IV of the Petition. As per the details of invoices raised by the Operational Creditor and payments made by the Corporate Debtor, from 13.06.2021 till 26.08.2022, there is total due amount of Rs. 1,82,62,820.80/-, out of which Corporate Debtor has made a part payment Rs. 10,00,000/- on 05.09.2022 as the last payment after the

-Sd-

-Sd-

last bill was raised on 26.08.2022 and this payment is within a period of 30 days from the date of raising of last bill but thereafter, no payment was made, thereby committing a default in payment of balance amount of Rs. 1,72,62,820.80/- outstanding as on 05.09.2022. The Applicant sent demand notice vide e-mail on 01.11.2022 mentioning amount of default as Rs. 1,72,62,820/- and date of default as 05.09.2022. Thereafter, in response to the demand notice, the Corporate Debtor immediately replied on the same day vide email dated 01.11.2022 stating that they will pay off due amount of the Operational Creditor in the months of November and December in full and also, the reason for delay in payment was explained to be due to delay in the payments received from their overseas buyers and accordingly, two months times was sought to make the full payments. Subsequently, the Corporate Debtor made payment of Rs. 25,00,000/- on 31.12.2022 and as such, the total amount of debt due and outstanding as on that date remained to be Rs.1,47,62,820.80/- along with an interest of 24% per annum resulting into filing of present application u/s 9 on 13.03.2023. Therefore, in view of the facts of the case as stated above, it is clear that there is outstanding debt which has been paid in past but still outstanding amount remained above the threshold limit of Rs. 1 crore against which a demand notice was also issued showing and recording date of default as 05.09.2022 and amount of default Rs. 1,72,62,820/- but in response to this

-Sd-

-Sd-

demand notice, the Corporate Debtor did not raise any notice of dispute and by admitting the total debt, an amount of Rs. 25,00,000/- has also been paid but the debt in default still remained above Rs. 1 crore resulting into filing of present petition on 13.03.2023. Accordingly, the present application is found to be well within limitation of three years from the date when first default occurred i.e. 05.09.2022 as mentioned in demand notice and the date of filing of this Application on 13.03.2023.

12. Plea of the Corporate Debtor regarding the matter in the present case being covered by the first proviso to section 10A as certain invoices were issued during the suspension period of 25th March 2020 to 24th March 2021 mentioned in the provision of section 10A, has also not been found tenable considering the fact that a running ledger account is being maintained by the Operational Creditor for transaction with the Corporate Debtor recording the invoices issued and amount received and first default in payment of cumulative debt on account of all the invoices issued, has occurred on 05.09.2022 which falls outside the time period of default specified in the provision of section 10A.
13. Therefore, all the objections raised by the Corporate Debtor on maintainability of the present application on the ground of limitation as well as being hit by the Section 10A have not been found to be justifiable, and hence rejected.

-Sd-

-Sd-

DEBT AND DEFAULT,

14. The present Application filed by the Operational Creditor in Form 5, seeking initiation of CIRP against the Corporate Debtor is based on the outstanding dues mentioned in Part-IV of the Application as debt in default, which is amounting to Rs. 1,47,62,820.80/-, with the date of default as mentioned therein being 05.09.2022. The facts leading to the above debt and default are that the Operational Creditor supplied large quantities of packaging materials to the Corporate Debtor. As decided between the parties, when invoice was raised by the Operational Creditor on supplying of goods, the Corporate Debtor was to provide the payment of the invoice within 30 days from the date of the invoice. The Corporate Debtor was in receipt of invoices for different amounts on account of supplying of packing materials during the period from 13.06.2021 onwards till 26.08.2022, details of which along with recording of on account payments are provided from page no 48 to 61 of the application. As per these details, the last payment of Rs. 10,00,000/- was made on 05.09.2022 after the last bill was raised on 26.08.2022 and the outstanding debt on that date comes to Rs. 1,72,62,820.80/-. Thereafter, the Corporate Debtor has not been making any payment after 05.09.2022. After multiple correspondences through various mediums, the Corporate Debtor did not respond to the request of Operational Creditor. As a result, the Corporate Debtor defaulted

-Sd-

-Sd-

in payment of Rs.1,72,62,820.80/- towards the invoices raised by the Operational Creditor against the supply of various packaging products as requested by the Corporate Debtor and thus, a debt in default of Rs.1,72,62,820.80 has become due against the Corporate Debtor payable to the Operational Creditor. It is pertinent to note that the Respondent Corporate Debtor did not object to such invoices after it received them, and even while making the various on account payments in part later on, it did not specify the manner in which such payments are to be appropriated towards the principal amount of any specific invoice. Therefore, on account payments made by the Corporate Debtor have been adjusted against the outstanding bills in chronological order and the outstanding debt as on 05.09.2022 comes to Rs. 1,72,62,820/- for which a demand notice dated 01.11.2022 was issued by the Operational Creditor and the same was replied by the Corporate Debtor vide an email dated 01.11.2022 without raising any dispute and informing to pay within two months but except Rs. 25,00,000/-, no other payments have been made, resulting into a clear debt in default of Rs. 1,47,62,820/- (Rs. 1,72,62,820 – Rs. 25,00,000/-) as shown in part IV of the application filed under section 9.

15. In the case of Beetel Teletch Ltd. v. Arcelia IT Services Pvt. Ltd. Company Appeal (AT) (Ins) No.1459 of 2022, the court held that:-

-Sd-

-Sd-

"Para 19-A plain reading of Section 60 of the Indian Contract Act 1872, shows that if the debtor makes any payment without any appropriation, then the creditor can use his discretion to wipe out any of the remaining debt(s) which is/are due. The right of appropriation lies with the creditor if the debtor does not indicate in what manner the debt is to be discharged. In such circumstances, the creditor has a lot of scope for exercising his right in such a manner so as to put himself in the most advantageous position. It is also a well settled business practice that in a debt where the principal amount is outstanding and interest has also accrued on the debt, sums paid by the debtor is applied by the creditor first to the interest. In the present facts of the case, payments received by the Operational Creditor have been duly adjusted also against the principal amount or interest accrued in respect of invoices other than RV1927813879 which were all pending for payment. Without explaining how this action has Operational Creditor has been in contravention of the statutory provisions contained in the Indian Contract Act, it has therefore been unreasonable on the part of the Adjudicating Authority to hold that there is an inconsistency in the pattern adopted by the present Appellant while adjusting payments received against outstanding dues."

16. Moreover, even after receipt of the Demand Notice of Section 8 of the Code, the Respondent Corporate Debtor gave assurance of making the payment and, the Corporate Debtor requested vide email dated 01.11.2022, for further extension period of two months in which they assured to make the payment of outstanding amount. However, the Corporate Debtor made

-Sd-

-Sd-

a part payment of Rs. 25,00,000/- on 31-12-2022, thus, the balance debt in default remained to be at Rs. 1,47,62,820.80/-.

17. As per section 4 of the Code, the minimum threshold for initiating a CIRP application is Rs. 1 Crore. In the present case, the Applicant has placed sufficient documents to show that a debt of more than Rs. 1 crore, as also mentioned in Part IV of the Application, is due and that there has been a default in payment on the part of the Corporate Debtor.
18. After considering the above facts and circumstances of the case, we are of the view that the admission of liability by the Corporate Debtor through its emails dated 29.10.2022 and 01.11.2022, establishes the existence of a legally enforceable debt. The failure to make payments of such amount of entire debt after 05.09.2022 and repeated pleas taken by the Corporate Debtor even during the course of hearing for making efforts for settlement of outstanding debt and even paying Rs. 50,00,000/- on 07.06.2024 during the course of such efforts being made for settlement by the Corporate Debtor after filing of the present application u/s 9 by the Operational Creditor, confirms the occurrence of default for which the present application u/s 9 was filed with the debt in default being more than the threshold limit of Rs. 1 crore on the date of filing of the application. Thus, it is evident that in the present case under consideration, there is a valid debt more than the threshold limit of Rs. 1 crore on the date of default

-Sd-

-Sd-

which remained unpaid to the extent of more than Rs. 1 crore even on the date of filing of the present application u/s 9, leading to a default on the part of the Corporate Debtor. Therefore, we are satisfied that there is a debt of more than Rs. 1 Crore and also a default has occurred on the part of the Respondent to pay this debt.

PRE-EXISTING DISPUTE

19. As regards there being any pre-existing dispute in respect of the claim made by the Operational Creditor as discussed above, we find that no notice of dispute was raised by the Corporate Debtor against the demand notice dated 01.11.2022 issued u/s 8, as required under Section 8(2)(a) and also there being no notice of dispute, the condition for admission of application u/s 9 as provided u/s Section 9(5)(i)(d) of the Code is also fulfilled, whilst simultaneously acknowledging the debt and making part payments. While the Corporate Debtor has annexed certain documents in their reply terming them to be pre-existing dispute raised by it, however, the copies of the said emails annexed by the Corporate Debtor serve merely as a moonshine defence and no substantial dispute is there on the material supplied or the invoices raised. Therefore, the Corporate Debtor has been constantly making efforts for settling the payment of outstanding debt and also made some payments even after filing of application u/s 9 but the

-Sd-

-Sd-

entire debt is still not paid. Therefore, no pre-existing dispute has been found in existence in the present case.

- 20.** After finding that in the present case, the present Application is filed within limitation period, there is debt more than the threshold limit of Rs. 1 crore on the date of default as well as on the date when the present application u/s 9 has been filed, there is a default in repayment of the said debt and there is no pre-existing dispute with respect to this debt, further, all other conditions for admission of application under Section 9(5)(i) of the Code 2016 against the Corporate Debtor, have also been found to be fulfilled, we find this application as being fit for admission under Section 9(5)(i) of the Code, 2016 for starting CIRP against the Corporate Debtor.
- 21.** We note that the Operational Creditor has proposed the name of Ms. Parul Goyal, the Insolvency Professional, to be appointed as Interim Resolution Professional (IRP), having Registration No. IBBI/IPA-003/IP-N00064/2017-18/10550, having address: B-5/24, Sector 4, Rohini, Near Vishram Chowk, Opposite Mother Divine Public School, New Delhi, National Capital Territory of Delhi, 110085 and email id: parul.aquarius@gmail.com. The verification of the said IRP has been carried out by the Law Research Associate of this Tribunal, Mr. Sarim Husain, and it is found that there is no proceeding pending against the

-Sd-

-Sd-

proposed IRP, and it is also found that this Insolvency professional holds valid authorization till 31.12.2025.

22. Accordingly, this application is admitted u/s 9 of the Code, 2016, under the following terms and conditions.

- i.** The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e., Rasik Products Private Limited is hereby admitted.
- ii.** We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii.** This Adjudicating Authority hereby appoints Ms. Parul Goyal to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 24 above.
- iv.** The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 has commenced from the date of this order prohibiting the following:
 - a)** The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including

-Sd-

-Sd-

- execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b)** Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c)** Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d)** The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- vi.** Apart from above prohibitions in respect of the corporate debtor, it is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- vii.** The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- viii.** The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

-Sd-

-Sd-

- ix.** The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.
- x.** The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor and to constitute a Committee of Creditors (hereinafter referred as “**COC**”) and shall file a report certifying the constitution of the COC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the COC within seven days of filing the report of the constitution of the COC.
- xi.** The COC in its first meeting shall appoint a Resolution Professional (hereinafter referred as “**RP**”) as per the provision of section 22(2) and file an application before this Tribunal for confirmation of the appointment of the RP.
- xii.** The Suspended Board of Directors of the corporate debtor is directed to give to IRP/RP complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the IRP/RP all the information regarding maintaining the Backup and regarding service provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the service provider and its

-Sd-

-Sd-

location, and also address of the location of the Books of Accounts maintained in the cloud. In case, accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs.

- xiii.** The Statutory Auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI.
- xiv.** The IRP/RP is directed to take custody and control of all the records of information relating to assets of the Corporate Debtor, its Books of Account in physical form or the computer systems storing the electronic records at the earliest in accordance with the provision of Regulation 3A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “CIRP Regulations, 2016”).
- xv.** The Operational Creditor shall also provide necessary assistance to IRP/RP in obtaining the necessary information about the Corporate Debtor as envisaged in Regulation 4(3) of the CIRP Regulations, 2016.
- xvi.** In case of any non-cooperation by the Suspended Board of Directors or the Statutory Auditors, IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in

-Sd-

-Sd-

implementing this order for the retrieval of relevant information from the systems of the corporate debtor.

- xvii.** The IRP/RP may take the assistance of Digital Forensic Experts empaneled with this Bench/IBBI/MCA for this purpose.
- xviii.** The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances.
- xix.** The IRP/RP is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.
- xx.** The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities'/institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings.
- xxi.** The IRP/RP is directed to approach all the concerned Government Departments and authorities as discernible from the books of account of the Corporate Debtor requesting them to file claims if any amount is outstanding against the Corporate Debtor.
- xxii.** The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIR Proceedings as per law.

-Sd-

-Sd-

- xxiii.** The IRP/RP shall collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the Corporate Debtor.
- xxiv.** The IRP/RP is further directed to send regular progress reports to this Tribunal every month.
- xxv.** We direct the Operational Creditor to deposit a sum of Rs.1,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.
- 23.** A certified copy of the order shall be communicated to both the Applicant Operational Creditor and the Respondent Corporate Debtor. The learned counsel for the Applicant Operational Creditor shall deliver a certified copy of this order to the IRP forthwith. The Registry is also directed to send a certified copy of this order to the IRP at his e-mail address forthwith.
- 24.** List the **CP (IB) 38/ALD/2023** on 14.10.2025 for filing of the progress report/further proceedings.

-Sd-

(Ashish Verma)

Member (Technical)

Date: 08.09.2025

-Sd-

(Praveen Gupta)

Member (Judicial)