



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-I

**CP (IB) 1211/MB /2023**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

**In the matter of**

M/s International Electricals

**...Operational Creditor/Applicant**

Versus

Aryan Electricals Private Limited

**...Corporate Debtor/Respondent**

**Order Delivered on 23.04.2025**

***Coram:***

Shri.Prabhat Kumar  
Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).  
Hon'ble Member (Judicial)

***Appearances:***

For the Operational Creditor : Ms. Mily Ghoshal, Adv.  
For the Corporate Debtor : Mr. Pulkit Sharma ,Adv.

**ORDER**

1. This Petition CP (IB) 1211/MB/2023 is filed by M/s International Electricals (hereinafter referred as '**Applicant**'/ (**Operational Creditor**')) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the **Code/IBC**') seeking initiation of Corporate Insolvency Resolution Process ("**CIRP**") against Aryan Electricals Private Limited (hereinafter referred as '**Respondent**'/ '**Corporate Debtor**') for non-payment of Operational Debt of Rs. 4,42,05,194.17/-

(Indian Rupees Four Crore Forty-Two Lakh Five Thousand One Hundred Ninety-Four and Seventeen Paise Only), along with interest at the rate of 18 %. The interest is calculated up to the date of Demand Notice i.e. 20.06.2023 with further interest accruing thereon w.e.f. 21.06.2023 till payment/actual realization.

2. The principal amount is Rs. 3,54,66,742/- (Rupees Three Crore Fifty-Four Lakh Sixty-Six Thousand Seven Hundred Forty-Two Only), and the interest on the debt amounts to Rs 87,38,452.17/- (Rupees Eighty-Seven Lakh Thirty-eight Thousand Four Hundred Fifty-Two and Seventeen Paise Only), as of 15.02.2023.
3. The date of default, as per Part IV of the Application, is 09.03.2022.
4. The record of financial information in Form-C, filed with NeSL, the Information Utility, records that the date of default as 07.02.2022.

**Submissions made by the Operational Creditor/Petitioner:**

5. The Operational Creditor is a partnership firm engaged in the business of trading, selling, import, export, of a wide selection of electrical goods.
6. The Corporate Debtor approached the Operational Creditor for the supply of electrical cables and issued different purchase orders. Based on the purchase orders raised by the Corporate Debtor, the Operational Creditor supplied the goods to the Corporate Debtor as per their requirement at their location in due time along with the manufacturer test certificates of the material supplied.
7. As per the terms and conditions agreed by and between the parties, the corporate debtor had issued post-dated cheques to the operational creditors in advance as an assurance for completion of the transaction. The Corporate Debtor had issued advance post-dated cheques bearing number 122182, 122183, 122184, 122185 and 122468 of Satara Sahakari

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Bank Limited in favour of Operational Creditor as an assurance of payment of bills, however, all the cheques were dishonoured.

8. The Operational Creditor states that the Corporate Debtor has denied receiving the goods that were to be supplied. Consequently, on 29.12.2022, the Corporate Debtor issued a legal notice to the Operational Creditor, raising non-provision of test certificate in terms of clause 4 of the Purchase Order and concluding on that basis non-provision of goods.
9. On 09.01.2023, the Operational Creditor, through its advocate, responded to the legal notice, disputing the incorrect factual claims made by the Corporate Debtor. In the response, the Operational Creditor addressed the allegation of non-supply of goods. The Operational Creditor asserts that the goods were supplied to the Corporate Debtor, and there is no dispute regarding this matter. The details of the materials supplied to the Corporate Debtor are provided below:

Sr.No.	Invoice no.	Date	Amount
01.	2442/21-22	07.02.2022	54,68,118/-
02.	2450/21-22	07.02.2022	74,14,176/-
03.	2457/21-22	08.02.2022	89,040/-
04.	2458/21-22	08.02.2022	21,168/-
05.	2476/21-22	10.02.2022	63,14,407/-
06.	2536/21-22	18.02.2022	41,82,181/-
07.	2550/21-22	21.02.2022	34,23,934/-
08.	2558/21-22	21.02.2022	5,880/-
09.	2559/21-22	21.02.2022	38,080/-
10.	2591/21-22	24.02.2022	41,064/-
11.	2596/21-22	24.02.2022	65,856/-
12.	2597/21-22	24.02.2022	98,784/-
13.	2599/21-22	24.02.2022	34,188/-
14.	2601/21-22	24.02.2022	4,21,968/-

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15.	2629/21-22	26.02.2022	37,70,948/-
16.	2750/21-22	10.03.2022	9,98,480/-
17.	2762/21-22	11.03.2022	2,15,376/-
18.	2773/21-22	12.09.2022	9,70,816/-
19.	2839/21-22	21.03.2022	2,23,337/-
20.	2886/21-22	26.03.2022	1,18,708/-
21.	2898/21-22	28.03.2022	16,20,259/-
22.	V0225/22-23	02.05.2022	45,22,349/-
		<b>Total</b>	<b>4,00,59,117/-</b>

10. The Operational Creditor states that the Corporate Debtor issued 5 cheques in favor of the Operational Creditor as partial payment towards the outstanding liability. The Operational Creditor further submits that on 12.12.2022, one of the cheque, bearing cheque number 122182 for an amount of ₹30,00,000/-, was deposited at HDFC Bank Ltd. by the Operational Creditor Valsad, Gujarat. However, the cheque was dishonoured due to insufficient funds. The remaining four cheques were dishonoured on 26.12.2022, with the reason stated as "Cheque Stale." The dishonor of the aforementioned cheques was duly communicated to the Corporate Debtor, who subsequently requested additional time to settle the outstanding dues and urged the Operational Creditor not to pursue legal remedies for recovery. Despite receiving assurances from the Corporate Debtor that the outstanding dues would be cleared, the Corporate Debtor later stopped responding to the Operational Creditor's calls and completely ignored further communication.
11. The amount outstanding from the Corporate Debtor is duly recorded in the books of accounts and is also reflected in the Balance Sheet of the Operational Creditor.



12. The Operational Creditor submits that they have approached the Micro and Small Enterprises Facilitation Council (“MSEFC”), Gujarat, seeking recovery of the outstanding amount from the Corporate Debtor. Pursuant to this, the MSEFC, by way of a notice dated 12.01.2023, directed the Corporate Debtor to pay the outstanding dues to the Operational Creditor within 15 days from the date of receipt of the notice. However, despite the direction issued by the MSEFC, the Corporate Debtor failed to make the payment of the outstanding amount
13. During the period from 2020 to 2022, there were numerous email and WhatsApp correspondences between the Operational Creditor and the Corporate Debtor regarding quotation requests, purchase orders, and acknowledgments of receipt of goods.
14. Under these circumstances, the Operational Creditor issued a demand notice to the Corporate Debtor on 26.06.2023, demanding a sum of Rs. 4,42,05,194.17/-. Notably, the Respondent replied to the demand notice, asserting that the goods were never delivered to the Corporate Debtor.

**Submissions made by the Corporate Debtor:**

15. The Corporate Debtor submitted that the Demand Notice under Section 8 of the code is invalid as it seeks to claim interest amounting to Rs. 87,38,452.17/- without any supporting contractual document and no invoice has been annexed to demand notice under form 3 of the IBC.
16. It is further submitted by the Corporate Debtor that Mr. Gautam S. Jain, a partner of the Petitioner firm, is not authorised by the Firm to issue the Demand Notice under Section 8 or to initiate proceedings

under Section 9 of the IBC. In absence of such authority, the Demand Notice and the Petition are invalid and liable to be dismissed.

17. It is further submitted that the tax invoices annexed to the Petition were never received or acknowledged by the Corporate Debtor. None of the invoices bear acknowledgment or certification by the Corporate Debtor, rendering them unreliable.
18. The Corporate Debtor submits that there is a clear and bona fide dispute exists between the parties which is evidenced from the legal notice dated 29.12.2022, whereby the Corporate Debtor asserted that:
  - a) Goods were not supplied as per the purchase orders;
  - b) Inferior quality products were delivered;
  - c) Terms of the purchase orders were violated by the Petitioner.
19. These aspects were never responded to by the Petitioner in their reply to the legal notice, which was also a demand notice issued in terms of Section 138 of the Negotiable Instruments Act. Further, the Respondent highlighted the issue of quality and quantity of goods supplied and sought reconciliation of accounts, which was not complied with by the Petitioner.
20. The Corporate avers that the Petitioner approached the Micro and Small Enterprises Facilitation Council (MSEFC), Gujarat on 12.01.2023. The MSEFC issued an intimation to the Respondent to pay the amount of ₹4,31,19,600/-. However, since the Petitioner's claims were already disputed vide reply dated 29.12.2022, the matter was converted into a formal case before the MSEFC. The very fact that the Petitioner resorted to proceedings under the MSMED Act before approaching this Tribunal further evidences the pre-existing dispute.
21. Furthermore, on 28.03.2023, a case was registered against the Corporate Debtor under Section 138 of the Negotiable Instruments Act,

1881, before the Learned Judicial Magistrate First Class (“J.M.F.C.”) at Vapi, Gujarat.

22. The Corporate Submits that the alleged debt as claimed by the Petitioner is barred by limitation. The Petitioner has not produced any acknowledgment of debt under Section 18 of the Limitation Act, 1963, nor any part-payment under Section 19 thereof, within the period of limitation. The present petition, having been filed beyond three years from the date of the alleged default, is therefore ex-facie barred by limitation and is liable to be dismissed on this ground alone.


**Findings:**

23. Heard learned Counsel for both the parties and have duly perused the documents on record.
24. The Petitioner has filed this Petition on the basis of default, alleged to have been committed by the Corporate Debtor, in payment of invoice(s) issued from 7.2.2022 to 2.5.2022 against the alleged supply of goods.
25. The Purchase Order issued by the Corporate Debtor contemplates (a) supply of goods to M/s Datwyler Pharma Packaging India Pvt. Ltd; (b) payment within 45 days PDC; (c) provision of Test certificate along with dispatch documents; and (d) goods are to be delivered within 1 week from quality clearance in writing, but said purchase order does not contemplate interest payment on delayed payment. Further, the invoice(s) raised by the Petitioner also does not contemplate payment of interest on delayed payment, which can be understood from the fact that the payment was assured within 45 days by issuance of PDC. Hence, the claim of interest is not permissible in these proceedings in the absence of mutual agreement between the parties in relation to liability for interest on delayed payment.

26. We find no merit in the Corporate Debtor's argument that the absence of invoices renders the Demand Notice defective or incomplete in view of decision of Hon'ble NCLAT in the case of *Neeraj Jain Director of M/s Flipkart India Private Limited vs. Cloudwalker Streaming Technologies Private Limited(Company Appeal (AT)(Insolvency) No.1354 of 2019*, wherein it was held that :

*47.the choice of issuance of demand notice u/s 8(1) of the Code, either in Form 3 or Form 4, under the Application to Adjudicating Authority Rules 2016, depends on the nature of Operational Debt. Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice either Form 3 or Form 4, as per its convenience. The applicability of Form 3 or Form 4 depends on whether the invoices were generated during the course of transaction or not. It is also made clear that the copy of the invoice is not mandatory if the demand notice is issued in Form 3 of the Application to Adjudicating Authority Rules 2016 provided the documents to prove the existence of operational debt and the amount in default is attached with the application."*

27. Mr. Gautam S. Jain has filed this petition in his capacity as partner of the firm. Section 9 of the Partnership Act, 1922 provides that "*Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative*". Section 12(a) of the said Act further provides that every partner has a right to take part in the conduct of the business subject to contract between the partners. Section 22 of the said Act provides that "*In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm*". Section 19(2) of said Act excludes certain acts which do not fall under the implied authority of a partner, but it does not include any



proceedings instituted by a partner in relation to debt of the firm. Section 19(1) of said Act further provides that “*Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm*”. Accordingly, on a combined reading of these section, it follows Mr. Gautam S. Jain, a partner of the Petitioner firm, is authorised to issue the Demand Notice under Section 8 or to initiate proceedings under Section 9 of the IBC in the name of the Firm.

28. There is no merit in the plea of limitation raised by the Corporate Debtor as the claim is in respect of invoice(s) issued from February, 2022, which were payable within 45 days. Accordingly, the payment against these invoices falls due from end of March, 2022 till June, 2022. The present petition is filed on 12.12.2023, which is within 3 years of limitation even in relation to default pertaining to first invoice.
29. The Hon’ble NCLAT in the case *iValue Advisors Pvt. Ltd. Vs. Srinagar Banihal Expressway Ltd. Company Appeal (AT) (Ins) No.1142 of 2019*; has held that proceedings before MSME Council does not, by itself, establish the existence of a pre-existing dispute and also held that “*even if the conciliation proceeding was to start, if the Respondent did not raise dispute regarding the supply of goods or quality of services, still it would be open for the Adjudicating Authority to look into the question whether or not dispute as covered under the IBC, is attracted*”.
30. The complaint under Section 138 of the Negotiable Instruments Act, 1881, filed against the Corporate Debtor before the Ld. J.M.F.C., Vapi, Gujarat also does not constitute a pre-existing dispute, as that complaint lie on dishonor of cheque and factum of dispute, if any, has no relevance in those disputes.
31. Therefore, we are of considered view that neither the initiation of proceedings under the MSME Act nor the existence of proceedings

under Section 138 of the Negotiable Instruments Act automatically constitute pre-existing disputes that would render a Section 9 application under the IBC inadmissible. Each case must be assessed on its own merits to determine the existence of a genuine dispute.

32. The Operational Creditor had placed on record by way of compilation of documents lorry receipts, wherein there is signature of one person representing Corporate Debtor. The invoice(s) claimed to be in default are reported in GSTR-1 by the Operational Creditor and reflected in the GSTR portal of the Corporate Debtor and status of these invoice(s) is reflected as processed in GSTIN portal, as is evidenced from the GSTR-1 for the relevant period placed on record. Third party confirmation in relation to delivery of goods has been placed on record, which further confirms supply of goods. The test certificate issued by the manufacturer of supplied goods is enclosed with each invoice(s). There is no communication on record from the Corporate Debtor prior to issuance of legal notice dated 29.12.2022. It is pertinent to note that this is the date when the cheques issued by the Corporate Debtor, claimed as security cheques, bounced back. Accordingly, we do not find any substance in the contention that none of the invoices bear acknowledgment or certification by the Corporate Debtor.

33. As noted in para 32, the claim of non-receipt of goods is not tenable as raised in legal notice dated 29.12.2022. As regards complaint of supply of inferior quality products or violation of terms of purchase order, no cogent material, except bald statement and mere assertion, has been placed on record to substantiate the same. The contention relating to difference between the lorry receipts placed on record via different filings, we do not find any merit in those contentions as lorry receipts are issued in triplicate and the transport agency obtains the receipts over its copy of lorry receipts, which is sent back to the sender of goods. The electronic generated invoices are not required to be signed and these

invoices having been reported on GSTIN portal upon its issuance cannot be said to be back-dated. It is relevant to note that the what's app communication placed at Page 670 of the Petition categorically demonstrates the acknowledgement of debt while asking not to calculate interest. Accordingly, we are of considered view that the defence of pre-existing dispute is a moon shine defence and has no substance. The decisions relied by the Corporate Debtor on issue of pre-existing dispute were rendered on factual matrix of those cases, hence are distinguishable.

34. Since, the transaction in question is evidenced by the invoice(s), purchase order and other contemporaneous evidences, we are of considered view that it is not necessary to have an agreement or contract between the parties.
35. In our considered view the principal claim alone meets the threshold limit of ₹1 crore as mandated under the Insolvency and Bankruptcy Code, 2016. The petition is complete in all respect; accordingly, we are of considered view that it deserves to be allowed.

**Order**

- a. In the above circumstances the petition bearing **CP(IB)1211/2023 MB/C-I**/filed by M/s International Electricals, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Aryan Electricals Private Limited, the Corporate Debtor, is allowed.
- b. This Bench hereby **appoints Ms. Vineeta Maheshwari, Registration No: IBBI/IPA-001/IP-P00185/2017-2018/10364 as the Interim Resolution Professional** having email: -

**ipvineetak@gmail.com** , at Office No-302, third Floor, Reegus Business Centre, Nr Anupam Bunglows, New Citylight Road, Bharthan, Vesu, Surat , Gujarat-395007 , to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. There shall be a moratorium under section 14 of the IBC, in regard to the following:

- i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

d. Notwithstanding the above, during the period of moratorium: -

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- e. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves

the resolution plan under Sub-Section (1) of Section 31 of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

- f. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. The Financial Creditor shall deposit an amount of **Rs. Three Lakhs** towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- h. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- i. The following persons/ authorities shall provide access to the books of account, records and other relevant documents and information to the interim resolution professional or the resolution professional, to the extent relevant for discharging his duties under the Code:
- i. depositories of securities;
  - ii. professional advisors of the corporate debtor;
  - iii. information utilities;
  - iv. other registries that records the ownership of assets;

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- v. members, promoters, partners, board of directors and joint venture partners of the corporate debtor; and
- vi. contractual counterparties of the corporate debtor.
- j. The creditor shall provide to the interim resolution professional or resolution professional, the information in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and such other information which shall assist the interim resolution professional or the resolution professional in preparing the information memorandum, getting valuation determined and in conducting the corporate insolvency resolution process.
- k. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by speed post and email immediately, and in any case, not later than two days from the date of this Order.
- l. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

**PRABHAT KUMAR**  
Member (Technical)

Sd/-

**JUSTICE V.G BISHT**  
Member (Judicial)