IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH COURT

CP (IB) 1286 (MB) of 2021

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

In the matter of

**Ujjawal Refinery Private Limited,** a Company incorporated under the Companies Act, 1956 and having its registered office at Shop No 14, New Mondha, Near Mama Chowk, Bus Stand Road, Jalna-431203.

**… Operational Creditor/Petitioner**

**Vs**

**Bhumi Cottex Industry Pvt Ltd**, a Company incorporated under the Companies Act, 1956 and having its registered office at -1, Runwal Complex, Opposite Hanuman Mandir, Old Mondha Jalna-431203

**… Corporate Debtor/Respondent**

**Coram:**
**Hon'ble Shri H.V.Subba Rao, Member (J)**
**Hon'ble Mrs. Madhu Sinha, Member (T)**

**Order delivered on: 07.03.2024**

## ORDER

**[Per se: Shri H.V.Subba Rao , Member (J)]**

1. The above Company Petition is filed by Ujjawal Refinery Private Limited (Operational Creditor) seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against Bhumi Cottex Industry Pvt Ltd. (Corporate Debtor) by invoking the provisions of Section 9 Insolvency and Bankruptcy Code,

2016 read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a resolution of Operational Debt of Rs. 3,29,37,538/- (Rupees Three Crore Twenty-Nine Lacs Thirty-Seven Thousand Five Hundred and Thirty-Eight Only).

2. Brief facts as stated by the Petitioner are as follows:

2.1 The Operational Creditor and the Corporate Debtor were having commercial transactions since the year 2019. From 2019 to March 2020, the Operational Creditor had transferred an amount of Rs.5,48,12,538/- towards advance for purchase of raw material as per the oral purchase orders placed by the Operational Creditor from time to time.

2.2 However, in the month of April 2020, the Corporate Debtor due to its own reasons failed to supply the raw material to the Operational Creditor on time and hence, the Corporate Debtor informed the Operational Creditor that it would not be in position to supply the raw material due to Covid-19 situation and hence the Corporate Debtor would be refunding the entire advance amount paid by the Operational Creditor.

2.3 Accordingly, from 05.05.2020 to 30.09.2020, the Corporate Debtor transferred an amount of Rs. 2,18,75,000/- and sought time to refund the remaining amount within a period of 6 to 8 months. Considering the Covid-19 situation the Operational Creditor gave 6 to 8 months' time to the Corporate Debtor to refund the advance payment.

2.4 In the month of March 2021, when the Operational Creditor requested the Corporate Debtor to refund the balance advance, the Corporate Debtor sought time till July 2021, for making the payments due to Covid-19. Considering the request of the Operational Creditor granted time till July 2021.

2.5 In the month of July 2021, the Corporate Debtor failed to make the payments and started avoiding to make the payments thereafter and hence, the Operational Creditor was left with no option but to issue the Demand notice u/s 8 of IBC.

2.6 On 14.09.2021, the Board of Directors of the Operational Creditor passed resolution for initiating legal process against the Corporate Debtor and passed a further resolution authorizing its Director Mr. Pavan Omprakash Panch to represent the Operational Creditor for taking all the necessary legal actions against Corporate Debtor.

2.7 On 15.09.2021, the Operational Creditor issued notice u/s 8 of the Code of 2016 and the Corporate Debtor failed to repay the outstanding dues nor gave any reply within 10 days as contemplated u/s 8(2) of the Code of 2016.

2.8 The said demand notice was received by the Corporate Debtor on 22.09.2021 itself, the Corporate Debtor issued a false and vague reply on 18.10.2021 i.e. after the statutory period of 10 days contemplated u/s 8(2) of the Code of 2016 and avoided to make the payments of the outstanding amount. Hence, this application.

3. The Respondent filed affidavit in reply dated 07.03.2022 opposing the above application stating that:

3.1 The captioned Petition filed by the Petitioner is without any basis and there is admittedly no debt due and payable by the Respondent to the Petitioner.

3.2 The Respondent Company is inter alia engaged in the business of production of cotton seed wash oil since 2012. The Respondent Company promoted Mr. Paresh N Runwal, had a good relationship with the Petitioner's promoter, Mr. Nitin Panch, since 2015. The Petitioner and its sister concern Ujjwal Proteins Private Limited (UPPL), required cotton seed wash oil for edible oil production and had

been purchasing the same from the Respondent regularly since 2015 though oral orders.

3.3 In first week of January 2020, the Petitioner approached the Respondent for procurement of 3200 MT of cotton seed wash oil from at the rate of Rs. 81,700/- per MT, the total procurement value amounting to Rs. 26.14 crores without GST. The petitioner was supposed to lift these goods on spot basis i.e., lifting was to happen by the Petitioner immediately at its own cost.

3.4 Since there were certain issues in the past with respect to recovery of dues and further, on account of the fact that the quantity ordered by the Petitioner was very large, the Respondent agreed to supply the required quantity subject to Petitioner paying 20% of the value of the materials upfront as an advance and the balance 80% was to be paid against lifting of the material which was to be completed within a period of five months.

3.5 It was further agreed by the parties that in case of failure on part of the Petitioner to lift the entire material, the Respondent would be constrained to forfeit the entire advance. This was on account of the fact that the Respondent had, at the outset, informed the Petitioner that since the ordered quantity is very large, it would be required to place large orders on its own suppliers and make entire advance payment to them and only thereafter lift the cotton seeds which is the raw material required for the purpose of making cotton seed wash oil.

3.6 The Petitioner agreed to these terms and conditions and accordingly, on these terms and conditions, the parties entered into an oral contract with each other for purchase and sale of 3200 MT of cotton seed wash oil @ Rs. 81700/- per MT.

3.7 The Respondent did not insist upon a written contract between the parties on account of the relations between the parties and as per the

past dealings various orders were orally placed by the Petitioner and UPPL and were honoured by them.

3.8 Pursuant to the agreement, the Respondent started procuring cotton seeds from various Public Sector Undertakings of the Central Government of India i.e. Cotton Corporation of India (CCI) and the Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. and placed orders with these government entities and made payment of the entire 100% advance amount to these government authorities for procurement of cotton seeds.

3.9 The Petitioner made payment of an amount of Rs. 5,23,12,500/- as and by way of 20% advance, over a period of 3 months i.e. from January 2020 to March, 2020. The majority of the advance payment was made in January 2020. On account of payment of this advance amount, the Respondent commenced lifting of materials. Since the material was lifted only after majority of the advance amount was paid by the Petitioner to the Respondent and therefore, the Respondent was burdened with charges levied by the government authorities on account of delay in lifting the raw material to the tune of Rs. 1.07 crores (late lifting and carrying charges). Despite the above delay on the part of the Petitioner in making payment of the advance, the Respondent lifted the material by bearing the loss only and began manufacturing cotton seed wash oil for the purpose of delivery to the Petitioner.

3.10 However, the Petitioner failed to lift the materials. From the conduct of the Petitioner, it was apparent that the non-lifting of the material was on account of the decrease in the price of the raw material after the contract between the parties having been entered into. The Petitioner had a change of heart and therefore, thought it profitable to breach its obligation rather than honour the same and lift the material at the contractually agreed price which was much higher than the prevailing rate in the subsequent months.

3.11 Since the Petitioner did not lift the materials, the Respondent was constrained to sell the same in the open market at a lower price and mitigate its losses. On account of the breach on the part of the Petitioner in lifting the material produced by the Respondent, as per the agreement between the parties, the entire advance to the tune of Rs. Rs. 5,23,12,500/- was liable to be forfeited and therefore, the Respondent rightly forfeited the same.

3.12 Having breached its obligation and upon the Respondent forfeiting the advance paid by the Petitioner as per the terms of the contract on account of actual loss suffered by the Respondent, the Petitioner requested the Respondent to consider its case and forfeit only an amount to the extent of the actual loss suffered by the Respondent i.e. the amount of Rs. 3,04,37,500/- . Upon the Respondent considering the above and accepting the offer of the Petitioner wholly with a view to maintain business relations, the Petitioner happily accepted the balance amount to the tune of Rs. 2,18,75,000/- and it was mutually agreed between the parties that the remaining forfeited amount to the tune of Rs. 3,04,37,500/- would be appropriated towards the actual loss suffered by the Respondent. The Petitioner accepted the aforesaid refund without any demur or protest. This refund was made by the Respondent to the Petitioner merely as a goodwill gesture and considering the past relations between the parties and on the request of the Petitioner and the amount retained by the Respondent was only the amount to the extent of the actual loss suffered by the Respondent on account of the breach committed by the Petitioner.

3.13 On these terms, the transaction between the parties had ended. However, subsequently, the Petitioner issued demand notice dated 15.09.2021 under section 8 of IBC. Till the issuance of notice under Section 8 of the IBC, there was no whisper or any communication by the Petitioner with respect to the refund of the alleged balance amount.

It is only after more than 1 year, with a mala fide and oblique, motive that the Petitioner issued the Demand Notice under Section 8 of the IBC before which, the Respondent had not only appropriated the amount towards the loss incurred but had also paid the tax on the same as per the advice of the Chartered Accountant of the Respondent. The said forfeiture is also reflected in the books of accounts of the Respondent for the year ended 31st March, 2021 and the audit of which has also been completed prior to receiving the said frivolous demand notice. Since this demand notice issued under the provisions of IBC was issued contrary to the understanding between the parties and was ex-fade erroneous and issued with malafide intent, the Respondent, by its, Advocate's letter dated 18.10.2021 responded to the said notice.

3.14 The Respondent has reliably learnt that in fact, the said notice was addressed only after the Petitioner's financial condition deteriorated and after the Petitioner's lenders initiating action against the Petitioner under the provisions of the SARFEASI. Realizing that the Petitioner would not be in a position to service these admitted debts due and payable, the Petitioner, with a view to extort monies from the Respondent addressed the demand notice and has filed the present Petition with the same intent.

3.15 The present proceedings are nothing, but a pressure tactic employed by the Petitioner to blackmail and pressurize the Respondent to make payment of amounts which are not due and payable by the Respondent to the Petitioner. The Petitioner has conveniently not disclosed the true and correct facts in the matter and is accordingly, guilty of *suppressio veri* and *suggestio falsi.*

3.16 On account of the fact that there is no amount due and payable by the Respondent to the Petitioner, there is admittedly no debt due and payable by. Respondent to the Petitioner and accordingly, on account of the above, since there is no debt due and payable, there arises no

question of a default in making payment of the same and therefore, the present petition in these facts and circumstances, is liable to be dismissed.

4. The Petitioner in accordance with order dated 10.03.2022 *vide* additional affidavit dated 26.07.2022, submits that:

4.1 Section 10A of the Indian Insolvency and Bankruptcy Code states that no application for the initiation of the corporate insolvency resolution process of a corporate debtor can be filed for any default that occurs on or after 25th March 2020, for a period of six months. This period may be extended up to one year as notified. Additionally, no application can be filed for the initiation of the corporate insolvency resolution process of a corporate debtor for the default that occurs during this period.

4.2 It is important to note that the Explanation to this Section clarifies that the provisions of this section do not apply to any default committed under the said sections before 25th March 2020.

4.3 The details of the ledger account of the Operational Creditor which highlights the transactions between the Operational Creditor and Corporate Debtor has been annexed at Annexure 7 to the Company Petition (page 24 to 25).

4.4 Section 2(11) describes "debt" as a liability or obligation in respect of a claim due from any person and includes a financial debt and operational debt. Therefore, a debt may be an operational debt or financial debt. In the present case, the Operational Creditor had paid for the supply of certain goods, which were never supplied by the Corporate Debtor, as the same were not delivered to it, nor did the Corporate Debtor provide any proof of delivery of said goods. The Company Petition includes all documentary evidence to prove money paid to Corporate Debtor and no goods were supplied. It is pertinent to note that the debt fell due from the date the amount was paid to the

Corporate Debtor, and it failed to supply the goods. Considering that the debt is not a financial debt but an operational debt, it became due when there was non-repayment of the amount paid by the Operational Creditor.

4.5 The bifurcation of default is as follows:

**A. Default occurred till 25.3.2020 (prior to Covid Pandemic) is Rs. 2,99,37,538**

- Total amount paid by the Operational Creditor for the period of 07.01.2020 to till 25.3.2020 = Rs. 5,18,12,538/-
- Total Amount repaid by the Corporate Debtor till 30.09.2020 = Rs. 2,18,75,000/-
- Amount liable to be paid (Returned) = Rs. 2,99,37,538/-

B. Default occurred after 25.3.2020 is Rs. 30,00,000/-

- Total amount paid by the Petitioner on 26.03.2020 = Rs. 30,00,000/-
- Amount returned= NIL
- Debt liable to be paid (Returned) = Rs. 30,00,000/- (Post Covid)

4.6 The default date in this case is mentioned as 30.09.2020, as that is the last date the Corporate Debtor made the last payment of the instalment towards repayment of the amount. However, considering that the debt occurred due to retention of the amount without supplying the goods, the default occurred immediately after the payment was made by the Operational Creditor.

4.7 The Corporate Debtor has filed its reply to the present Petition and has also filed an IA for rejection of the Company Petition by relying upon the bar under Section 10A. However, it is pertinent to note that the Corporate Debtor is operating in the Agro-based industry, and there was no impediment and/or restriction in the conduct of business

and/or transport of the same, as the said industry was considered as an essential.

4.8 The Corporate Debtor has admitted in its reply to the present Petition that the goods were to be supplied prior to the pandemic, as in paragraph 16 to the Reply, in which it is clearly stated that the goods were to be picked up immediately by the Operational Creditor. However, the Corporate Debtor failed to bring on record anything to indicate that it had communicated to the Operational Creditor that the goods were ready, and the Operational Creditor failed to lift the goods.

4.9 The Corporate Debtor, in its reply to the present Company Petition, has attempted to indicate that it has fortified the amount of Rs. 3,04,37,500/- on the ground of alleged loss suffered by it due to non-lifting of the goods by the Operational Creditor. However, the Corporate Debtor has failed to indicate how such loss was suffered, and the Corporate Debtor is attempting to mislead this tribunal by suppressing the actual profits made by it during the said period by diverting the goods to other companies.

4.10 Moreover, it is essential to note that the Corporate Debtor is attempting to show a pre-existing dispute through its voluminous reply, however, nothing is brought on record to indicate that the same existed prior to the Demand Notice, and it is evident that the Corporate Debtor is merely attempting to create a baseless dispute to give the colour of a pre-existing dispute, without any justified cause and/or reason, only to defeat the process of the Company Petition.

4.11 The Corporate Debtor has informed that it has fortified the amount as per the CA opinion dated 08.08.2020. However, it needs to consider the tax implications of the same as forfeiture of the amount would be considered as income. Therefore, the Corporate Debtor is liable to pay Income Tax as well as GST on the same. The conduct of the Corporate Debtor indicates that the reference of forfeiture of amount of Rs.

3,04,37,500/- is merely an afterthought to escape its liability and corporate insolvency process. This is because the alleged forfeiture was never communicated to the Operational Creditor before, and no debit note was raised. The reference of forfeiture was made for the first time after serving the Demand Notice, when the Corporate sent its reply to the same. The Tribunal is not required to consider the status of the company and losses faced by it during the pandemic while considering the applicability of Section 10A. However, the same is not applicable in the present case as the Corporate Debtor not only failed to indicate its inability to supply the goods due to the pandemic but also diverted the goods, which were to be supplied to the Operational Creditor, to other companies in the industry. This can be clarified through its production and relevant documents of Sales Register, Production Register, GST bills, electricity bill, and its working condition.

4.12 In order to unearth the truth, it is necessary under Order 11 of CPC, which is a sacrosanct provision, that the Corporate Debtor be directed to produce on record all necessary documents for the period of April 2020 to March 2021. These documents should include Books of Account, Stock-register, Sales register, Purchase register, Manufacturing Register, Production Register, GST returns, and electricity bill. The relevant documents showing that the Corporate Debtor has paid applicable tax as stated before serving the Demand Notice should also be produced.

4.13 The contention of the Corporate Debtor that the Operational Creditor had placed an order for the supply of 3200Mt material @81700 per MT is denied in toto. The Operational Creditor has not entered into any oral/written contract or agreement to purchase such a huge quantity from Corporate Debtor. The contract between the parties was for the purchase of 700 MT of cotton wash oil @ Rs 75000 per Mt + 5% GST. Against the said purchase, the Operational Creditor made advance

payment, and accordingly made payments from 07.01.2020 till 26.03.2020. Further, the claim of the Corporate Debtor that Operational Creditor had placed an order for the supply of 3200Mt material @81700 per MT, is totally illogical, as production capacity of Corporate Debtor's company is to produce approximately 55 Mt of cottonseed wash oil per day in 24 hours. Therefore, it is required for the Corporate Debtor to supply its 58-60 days production to a single party at one rate, which is highly illogical. Moreover, the Corporate Debtor has failed to indicate even a single instance from its incorporation that it entered such type of contract/agreement in the past.

4.14 The Corporate Debtor has stated that it entered into such a big contract/agreement to supply material to Operational Creditors on the basis of its cordial relationship with the sister concern of Operational Creditor. However, the same is also unfathomable as the sister concern of the Operational Creditor had business with Corporate Debtor for the supply of oil in the past 4 years. It is not possible that the Operational Creditor agreed to purchase 3200 Mt of worth Rs 26.14 crore exclusive of GST when the Corporate Debtor has never supplied the Operational Creditor's sister concern even half of 3200MT at the same rate in the past 4 years.

4.15 Furthermore, the claim of Corporate Debtor that the Operational Creditor placed an order of 3200MT is not true as Exhibit E page 2 provides a tabular form that shows the details of cottonseed purchased by the Corporate Debtor. The purchase of cottonseed of 23041.00 Mt of worth Rs 53.71 crore during January 2019 to May 2019 & purchase of cottonseed of 35062.70 Mt of worth Rs 77.01 crore in January 2020 to June 2020. Out of this, it is possible to produce only 5610.00 Mt oil, and it is indigestible that Corporate Debtor intended to sell 3200 Mt i.e. almost 57% of their production to single buyer, Operational Creditor at same rate. It is evident that the Corporate Debtor is misleading this

Tribunal by putting forth such incorrect claim, and it is put to strict proof thereof.

4.16 The Corporate Debtor has put forth an incorrect representation before this Hon'ble Court and is attempting to escape its liability. The default of an amount of Rs. 2,99,37,538/- has occurred prior to pandemic, and it is necessary in the interest of justice to admit the present company petition and initiate the Corporate Insolvency Resolution Process against the Operational Creditor.

5. On the other hand, the Respondent *vide* written submissions dated 10.08.2023 submits that:

5.1 The date of default as reflected in the Demand Notice sent by the Petitioner is 30th September, 2020 and in view of the same the alleged claim by the Petitioner is barred in accordance with the provisions of Section 10A of the Code. The debarment of claim under Section 10A is without prejudice to the fact that there is no debt due and payable to the Petitioner.

5.2 In assessing the date of default, the Petitioner on account of its own admission put the date of default as 30th September, 2020, captured by the Demand Notice and therefore this period being well within the relaxation provided under Section 10A, is caught by the same. Further, this submission hits the very maintainability of the present Petition and makes it liable to be dismissed.

5.3 Reliance for the application of Section 10A in the present case is placed on ***Ramesh Kymal vs. M/s Siemens Gamesa Renewable Power Pvt. Ltd., Civil Appeal No. 4050 of 2020***, a copy of which is annexed to the present Petition under "Annexure 1".

5.4 The bifurcation of debt by the Petitioner contending that an alleged amount of 2,99,37,538/- became due prior to 25th March, 2020 and a balance of Rs 30,00,000/- became due post 25th March, 2020 is baseless

and lacks merit along with being a completely contrary to the averments in the main Petition as this contention was brought forth by virtue of the Additional Affidavit and such a deviation is not permissible.

5.5 It is wrongly asserted by the Petitioner that that the alleged default arose on the very same date when the alleged advance was paid by it to the Respondent on account of non-supply of goods as the goods were to be supplied in April, 2020 and consequently, the breach if any, of the alleged contract occurred in April, 2020. In any case, the date of default is confirmed as 30th September, 2020 in the demand notice and any deviation from the same is impermissible in law.

5.6 There is no debt due and payable since the balance of the advance paid by the Petitioner to the Respondent was forfeited due to the failure on the part of the Respondent to lift material.

5.7 The present Petition is liable to be dismissed firstly on the ground of maintainability on account of the admitted fact that the same is barred under Section 10A of the IBC and even otherwise, on the merits of the matter which are admittedly unconverted by the Petitioner.

**Findings and Observations:**

6. Heard Ms. Sairuchita Chowdhari, ld. Counsel appearing for the Applicant and Mr. Shyam Kapadia, ld. Counsel appearing for the Respondent and perused the record.

7. Before entering into the merits of the case, it is important to mention here the undisputed facts between the parties. There is no dispute between the parties with regard to the payment of an amount of Rs. 5,48,12,538/- by the Operational Creditor to the Corporate Debtor towards the supply of raw materials by the Corporate Debtor. It is also an admitted fact between the parties that there was no written contract or work order for supply of materials by the Corporate Debtor. Similarly, there is no dispute between the parties that

the entire amount was not refunded by the Corporate Debtor to the Operational Creditor.

It is a settled proposition of law that an advance amount paid by an Operational Creditor to Corporate Debtor for supply of materials, goods or services is an Operational Debt within the meaning of the definition of "Operational Debt" under the Code and thus there is no dispute with respect to existence of operational debt.

8. The main contention of the Corporate Debtor in their affidavit in reply is that the Operational Creditor had paid the above amount of Rs. 5,48,12,538/- towards 20% upfront advance for supply of materials and the balance 80% was to be paid by them at the time of lifting of materials which was to be completed within a period of 5 months as per their mutual oral understanding. It is also the contention of the Corporate Debtor that the material was not lifted by the Operational Creditor by paying the remaining 80% amount as a result of which the Corporate Debtor sustained huge financial loss due to breach of oral understanding by the Operational Creditor since the Corporate Debtor has in turn paid amount to various parties to procure the seeds/materials for the benefit of Operational Creditor. It is his further contention that the Corporate Debtor can forfeit the entire advance amount in case of breach by the Operational Creditor as per their understanding. However, keeping the long-standing business relationship and the close relationship between the promoters of both the Companies in mind, the Corporate Debtor refunded an amount of Rs. 2,18,75,000/- and forfeited the remaining advance amount of Rs. 3,04,37,500/- as full and final settlement by understanding. Thus, the contention of the Corporate Debtor is that there was no balance amount of operational debt due and payable by them and the Operational Creditor has purposefully issued a demand notice belatedly as an afterthought to exert pressure on the Corporate Debtor since the Corporate Debtor is a solvent company and therefore prayed for its dismissal. Candidly, the Corporate

Debtor is praying for the dismissal of the above Company Petition on the ground of pre-existing dispute.

9. However, this tribunal did not find any documentary proof prior to issuing of demand notice by the Operational Creditor to substantiate the above contentions of the Corporate Debtor with regard to the alleged full and final settlement between them and also with respect to the non-lifting of material by the Operational Creditor, etc., which is a condition precedent for dismissing an application filed under section 9 of the Code filed by the Operational Creditor on the plea of pre-existing dispute.

10. To our utmost surprise, prima facie we find from the record that the date of default in this case falls within Section 10 A period, even according to the own case of the Operational Creditor and the above Company Petition has to be dismissed on that score alone without entering into the defences raised by Corporate Debtor for the following reasons:

    i. The Operational Creditor in the above company petition at Part IV Column 2 mentioned the occurrence of date of default as 30.09.2020. Similarly, the NeSL Certificate annexed at Pg. 27 to 28 under Annexure 9, coupled with demand notice dated 15.09.2021 in Form 4 issued by the Operational Creditor shows the date of default as 30.09.2020 and 01.10.2020 respectively which falls during Section 10 A period.

    ii. It is the own case of the Applicant that from 2019 to March 2020, the Operational Creditor has transferred an amount of Rs. 5,48,12,538/- as advance to the Corporate Debtor and the Corporate Debtor failed to supply the raw materials in the month of April 2020. It is also the admitted case of the Operational Creditor in Para. 13 of additional affidavit that considering the debt occurred due to retention of advance amount without supplying the goods, the default occurred immediately after the payment was made by the Operational Creditor as a logical

corollary default starts immediately from April 2020 according to the own case of the Operational Creditor.

11. The explanation of the Operational Creditor with regard to section 10 A period as mentioned in the additional affidavit is that the Respondent/CD made his last payment on 30.09.2020 and requested 6 to 8 months' time for repayment of the balance amount and therefore the default starts 6 to 8 months after 30.09.2020 and therefore the above Company Petition is not hit by Section 10A. The Operational Creditor has not filed any documentary proof to prove the alleged request of Corporate Debtor for extension of time of 6 to 8 months from 30.09.2020 and is against to their own pleadings, NeSL Certificate and Demand Notice referred above.

12. If at all, this tribunal has to admit the above Company Petition believing the alleged oral request of the Corporate Debtor as propounded by the Operational Creditor ignoring their own documents, applying the same logic and rule of evidence this tribunal shall dismiss the above Company Petition on the plea of pre-existing disputes by believing the alleged oral understanding propounded by the Corporate Debtor with regard to forfeiting the entire amount in case of breach by the Operational Creditor and also the alleged inaction of the Operational Creditor in non-lifting of the material, etc.

13. Therefore, in the light of above factual and legal background, this tribunal thought it fit to decide the above Company Petition only as per the material available on record without considering the assertion of mutual understanding propounded by either of the party since this bench is of the opinion that both the parties did not approach this court with clean hands and have set up their own theories to suit their convenience that does not stand to the test of legal scrutiny.

14. For the aforesaid reasons, viewing from any angle, this bench has no hesitation in holding that the above Company Petition is hit by Section 10 A of the Code and is liable to be dismissed in the light of the judgment of the Hon'ble

Supreme Court in ***Ramesh Kymal* vs. *M/s Siemens Gamesa Renewable Power Pvt. Ltd.,*** Civil Appeal No. 4050 of 2020. Accordingly, the above CP (IB) 1286 (MB) of 2021 stands dismissed and consequently all pending IAs, if any, also stands disposed of.

15. It is needless to mention here that the above Company Petition is dismissed only on the ground of Section 10 A of the Code keeping the other contentions open to both the parties. This order does not preclude the Operational Creditor from initiating appropriate legal proceedings or another Company Petition, if permissible under law.

Sd/-
**Madhu Sinha**
**Member (Technical)**

Sd/-
**H.V. Subba Rao**
**Member (Judicial)**

# NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

## COURT-III

2. C.P.(IB)-1286(MB)/2021

CORAM: SHRI H. V. SUBBA RAO, HON'BLE MEMBER (J)

MS. MADHU SINHA, HON'BLE MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **07.03.2024**

NAME OF THE PARTIES: Ujjawal Refinery Private Limited

V/s.

Bhumi Cottex Industry Private Limited.

SECTION 9 OF IBC, 2016

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**ORDER**

**Hearing Through: Virtually and Physical (Hybrid) Mode**

**C.P.(IB)-1286(MB)/2021**

Mrs. Saruchita Chowdry Counsel appearing for applicant along with Mr. Kapadia counsel appearing for the respondent are present through video Conferencing and reported no objection for pronouncement of the order in the above company petition without insisting for fresh hearing even though the matter was de-reserved and again listed before the regular Bench. Hence, order is pronounced vide separate order. In the result, the above CP is **dismissed.**

Sd/-
MADHU SINHA
Member (Technical)

Sd/-
H. V. SUBBA RAO
Member (Judicial)

*Zeba(PS)*