IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-VI, NEW DELHI

CP IB NO. 429/(ND)/2024

An Application 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:

M/S MANGAL SALES CORPORATION
Through its Proprietor, Mr. Dharmender Kumar
S-507, School Block Part-1,
Shakarpur, Delhi-110092 **...Operational Creditor/Applicant**

VERSUS

1. **M/S PROLIFIC PAPERS PRIVATE LIMITED**
   5/2389 Chatta Shahji,
   Chawari Bazar, Delhi-110006

2. **HEMANT KUMAR JODHANI**
   Former Director of Prolific Papers Private Limited
   5/2389 Chatta Shahji,
   Chawari Bazar, Delhi-110006

3. **SOURABH JODHANI**
   Former Director of Prolific Papers Private Limited
   5/2389 Chatta Shahji,
   Chawari Bazar, Delhi-110006 **...Corporate Debtor/Respondents**

Order Delivered on: 09.04.2026

CORAM:

JUSTICE JYOTSNA SHARMA	**MS. ANU JAGMOHAN SINGH**
HON'BLE MEMBER (JUDICIAL)	**HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant : Mr. Aditya Sharan, Mr. Sumesh Malhotra, Advs.
For the Respondent : Mr. Akhil Shankhwar, Mr. Vardan Mittal, Advs.

O R D E R

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 **M/s Mangal Sales Corporation through its Proprietor Mr. Dharmender Kumar ('Operational Creditor')** for initiation of Corporate Insolvency Resolution Process **('CIRP')** against **M/s Prolific Papers Private Limited ('Corporate Debtor')**.

2. **M/s Prolific Papers Private Limited** (Corporate Debtor) is a company incorporated on 05.03.2007 and registered under the Companies Act, 1956 [CIN: U21093DL2007PTC160114], having its registered office at 5/2389 Chatta Shahji Chawari Bazar, Delhi-110006. Therefore, this Adjudicating Authority has jurisdiction to deal with this petition.

3. The present Petition was filed on 08.07.2024 before this Adjudicating Authority by M/s Mangal Sales Corporation through its Proprietor Mr. Dharmender Kumar (Operational Creditor) to initiate Corporate Insolvency Resolution Process (**"CIRP**") proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**"Code'**). The total amount due as claimed in Part-IV of the application is Rs. 1,69,48,652.14/- (Rupees One Crore Sixty-Nine Lacs Forty-Eight Thousand Six Hundred Fifty-Two and Fourteen Paisa) along with interest @ 18% p.a., as on date. The date of default is stated in Part-IV as the date of each invoice starting from 05.02.2023.

4. **Submissions by the Operational Creditor**.
   a) That the Operational Creditor is a leading producer/manufacturer of supply and trading of waste paper throughout the region of Delhi. The Corporate

Debtor is in the business of manufacturing of high grade writing and printing paper by recycling waste paper.

b) That since more than 9 years, the Operational Creditor has been supplying waste paper of different categories on a recurring basis to the Corporate Debtor and maintained a running account with the Corporate Debtor.

c) That in respect of the supply of the waste papers, the Operational Creditor issued 82 invoices to the Corporate Debtor ranging from 05.02.2023 to 25.11.2023 and the Corporate Debtor has defaulted in the payment of all the 82 invoices.

d) That despite repeated requests, the Corporate Debtor failed in discharging complete payment of the outstanding amount. Therefore, the Operational Creditor issued statutory Demand Notice in Form-3 via speed post on 18.03.2024 which was delivered to the Corporate Debtor on 19.03.2024 and also via email dated 23.03.2024. However, the Corporate Debtor neither replied to the Demand Notice nor cleared the outstanding amount.

e) That subsequent to filing of the present application (i.e. on 08.07.2024), the Corporate Debtor paid an amount of Rs. 48,75,000/- on 23.09.2024 and an amount of Rs. 48,75,000/- on 14.10.2024 towards discharge of liability owed towards the Operational Creditor in order to oust the Operational Creditor from the pecuniary jurisdiction of this Adjudicating Authority. However, the aforesaid payments reflect the acknowledgement of liability on the part of the Corporate Debtor.

f) That the Operational Creditor is a registered MSME and therefore, by virtue of Section 16 of the MSMED Act, 2006, the supplier is entitled to claim compound interest from the buyer at three times of the bank rate notified by the Reserve Bank, in case of failure by the buyer to make payment of the outstanding amount to the supplier.

g) That in view of the subsequent payments made by the Corporate Debtor, the amount of the said 82 invoices has been reduced. However, it is pointed out that even after adjustments of the said payments, there is a balance overdue of Rs. 1,11,06,641/- including interest of Rs. 6,98,086/- calculated @ 18% p.a. Hence, the instant petition has been filed.

5. **Submissions by the Corporate Debtor:**

a) That the Operational Creditor has failed to serve a proper Demand Notice under Section 8 of the Code on the Corporate Debtor. The Operational Creditor relies on the Affidavit of Service dated 10.08.2024 and postal receipts. However, it is pointed out that the alleged service was defective for the following reasons: Firstly, the 1st notice was sent to Mr. Hemant Kumar Jodhani, who is neither a Director nor a Key Managerial Personnel nor otherwise associated with the Corporate Debtor. Secondly, the 2nd notice was sent to a distinct legal entity named M/s Prolific Papers Private Limited, Kashipur, Uttar Pradesh. However, the Corporate Debtor has no registered office at Kashipur, Uttar Pradesh and no service was done at the registered office of the Corporate Debtor. Thirdly, the alleged Demand Notice was sent on an unregistered email address i.e. accounts@prolificpapers.com, whereas the MCA registered email Id of the Corporate Debtor is dco@prolificpapers.com.

b) That the alleged Demand Notice is incomplete, defective and non-compliant with mandatory statutory requirements since it fails to specify the series and events leading to occurrence of default. Further that, the Operational Creditor has failed to segregate the invoices in default, to indicate how payments or adjustments have been accounted for, to correlate them with any specific outstanding amount and to provide proof of delivery or corresponding ledger statements.

c) That the Operational Creditor has referred to the alleged date of default as 05.02.2023. However, the Corporate Debtor has made regular payments even after the said date of default, up to the date of filing, amounting to INR 1,95,97,358/-, as reflected in the ledger of the Corporate Debtor, which amount is exceeding the amount claimed in the petition and the said fact has been concealed by the Operational Creditor.

d) That despite asserting the existence of a running account, the Operational Creditor has not produced any written agreement, purchase orders or document evidencing a mutually accepted running account. The transactions were strictly on an invoice-to-invoice basis, arising out of longstanding business dealings.

e) That the Operational Creditor unjustifiably claims interest @ 18% p.a. despite there being no written agreement, understanding or document between the parties providing for payment of interest. No document annexed with the present Petition evidences any consent by the Corporate Debtor to such interest.

f) That despite non-service of the Demand Notice, the Corporate Debtor, acting in good faith, made payments totaling to INR 97,50,000/- and after adjusting sum of Rs. 97,50,000/-, the actual outstanding, if any, is only INR 71,98,652.52, which falls below the statutory threshold for the purpose of admission.

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, reply filed by the Corporate Debtor 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 is having territorial jurisdiction as the Adjudicating Authority in relation to 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. In the instant case, the Operational Creditor had been supplying waste paper to the Corporate Debtor for a period of more than 9 years for the purpose of manufacturing of high grade writing and printing paper by recycling of waste paper. The said fact has not been disputed by the Corporate Debtor. It is the case of the Applicant that in respect of the goods supplied by the Operational Creditor to the Corporate Debtor, the Operational Creditor raised 82 invoices ranging from 05.02.2023 to 25.11.2023. However, the Corporate Debtor defaulted in the payment of all the 82 invoices. Therefore, the Operational Creditor issued a statutory Demand Notice in Form -3 on the Corporate Debtor

via speed post on 18.03.2024 (which was delivered to the Corporate Debtor on 19.03.2024) and via email on 23.03.2024. However, no reply to the same has been filed by the Corporate Debtor.

8. The Corporate Debtor disputes the service of Demand Notice mainly on the two grounds: firstly, the Demand Notice was not served on the registered address of the Corporate Debtor and was instead served on the Kashipur address of the Corporate Debtor and secondly, the Demand Notice was served on the unregistered email id of the Corporate Debtor. On the perusal of the records, we note that the invoices issued by the Operational Creditor to the Corporate Debtor carry the Kashipur address of the Corporate Debtor and the same has not been disputed by the Corporate Debtor. We further note that the Kashipur address of the Corporate Debtor is duly reflected in the MCA master data of the Corporate Debtor. Further, with regard to the Demand Notice being served by the Operational Creditor on the unregistered email id of the Corporate Debtor, we note that the alleged unregistered email id is the one on which the Operational Creditor used to share invoices with the Corporate Debtor and the said fact has not been disputed/rebutted by the Corporate Debtor. Therefore, in light of the aforesaid observations, we are of the view that the Demand Notice was duly served on the Corporate Debtor.

9. It is further the contention of the Corporate Debtor that the Operational Creditor has stated the date of default as 05.02.2023. However, even after the alleged date of default as stated by the Applicant, the Corporate Debtor has made payments in respect of the outstanding invoices and the said fact has not been disclosed by the Operational Creditor. We note that in compliance of Order dated 21.04.2025 passed by this Adjudicating Authority, the Operational Creditor has filed a clarificatory affidavit dated 05.05.2025 clarifying the date of default and accordingly, clarified that the Operational Creditor is a MSME and by virtue of Section 15 of the MSME Act, 2006, the default for each invoice is considered on the lapse of 45 days from the date of each invoice. Therefore, there are multiple date of defaults commencing from the lapse of 45 days from the date of first invoice i.e. 05.02.2023.

10. On perusal of the ledger account of the Corporate Debtor as maintained by the Operational Creditor, we note that as on the date of the filing of the present application, there is an outstanding balance of Rs. 1,69,48,652.14/-. We note that the aforesaid balance of Rs. 1,69,48,652/- corresponds with the ledger account of the Operational Creditor maintained by the Corporate Debtor. Hence, the Corporate Debtor has not disputed the existence of the 'Operational Debt' as on the date of the filing of the instant petition. It is the only contention of the Corporate Debtor that subsequent to filing of the present petition, the Corporate Debtor had made the payment in two tranches of Rs. 48,75,000/- each on 23.09.2024 and 14.10.2024. Therefore, after adjustments of such amount being paid by the Corporate Debtor, the outstanding debt amount falls below the threshold of Rs. 1 crore as laid down under Section 4 of the Code. In this regard, we note that the instant application was filed on 08.07.2024 and any subsequent payments (on 23.09.2024 and 14.10.2024) made with intent to reduce the threshold amount would not hamper the maintainability of the present application. It is a settled principle of law that the threshold of Rs. 1 crore is to be seen at the time of filing of the application and not subsequent thereto. We rely upon the recent decision of the Hon'ble NCLAT in the matter of **Devika Resources Private Limited Vs. MAA Manasha Devi Alloys Private Limited [Comp. App. (AT) (Ins) No.938 of 2024 & I.A. No. 3418, 3419 of 2024]** wherein the Hon'ble NCLAT has held that the threshold of Rs. 1 crore for the purpose of Section 9 of the Code is to be seen at the time of filing of the application and not at the time of admission of the application. The relevant extract of the order passed by the Hon'ble NCLAT is as under:

> *"14.* ***There is no dispute that when the application under Section 9 was filed by the Appellant it had crossed the threshold of Rs. 1 Cr. because the amount at that time was Rs. 1,16,25,583/- as principal but during the pendency of the application, the Respondent deposited Rs. 20 lakh towards the outstanding dues because of which it reduced to less than Rs. 1 Cr****.*
>
> *15. In the case of Rajamundry Electric Supply Corporation Ltd. (Supra) the Hon'ble Supreme Court has categorically held that the threshold has to be seen at the time of filing of the application and in this regard made the following observations:-*
>
> > *"............* ***The validity of a petition must be judged on the facts as they were at the time of its presentation, and a***

petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation*......"*

16. In the case of Manish Kumar (Supra) the Hon'ble Supreme Court has observed as under:

> *"THE POINT OF TIME TO COMPLY WITH THE THRESHHOLD REQUIREMENTS*
>
> *178. The question, then arises, as to the alleged lack of clarity about the point of time, at which the requirements of the impugned provisos, are to be met. Is it sufficient, if the required number of allottees join together and file an application under Section 7 and fulfil the requirements, at the time of presentation? Or, is it necessary that the application must conform the numerical strength, under the new proviso, even after filing of the application, and till the date, the application is admitted under Section 7(5)?* ***There can be no doubt that the requirement of a threshold under the impugned proviso, in Section 7(1), must be fulfilled as on the date of the filing of the application****........"*

18. It has been held in the aforesaid cases that ***the threshold has to be seen at the time of filing of the application and not at the time of the admission of the application****.*

20. However, in our considered opinion, the ratio laid down in the aforesaid decisions relied by the Appellant squarely covers the case of the Appellant. Consequently, there is no hitch on our part to hold that the Tribunal has committed a patent error in dismissing the application."

11. The ambit and scope of Section 9 of the Code has been dealt within details by the Hon'ble Apex Court in the matter of **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** wherein, the Hon'ble Apex Court has clarified that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:
    a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
    b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
    c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

12. In view of the observations made hereinbefore, we note that there exists 'Operational Debt' due and payable in favor of the Operational creditor. The Corporate Debtor has failed to produce document evidencing the payment of outstanding invoices substantiating the existence of 'default' on the part of the Corporate Debtor. Further, the Corporate Debtor has not raised any material dispute showing the existence of Pre-Existing dispute between the parties. Instead, all the disputes raised by the Corporate Debtor are merely based on technical grounds. The same has been dealt with in preceding paras of this Order. We further note that no dispute with regard to the quality or quantity of the goods supplied by the Corporate Debtor was ever raised by the Corporate Debtor prior to issuance of Section 8 notice. Therefore, in the instant case, there is no Pre-Existing dispute as specified under the judgment of the Hon'ble Supreme Court in *Mobilox Innovations (supra).*

13. We further note that in addition to the disputes/objections raised by the Corporate Debtor, the Corporate Debtor disputes the imposition of interest by the Operational Creditor as being unjustified. In this regard, we note that even after excluding the interest component, the principal amount claimed is well above the threshold of Rs. 1 crore as laid down under Section 4 of the Code. Therefore, the objection raised in this regard also does not hold any ground and the present petition duly fulfills the requirement of statutory threshold as provided under Section 4 of the Code.

14. Therefore, in view of the transactional invoices, bank statements, ledger accounts of the Operational Creditor and the Corporate Debtor and other documents placed on record by both the parties, we are satisfied that there exists an 'Operational Debt' and that the Corporate Debtor has defaulted in the payment of such debt. Hence, we are of the view that there is a *debt due and payable* and that there has been *default* on the part of the Corporate Debtor.

15. In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of Section 9(5) of the Insolvency and Bankruptcy Code. The Petition

establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. In the light of the above facts and circumstances, it is, hereby ordered as follows: -

a) The application bearing **CP (IB) No. 429/ND/2024** filed by, **M/s Mangal Sales Corporation,** the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Prolific Papers Private Limited,** the Corporate Debtor, stands **admitted**.

b) The Applicant has not proposed any name for the Interim Resolution Professional ("IRP") and requested this Adjudicating Authority to appoint an IRP. Therefore, from the Panel of Insolvency Professional via reference letter IP-12011/1/2020-IBBI dated 16.01.2026 received from Insolvency and Bankruptcy Board of India valid for the period January 16- June 30, 2026, we appoint **Mr. Amar Nath** having IBBI Registration No. IBBI/IPA-001/IP-P01639/2019-2020/12530 and email id-insolvencyprofessional2019@gmail.com the as Interim Resolution Professional ("IRP")**.** The IRP is directed to file a valid Authorization for Assignment (AFA) along with Written Consent in Form-2 and disclosure about non-initiation of any disciplinary proceedings against him, within 7 days from the date of this order.

c) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Amar Nath, 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 needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

d) We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

> *"(a)The institution of suits or continuation of pending suits or proceedings against the corporate debtor including 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;*
> *(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."*
> *(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period."*

e) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

f) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.

g) In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

h) A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Sd/-	**Sd/-**
(ANU JAGMOHAN SINGH)	**(JYOTSNA SHARMA)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**