

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**(IB)-345(ND)2020**

**IN THE MATTER OF:**

**M/s. G. L. Shoes  
27, Sulehkul Nagar, Near  
Maruti Estate Crossing,  
Shahganj Bodla Road,  
Agra, Uttar Pradesh-282010**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s. Action Udhog Private Limited  
98, Shahzada Bagh,  
Industrial Area Old Rohtak Road,  
New Delhi-110035**

**...Respondent/Corporate Debtor**

**Section: 9 of the IBC, 2016**

**Order Delivered on: 06.06.2022**

**CORAM:**

**SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Mr. Nitin Kumar Kaushik, Advocate

**For the Respondent** : Ms. Varsha Banerjee, Advocate

## **ORDER**

**PER SHRI L. N. GUPTA, MEMBER (T)**

The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. G. L. Shoes (for brevity '**Applicant/Operational Creditor**'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Action Udhyog Private Limited (for brevity '**Respondent/Corporate Debtor**').

2. That the Corporate Debtor namely, M/s. Action Udhyog Private Limited is a Company incorporated on 26.11.2007 with CIN U19201DL 2007PTC170744 under the provisions of the Companies Act, 2016 having its registered Office at 98, Shahzada Bagh, Industrial Area Old Rohtak, New Delhi-110035, which is within the jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 21,00,00,000/- and Paid-up Share Capital is Rs. 20,73,60,000/- as per the Master Data of the Corporate Debtor.

4. That the detailed particulars of the Operational Debt as provided by the Applicant in the Part IV of its Application are reproduced overleaf:

**PART-IV**

<b>PARTICULARS OF OPERATIONAL DEBT</b>		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	<p>A. The total amount of Operational Debt is Rs. 22,26,456/- (Rupees Twenty Two Lakh Twenty Six Thousand and Four Hundred Fifty Six Only) comprising of Rs. 14,66,044/- (Rupees Fourteen Lakh Sixty Six Thousand Forty Four Only) as Principal and Rs. 7,60,412/- (Rupees Seven Lakh Sixty Thousand Four Hundred Twelve only) as Interest amount @ 18% p.a.</p> <p>B. The details of the transactions on account of which the said Debt fell due are as follows:</p> <p>i) The Corporate Debtor had purchased Shoes, Sandals and Foam Slippers etc from April to June, 2016 from the Operational Creditor.</p> <p>ii) The Operational Creditor supplied</p>

		<p>the same on time to time as per the purchase order placed by the Corporate Debtor. However, despite supplying such material/goods; the Corporate Debtor failed to pay the due amounts towards the invoices raised by Operational Creditor in this regard.</p> <p>C. The payment for consignment fell due on 08.07.2016 onwards i.e. 75 days from the date of invoice, as per the Invoices.</p>
2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>	<p>The amount claimed to be in default is Rs. 14,63,044/- (Rupees Fourteen Lakh Sixty Six Thousand Forty Four Only).</p> <p>The date on which the default occurred is 08.07.2016.</p>

5. That from perusal of the Part IV of the Application, it is observed that the Applicant had supplied footwears to the Corporate Debtor. That the total claim of the Operational Creditor amounts to Rs.22,26,456/- out of which Rs.14,66,044/- is the principal amount and Rs.7,60,412/- is claimed as interest. That the date of default as mentioned by the Applicant is 08.07.2016.

6. That it is submitted by the Operational Creditor that since the Corporate Debtor did not make the due payment of his operational debt, it had issued a Demand Notice dated 02.07.2019 under Section 8 of IBC, 2016 at the registered office of the Corporate Debtor via Speed Post. That the Applicant has also filed an Affidavit in compliance of Section 9(3)(b) of IBC, 2016 stating that no notice of dispute has been received by it.

7. That on issuance of the notice, the Corporate Debtor has filed its reply dated 09.03.2020 and written submissions, by which it has raised certain objections, which are summarized as below :

- a) That the Application is filed by an Unregistered Partnership Firm. It is added that Section 69(2) of the Partnership Act, 1932 creates a bar on an unregistered partnership firm to initiate the proceedings against a third party.
- b) That the instant application has been signed by one Mr. Ritesh Chugh in the capacity as partner of the Applicant Firm. It has been submitted that Mr. Ritesh Chugh is not authorised by the other partners of the Applicant Firm to file the instant proceedings and hence, the instant Application filed by Mr. Ritesh Chugh is without due authorization.

- c) That the present Application has been filed after 3 years from the date of default, which as mentioned in the Application is 08.07.2016.
- d) That the email dated 05.05.2017 cannot be treated as valid acknowledgement of debt for extending the period of limitation since the same is not signed by the Authorized Representative of the Corporate Debtor.
- e) That the Operational Creditor has not served the demand notice with the Information Utility, which is in violation of Application to Adjudicating Authority Rules, 2016.
- f) That there is a dispute with respect to quality of goods supplied by the Corporate Debtor.
- g) That the Corporate Debtor has denied the service of the demand notice at its registered office, since the registered office of the Corporate Debtor is in possession of the State Bank of India since 6th October 2018.
- h) That the Demand Notice sent under Section 8 of IBC, 2016 is defective since the same is issued in Form 3. It is stated by the Corporate Debtor that the Applicant was supposed to issue demand notice under Form 4, as the claim of the Operational Creditor is based on invoices. It has further placed reliance on the Judgment of Hon'ble NCLAT passed in the matter of the **Neeraj Jain, Director of M/s Flipkart India Pvt. Ltd. v. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr. Company Appeal (AT) (Insolvency) No. 1354 of 2019**
- (i) That there is no date of default mentioned in the Demand Notice. Hence, the Demand Notice is defective.

8. That the Operational Creditor has filed its Rejoinder and Written submissions addressing the objections raised by the Corporate Debtor.

9. That as regards to filing of this Application by a non-registered partnership firm, it has been submitted by the Operational Creditor that as per Section 3 (23) of the IBC 2016, the definition of the term 'Person' includes both the registered partnership and unregistered partnership firm. Section 3(23) of the IB Code is reproduced as under:

*the Section 3(23) "person" includes –*

*(a) an individual;*

*(b) a Hindu Undivided Family*

*(c) a company;*

*(d) a trust;*

*(e) a partnership;*

*(f) a limited liability partnership, and*

*(g) any other entity established by a statute, and includes a person resident outside India;*

10. It is added that as per Section 69(2) of the Partnership Act, 1932, no suit can be filed before any court on behalf of partnership firm against any third party to enforce a contract. However, the Applicant has filed "an application" under Section 9 of IBC and not filed any "suit" before the NCLT. The Applicant has relied on the **Apex Court's Judgement in the matter of Gaurav Hargovindbhai Dave Vs Asset Reconstruction Company**, wherein while addressing the issue of applicability of the provisions of the Limitation Act, 1963, the Hon'ble Supreme Court has held that Article 62 (of the Limitation Act, 1963) is not applicable on the ground that it would only apply

to suits and not for the application filed under the Insolvency and Bankruptcy Code, 2016. Further, in the matter of **Sagar Sharma Vs. Phoenix ARC Private Limited**, the Hon'ble Supreme Court has held that applications filed under IBC are Petitions and not the Suits.

Further, while relying on the Judgment of the Hon'ble Calcutta High Court in the matter of **Shree Balaji Steels Vs. Gontermann-Peipers (India) Limited**, it is stated by the Applicant that the petition for winding up filed by the unregistered firm cannot be construed to be a "Suit" within the meaning of Section 69(2) of the Partnership Act, 1932. The Relevant Para of the Judgment is reproduced as under:

*"9..... In our view, in order to bring the winding-up petition within the bar as contemplated in section 69(2) of the Partnership Act, two things are to be considered. The first one is whether the winding-up petition can be construed to be a "suit" within the meaning of section 69(2) of the Partnership Act, and the other is whether a winding up petition has been filed on a cause of action to enforce a right arising from a contract or conferred by the Partnership Act. So far as the first condition is concerned in this case, it is an admitted position that petition for winding up filed by the unregistered firm cannot be construed to be a "suit" within the meaning of section 69(2) of the Partnership Act ..."*

11. Further, with regard to the issue of limitation, it is stated by the Operational Creditor that the Hon'ble Karnataka High Court in the matter of **Sudarshan Cargo Pvt. Ltd. Vs. M/s Techvac Engineering Pvt. Ltd**, has held that an email acknowledging the debt constitutes a valid and legal acknowledgment of debt, despite the facts that it is not a strictly "signed" document for the purpose of Section 18 of the Limitation Act, 1908. The email, being a legally recognized form of communication under the Information

Technology Act, is a valid acknowledgement under Section 18 of the Limitation Act, 1908.

12. With regard to non-service of demand notice with the Information Utility, it has been submitted by the Applicant that filing of documents with the Information Utility is not mandatory for the Operational Creditor, therefore, the instant application filed in Form 5 filed by the Operational Creditor is in accordance with the Section 9 of IBC.

13. As regards to the issuance of the demand notice at the registered office of the Corporate Debtor, it has been submitted by the Operational Creditor that as per Section 13 of the Companies Act, 2013, the Corporate Debtor had sufficient time and opportunity to change its registered office since 06.10.2018. It is further submitted that as per Section 8 of IBC read with Rule 5 of IBBI (Application to Adjudicating Authority) Rules, 2016, the Applicant has sent the demand notice to the registered office of the Corporate Debtor, which clearly demonstrates that the Applicant has made sufficient compliance for initiating Corporate Insolvency Resolution Process of the Corporate Debtor under Section 9 of IBC.

14. With regard to the issuance of demand notice in Form 3, it is stated by the Operational Creditor that it has issued the demand notice along with invoices and all the relevant annexures, which is in terms of Section 8 of IBC, 2016.

15. It is further stated by the Operational Creditor that it has mentioned the date of default in the Part IV of the Application.

16. After perusing the pleadings and written submissions placed on record and hearing submissions of both the parties, this Bench observes that the issues raised in respect of maintainability of the present application by the Corporate Debtor need to be adjudicated first.

17. That the Corporate Debtor has stated that the present application is not maintainable since the same is filed by an “unregistered partnership firm”.

18. That we are aware that the said issue has been decided by the NCLT Mumbai Bench in the matter of **M/s Shree Dev Chemicals Corporation Vs. Gammon India Limited in CP (IB) No.3637/MB.IV/2018 dated 16.07.2020**, wherein the following is held:

*“10. Section 69(2) of the Indian Partnership Act, 1932, reads as follows:*

*“No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.”*

*11. It is clear from the above that the provision would apply only to a ‘suit’ and not to proceedings. Applications filed under the IBC are not ‘suits’ but only proceedings, and therefore, we hold that the bar in terms of section 69(2) of the Indian Partnership Act, 1932, would not apply to applications filed under the IBC...”*

19. Further, a similar observation is made by Hon'ble Calcutta High Court in the matter of **Shree Balaji Steels Vs. Gontermann-Peipers (India) Limited, 2003 114 Comp Cas 193 Cal, dated 15.05.2002**, wherein the Hon'ble High Court held that the petition for winding up filed by the

unregistered firm cannot be construed to be a “Suit” within the meaning of Section 69(2) of the Partnership Act, 1932.

20. That we have no reason to disagree with the view taken by the Hon’ble High Court of Calcutta in the **Shree Balaji** (Supra) and by the NCLT Mumbai in **Shree Dev Chemicals Corporation** (Supra). Hence, we are of the view that the instant Application filed by the Unregistered Partnership firm is maintainable.

21. That the Corporate Debtor has further objected to the Application on the ground that there is a defect in the demand notice. It has been stated by the Corporate Debtor that the Demand Notice, basing on invoices has to be sent in Form 4 instead of Form 3. In this regard, the Corporate Debtor has placed reliance on the Judgement of Hon’ble NCLAT in the matter of the **Neeraj Jain, Director of M/s Flipkart India Pvt. Ltd. v. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr. Company Appeal (AT) (Insolvency) No. 1354 of 2019**.

22. That the aforesaid issue has already been dealt in detail and decided by this Bench in the matter of **Tudor India Pvt. Ltd. Vs Servotech Power Systems Limited IB 219/ND/2021 dated 02.07.2021**. The relevant extracts of the Order are reproduced below :

*27. From the collective reading of both the provision under section 8(1) of IBC 2016 and Para 45 of the Neeraj Jain Judgement, we observe that the law laid down by Hon’ble NCLAT is primarily to curb the practice of not annexing invoice(s) in a transaction, where invoice(s) is not only generated but is also a relevant document to prove the existence of default. In the instant case, the Operational Creditor has sent the demand notice along*

*with copy of the unpaid invoice. Further, the said Judgement has not expressly dealt with the interpretation of Rule 5 of I&B (Application to Adjudicating Authority) Rules 2016, which could be applied as a thumb rule for each and every case. Therefore, we are of the view that in the present case, the Demand Notice has been sent in letter and spirit of Section 8(1) read with Rule 5(1) of I&B (Application to Adjudicating Authority) Rules, 2016.*

*28. We, therefore, conclude that the facts of the Neeraj Jain Case decided by Hon'ble NCLAT were different from the facts of the present case inasmuch as no invoice was ever sent by the Operational Creditor in that case, whereas the Operational Creditor in the present case has annexed the invoices with its demand notice sent in Form 3. Hence, the conclusion made in the aforesaid Judgement is binding on this Adjudicating Authority only in a situation where invoice is not only generated but is also a relevant document to prove the existence of default but the same is not annexed with the Demand Notice sent in Form 3 or Form 4.*

*29. Accordingly, **we hold that in a situation where an Operational Debt arises out of the provision of goods and services and pursuant to that Invoices are raised, there is no illegality in choosing the Form 3 as provided in Rule 5(1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for sending the Demand Notice provided that the Unpaid Invoices forming part of the transaction are annexed therewith. Hence, issuance of Demand Notice in Form 3 annexed with invoices by the Operational Creditor in the present case would be in order in terms of the Rules.***

23. Since there is no illegality in serving the Demand Notice in Form 3 as provided in Rule 5(1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provided that the unpaid invoices forming part of the transaction are annexed therewith and the Operational Creditor in the instant case has annexed the invoices along with its Demand

Notice in Form 3, the demand notice cannot be held as defective or invalid on this sole ground.

24. It has been further contended by the Corporate Debtor that the demand notice is invalid as it does not contain the 'date of default'.

25. In order to examine whether the Operational Creditor has mentioned the date of default or not, it is necessary to visit the demand notice. The scanned copy of the relevant portion of the demand notice is reproduced below:

2.	Amount claimed to be in default and the date on which the default occurred (working papers for computation of default in tabular form attached)	<b>Rs. 14,66,044.00</b> (Rs. Fourteen Lacs Sixty Six Thousand Forty Four) in view of supply made against various Unpaid Bills fell due between April, 22 <sup>nd</sup> , 2016 till July 8 <sup>th</sup> , 2016.  The copies of Unpaid Bills and Interest Calculation sheet attached considering interest @ 18% P.A. on overdue period.
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26. That from the perusal of the Demand Notice annexed at Page 55 to 57 of the Application, it is observed that the Applicant has mentioned that the debt fell due between 22.04.2016 and 08.07.2016.

27. Now, we visit the averments made by the Applicant at Sl. No. 2 of the Part IV of the Application, the scanned copy of which is reproduced overleaf :

2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>	<p>The amount claimed to be in default is Rs. 14,63,044/- (Rupees Fourteen Lakh Sixty Six Thousand Forty Four Only).</p> <p>The date on which the default occurred is 08.07.2016.</p>
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On perusal of the Part IV of the Application, we find that the Applicant has relied upon the date of 08.07.2016 as date of default, which very well falls within the period indicated in the Demand Notice. Hence, we find no force in the argument of the Corporate Debtor that there is no mentioning of the date of default in the demand notice.

28. That as regards to non-receipt of the Demand Notice, we observe that the Applicant has placed on record the Tracking Report, which clearly indicates “*item delivery confirmed*”. Therefore, it is concluded that the demand notice was duly served upon the Corporate Debtor. The scanned copy of the Tracking Report of demand notice as annexed by the Applicant is reproduced overleaf :



You are here Home >> Track Consignment

Track Consignment

Quick help

\* Indicates a required field.

\* Consignment Number

EU983907634IN

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivered On
KAMLA NAGAR SO	03/07/2019 13:08:13	110035	47.20	Speed Post	Keshavpuram SO	05/07/2019 15:50:45

Event Details For : EU983907634IN

Current Status : Item Delivery Confirmed

Date	Time	Office	Event
05/07/2019	15:50:45	Keshavpuram SO	Item Delivery Confirmed
05/07/2019	09:21:13	Keshavpuram SO	Out for Delivery
05/07/2019	08:52:38	Keshavpuram SO	Item Received
03/07/2019	22:50:35	Agra NSH	Item Dispatched
03/07/2019	22:37:30	Agra NSH	Item Bagged
03/07/2019	19:50:45	Agra NSH	Item Received
03/07/2019	13:08:13	KAMLA NAGAR SO	Item Booked

29. That another objection taken by the Corporate Debtor is that the demand notice has not been served by the Operational Creditor with the Information Utility. That here, we would like to refer to the provision containing in Section 215(3) of IBC, 2016, which is reproduced below :

**215. Procedure for submission, etc. of financial information. –**

(1) Any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fee and submit information in such form and manner as may be specified by regulations.

(2) A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations.

(3) An operational creditor may submit financial information to the information utility in such form and manner as may be specified.

Hence, from the provision under Section 215(3), it can be inferred that it is optional for the Operational Creditor to serve the demand notice with the Information Utility. Since the service of demand notice with the Information Utility will not cause any prejudice to the Corporate Debtor in any manner, we are of the view that this objection is irrelevant in the instant case.

30. That the Corporate Debtor has raised another objection that the present Application has been filed after 03 years from the date of default. Hence, the Application is barred by limitation. It has been contended by the Corporate Debtor that the date of default mentioned by the Applicant in Part IV of the Application is 08.07.2016, whereas the Application is filed in NCLT on 22.01.2020.

31. It is further argued by the Corporate Debtor that the email dated 05.05.2017 along with its attachment cannot be relied to extend the limitation, since the same is not signed by the Corporate Debtor or any person authorized by it.

32. In response, the Operational Creditor has relied on the Judgement of the Hon'ble High Court of Karnataka passed in the matter of **Sudarshan Cargo Pvt. Ltd. vs M/S Techvac Engineering Pvt. Ltd.** CO.P.NO. 11/2013 dated 25.06.2013.

33. That in order to ascertain the facts, we feel it necessary to visit the email dated 05.05.2017, the scanned copy of which is reproduced overleaf :



Nitin Kaushik &lt;advnitinkaushik@gmail.com&gt;

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**Fwd: Fw: Fwd: Aged Accounts Payable - milano**


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GAURAV R &lt;gaurav.r2019@gmail.com&gt;

Sat, Jan 4, 2020 at 6:34 PM

To: advnitinkaushik@gmail.com, Gaurav Rajoriya &lt;gaurav.rajoriya@yahoo.com&gt;

----- Forwarded message -----

From: **Pradeep Chugh** <chugh23@rediffmail.com>  
 Date: Sat, 4 Jan 2020, 18:27  
 Subject: Fw: Fwd: Aged Accounts Payable - milano  
 To: <gaurav.r2019@gmail.com>

Sent from RediffmailNG on Android

From: Pradeep Chugh <pradeep.chugh@mankindpharma.com>  
 Sent: Sat, 4 Jan 2020 15:45:41 GMT+0530  
 To: "chugh23@rediffmail.com" <chugh23@rediffmail.com>  
 Subject: Fwd: Aged Accounts Payable - milano

Get Outlook for Android

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From: Ritesh Chugh <glshoesagra@gmail.com>  
 Sent: Friday, January 3, 2020 5:54:35 PM  
 To: Pradeep Chugh <pradeep.chugh@mankindpharma.com>  
 Subject: Fwd: FW: Aged Accounts Payable - milano

FYI,

Regards

**Ritesh Chugh / Kunal Chugh**  
 Mob. 9808973481 / 9319691068  
 M/s G.L. Shoes  
 27, Sulehkul Nagar, Shahganj-Bodla Road,  
 Agra - 282 010 [U.P.]

----- Forwarded message -----

From: <saurabhsingh@actionshoes.com>  
 Date: Fri, 5 May 2017 at 10:55  
 Subject: FW: Aged Accounts Payable - milano  
 To: <madan\_sandy2004@yahoo.co.in>, <srilaxmifootwear123@gmail.com>, <glshoesagra@gmail.com>, <abhaymittal1977@gmail.com>, <pushpashoefactory@gmail.com>, <sanjay\_madan2004@yahoo.co.in>, <santoshlamos@gmail.com>, Shankar Asrani <shankarasrani@gmail.com>

True copy

<https://mail.google.com/mail/u/0?ik=c7c7f9fccf&view=pt&search=all&permmsgid=msg-f%3A1654802932893000096&siml=msg-f%3A165480293289...> 1/2

27

1/21/2020

Gmail - Fwd: Fw: Fwd: Aged Accounts Payable - milano

Fyi.

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**From:** Sanjeev Kumar [mailto:sanjeev.kumar@actionshoes.com]  
**Sent:** Thursday, February 02, 2017 2:48 PM  
**To:** saurabhsingh@actionshoes.com  
**Subject:** Aged Accounts Payable - milano

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 **Aged\_Accounts\_Payable.xls**  
28K

**Aged Accounts Payable**

ACTION UDHYOG PVT. LTD.

Aged as of 2. February 2017

Aged by Posting Date

Vendor: Vendor Posting Group: MILANO

No.	Name	Currency Code	Balance	Aged by Posting Date				
				1 - 30 days	31 - 60 days	61 - 90 days	91 - 120 days	More than 120 days
V0070	KRIPA MANUFACTURER	INR	-1,277,257.62	0.00	0.00	0.00	-289,732.00	-987,525.62
V0078	PERRINIAL INDUSTRIES	INR	-1,052,613.64	0.00	0.00	0.00	0.00	-1,052,613.64
V0084	TRUST ENTERPRISES	INR	-1,029,478.29	0.00	0.00	0.00	0.00	-1,029,478.29
V0305	S. LAMOS SHOES	INR	-1,211,520.79	0.00	0.00	0.00	0.00	-1,211,520.79
V0488	LANDMARK OVERSEAS	INR	-2,405,770.65	0.00	0.00	0.00	0.00	-2,405,770.65
V0490	G.L.SHOES	INR	-1,466,039.60	0.00	0.00	0.00	0.00	-1,466,039.60
V0492	SHREE LAXMI FOOTWEAR	INR	-4,716,526.04	0.00	0.00	0.00	90,535.00	-4,807,061.04
V0493	Madan International	INR	-2,193,281.56	0.00	0.00	0.00	-134,708.74	-2,058,572.82
V0595	Sun Shines Footcare	INR	-907,217.86	0.00	0.00	-319,730.17	0.00	-587,487.69
V0598	MADAN SHOE CO.	INR	-1,395,520.57	0.00	0.00	-343,756.31	-794,272.51	-257,491.75
<b>Total (LCY)</b>			<b>-17,655,226.62</b>	<b>0.00</b>	<b>0.00</b>	<b>-663,486.48</b>	<b>-1,128,178.25</b>	<b>-15,863,561.89</b>

34. That from perusal of the aforesaid email and attachment annexed therewith, it is observed that the main body of the e-mail does not contain any statement regarding acknowledgement of the debt by the corporate debtor and the attachment relating to Accounts attached therewith is neither signed by any authorized person nor bears the Company Seal. Further, we notice that the Applicant, for the acknowledgement of debt, has referred to and relied on the attachment containing Accounts statement of the Corporate Debtor, which as we have observed, is not duly authenticated.

35. We understand that there is no requirement or scope to sign the main body of the e-mail and at the same time, there is no possibility of tampering the date and time of the main body of e-mail, which is a major factor while considering the issue of limitation. Per contra, if acknowledgement of debt is made basing on the contents of an attachment, which is an external file exported/attached with the mail and if that attachment is not duly authenticated by signature of the authorized person and date or/and Company Seal, it is not possible to ascertain beyond doubt to which date the document is generated or belongs to.

36. Further, sending a communication by way of an attachment with an email can be understood like sending a communication by a virtual speed envelope. At the end, what matters is what is there inside the virtual envelop/ attachment. Just like an unsigned document sent via physical post cannot be construed a valid acknowledgement of debt in terms of Section 18 of the Limitation Act 1963, the same way in today's technologically advanced world (where with the scanning software available, one can easily ask for / transmit

a signed and stamped document from one recipient to another without any difficulty), the necessary condition of signing/authenticating a document sent/received as an attachment with an e-mail cannot be dispensed with for treating it as a valid acknowledgement in terms of Section 18 of the Limitation Act, 1963.

37. Further, the decision of the Hon'ble High Court of Karnataka in the **Sudarshan Cargo Pvt Ltd (Supra)** brings no guidance for us when the acknowledgement of debt is relied upon an external file of the attachment. Hence, the decision would be applicable in a situation, where the acknowledgement of debt is made in the main body of the e-mail and not in case of a document/file sent through an attachment.

38. Hence, the attachment containing accounts statement annexed with the e-mail dated 05.05.2017 without any signature and date or/and Company Seal cannot be held authenticated or valid in terms of Section 18 of Limitation Act for extending the period of Limitation.

39. In sequel to the above, since the Petition has not been filed within 03 years from the date of default and there is no other material available on record in support of extension of the Limitation period, **we conclude that the present Application is barred by Limitation and is accordingly, Dismissed.**

**Sd/-**  
**(L. N. GUPTA)**  
**MEMBER (T)**

**Sd/-**  
**(ABNI RANJAN KUMAR SINHA)**  
**MEMBER (J)**