

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
Court- I**

**CP (IB) No.168/Chd/Pb/2021
Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

M/s Gokal Iron & Hardware Traders (LDH),
VPO Jugiana, G.T. Road Ludhiana,
Head office C-74, Industrial Area Phase VI,
Mohali, District SAS Nagar,
through its partner Sh. Mangat Rai

.....Petitioner- Operational Creditor

Versus

M/s Ahio Overseas LLP,
CIN/LLP Identification No.AAG-8557,
B-III-468, First Floor,
Purana Bazar, Ludhiana,
through its Directors Sandeep Bansal,
Deepak Bansal and Vasudev Bansal

.....Respondent- Corporate Debtor

Judgment delivered on: 09.09.2024

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. D. Arvind, Member (Technical)**

For the Petitioner- Operational Creditor : Mr. Nakul Sharma, Advocate

For the Respondent-Corporate Debtor : Mr. S.S. Brar, Advocate

Per: Harnam Singh Thakur, Member (Judicial)
D. Arvind (Technical)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **M/s Gokul Iron & Hardware Traders** (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **M/s Ahio Overseas LLP** (for brevity 'Corporate Debtor' / 'Respondent').

2. The Corporate Debtor, namely, is a Company incorporated on 05.07.2016 under the provisions of the Companies Act, 2013 with CIN No. AAG-8557 with its registered office at B-III-468, First Floor, Purana Bazar Ludhiana. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure A-6.

3. The brief facts as stated in the petition are that the corporate debtor purchased the items from the operational creditor on credit basis vide different bills on different dates and invoices were raised. The part payment was made against the said invoices. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 1,71,28,172/- (Rupees One Crore Seventy One Lakhs Twenty Eight Thousand One Hundred and Seventy Two Only) (Principal amount of Rs. 84,88,307/- and interest from 09.11.2016 to 30.06.2020 is Rs. 86,39,865/- and the default occurred on 30.11.2018 i.e. when the last credit was issued to the corporate debtor vide bill No. G-9 dated 29.11.2018 (E-way bill for G-9 dated

29.11.2018 attached as Annexure A-7). Copy of GST In registration (Annexure A3), LLP Form No.8 (Annexure A5), invoices (Annexure A7), ledger account (Annexure A8), interest calculation sheet (Annexure A9), statement of account (Annexure A14) are attached with the main petition.

4. A demand notice in Form 3 is stated to be issued by the operational creditor on 30.06.2020 and the same has been delivered to the corporate debtor vide registered post as the postal receipts are attached as Annexure-A10 with the petition. The corporate debtor has given reply dated 25.08.2020 to the demand notice wherein it is stated that the goods were purchased in the year 2016. However, on the account of substandard material, it was agreed that the cost of goods will reduce to the extent of 20 to 25% depending upon the batch. The remaining payments were duly made. Therefore, unsustainable claim with respect to invoices issued in 2016 have been made. The limitation period for initiating the legal proceedings ended on 08.11.2019 i.e. 3 years from the alleged date of default. The invoices attached are not signed or accepted by the corporate debtor nor they bear any endorsement. Further, as per the notification dated 24.03.2020, the threshold limit of default has been raised to 1 crore, however, the amount in default is 84,88,307/-. The response to the reply was sent by the operational creditor wherein it was stated that it has been wrongly contended that the material supplied was of substandard material and wrongly stated that the cost of goods would reduce to the extent of 20-25% depending upon the batch. The corporate debtor had purchased articles/items from the operational creditor on credit basis vide different bills of different dates. The last bill was generated on 29.11.2018 for Rs. 9,67,619/- for polyester filament. Out of the

total bills, the part payments are made. The total outstanding amount including the interest is Rs. 1,71,28,172/- which is above the threshold limit. Further, the response dated 22.12.2020 was sent by the corporate debtor to the operational creditor reiterating the earlier mentioned facts. Further, it was stated that the last purchased is mentioned to be done on 29.11.2018, however, no invoice has been attached for such date. The interest @18% per annum was to be levied, yet there is no document/agreement which shows the agreed interest rate between the parties. Unilateral invoices have not been accepted by the corporate debtor.

5. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Diary Nos. 00646/1 dated 28.01.2022. The reply was filed by the corporate debtor vide Dairy No. 00646/2 dated 13.04.2022 wherein it is stated that goods were purchased in the year 2016 and invoices were raised. The cost of the goods was agreed to be reduced to the extent of 20-25% due to substandard quality. However, the demand notice was received after 4 years beyond the limitation period and no invoice was raised after 07.11.2016. An amount of Rs 1,71,28,172/- including principal amount of Rs 84,88,307/- is claimed alongwith interest for a period of 09.11.2016 to 30.06.2020. However, the interest being claimed is a time barred claim as per the statute of limitation and cannot be entertained in view of the amendment which was carried out in the Insolvency and Bankruptcy Code, 2016 (the code) vide the Insolvency and Bankruptcy Code, 2016 (Second Amendment Act, 2020, by virtue of which no application for initiating CIRP can be entertained for any default arising on or after 25.03.2020 for a period of 6

months but not exceeding 1 year unless otherwise notified by the Government. Furthermore, it is submitted that no application for a default on or after 25.03.2020 i.e. when the Code was suspended, and as extended could be filed at any point in time. Moreso, it is averred that the interest amount cannot be clubbed together with the principal amount to overcome the threshold limit of rupees one crore. There is a difference between the operational debt and the financial debt. The reliance is placed on the judgment of **"M/s Wanbury Ltd Vs M/s Panacea Biotech Ltd" bearing number CP 8/2016 decided on 18.04.2017** wherein it was observed that,

"There is a marked difference between the definition of the term 'financial debt' and the 'operational debt'. Under section 5(8) the term 'financial debt' means a debt alongwith interest, if any, which is disbursed against the consideration of time value of money and that is an inclusive definition. In the definition of the term 'operational debt' under section 5(21) the word 'interest' has not been mentioned."

Therefore, interest can only form a part of the outstanding amount in the case of a financial debt only and not an operational debt. The reliance is further placed on the judgment passed by the **Hon'ble NCLT, New Delhi Bench-III in the matter of "CBRE South Asia Pvt Ltd v. M/s United Concepts and Solutions Pvt Ltd"** bearing number IB 797(ND)2021 decided on 19.01.2022, wherein the Hon'ble Court was pleased to dismiss the petition of the operational creditor as the same was not maintainable, as the principal amount was below the threshold limit of Rs 1 Crore and had only crossed the crore mark by clubbing the interest, which was held to be not permissible. It is further averred that the notification of the threshold limit is not retrospectively applicable. The reliance is placed on the judgment of '**Jumbo Paper Products v. Hansraj Agrofresh Ltd. Company Appeal (AT) (Ins) No.**

813/2021 decided on 25.10.2021 which stated that the threshold limit would apply to the petition filed on or after 24.03.2020 even if the debt is of an earlier date.

6. The rejoinder was filed by the operational creditor vide Dairy No. 00646/3 dated 14.06.2022 wherein it is stated that there were no such agreed terms between the parties to reduce the cost of goods to the extent of 20-25% depending upon the batch. The invoices between the parties show that the transaction was till 29.11.2018 when the last bill was generated. The respondent made the part payment which shows that the amount is due which is above the threshold limit. It is further submitted that the debt claimed is not time barred and the interest claimed for the period of 09.11.2016 to 30.06.2020 does not encompass the period of suspension. It is wrong that the interest can only be claimed in terms of the financial debt and not the operational debt. Moreso, the authorities relied upon by the corporate debtor does not apply to the present case.

7. The short written submissions have been filed by the petitioner vide Dairy No.00646/4 dated 19.07.2022 and by the corporate debtor vide Dairy No. 00646/5 dated 05.08.2022 reiterating the above-mentioned facts.

8. We have heard the learned counsels for the parties and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 dated 30.06.2020 was properly served. The demand notice dated 30.06.,2020 has been delivered to the corporate debtor vide registered post as the postal receipts are attached as Annexure-A10 with the petition. The

corporate debtor has given reply dated 25.08.2020 to the demand notice. Hence, the demand notice is deemed to be duly served.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 30.06.2020 in Form 3 attached as (Annexure A10) was duly served on the corporate debtor. It is contended on behalf of the corporate debtor that the limitation period for initiating the legal proceedings ended on 08.11.2019 i.e. 3 years from the alleged date of default.

However, the period of limitation would begin from the date of default on 30.11.2018 i.e. when the last credit was issued to the corporate debtor vide bill No. G-9 dated 29.11.2018 (E-way bill for G-9 dated 29.11.2018 attached as Annexure A-7). This application was filed vide Diary No. 00646 on 06.05.2021 refiled on 06.07.2021 and again re-filed on 23.07.2021. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by learned counsel for the petitioner by way of affidavit filed under Section 9(3)(b) dated 03.07.2024 vide Diary No. 02137 dated 09.07.2024 that no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt. It is contended on behalf of the corporate debtor that the goods were purchased in the year 2016 and invoices were raised. The cost of the goods was agreed to be reduced to the extent of 20-25% due to substandard quality. However, it is contended on behalf of the operational creditor that there is nothing on record in writing or in any other mode, which proves that no such agreement was

made between parties. It is further submitted that no such material was supplied by Petitioner which was substandard and there was no such agreement or any party would agree that cost of good would be reduced to the extent of 20%-25% depending upon the batch.

Therefore, this plea of the corporate debtor cannot be considered as this contention is devoid of legal force and no evidence is placed on record in support of this plea.

12. It is contended by the corporate debtor that the interest amount cannot be clubbed together with the principal amount to overcome the threshold limit of rupees one crore. There is a difference between the operational debt and the financial debt. The interest amount can only be taken in the case of the financial debt and not the operational debt. The notification dated 24.03.2020 wherein the threshold limit was raised to rupees one crore from rupees one lakh is not applicable retrospectively. On the other hand, it is contended by the operational creditor that the amount due is above the threshold limit and the part payments were made by the corporate debtor which shows that the amount is due.

However, it is seen from the records that there were business dealings between Petitioner and Corporate Debtor as Corporate Debtor purchased articles/items from Petitioner on a credit basis vide different bills of different dates. The perusal of bills/invoices shows that the transaction between Petitioner and Corporate Debtor was till 29.11.2018 and the last bill, was generated on 29.11.2018. Thereafter, out of total complete bills, the Corporate Debtor made payment/some part payment to Petitioner and after adjusting the outstanding amount due towards Corporate Debtor is

amounting to Rs. 84,88,307/- Hence, debt calculated upto 30.06.2020 is Rs.1,71,28,172/-. The principal amount due is Rs.84,88,307/- and interest due upto 30.06.2020 @ 18% amounting to Rs.86,39,865/-. Hence, total amount Rs.1,71,28,172/- (Rupees One Crore Seventy One Lakhs Twenty Eight Thousand One Hundred and Seventy Two Only). The interest amount can be clubbed with the principal amount to meet the threshold limit of rupees one crore. The reliance is placed on the judgments passed by the Hon'ble National Company Law Appellate Tribunal, Principal bench, New Delhi in the case of ***Netafirm Agricultural Financing Agency Private Limited v. Baliraja Sakhar Karkhana Limited 2023 SCC Online NCLAT 241 decided on 03.05.2023*** wherein it was stated that, "We, thus, are of the view that for finding out threshold both amount Principal and Interest has to be computed". Further, reliance can be placed on the matter, "***Mr. Prashant Agarwal v. Vikash Parasrampur, [Company Appeal (AT) (Ins) No. 690 of 2022]***" wherein it was held that,

"Since, interest on delayed payment was clearly stipulated in the invoice and therefore, this will entitle for "right to payment" (Section 3(6) IBC) and therefore will form part of "debt" (Section 3(11) IBC), (vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It is noted that the total principal debt amount of Rs. 97,87,220/- along with interest the total debt makes total outstanding as Rs. 1,60,87,838/- . Thus, the total debt outstanding of OC is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O 1205 (E) dated 24.3.2020 (Supra), and meets the criteria of Rs. 1crore as per Section 4 of IBC and Application is therefore maintainable in present case. We concur with the orders of Adjudicating Authority on this issue also".

Further, reliance can be placed upon the case of **Mr. Anuj Sharma Vs. Rustagi Projects Pvt. Ltd. (2023) ibclaw.in 421 NCLAT** wherein it is stated that,

“14. The above judgment of “Prashant Agarwal” clearly supports the submission of learned counsel for the Respondent that for calculating the amount for maintainability of the claim, for threshold purpose, both Principal Amount and Interest has to be calculated when the interest is stipulated between the parties.

“15. The ground taken in the I.A. under 10A is clearly misconstrued since the default is being claimed by the Operational Creditor w.e.f. 26.07.2018 which was much before the 10A period. The mere fact that the Demand Notice was dated 21.12.2020 shall not have any effect on the maintainability of the application under Section 9 when default is committed on 26.07.2018 and admitted thereafter.

16. In the facts of the present case, we are satisfied that the Adjudicating Authority did not commit any error in admitting Section 9 application which clearly fulfils the threshold”.

In the present case, if the principal amount alongwith the interest is taken up together, it constitutes more than rupees one crore which is the threshold limit as per the Notification No. S.O.1205(E) dated 24.03.2020.

It is pertinent to note that the authorities relied upon by the corporate debtor i.e. **M/s Wanbury Ltd (supra), CBRE South Asia Pvt Ltd (supra) and Jumbo Paper Products (supra)** cannot be considered as the facts of these cases are much different from the facts of the present case in hand.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 1,71,28,172/- (Rupees One Crore Seventy One Lakhs Twenty Eight Thousand One Hundred and Seventy Two Only) (Principal amount of Rs. 84,88,307/- and interest from 09.11.2016 to 30.06.2020 is Rs. 86,39,865/- still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite

repeated reminders by the petitioner-operational creditor. Copy of GST In registration (Annexure A3), LLP Form No.8 (Annexure A5), invoices (Annexure A7), ledger account (Annexure A8), interest calculation sheet (Annexure A9), statement of account (Annexure A14) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

14. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above the threshold limit.

15. In the present petition, all the requirements of Section 9 of IBC i.e. debt, default and no dispute between the parties have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s Ahio Overseas LLP and declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

16. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. We appoint Mr. Rajesh Dhawan, Registration No. IBBI/IPA-001 /IP-P00952 /2017-18 /11572, E-mail: rdshivam@yahoo.co.uk, Mobile No. +91- 9814049497 from the list provided by the Insolvency and Bankruptcy Board of India. The Law Research Associate of this Tribunal has checked the credentials of Mr. Rajesh Dhawan and there is nothing adverse against him and his AFA Certification is valid upto 02.01.2025. This Adjudicating Authority further directs that:

i.) The term of appointment of Mr. Rajesh Dhawan be in accordance with the provisions of Section 16(5) of the Code, subject to the written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand

suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give 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 Resolution Professional 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 location, and also the 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. 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. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he 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 implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. 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. The Interim Resolution Professional 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.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with a request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution

Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee 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 Committee within seven days of filing the report of the constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during the moratorium period. 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. 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 sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

19. The petitioner is directed to deposit an amount of ₹1,50,000/- (Rupees One lakh Fifty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

21. This petition is accordingly admitted.

Sd/-
(D. Arvind)
Member (Technical)

Sd/
(Harnam Singh Thakur)
Member (Judicial)

September 09 , 2024
Tamanna