

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI ATUL CHATURVEDI
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 160/9/JPR/2020

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

IN THE MATTER OF:

COGENT ENGINEERS PRIVATE LIMITED

...Operational Creditor

Versus

GOYAL PROTEINS LIMITED

...Corporate Debtor

MEMO OF PARTIES

KAIRAV TRIVEDI (RESOLUTION PROFESSIONAL)
FOR COGENT ENGINEERS PVT. LTD.

R/o 23 A 5th Floor Jyoti Bldg, Wadala
East Mumbai 400037

...Applicant

VERSUS

GOYAL PROTEINS LIMITED
Mr. Nirmal Goyal, Managing Director
R/o N. H. No. 52, Village Kasar,
Tehsil Ladpura, Kota, Rajasthan- 325003

...Respondent

For the Applicant : Kairav Trivedi, RP
For the Respondent : Ankit Totuka, Adv.

Order Pronounced On: 01.06.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present application has been filed by M/s Cogent Engineers Private Limited ('Operational Creditor'/ 'Applicant') through its authorised representative Mr. Kairav Trivedi ('Resolution Professional/ RP'), seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against M/s Goyal Proteins Limited ('Corporate Debtor'/ 'Respondent') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules'). A copy of the CIRP Order of the Operational Creditor is annexed on Pages No. 49 – 53 of the Application.
2. The Applicant, M/s Cogent Engineers Private Limited, is a private limited company which is currently under liquidation. The registered address of the Operational Creditor is GAT No 823/824, Sanaswadital, Shirur, Pune, Maharashtra – 422208. The CIRP Order was passed by NCLT, Mumbai Bench *vide* Order dated 30.08.2019 in CP (IB) No. 3861/NCLT/MB/2018. The alleged default by the Corporate Debtor for the non-payment of operational dues amounts to Rs. 1,16,00,306 (Rupees One Crore Sixteen

Lakhs Three Hundred and Six Only) along with interest payable @ 18% per annum.

3. The Corporate Debtor, M/s Goyal Proteins Limited, is a public company incorporated under the Companies Act, 1956, on 16.06.1999, having CIN: U24117RJ1999PLC015695. The Respondent has its registered office at – Goyal Protein Limited, NH No. 52, Village Kasar, Tehsil Ladpura, Kota – 325003; and has an Authorised Share Capital of Rs. 90,00,00,000/- (Rupees Ninety Crores Only) and Paid-Up Share Capital of Rs. 81,60,00,000/- (Rupees Eighty-One Crores Sixty Lakhs Only) as per latest master data available on the site of Ministry of Corporate Affairs ('MCA').
4. The details of the transactions leading to the filing of this application averred by the Applicant *vide* Diary No. 640/2020 dated 19.10.2020 are as follows:
 - a. The Operational Creditor agreed to supply and erect 40 TPH, 45 kg/cm²(g) Pressure and 425 +/-5⁰ C SH Steam 100% Mustard Husk Pulsating Grate Boiler ('Product') *vide* Purchase Order GPL/12-13/March 28, 2013/L-638 for a total consideration Rs. 5,39,00,000 (Rupees Five Crores Thirty-Nine Lakhs Only).
 - b. During the production of the product, the operations of the Applicant halted because of the Financial Crisis. Hence, despite the Applicant being non-operational, it was agreed between the parties to get the

remaining work completed through approved sub-contractors wherein the Corporate Debtor would make the direct payment. Such direct payment to such sub-contractors would only be done after a specific approval of the Applicant. Thus, the amount paid to the sub-contractors would be debited to the account of the Applicant and the balance, under the contract, would be paid to the Operational Creditor. Resultantly, the Applicant issued various sale invoices valuing, inclusive of the cost of carriage, Rs. 5,65,09,921/- (Rupees Five Crore Sixty-Five Lakhs Nine Thousand Nine Hundred and Twenty-One Only).

- c. The Respondent made payments directly to either the Operational Creditor or the sub-contractors amounting to Rs. 5,04,65,680/- (Rupees Five Crore Four Lakhs Sixty-Five Thousand Six Hundred and Eighty Only). However, a balance of Rs. 60,44,241/- (Rupees Sixty Lakhs Forty-Four Thousand Two Hundred and Forty-One Only) remains unpaid after the commissioning of the product.
- d. The RP issued a notice in December 2019 for non-issuance of Form C which fetched a total liability of Rs. 4.7 Crores by the Sales Tax Department on the Applicant under the liquidation. The aforementioned outstanding amount has been accepted by the

Corporate Debtor from the demand of a No Dues Certificate ('NOC') as a pre-condition for issuance of pending Form C.

- e. Subsequently, the RP raised the Demand Notice dated 10.02.2020 under Section 8 of the Code as per Form 3 and 4 as prescribed under Rule 5 of the Rules at the Corporate Debtor's registered office, demanding a sum of Rs. 1,16,00,306/- (Rupees One Crore Sixteen Lakhs Three Hundred and Six Only) along with interest @18% per annum on the unpaid dues. The Respondent neither paid the outstanding debt nor raised a dispute regarding the outstanding debt till the filing of the present petition. The demand notice was accompanied by a computation of interest, details of invoices, and relevant dates of default. The Demand Notice was delivered on 15.02.2020. A copy of the Demand Notice dated 10.02.2020 along with Form 4, postal receipts and tracking reports are annexed on Pages No. 30 – 44 of the Application.
- f. Further, the Committee of Creditors ('CoC') has unanimously resolved for the initiation of CIRP against the Corporate Debtor for non-payment of Operational Dues in its second CoC meeting held on 07.03.2020. A copy of the minutes of the second CoC meeting is annexed on Pages No. 54 – 56 of the Application.

g. The Applicant has further attached a copy of the statement of accounts which is annexed at Pages No. 45 – 47 of the Application. The aforementioned details, as reflected in Part IV of the Application, are as follows:

Part IV

Particulars of Operational Debt

1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	Total amount of debt: Rs. 1,16,00,306/- (Rupees One Crore Sixteen Lakhs Three Hundred and Six Only)
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 1,16,00,306/- [#] Total Principal Amount: Rs. 60,44,241/- Total Interest Due: Rs. 55,56,065/- [*] Date from which Debt fell Due: 09.03.2015

** Calculated the Interest Amount @18% p.a. from the period of 01.04.2015 to 02.10.2020.*

Computation of Amount to be claimed from Corporate Debtor is annexed on Page No. 48 of the application.

5. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply *vide* Dairy No. 200/2021 dated 19.01.2021, stating as follows:

a. The Respondent contended that the Applicant/Operational Creditor has not approached with clean hands and suppressed various material facts. The present application has been filed with an ulterior

motive to extract further amount which is neither due nor payable. Thus, the present application is liable to be dismissed.

- b. The present claim under the Section 9 of the Code is barred by the limitation and is not maintainable. Article 137 of the Limitation Act, 1963 prescribes a limitation of three years. Thus, if such period is calculated from the date of the last invoice and payment, its limitation expires on 31.03.2018 whereas when the date of the last accounting adjustment is considered, the period would expire on 31.08.2018. In all probability, such claim of the Applicant shall be barred as held in the case of *B.K. Educational Services Private Limited v. Parag Gupta and Associates*, AIR 2018 SC 5601; the ratio *decidendi* was further relied upon by the coordinate bench in *Enexio Power Cooling Solutions India (P.) Limited v. MSR Mega Bio Power Limited*, CP (IB) No. 65/9/HBD/2019.
- c. The application filed under Section 9 of the Code is also not maintainable given the MCA *vide* Notification dated 24.03.2020 ('Notification') had specified Rs. One Crore is the minimum amount of default for the purpose of filing the application under the Code. The Applicant stated total unpaid debt is Rs. 1,16,00,306/- which is inclusive of interest of Rs. 55,56,065/-. However, there is no interest clause in the agreement/ purchase order. Hence, the principal amount

of Rs. 60,44,241/- excluding interest is below the minimum threshold limit.

- d. Further, the Respondent has cleared all dues and had made all the payments in respect of invoices raised by the Operational Creditor. Thus, they have fully settled the account of the Applicant in June 2015; no debt is due and payable by the Corporate Debtor. This is evident from the Ledger Accounts maintained by the Respondent in its ordinary course of business of the Operational Creditor for the period 01.04.2013 to 30.06.2015. A copy Ledger Account is annexed as Annexure R – 1 of the Reply.
- e. Furthermore, the definition of ‘Operational Debt’ under Section 2(21) of the Code does not include the words ‘along with interest, if any’. For an operational debt, interest cannot be the basis for an application under Section 9 of the Code for the reason that there is no document on record to show that interest is chargeable either in the purchase order or in the invoices raised. Therefore, when the entire principal amount has been paid there is no question to pay interest. The Respondent has placed its reliance on the judgments of the coordinate benches in *Wanbury Limited v. Panacea Biotech Limited*, RT No. 9/CHD/PB/2017 and *Swastik Enterprises v. Gammon India Limited*, CP 1727/IBC/NCLT/MAH/2017.

- f. Moreover, the Operational Creditor made a request to the Respondent for issuing the pending Form C *vide* Letter dated 10.12.2019 and Demand Notice dated 15.01.2020. A copy of the Letter dated 10.12.2019 and Demand Notice dated 15.01.2020 is annexed as Annexure R – 2 and 3 of the Reply, respectively. In the Demand Notice dated 15.01.2020, the Resolution Professional did not mention any pending amount except the default as calculated by the Sales Tax Department amounting to Rs. 1,62,42,539/- (Rupees One Crore Sixty-Two Lakhs Forty-Two Thousand Five Hundred and Thirty-Nine Only) for the non-production of Form C for the product valuation of Rs. 5,02,91,161/- (Rupees Five Crores Two Lakhs Ninety-One Thousand One Hundred and Sixty-One Only).
- g. Consequently, the Corporate Debtor adhering to representation, supplied Form C *vide* Letter dated 14.02.2020 and requested for issuance of NOC in good faith. A copy of the Letter dated 14.02.2020 is annexed as Annexure R – 4 of the Reply. The Hon'ble Delhi High Court in the case of *Taipack Limited & Ors. V. Ram Kishore Nagar Mal, OMP No. 361/2001* has stated that the supply of Form C does not constitute acknowledgement of a debt owed, thereby giving a fresh commencement of the limitation period. Nevertheless, the Applicant issued a second demand notice dated

10.02.2020, demanding Rs. 1,16,00,306/-in respect of a settled account after the lapse of five years. Such action of the Applicant for issuing demand notice in piecemeal is not provided under the Code and reflects recovery as the motive to file the instant application.

6. The Operational Creditor filed its rejoinder *vide* Dairy No. 98/2022 dated 10.01.2022, wherein it reiterated its contentions as taken in its application, in addition to the following:

a. It was expressly agreed between both parties that the Corporate Debtor would make direct payments to the sub-contractors only after a specific approval of the Operational Creditor for the work undertaken by such sub-contractors. The Applicant has relied on the authorised payment released directly to the sub-contractors on the letterhead of the Operational Creditor under mentioned, which is annexed on Pages No. 4 – 10 of the rejoinder:

Date	Ref	Particulars	Amount (<i>in Rs.</i>)	Specific Purpose
22.02.2014	CGN/14-15	Pankaj Trading Corporation	12,00,000/-	Furnace & Super Heater Tube – 30% Advance
24.02.2014	CGN/14-15	Richardson & Cruddas Limited	3,07,230/-	Water Drum Fabrication – 100% Readiness
24.04.2014	CGN/14-15	Mahesh; Hitech;	16,79,566	100% Against

		Riddhi Siddhi		Material Readiness
02.09.2014	CGN/14-15	Payment to Supplier	1,55,996	Steel Material, Sample Cooler Assly, BO Plate
07.10.2014	CGN/14-15	Payment against Invoice No. 46	65,513	Boiler Components
29.10.2014	CGN/14-15	Payment to transporter	2,08,750	Freight
08.04.2015	CGN/14-15	Payment to contractor M/s Neha Enterprise – Bill No. 64	45,000	Fabrication of fitting for Air Chamber, damper and blow down

b. Thus, the Ledger Account Statement of the Operational Creditor has been manipulated to deceive the creditors of its rightful dues. The following entries were fictitious, unauthorised and have been unilaterally passed by the Respondent:

- i. 41 entries of Cash Payments of Rs. 20,000/- each totalling to, Rs. 8,20,000/- are shown as paid to individuals without authorisation;
- ii. A payment dated 30.03.2015 stating the amount transferred to a related account on behalf of Operational Creditor for Rs. 13,80,154/- without authorisation;

- iii. Similar entry has also been passed on 27.05.2015 for Rs. 45,000/- without authorisation;
 - iv. A payment, dated 30.08.2014, made on behalf of the Applicant without authorisation of Rs. 26,65,587/-;
 - v. A payment, dated 31.12.2014, made on behalf of the Applicant without authorisation of Rs. 72,946/-.
- c. In addition, the Applicant has enclosed confirmation for every transaction approved by the Operational Creditor from 2013-14 in a tabular format along with the reconciliation bifurcating the amount receivable as Rs. 26,95,000/- under 5% retention and balance receivable of Rs. 33,49,241/-, totalling Rs. 60,44,241/-. The aforementioned principal amount was adjusted without the knowledge and authority.
- d. Further, the Corporate Debtor was fully aware of the non-operability of the Applicant, wherein neither there were any employees nor functional management. Upon undertaking the affairs of the Operational Creditor *via* a CIRP Order, the Resolution Professional started preparing the accounts and follows ups. Hence, such actions amount to an exception to the rules of limitation. Additionally, the statutory non-compliance with the issuance of Form C has nothing to do with the outstanding operational debt.

7. The Operational Creditor filed Additional Documents on record *vide* Diary No. 1233/2022 dated 25.04.2022 for taking additional documentary evidence of the facts already stated in the rejoinder. These documents pertain to third-party correspondences confirming the refund of payment of the advanced amount received by various authorised sub-contractors given the materials were either rejected and returned or received excess payments. This further confirms that the payments have been released by the Corporate Debtor on the written instruction/ confirmation of the Operational Creditor irrespective of it being non-operational. A copy of such third-party confirmation *via* Ledger Account and Email is annexed on Pages No. 5 – 8 of the Additional Documents.

8. The Operational Creditor filed its Written Submission *vide* Diary No. 1053/2023 dated 26.04.2023 and reiterated that the Demand Notice was issued on 10.02.2020 and delivered on 15.02.2020. The present application has been prepared on 21.03.2020 after the expiration of the mandatory period of 14 days from the date of delivery. The NCLT Registrar *vide* Circular dated 19.03.2020 ('Circular') stated that due to COVID-19, it has been decided to close all the filing counters at NCLT with immediate effect. Thus, the application could neither be filed physically nor be complied with the new increased threshold limit. Further, the online payment facility was not activated during COVID along with strict curfew hours in Mumbai

resulting in the presentation of the application on 19.04.2020. A copy of the Circular dated 19.03.2020 and Challan for filing of the application online is annexed on Pages No. 6 – 7 of the Written Submission.

9. The Hon'ble Supreme Court of India India in *Suo Motu Writ Petition (Civil) No(s). 3/2020 in Re: cognizance for extension of Limitation*, vide Order dated 23.03.2020 extended the period of limitations in all the proceedings *w.e.f.* 15.03.2020; furthermore, in *Sesh Nath Singh & Anr. v. Baidyabati Sheoraphuli Co-Operative Bank & Anr.*, Civil Appeal No. 9198 of 2019, the Hon'ble Apex Court stated that the '*delay can be condoned irrespective of whether there is a formal application, if there are sufficient materials on record disclosing sufficient cause for the delay*'. Also, the instant application is covered under Section 17 of the Limitation Act, 1963 as the Applicant has the intention to deceive the creditor of the Applicant from their rightful dues by annexing misleading accounts statements and unauthorised unilateral actions. The instant application falls under the limitation given under Section 17 of the Limitation Act, 1963 begins to run when the Applicant discovers the fraud or mistake. Accordingly, the period starts from the date of appointment of the RP.

10. The Corporate Debtor filed its Written Submission *vide* Diary No.1058/2023 dated 27.04.2023 reiterated its earlier submission and has further stated that the Operational Creditor has not made any submission

of Section 17 of the Limitation Act, 1963 either in the application or rejoinder. Thus, the invocation of the aforementioned plea is an afterthought as there was no agreement between the parties that the sub-contractors' payments were to be made only after the specific approval of the Operational Creditor. Besides, it made advance payments to the Applicant in respect of the work completed by the third-party vendors. In addition, the Corporate Debtor made necessary payments to the sub-contractors directly in order to complete the product as the Applicant had expressed its inability to perform the contract due to non-operability, which is inclusive of the permissible cash payment of Rs. 20,000/- (Rupees Twenty Thousand Only) to labourers of the product.

11. In *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Ors.*, Civil Appeal No. 6347 of 2019, wherein the Hon'ble Supreme Court while dealing with the issue of the limitation has observed that:

'33. ... Therefore, on the admitted fact situation of the present case, where only the date of default as '08.07.2011' has been stated for the purpose of maintaining the application Under Section 7 of the Code, and not even a foundation is laid in the application for suggesting any acknowledgement or any other date of default, in our view, the submissions sought to be developed on behalf of the Respondent No. 2 at the later stage cannot be permitted. It remains trite that the question of limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for

extension or enlargement of the period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced. Indisputably, in the present case, Respondent No. 2 never came out with any pleading other than stating the date of default as '08.07.2011' in the period of limitation is available to be examined. In other words, even if Section 18 of the Limitation Act and principles thereof were applicable, the same would not apply to the application under consideration in the present case, looking to the very averment regarding default therein and for want of any other averment in regard to acknowledgement.'

12. The Hon'ble Supreme Court, in the case of *S. S. Engineers v. HPCL*, 2022 SCC Online SC 1385, has stated that *on a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process when there is an undisputed debt and a default in payment thereof. If the claim of an Operational Creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.* Supplementarily, in *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.*, 2019 SCC Online SC 73, it held that *'Operational debts also tend to be recurring in nature and the possibility of genuine disputes in case of operational debts is much higher when compared to financial debts. A simple example will suffice. Goods that are supplied may be substandard. Services that are provided may be substandard. Goods may not have been supplied at all. All these*

qua operational debts are matters to be proved in arbitration or in the courts of law.’

13. The Hon’ble NCLAT in the case of *Jumbo Paper Products v. Hansraj Agrofresh Pvt. Ltd., Company Appeal (AT) (Ins) No. 813 of 2021*, held that *notification dated 24.03.2020 makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 Crore. This threshold limit will be applicable for applications filed u/s 7 or 9 on or after 24.03.2020 even if the debt is of a date earlier than 24.03.2020. Since the application under Section 9 which is the subject matter of this appeal was filed on 13.09.2020, therefore the threshold limit of Rs. 1 Crore of debt will be applicable in the present case.*

14. We have heard the Learned Counsels for the parties and perused the averments made in the application, reply, rejoinder, additional documents, written submissions and the documents enclosed with the application.

15. It is necessary to refer to Section 4 of the IBC which reads as follows:

“4. Application of this Part –

(1) This part shall apply to matters relating to the Insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees.

***Provided** that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.”*

16. The Ministry of Corporate Affairs *vide* Notification specified Rupees One (1) Crore as the minimum amount of default for Section 4 of the Code. Hence, as per the Code, the minimum amount of default against which applications under Part II of the Code can be moved, in lieu of the Notification, is revised to Rs. 1,00,00,000/- (Rupees One Crore Only).
17. Therefore, all the applications that are filed after the Notification came into existence, must fall within the amended threshold limit of Rs. 1,00,00,000/- (Rupees One Crores Only) even if the debt existed or default occurred before 24.03.2020. The Hon'ble NCLAT has further clarified in the judgment of *Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd., Company Appeal (AT) (Ins.) No. 813 of 2021* that the threshold limit will be applicable for applications filed under Sections 7 or 9 of the Code, on or after 24.03.2020, even if the debt is of a date earlier than 24.03.2020.
18. It is necessary to examine whether the present insolvency application is maintainable in terms of Section 4 of the Code as the Applicant in Part IV of the application has claimed an amount of Rs. 1,16,00,306/- (Rupees One Crore Sixteen Lakhs Three Hundred and Six Only) from the Respondent.
19. In the instant case, the Applicant sent a Demand Notice dated 10.02.2020 *via* speed post on 10.02.2020 to the Respondent in Form 3 under Rule 5 of the Rules, wherein the aggregate amount of Rs. 1,16,00,306/- has been claimed. The Applicant has also submitted it has filed the present application online on 19.04.2020 and a copy of the physical application

before this Adjudicating Authority on 19.10.2020, which is post the applicability of the Notification. Further, the Circular issued by the NCLT Registrar directed to file applications online at Delhi, Mumbai, Hyderabad, Amaravati and Jaipur till the time filing counters are closed; the Applicant has not filed the application in compliance with the same.

20. Additionally, the representation of the Applicant in computing the interest to date to ensure that the application falls within the threshold limit is flawed. The charging of interest amount of Rs. 55,56,065/- was never documented or agreed upon by the parties either in the purchase orders or invoices. In such circumstances, the total debt falls below the threshold limit prescribed under the aforementioned Notification.

21. Moreover, it is immaterial, while deliberating upon the issue of threshold, as to the date of default, date of demand notice(s) or preparation and notarization of the application. The intent of the legislature to fix a higher threshold limit was to save companies from the clutches of relatively smaller debts during the COVID period. The action of the Operational Creditor reflects recovery as the motive for filing the instant application as a dual chance to recover dues.

22. Also, the Operational Creditor has placed heavy reliance on the invoices raised, but such invoices purported services which were rendered before the period of limitation. In the absence of any confirmation/ acknowledgement by the Corporate Debtor, such invoices cannot be

deliberated as it is barred by limitation. Supplementarily, the issuance of Form C cannot reflect as a valid acknowledgement of prior debts or falls under Section 17 of the Limitation Act, 1963. Consequently, the same cannot be considered an indicator of the operational debt being due and defaulted in the current set of circumstances of the case.

23. Furthermore, the Hon'ble Supreme Court of India, in the matter of 'Mobilox Innovative Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353', held as follows:

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties.

Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.

However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long

as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

24. In view of the foregoing, *inter-alia* including lack of pecuniary limits and time-barred claim, we have no option but to reject the prayer of the Operational Creditor to initiate proceedings under Section 9 of the IBC.

25. Hence, the Application is Dismissed. The Order in the present matter is made in terms of Section 9 (5) (ii) of IBC, 2016 and based on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority.

26. Let the copy of the Order be served to the parties and IBBI.

-Sd-

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

-Sd-

**ATUL CHATURVEDI,
TECHNICAL MEMBER**