IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301

C.P.(IB)/33(AHM)2022

Order under Section 9 of IBC, 2016

IN THE MATTER OF:
Naresh Tradelink Pvt. Ltd.

.......Applicant

v/s

Optus Laminates Pvt. Ltd. **.......Respondent**

Order delivered on: 24/01/2024

Coram:
Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:
For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT-I)

CP (IB) No.33/AHM/2022

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

IN THE MATTER OF:

Naresh Tradelink Private Limited
Having office at:
304, Aditya, B/h. Sardar Patel Seva Samaj Hall, Mithakhali Six Road, Ahmedabad, Gujarat-380006
CIN:U51100GJ2005PTC046005

Applicant/ Operational Creditor

VERSUS

Optus Laminates Private Limited
Registered office at:
Block- B, 903- 904,
Solitaire Corporate Park,
Nr. Divya Bhaskar Press,
SG Highway, Ahmedabad- 380051
CIN:U20210GJ2004PTC044949

Respondent/ Corporate Debtor

Order pronounced on: 24.01.2024

CORAM:

MR. SHAMMI KHAN (MEMBER JUDICIAL)
MR. SAMEER KAKAR (MEMBER TECHNICAL)

APPEARANCE:
For the Applicant/OC : Mr. Rasesh H Parikh, Adv.
For the Respondent/CD: Mr. Pratik Thakkar, Adv.
For the Bank of Baroda : Ms. Nalini Lodha, Adv.

O R D E R

1. The Present Application was filed on **03.02.2022** by **Naresh Tradelink Private Limited** (hereinafter referred to as **"the Applicant/Operational Creditor"**) against **Optus Laminates Private Limited** (hereinafter referred to as **"the Respondent/Corporate Debtor"**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (in short **"CIRP")** against the Respondent/Corporate Debtor for having defaulted in payment of its outstanding dues of **Rs.2,72,75,508/-.** The date of default as stated to be **27.03.2019**.

2. On perusal of Part-I of the Form-V reveals that the Applicant is one Naresh Tradelink Private Limited having CIN No.U51100GJ2005PTC046005. The registered office of the Applicant is situated at 304, Aditya, B/h. Sardar Patel Seva

Samaj Hall, Mithakali Six Road, Ahemdabad, Gujarat-380006.

3. On perusal of Part-II of the Form-V reveals that the Respondent is one Optus Laminates Private Limited having CIN No.U20210GJ2004PTC044949. The registered office of the Respondent/ Corporate Debtor is situated at Block-B, 903-904, Solitaire Corporate Park, Nr. Divya Bhaskar Press, SG Highway, Ahmedabad-380051, Gujarat.

4. An affidavit for filing this application is signed by one Mr. Hasmukh Tarachand Agrawal, Director and authorized representative of Applicant authorized by Board Resolution dated **21.01.2022** which is annexed to the Petition.

5. On perusal of Part-III of the Form-V reveals that the Applicant has proposed the name of the Interim Resolution Professional **('IRP') CA Vinod Tarachand Agrawal,** having registration No. IBBI/IPA-001/IP-P0641/2017-2018/11090, E-mail ID ca.vinod@gmail.com. He has filed his written communication annexed with the Application as Annexure-D as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations.

6. On perusal of Part-IV of the Form-V reveals that total dues as claimed by the Applicant is **Rs.2,72,75,508/-.** It is pleaded by the applicant that Respondent herein has approached the applicant with a request paper to supply as per requirement, its against which the said goods were supplied as per demand.

7. The Applicant, in the regular course of its business operations, has supplied papers in accordance with the requirements of Respondent. Consequently, invoices were generated by the Applicant for the supplied goods. The aforementioned goods were delivered to Respondent in compliance with the agreed terms, and Respondent acknowledged receipt without any reservation or dispute. The copies of the aforementioned invoices, transport lorry receipts, and E-way bills are annexed with the application.

8. The opening balance of Respondent in the books of Applicant as on 01.04.2017 is Rs.1,06,62,738/- in addition to said amount, further transaction took place between 01.04.2017 to 31.03.2018 and the total amount payable by Respondent to Applicant on 31.03.2018 arrived at Rs.6,86,66,048/-. Against the said amount the Respondent made payment of Rs.3,79,96,474.01ps/-.

9. The Books of account further reflects that total outstanding payable by Respondent to Applicant as on 01.04.2018 is Rs.3,06,69,573.99ps/-. Further, in the period from 01.04.2018 to 15.02.2019 additional business taking total payable by Respondent to Applicant on 15.02.2019 arrived at

Rs.4,99,65,726.99ps/-. Against the said amount the Respondent made payment of Rs.3,11,61,400.66ps/-.

10. The accounts of Respondent in Applicant account book further reflects that total outstanding payable by Respondent to Applicant as on 01.04.2019 is Rs.1,88,04,326.33ps/-. Further, in the period from 01.04.2019 to 11.02.2020 additional business taking total payable by Respondent to Applicant on 11.02.2020 arrived at Rs.3,38,91,110.33ps/-. Against the said amount the Respondent made payment of Rs. 79, 74,096.18ps/-.

11. Further the accounts reflect that total outstanding payable by Respondent to Applicant as on 01.04.2020 is Rs.2,59,17,014.15ps/-. Further, in the period from 01.04.2020 to 28.02.2021 additional business taking total payable by Respondent to Applicant on 28.02.2021 arrived at Rs.3,51,90,374.15ps/-. Against the said amount the Respondent made payment of Rs. 79, 14,866.36ps/-.

12. Lastly, on perusal of accounts reflects that total outstanding payable by Respondent to Applicant as on 01.04.2021 is Rs.2,72,75,507.79ps/-.

13. The Respondent failed to make payment of Rs.2,72,75,507.79ps/- therefore, the Applicant issued demand notice dated 17.11.2021 under section 8 of Insolvency and Bankruptcy Code, 2016 demanding payment of Rs.2,72,75,508/- (Rounded off amount).To the registered office and the same left undelivered with marks as "**LEFT.**"

14. The Applicant further submits that the Applicant herein also serves the copy of demand notice to Respondent on its registered email id and copy to the registered address of the director of the company.

15. The Applicant has also annexed to the application the copy of Bank statement of its account which shows that no further amount was received by him for the period from 08.02.2021 to 12.02.2021 from Respondent.

16. Given the aforementioned circumstances, the debtor has defaulted in fulfilling the payment obligation for the outstanding operational debt as previously specified. Consequently, the Applicant's petition is hereby proposed for approval to commence the Corporate Insolvency Resolution Process against Respondent, in compliance with the provisions outlined in the Insolvency and Bankruptcy Code of 2016.

17. The Applicant claims that the present application is well within limitation in view of Hon'ble Supreme Court vide its suo moto order dated 10.01.2022 has allowed exclusion of the lockdown for the period (from15.03.2020 to 28.02.2022) for calculation of limitation calculation due to Covid. The Applicant states that present application is within the Limitation.

18. The Applicant relies upon below mentioned documents to prove its case:

Sr.	Particulars	Annexures	Page No.
1.	Copy of certificate of Incorporation, pan card and GST Registration certificate of Applicant Naresh Tradelink Pvt Ltd.	A	20-24
2.	Copy of Master data of Respondent Optus Laminates Private Ltd	B	25
3.	Copy of Board Resolution dated 21-01-2021 of Applicant Naresh Tradelink Pvt Ltd.	C	26-27
4.	Copy of Consent of CA Vinod Chand Agrawal in Form-2	D	28-31
5.	Copies of Invoices, Transport lorry receipts and E-Way bills	E	32-250
6.	Copy of ledger account of corporate debtor maintained by the Applicant from 01.04.2017 to 17.11.2021	F	251-260
7.	Copy of Email, Demand notice in Form 3&4 dated 17.11.2021 along with tracking report.	G	261-273
8.	Working of Computation of the amount of Unpaid Invoice	H	274-275
9.	Copy of Bank Statement for the period from 08.02.2021 to 12.02.2021	I	276-278

19. This Hon'ble Tribunal through its order dated 08.02.2022 directed the Applicant to serve notice to Respondent. And Respondent to file reply and the other side to file rejoinder if any.

20. The Respondent has filed its reply on ***11.07.2022*** the averments of the Respondent in the reply are stated below:-

a) The Respondent pleaded that through Board Resolution dated 25.10.2021 one Mr. Dharmendra Patel, Director of Respondent has been authorized to file reply/objections on behalf of Respondent.

b) The Respondent has raised and contended following objections in his reply raised following Preliminary objections

    I. Amount paid on the invoices claimed and the claim below is below the threshold limit as per Section 4.

    II. Interest cannot be claimed in Section 9 petition.

c) Under Objection No. I, Respondent contend that the claim made by the Applicant lacks merit, as Respondent has previously issued multiple Letters of Credit (LCs) through Bank of Baroda in favor of the Applicant for various invoices. It is asserted that the Applicant provides a proforma invoice, and Respondent subsequently applies for an LC with the bank based on this proforma invoice. It is further maintained that the bank issues the LC based on the proforma invoice, and upon receipt of the final invoice, the bank disburses the payment to the Applicant if Respondent fails to make the payment. The Respondent has also annexed the LC issued in favour of Applicant against the invoices are reproduced here as follows:-

Invoice Date	Invoice No	Invoice Amount	LC Invocation Date	LC Amount	LC No
27-11-2018	2104/18-19	3,33,193.00			
18-12-2018	2332/18-19	3,53,156.00			
19-12-2018	2341/18-19	5,61,830.00			
20-12-2018	2342/18-19	3,31,447.00			
		15,79,626.00	04.01.2019	**15,79,626.00**	**3149ILCIS0004918**
15-10-2019	2110/19-20	3,16,313.00			
17-10-2019	2128/19-20	4,55,855.00		**7,72,168.00**	**3149ILCIS0011219**
		7,72,168.00			
29-12-2019	2843/19-20	4,81,646.00			
29-12-2019	2844/19-20	3,02,681.00			
29-12-2019	2845/19-20	4,81,221.00			
30-12-2019	2852/19-20	3,13,242.00	27.01.2020	**15,78,790.00**	**3149ILCIS0001120**
		15,78,790.00			
02-01-2020	2881/19-20	4,76,433.00			
02-01-2020	2882/19-20	4,79,518.00			
04-01-2020	2890/19-20	3,04,836.00	20.01.2021	**12,60,787.00**	**3149ILCIS0001020**
		12,60,787.00			
19-10-2020	1426/20-21	3,55,773.00			
20-10-2020	1438/20-21	3,51,888.00			
21-10-2020	1456/20-21	2,17,715.00	15.02.2021	**9,25,376.00**	**3149ILC000705020**
		9,25,376.00			
22-12-2020	2180/20-21	3,87,691.00			
22-12-2020	2183/20-21	3,98,436.00			
22-12-2020	2185/20-21	3,90,515.00			
25-12-2020	2218/20-21	3,90,136.00	09.03.2021	**15,66,778.00**	**3149ILC000879520**
		15,66,778.00			
19-01-2021	2484/20-21	6,65,800.00			
26-01-2021	2599/20-21	4,85,714.00			
27-01-2021	2612/20-21	6,80,924.00	27.05.2021	**18,32,438.00**	**3149ILC000019921**
		18,32,438.00			

Date of LC	LC Number	Amount
20-Dec-18	3149ILCIS0005118	1183308
28-Jan-19	3149ILCIS0000719	1357977
02-Feb-19	3149ILCIS0000919	1656731
26-Apr-19	3149ILCIS0003019	1607070
28-Nov-19	3149ILCIS0011119	1109160
18-Jan-20	3149ILCIS0001020	1260787
12-Oct-20	3149ILC000683020	932400
TOTAL		91,07,433/-

Thus, in total the Corporate Debtor has made payment through LCs towards specific invoices claimed in the petition to the tune of Rs. 1,86,23,396/-.

d) It is submitted by the Respondent that similar issue was decided by this Hon'ble Tribunal in C.P.(IB) No.434/2019 having same Respondent and that petition was dismissed vide order Dated 02.07.2020.

e) It is stated that the default amount in the present petition is under Rs.1Crore and there was no agreement for interest. Thus, present petition is not maintainable and liable to be dismissed.

f) Further, Respondent contends that the definition of "Operational Debt" does not include interest, damages and loss and even otherwise there was no agreement between the parties for 18% interest as claimed in the Petition. There are disputes with regards to principal and interest, hence, the petition deserves to be dismissed.

21. The Applicant filed a rejoinder to the reply of the Respondent on ***29.03.2023*** and made the following submissions:

a) The Applicant emphasizes on the fact that the Respondent has not contested the quality or quantity of the supplied goods. The goods provided have been duly utilized by the Respondent, and the sole objections articulated in the Respondent's response pertain to the payment of invoices. Further Applicant contends that the reply filed by the Respondent, claim for payment of invoices is devoid of the merit as Respondent has not produced ledger account of Applicant in its books.

b) The Applicant asserts that the operational procedure of the transaction between the Applicant and Respondent, as delineated in the response, is accurate. It is acknowledged that, based on proforma invoices, the Respondent habitually initiated the opening of Letters of Credit (LCs), with the understanding that the Applicant would encash these LCs if the Respondent failed to meet payment obligations. However, it is crucial to emphasize that, at this juncture, the Applicant disputes the notion that the amount from the encashed LCs by the Applicant would be allocated towards the oldest outstanding invoice. Contrary to the Respondent's claims in paragraphs 6 and 7 of its reply dated 11.07.2022, the attempt to fabricate such a scenario is deemed speculative and is vehemently denied by the Respondent as an effort to manufacture a nonexistent dispute. The Applicant asserts that none of the invoices displayed as outstanding invoices as claimed in the Petition have been settled by the Respondent.

c) Consequently, the present petition under Section 9 of the Code is considered justifiable for initiating the Corporate Insolvency Resolution Process against the Respondent.

d) Further in support of its contention Applicant has filed in it rejoinder details of the invoices that are credited out of the proceeds of LCs are reproduced as below:

SR	LC NO	LC AMOUNT	RECEIVED AMOUNT	Bill No. Credited	Bill date	Amount of Bill credited
1	3149ILC000019921	18,32,438.00	17,93,233.74	2057/18-19	24-Mar-2019	215629.53
				2089/18-19	25-Mar-2019	314852.00
				2090/19-20	11-Feb-2020	292668.00
				2095/19-20	11-Feb-2020	491309.00
				2096/19-20	11-Feb-2020	316424.00
				2104/18-19	27-Mar-2019	162351.21
2	3149ILC000879520	15,66,778.00	15,51,031.08	1791/18-19	13-Feb-2019	133974.61
				1795/18-19	13-Feb-2019	384902.00
				1894/18-19	24-Feb-2019	360497.00
				2040/18-19	21-Mar-2019	540339.00
				2057/18-19	24-Mar-2019	131318.47
3	3149ILC000705020	9,25,376.00	9,05,840.94	1609/18-19	22-Jan-2019	110472.55
				1688/18-19	31-Jan-2019	564901.00
				1791/18-19	13-Feb-2019	230467.39
4	3149ILCIS0001020	12,60,787.00	12,26,608.00	0438/18-19LC	13-Sep-2018	186464.15
				0472/18-19LC	15-Sep-2018	554365.00
				0843/18-19 LC	26-Oct-2018	485778.85
5	3149ILCIS0001120	15,78,790.00	15,37,271.00	0843/18-19 LC	26-Oct-2018	46797.15
				0923/18-19 LC	6-Nov-2018	372698.00
				0999/18-19 LC	16-Nov-2018	496238.00
				1057/18-19 LC	28-Nov-2018	341415.00
				1067/18-19 LC	28-Nov-2018	280122.85
6	3149ILCIS0011219	7,72,168.00	7,51,860.00	0180/18-19LC	18-Aug-2018	221968.15
				0255/18-19LC	24-Aug-2018	347168.00
				0393/18-19LC	8-Sep-2018	182723.85
7	3149ILCIS0004918	15,79,626.00	15,34,627.00	2471/17-18	14-Jun-2018	241256.49
				2524/17-18 LC	17-Jun-2018	471395.00
				2662/17-18 LC	4-Jul-2018	821975.51

SR	LC NO	LC AMOUNT	RECEIVED AMOUNT			
1	3149ILCIS0003218	15,04,279.00	14,63,042.10	1743/17-18	7-Mar-2018	509883.99
				1843/17-18 LC	15-Mar-2018	583435.00
				1776/17-18	9-Mar-2018	369723.11
2	3149ILCIS0003318	15,55,771.00	15,11,607.46	1776/17-18	9-Mar-2018	78185.89
				2029/17-18 LC	4-Apr-2018	901688.00
				2047/17-18 LC	5-Apr-2018	531733.57
3	3149ILCIS0002818	27,55,710.00	26,76,785.00	1509/17-18 LC	14-Feb-2018	2399.99
				1685/17-18	2-Mar-2018	532040.00
				1702/17-18 LC	3-Mar-2018	595854.00
				1705/17-18	3-Mar-2018	446725.00
				1729/17-18	6-Mar-2018	578607.00
				1731/17-18	6-Mar-2018	448431.00
				1743/17-18	7-Mar-2018	72728.01
4	3149ILCIS0002418	28,30,132.00	27,60,098.00	1245/17-18	11-Jan-2018	82304.99
				1288/17-18	13-Jan-2018	685467.00
				1447/17-18 LC	9-Feb-2018	398911.00
				1445/17-18 LC	8-Feb-2018	539201.00
				1450/17-18 LC	9-Feb-2018	562706.00
				1495/17-18 LC	13-Feb-2018	491508.01
5	3149ILCIS0002018	28,45,877.00	27,69,397.94	1178/17-18 LC	6-Jan-2018	442730.99
				1181/17-18 LC	6-Jan-2018	644691.00
				1204/17-18	8-Jan-2018	567077.00
				1216/17-18	9-Jan-2018	545153.00
				1230/17-18	10-Jan-2018	378679.00
				1245/17-18	11-Jan-2018	267546.01
6	3149ILCIS0001218	28,03,928.00	27,39,194.60	1027/17-18	23-Dec-2017	112660.99
				1030/17-18	23-Dec-2017	548317.00
				1096/17-18	29-Dec-2017	561082.00
				1149/17-18 LC	4-Jan-2018	927359.00
				1163/17-18 LC	5-Jan-2018	551382.00
				1178/17-18 LC	6-Jan-2018	103127.01
7	3149ILCIS0000918	31,14,323.00	30,42,502.18	0810/17-18 LC	8-Dec-2017	270561.99
				0816/17-18	9-Dec-2017	346102.00
				0865/17-18	12-Dec-2017	539596.00
				0867/17-18	12-Dec-2017	355727.00
				0876/17-18 LC	12-Dec-2017	411146.00
				0970/17-18	18-Dec-2017	385044.00
				1006/17-18 LC	21-Dec-2017	369452.00

				1027/17-18	23-Dec-2017	436694.01
8	3149ILCIS0001418	29,68,575.00	28,95,186.00	0627/17-18 LC	24-Nov-2017	203438.99
				0639/17-18 LC	25-Nov-2017	521447.00
				0661/17-18	27-Nov-2017	383896.00
				0753/17-18 LC	5-Dec-2017	875912.00
				0757/17-18 LC	5-Dec-2017	829456.00
				0810/17-18 LC	8-Dec-2017	154425.01

SR	LC NO	LC AMOUNT	RECEIVED AMOUNT			
1	3149ILC000683020	9,30,749.60	9,14,361.60	1294/18-19	20-Dec-2018	**366618.15**
				1587/18-19	18-Jan-2019	**322372.00**
				1609/18-19	22-Jan-2019	**225371.45**
2	3149ILCIS0011119	11,09,160.00	10,81,589.00	0393/18-19LC	8-Sep-2018	**151559.15**
				0414/18-19LC	10-Sep-2018	**567731.00**
				0438/18-19LC	13-Sep-2018	**362298.85**
3	3149ILCIS0003019	16,07,070.00	15,61,634.18	0149/18-19LC	16-Aug-2018	**317413.33**
				0155/18-19LC	16-Aug-2018	**390465.00**
				0168/18-19LC	17-Aug-2018	**853755.85**
4	3149ILCIS0000919	16,56,731.00	16,12,205.56	2724/17-18 LC	11-Jul-2018	**528043.89**
				2759/17-18LC	15-Jul-2018	**592335.00**
				0126/18-19LC	12-Aug-2018	**423442.00**
				0149/18-19LC	16-Aug-2018	**68384.67**
5	3149ILCIS0000719	13,57,977.00	13,21,353.60	2662/17-18 LC	4-Jul-2018	**50164.49**
				2677/17-18 LC	6-Jul-2018	**591113.00**
				2699/17-18 LC	8-Jul-2018	**594922.00**
				2724/17-18 LC	11-Jul-2018	**85154.11**
6	3149ILCIS0005118	11,83,308.00	11,51,095.00	0393/18-19LC	8-Sep-2018	**151559.15**
				0414/18-19LC	10-Sep-2018	**567731.00**
				0438/18-19LC	13-Sep-2018	362298.85

e) It is submitted that on the perusal of above reproduced contents of Proceeds of LC and its adjustment to Invoices, clearly shows that none of the Invoices claimed by the Applicant in petition has been paid.

f) The Applicant denies that the definition of Applicant does not include interest, damages or loss and relies on provisions of the Code and Section 3(11), 3(12) and 5(21). And that the petition is barred by Res Judicata.

g) The Applicant denies that the amount claimed as outstanding in the present petition stands adjusted by the LCs.

22. Upon notice Bank of Baroda filed a reply via Affidavit in compliance of the order dated 16.08.2023 as directed by this Tribunal on ***13.11.2023*** and made the following submissions:

a) It is pleaded that bank through its Motipura Branch at Himmatnagar has granted various credit facilities that were secured by the immovable properties to Respondent initially in the year 2018 of Rs.24.50Crores which was renewed in the year 2021 to Rs.27.56Crores.

b) The Respondent has utilized a Letter of Credit Limit of Rs.4Crores with Bank of Baroda (BoB) for procuring raw materials. BoB has issued Letters of Credit on behalf of the Respondent, including in favor of the Applicant, Naresh Tradelink Pvt. Ltd. However, the Respondent has defaulted in honoring bills under the Letters of Credit on the specified due dates. Consequently, BoB, upon devolvement, directly facilitated payment to the supplier (the beneficiary), i.e., the Applicant, in accordance with the Letters of Credit issued by BoB.

c) It is pleaded that the Applicant in the aforementioned petition alleges unpaid invoices aggregating to Rs.2,72,75,508/- as of 17.11.2021, and asserts that this amount represents outstanding payments for supplied materials to the Respondent. It is noted that some invoices have been settled by BoB directly to the Applicant under BoB-issued Letters of Credit within the overall LC limit of Rs.4.00 Crores, as per available records traced by BoB. The details of same has been reproduced below:

Invoice Date	Invoice No.	Invoice Amount (Rs.)	Due Date	Amount Paid by BoB and LC No. and date
06.01.2019	2529/18-90	3,34,440	06.05.2019	Rs.16,56,731/- (Total 4 invoices) Paid on 27.05.2019 3149ILCIS0000919 dated 01.02.2019
08.01.2019	2543/18-19	5,57,432	08.05.2019	
11.10.2020	1308/20-21	3,59,358	08.02.2021	Rs.9,30,749.65ps. Paid on 30.12.2020 3149ILC000683020 dated 12.10.2020
14.10.2020	1353/20-21	3,60,435	11.02.2021	
15.10.2020	1365/20-21	3,51,546	12.02.2021	
19.10.2020	1426/20-21	3,55,773	16.02.2021	Rs.9,23,738.09ps. Paid on 15.02.2021 3149ILC000705020 dated 16.10.2020
20.10.2020	1438/20-21	3,55,888	17.02.2021	
21.10.2020	1456/20-21	2,17,715	18.02.2021	
22.12.2020	2180/20-21	3,87,691	21.04.2021	Rs.15,66,778/- Paid on 09.03.2021 3149ILC000879520 dated 01.12.2020
22.12.2020	2183/20-21	3,98,436	21.04.2021	
22.12.2020	2185/20-21	3,90,515	21.04.2021	
25.12.2020	2218/20-21	3,90,136	24.04.2021	
19.01.2021	2484/20-21	6,65,800	19.05.2021	Rs.18,32,438/- Paid on 27.05.2021 3149ILC0000199921 dated 07.01.2021
26.01.2021	2599/20-21	4,85,714	26.05.2021	
27.01.2021	2612/20-21	6,80,924	27.05.2021	
			Total	Rs.61,45,575.74ps.

e. It is evident from the foregoing that, despite receiving direct payment from Bank of Baroda (BoB) pursuant to the Letters of Credit (LCs) initiated by the Respondent, the Applicant has categorically asserted the non-payment of the corresponding invoices. It is further asserted that BoB has only successfully traced only a few set of LC documents, attributing the failure to trace others to the aged nature of the records and the amalgamation of Dena Bank with Bank of Baroda, leading to the merger of branches. Consequently, the entirety of the records pertaining to these transactions could not be located, thereby leaving open the possibility that the outstanding invoices may have been settled by BoB.

f. Additionally, it is submitted that the Applicant has failed to present invoices for the period from October 2020 to 27.01.2021, as indicated in the provided table, despite having already received payment for them. Moreover, the Tax Invoice No. 2543/18-19 dated 8.01.2019, presented by the Applicant differs from the Tax Invoice submitted to BoB, lacking the LC No. reference found in the bank-submitted invoice.

23. The Applicant filed a reply to the reply of the Bank on ***21.11.2023*** and made the following submissions:

(a) It is categorically pleaded by the Applicant that Bank of Baroda (BOB) is neither necessary nor proper party in the present petition as BOB is not privy to operational debt as claimed by the Applicant. As present petition is instituted by the Applicant under section 9 of the code that doesn't envisage intervention of any party while adjudicating petition under this section and Applicant further rely upon decision of Hon'ble Supreme court in case of "**Innoventive Industries Ltd. Vs. ICICI Bank"** that Insolvency and Bankruptcy code, 2016 is an exhaustive code, Thus no other provisions of any other laws can be relied upon while adjudicating dispute under this code.

(b) It is further contended that relations of Applicant and Respondent are contractual in nature therefore attracts provision of Indian Contract Act, 1872 and specifically governed by Section 60 of the Act which confers unconditional right upon creditor to appropriate amount recovered from debtor thus wide discretion to appropriate such amounts even towards time barred debt. Section 60 have been reproduced below:

"60. Application of payment where debt to be discharged is not indicated.—

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful *debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits."*

(c) In both the petition and the rejoinder affidavit, the Applicant explicitly asserts having received funds from Respondent through the encashment of a Letter of Credit. However, it is emphasized that the credited amount corresponds to the oldest outstanding invoice, and the Applicant maintains that, in accordance with Section 60 of the Indian Contract Act, 1872, no legal provision, be it statutory or common law, and overrides the creditor's right to appropriate funds. It is underscored that this right pertains solely to the Applicant and Respondent.

(d) It is contended that the outstanding amount asserted in Form No. 3 and 4 pertains to the supply of goods consumed by Respondent. Respondent does not dispute the actual consumption of the goods but relies solely on the assertion that the claimed amount has been paid, a contention refuted in the rejoinder, demonstrating its unpaid status. Consequently, the Bank of Baroda's assertion that the Applicant approaches with unclean hands and that the invoice amount has been settled is inaccurate. It is reiterated that Bank of Baroda lacks the standing to comment on Respondent's outstanding amount concerning the Applicant, as it falls within the private domain of both parties.

(e) Hence, it is unequivocally established that the operational debt owed by Respondent to the Applicant remains unpaid. Consequently, the present petition must be admitted in accordance with the provisions of the Insolvency and Bankruptcy Code (IBC).

24. The Applicant as well as the Respondent also filed their respective written submissions which were also taken in to consideration.

25. We have heard the Ld. Counsel for all the parties and perused the material available on record.

26. It is noted that the Applicant supplied paper to the Respondent and maintained running accounts for their transactions, out of said transactions an amount of Rs.2,72,75,508/- was payable by Respondent to Applicant. The Respondent defaulted in paying said amount therefore, the Applicant issued demand notice dated 17.11.2021 claiming an amount of Rs.2,72,75,508/-. As no reply to demand notice was

received therefore, the Applicant proceeded to file present petition under section 9 of IBC, 2016 on 09.11.2020.

27. It is observed that specific date of default is mentioned in the application is 27.03.2019. And the Application is filed on 03.02.2022 thus within a period of three years from the date of default therefore, it can be said that the present application is within limitation.

28. The prime contention of Respondent is that certain invoices claimed unpaid by the Applicant are already paid through Letter of credit issued by Bank of Baroda in respect of the invoices raised by the Applicant time to time and if those invoices are excluded, the present Application would not be able to meet the minimum threshold limit of Rs.1 Crore.

29. On perusal of Record available it can stated that Payment through Letter of Credit to the Applicant is not disputed, But the major contention being that the Applicant has adjusted the same to old outstanding debts. For the same Applicant has relied on Section 60 of Indian Contract act, which has been reproduced below:

"60. Application of payment where debt to be discharged is not indicated.—

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits."

On bare reading of the section it is very clear that discretion becomes available to the creditor only when the debtor has omitted to intimate to which debt such payment has to be applied, In the present case it is very clear from the record that Letter of Credit has been issued by the Bank of Baroda specifically for the invoices raised, thus application of discretion by the creditor doesn't arise so as the application of the section 60. Hence Letters Of Credit issued by the bank were for specific invoices raised by the Applicant and can be used to satisfy those particular invoices only.

30. The Applicant claimed in its petition unpaid dues from 27.11.2018 to 30.01.2021 of amount Rs.2,72,75,508/. On perusal of the record available following Letter of Credit issued by Bank of Baroda in favor of Applicant which is not disputed by Applicant falls into the period between 27.11.2018 – 30.01.2021 and has been issued against particular invoices have been reproduced below:-

Invoice Date	Invoice No	Invoice Amount	LC Invocation Date	LC Amount	LC No
27-11-2018	2104/18-19	3,33,193.00			
18-12-2018	2332/18-19	3,53,156.00			
19-12-2018	2341/18-19	5,61,830.00			
20-12-2018	2342/18-19	3,31,447.00			
		15,79,626.00	04.01.2019	**15,79,626.00**	**3149ILCIS0004918**
15-10-2019	2110/19-20	3,16,313.00			
17-10-2019	2128/19-20	4,55,855.00		**7,72,168.00**	**3149ILCIS0011219**
		7,72,168.00			
29-12-2019	2843/19-20	4,81,646.00			
29-12-2019	2844/19-20	3,02,681.00			
29-12-2019	2845/19-20	4,81,221.00			
30-12-2019	2852/19-20	3,13,242.00	27.01.2020	**15,78,790.00**	**3149ILCIS0001120**
		15,78,790.00			
02-01-2020	2881/19-20	4,76,433.00			
02-01-2020	2882/19-20	4,79,518.00			
04-01-2020	2890/19-20	3,04,836.00	20.01.2021	**12,60,787.00**	**3149ILCIS0001020**
		12,60,787.00			
19-10-2020	1426/20-21	3,55,773.00			
20-10-2020	1438/20-21	3,51,888.00			
21-10-2020	1456/20-21	2,17,715.00	15.02.2021	**9,25,376.00**	**3149ILC000705020**
		9,25,376.00			
22-12-2020	2180/20-21	3,87,691.00			
22-12-2020	2183/20-21	3,98,436.00			
22-12-2020	2185/20-21	3,90,515.00			
25-12-2020	2218/20-21	3,90,136.00	09.03.2021	**15,66,778.00**	**3149ILC000879520**
		15,66,778.00			
19-01-2021	2484/20-21	6,65,800.00			
26-01-2021	2599/20-21	4,85,714.00			
27-01-2021	2612/20-21	6,80,924.00	27.05.2021	**18,32,438.00**	**3149ILC000019921**
		18,32,438.00			

Date of LC	LC Number	Amount
20-Dec-18	3149ILCIS0005118	1183308
28-Jan-19	3149ILCIS0000719	1357977
02-Feb-19	3149ILCIS0000919	1656731
26-Apr-19	3149ILCIS0003019	1607070
28-Nov-19	3149ILCIS0011119	1109160
18-Jan-20	3149ILCIS0001020	1260787
12-Oct-20	3149ILC000683020	932400

31. The aggregate amount of the all the Letter of Credit issued by the Bank of Baroda for Respondent to the

Applicant is **Rs.1,86,23,396/-**. On subtracting the amount claimed by the Applicant i.e. **Rs.2,72,75,508/-**, total unpaid amount left remains **Rs.86,52,112/-**.Thus the existing default amount is less than **Rupees One Crore** which doesn't meets the threshold limit as per section 4 of the Code.

32. In our view the applicant through its petition has tried to mislead the tribunal by adjusting specific Letter of Credit issued for specific invoices against old outstanding debts, which per se not applicable and thus initiated a malicious proceeding as well as mislead this Tribunal and thus attracts section 65 of the IBC code, 2016 which has been reproduced below:-

"Section 65 Fraudulent or Malicious initiation of Proceedings

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees."

33. In our view the applicant fails to prove that there is debt and default. We have also seen that the amount defaulted is less than Rs.1.00 Crore which doesn't meets the threshold limit as per section 4 of the Code

Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent deserves to be dismissed.

34. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-

(i) The Present application being CP(IB) No.33/AHM/2022 is dismissed.

(ii) As a consequence thereof for initiating Insolvency Resolution process with fraudulent intent this Hon'ble Tribunal directs the Applicant/Applicant to pay costs **Rs.5,00,000/- (Rs. Five Lakh only)** to **Prime National Relief Fund** within a period of **10 days** from the date of this order.

35. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

36. List this matter for reporting compliance on 07.03.2024.

-SD-	**-SD-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Anish keshari/LRA