

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH-IV**

**IB-1424/(ND)/2019**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

ALIG INTERNATIONAL

...Operational Creditor/Applicant

**Versus**

M/s NIKHIL FOOTWEAR Pvt. Ltd

...Corporate Debtor/Respondent

**Coram:**

**MR. DHARMINDER SINGH, Hon'ble Member (Judicial)**

**MS. SUMITA PURKAYASTHA, Hon'ble Member (Technical)**

**Order Delivered on: 10.06.2022**

**ORDER**

**PER: SUMITA PURKAYASTHA, MEMBER (TECHNICAL)**

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

2. The applicant, Alig International is a proprietorship firm, has filed the present application claiming as the operational creditor with the prayer for

initiation of Corporate Insolvency Resolution Process under the provisions of the Code.

3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

a. The Operational creditor is a proprietorship firm, operating since 1990 in the field of furnished leather, leather goods, saddlery and fancy shoe uppers.

b. The Operational Creditor submitted that the Corporate Debtor had failed to make the payment for the invoice dated 30.10.2013, amounting to Rs.12,34,051/- for the good supplied by the applicant, which was duly accepted by the corporate debtor without any dispute or demur.

c. The Operational Creditor submits that out of the total invoice amount he made of payment of Rs.7,76,123/- and an amount of Rs. 4,97,902/- remained unpaid.

d. That the parties were engaged in regular business till 16.01.2015 Pursuant to which both the parties entered into a final settlement summarizing that all the previous invoices issued by the applicant shall be settled via invoice raised by the Corporate Debtor for Rs.

16,16,819/- towards buy back of good by the applicant.

e. That in terms of the Settlement Agreement the last payment was received on 01.06.2019 through cheque bearing No. 026643 along with 3 other cheques of Rs.25000/- each against the invoice dated 30.10.2013 leaving a total balance amount of Rs. 4,97,902/-.

f. It is submitted by the applicant that despite various follow ups and requests for more than 6 years from the date of issuance of invoice and more than 2 years from the last date of payment made by the corporate, the corporate debtor failed to make payment of unpaid debt.

g. The Operational Creditor sent a Demand Notice dated 02.04.2019 demanding payment of an unpaid operational debt of Rs. 4,97,902/- as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The said notice was duly served upon the corporate debtor.

4. The Corporate Debtor denying the contention raised by the applicant submitted the following

- (a) That the present petition has been filed by the sole proprietorship firm is not maintainable. Further stated that no authority letter of Dr. S. Ahsan, being the proprietor of the firm has been placed on record.
- (b) That the amount claimed by the applicant is time barred and accordingly no amount is due and payable. It is added that only one invoice was raised by the applicant to the corporate debtor on 30.10.2013, which was due and payable, as the period of limitation lapsed on completion of 3 years i.e. 30.10.2016 from the date of invoice. Further it is also submitted that as per ledger account, the last payment was made on 10.02.2014 which is also barred by limitation.
- (c) That the application has not been filed in accordance with the provisions of Section 9(3)(c) of the Code as no certificate from the financial institution confirming that no payment was made by the corporate debtor. Further submitted that application is incomplete in terms of Section 9 of the Code.
- (d) It is further submitted that there was a pre-existing dispute with respect to the quality of the goods supplied. However, the applicant failed to address the issue of the corporate debtor, therefore, the corporate debtor stopped purchasing goods since 01.06.2016 onwards.

5. We have heard Ld. Counsel for both the parties, perused the averments made in the application and reply filed by the corporate debtor. But before examining the present application on merits, it is worthwhile to consider whether the present application under Section 9 IBC is maintainable in

terms of Section 4 of the IBC, 2016 with respect to threshold limit applicable on debt arising post 24.03.2020. On perusal of records it is seen that the present IB/1424/ND/2019 had been revived vide order dated 31.03.2022 in IA 1399/ND/2022 and the amount of debt claimed by the Applicant in the said application was Rs. 4,97,902/- as on 31.03.2022. Therefore, the *notification of MCA dated 24.3.2020*, shall be applicable on the present application. As per *notification of MCA dated 24.3.2020*, the threshold limit to be considered for application filed u/s 7 or 9 will be Rs. 1 Crore. This threshold limit will be applicable for applications filed on or after 24.3.3020 even if the debt is of date earlier than 24.03.2020. Since the present application under section 9 of the code had been revived on 31.03.2022, therefore the threshold limit of Rs. 1 Crore of debt will be applicable in the given facts.

In this regard, the reference can be made to the Judgment of Hon'ble NCLAT in the matter of ***Jumbo Paper Products V. Hansraj Agrofresh Pvt. Ltd. (Company Appeal (AT) (Ins) No. 813 of 2021*** wherein it was held that the any statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. It is seen that notification of MCA dated 24.3.2020 makes it unambiguously clear that the threshold limit to be considered for section 9 applications will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.3020 even if the debt is of date earlier than 24.03.2020. In this regard reference can also be made to citation of ***Prafulla Purushottamrao Gadge V. Narayan Mangal &Anr. (Comp. App. (AT) (Ins.) No. 498 of 2022)***. Further in the present application the Operational

Creditor demanded Rs. 4,97,902/- and the said amount doesn't fall within the threshold limit. As per the notification the date of the filing has to be seen and the date of the default or the date of the demand notice, shall be immaterial. The date of filing in the present case shall be the date of revival of the present application i.e. 31.03.2022. The intent of legislation to fix the threshold limit was to save the Companies from being rotted to NCLT for initiation of CIRP proceedings, due to COIVD-19 effect. The said notification was always prospective in nature but having retrospective repercussion also. Hence, even if the amount was due prior to 24.03.2020 and the demand notice was send prior to that the petition u/s 7 or 9 of the Code cannot be filed against the Corporate Debtor. Henceforth, for the above-mentioned reasons, the present Application cannot be admitted. Accordingly, the same being not maintainable stands dismissed with no order to costs.

Let copy of the order be served to the parties.

Consign the file to the record room.

- Sd -

**(SUMITA PURKAYASTHA)**  
**MEMBER (T)**

- Sd -

**(DHARMINDER SINGH)**  
**MEMBER (J)**