

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**COURT - 2**

ITEM No.304 - **CP(IB)/55(AHM)2021**

**Order under Section 9 IBC**

**IN THE MATTER OF:**

SABIC Asia Pacific Pte. Ltd.

.....Applicant

V/s

JBF Industries Limited

.....Respondent

**Order delivered on: 25/01/2024**

**Coram:**

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

**ORDER**

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

After passing of this order, the Learned Counsel for the respondent submitted a copy of order passed by the Hon'ble Supreme Court of India in the Civil Appeal No.44/2024 dated 08.01.2024. She submitted that in a similar case and Supreme Court had stayed the orders of the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.231 of 2023. It is observed from para order passed that it relates to another applicant in the matter and the appeal was heard and the directions contained in paragraph 34 of the impugned judgment dated 13<sup>th</sup> December, 2023, shall remain stayed till 29<sup>th</sup> January, 2024. On perusal of the directions and the orders of the Hon'ble NCLAT relevant to para 34, it is observed that it does not have any bearing on the orders passed by this Tribunal in this matter.

Sd/-

Sd/-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**IN THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-2**

**C.P. (IB) No. 55 of 2021**

**In the matter of:**

**SABIC Asia Pacific Pte. Ltd.**

Having its Registered Office at:

One Temasek Avenue,  
#06-01 Millenia Tower,  
Singapore 039192

Address of its Advocates:

Tuli & Co.  
604, Windfall Building  
Sahar Plaza Complex  
MV Road, Andheri East  
Mumbai, India - 400059

**.....Applicant/Operational Creditor**

**VERSUS**

**1. JBF Industries Limited**

Registered office at:

Survey No. 273,  
Village Athola,  
Silvassa, Dadra Nagar Haveli,  
DN 396230

**2. CFM Asset Reconstruction Pvt. Ltd.**

(acting in its capacity as trustee of CFMARC Trust – 88)

Having its Registered Office at:

Block No. A/1003, West Gate,  
Near YMCA Club, S.G. Highway,  
Makarba, Ahmedabad – 380 051, Gujarat

And having its corporate office at:

1<sup>st</sup> Floor, Wakefield House,  
Sprott Road, Ballard East,  
Mumbai – 400 038, Maharashtra,

(Amendment carried out as per order dated 10.01.2023 passed by the Hon'ble Tribunal)

**.....Respondents/Corporate Debtor**

**Order pronounced on: 25.01.2024**

**Coram: Mrs. Chitra Hankare, Hon'ble Member(J)  
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**Appearance:**

For the Applicant : Mr. Ajay Mehta, Advocate a.w. Mr. Anmol Mehta, Advocate, Mr. Naval Sharma, Advocate,  
Mr. Anubhav Dutta, Advocate  
For the Interveners : Mr. Mihir Thakore, Sr. Advocate along with Mr. Masoom K. Shah and Mr. Parth Thummar, Advocate in IA/874(AHM)2023  
For the Respondent : Mr. Maulik Nanavati, Advocate

**JUDGMENT**

1. This is an application filed by SABIC Asia Pacific Pte Ltd / Operational Creditor to initiate Corporate Insolvency Resolution Process under Section 9 of the IBC, 2016 against the JBF Industries Limited (Corporate Debtor) for an amount of debt due INR 24,71,27,834.91/-.

**Brief facts of the case are:**

2. A Chemical Terms Sales Contract ("the Contract") dated 01.01.2014 was executed between Saudi Basic Industries Corporation (SABIC) and JBF Industries Limited (RAK LLC) for the sale and purchase of Mono Ethylene Glycol ("MEG"). Various transactions were undertaken pursuant to the execution of the Contract. SABIC Asia Pacific Pte Limited ("Operational Creditor") was made party to the Contract by way of an amendment to the Contract. The said amendment was carried out in August 2014 and made effective retrospectively from 01.01.2014. The Operational Creditor was deemed to be a party to the Contract as on 01.01.2014 onwards, for the purpose of taking on and fulfilling all rights and obligations under the Contract. As per the terms of the Contract, the Operational Creditor supplied MEG to the Corporate Debtor and consequently raised invoices demanding payment.
3. The payment terms under the invoice was that payment was to be made within 75 days from the date of issuance of the bill of lading, i.e. 07.02.2017. Accordingly, payment on the invoice was due on 22.04.2017. The shipments under the Invoice, were duly received and no dispute has been raised by the Corporate Debtor. However, despite numerous discussions, extensive

correspondence and several reminders, no payment was forthcoming from the Corporate Debtor.

4. In view of the above, the Operational Creditor filed before this Tribunal, C.P. (I.B.) No. 194/9/NCLT/AHM/2018 ("CP 194 of 2018") and C.P. (I.B.) No. 221/9/NCLT/AHM/2018 (CP 221 of 2018") ("the NCLT Proceedings") under Section 9 of the IB Code. The said NCLT proceedings were initiated by the Operational Creditor against the non- payment of monies payable under the Contract which were guaranteed by two accepted bills of exchange. These bills of exchange were issued to guarantee payments under Invoice No's 600215293 and 600215295 dated 20.03.2017 and 25.03.2017 for a sum of US\$3,192,567.84 and US\$2,304,856.68 respectively. During the pendency of the NCLT Proceedings the Corporate Debtor agreed to pay the monies due and payable to the Operational Creditor for an aggregate sum of US\$9,173,861.8 and accordingly a Settlement Agreement dated 26.12.2018 ("Settlement Agreement") was executed. Both the Company Petitions were disposed of in light of the Settlement Agreement. The terms of the Settlement Agreement record that the Corporate Debtor had unequivocally and unconditionally admitted its liability under the Invoices and had agreed to a repayment plan to repay the entire debt to the Operational

Creditor arising under the Contract. Under the Contract the Corporate Debtor was entitled to certain incentives in the form of rebates. Under the terms of the Settlement Agreement a rebate of US\$715,000 was claimed by the Corporate Debtor which was agreed to by the Operational Creditor. Accordingly, after application of the rebate on a pro rata basis, the total monies due on the Invoice was US\$ 3,384,635.94. The manner of payment was narrated in the settlement agreement.

5. The Corporate Debtor however defaulted on the re-payment plan as provided under the Settlement Agreement. The Corporate Debtor made the last payment on 02.03.2020 ("11<sup>th</sup> installment") which was supposed to be remitted by the Corporate Debtor on 01.01.2020. It is stated that till date, the Operational Creditor has only received payment of 11 installments. According to the Settlement Agreement, the 12<sup>th</sup> installment was due on 01.02.2020 and the 13<sup>th</sup> installment was due on 01.03.2020. A default thus once again has occurred on 01.02.2020 as there was no repayment further as per the Settlement Agreement. The total default which is unpaid under the Settlement Agreement is US\$4,323,251.57.
6. On 15.04.2020, the Operational Creditor issued a Notice of Breach ("Notice of Breach") to the Corporate Debtor to

immediately rectify the breach of the Settlement Agreement and forthwith pay the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> installment and also provide the Bank Guarantee within 7 days of receipt of the Notice of Breach. The Corporate Debtor sent the Reply dated 22.04.2020 ("Reply to Notice of Breach") raising dispute that the demand was completely false and frivolous grounds. Thereafter on 04.05.2020, the Operational Creditor issued a Response letter ("Response Letter") to the Reply to Notice of Breach requesting the Corporate Debtor to rectify the breaches and immediately remit the monies as the explanation given by the Corporate Debtor in their Reply to the Notice of Breach was unacceptable.

7. As no payment was forthcoming, the Operational Creditor issued to the Corporate Debtor by Registered Post A.D., Speed Post and email a demand notice dated 04.01.2021 under Section 8 of the IB code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 and Form thereof demanding payment of monies due under the invoice amounting to INR 247,127,834.91 (US\$3,384,635.94) ("Outstanding Debt"). The said demand notice dated 04.01.2021 was delivered at the registered address of the Corporate Debtor on 08.01.2021. The Corporate Debtor responded to the Demand Notice on 05.02.2021, but failed to raise any valid dispute in

relation to the unpaid operational debt. The Corporate Debtor sought to rely on correspondence and issues which were of no consequence whatsoever as the Corporate Debtor under the Settlement Agreement had admitted to its unequivocal and unconditional liability towards payment of the invoice. The Corporate Debtor replied to the Insolvency Notice beyond the period of 10 days as mandated by the IB Code and therefore, there exists no Notice of Dispute in accordance with the Code.

8. The default under the Invoice occurred on 22.04.2017 and has continued thereafter. A settlement agreement was arrived on the default also occurred on 01.02.2020 when the 12<sup>th</sup> installment was due under the Settlement Agreement but was delayed and never paid. The Corporate Debtor under the Settlement Agreement has admitted its liability for the Invoice and had also agreed to repay these monies. For these reasons, the Operational Creditor submits and prays that the Corporate Insolvency Resolution Process be initiated against the Corporate Debtor.
9. The respondent filed affidavit in reply submitting that the present Application has suppressed material facts to mislead this Tribunal and made false statements by filing an Affidavit under Sec 9(3)(b) of the IBC confirming that the respondent had

not notified any pre-existing dispute. He has mentioned that the dues were disputed vide communications dated 17<sup>th</sup> March 2017, 24<sup>th</sup> March 2017, 24<sup>th</sup> April 2017, 28<sup>th</sup> August 2017 and 9<sup>th</sup> October 2017. The Demand Notice dated 4<sup>th</sup> January 2021 was also replied vide letter dated 5<sup>th</sup> February 2021. Furthermore, the present Application is not maintainable under Section 9 of the Code as the same is incomplete, defective and not maintainable in law and deserves to be dismissed *in limine* for the following amongst other grounds:

- I. Application is incomplete (Non submission of bank statement).
  - II. There is pre-existing dispute
  - III. No operational debt due and payable by the respondent as no proof is provided.
  - IV. No proof of default (No bank statements enclosed) & non-compliance of Sec 9(3) of the IBC (certificate from financial institution).
10. The respondent has further submitted that the Corporate Debtor along with its sister concern JBF Industries (RAK LLC) had entered in to a contract dated 1<sup>st</sup> January, 2014 with the SABIC for supply of Mono Ethylene Glycol (MEG) and the contract was valid till 31<sup>st</sup> December, 2018 and governed by the laws of

Kingdom of Saudi Arabia. Subsequently, the India business of SABIC was transferred to the operational creditor (applicant) and pursuant to that (i) SABIC, (ii) Corporate Debtor (respondent), JBF Industries Limited (RAK LLC) and (iv) Operational Creditor entered into an Amendment Agreement dated 14<sup>th</sup> August 2014 whereby the Operational Creditor was made a party to the contract who agreed to take over all the rights, benefits and entitlements of SABIC under the contract. It is further stated by the respondent that under the contract the Operational Creditor was obligated to supply MEG to the Corporate Debtor as per estimate purchase forecast and purchase orders placed by the Corporate Debtor and ship the consignment (MEG) from Saudi Arabia to India pursuant to which the Corporate Debtor would make payment towards the invoice raised by the Operational Creditor. Accordingly, the Corporate Debtor had purchased huge quantities and met the minimum quantity requirements which was delivered in two tranches for each month. The first tranche was delivered in February 2017 only on 19<sup>th</sup> and further the Operational Creditor failed to ship the second tranche of allocated MEG as well as the entire shipments allocated for the month of March 2017 in breach of its obligations under the contract. This act on the part of Operational Creditor in spite of regular payments made in other contracts, resulted in loss as

Corporate Debtor had to procure MEG from other suppliers on spot basis which caused strain on the liquidity and loss of production due to shortage and loss of revenue, in respect of which the Corporate Debtor reserves its right to claim damages in the appropriate forum from the Operational Creditor towards such losses.

11. Further the respondent Corporate Debtor states that the Operational Creditor had not settled and made payment of the incentives and price differences accrued for quarter 4 of 2016 and quarter 1 of 2017, amounting to a Minimum USD 1,233,970.52 (Approx 8,01 crores) which was not accounted for by the Operational Creditor which was suppressed, even though had admitted in the application that the Corporate Debtor was entitled to incentives. Accordingly, the Corporate Debtor and the Operational Creditor entered in to an understanding for the payments due under invoices dated 31 January 2017 and 16<sup>th</sup> Feb 2017 to be adjusted towards future invoices and in order to amicably settle disputes between parties, a settlement agreement dated 26<sup>th</sup> December 2018 was signed with the Operational Creditor. Thereby the settlement agreement was a novation whereby the unpaid invoices dated 31<sup>st</sup> January, 2017 and 16<sup>th</sup> February, 2017 were substituted.

12. The Corporate Debtor has in response stated that the claim made by preferring an application under Sec 9 of IBC thereby is not an operational debt which is not as specified under Sec 5(21) of the code for the reason that it is not the invoice dated 16<sup>th</sup> February 2017, but is based on the settlement Agreement dated 26<sup>th</sup> December 2017 whose terms and conditions are alleged to have been breached by the respondent. The submission further is that this does not invoke an insolvency and the due if any of the invoice dated 16<sup>th</sup> February 2017 is barred by limitation. The respondent has further submitted a detailed note on the absence of documents that are to be produced in terms of the IBC 2016 for bringing Insolvency under Sec 9 of the IB code.
13. As per the email dated 17 March 2017 and various other emails to Operational Creditor, two issues on late or delayed and stoppage of shipments and non-payment of incentive/price difference which affected production and liquidity were discussed by the respondent. Vide their letter dated 28<sup>th</sup> August 2017 to the Operational Creditor; the Corporate Debtor has disputed the liability on the grounds mentioned in email. Further, the applicant's balance sheet as on 31<sup>st</sup> March, 2020 and 31<sup>st</sup> March, 2019 of the Corporate Debtor has an observation of the Statutory Auditor (by way of a qualified

statement) that one of the operational creditors of JBF RAK LLC, situated at UAE, a subsidiary of the company, has made an application with NCLT under IBC 2016 against the company for supply of raw materials to JBF RAK and claimed for a debt of Rs 12.848 lakhs (US\$ 19,889,091.53). Management is of the view that in view of negotiation with the above creditor by JBF RAK and based on past settlement by the company with above creditors in respect of raw material purchased by the company, there will be no liability on account of it to the company and hence no provision is required towards above claim.

14. As per the applicant an amount of USD 3,384,635.94 was due and payable under the invoice which is presented before the Adjudicating Authority. The Corporate Debtor was served a demand notice under Sec 9 of IBC 2016 on 4<sup>th</sup> January, 2021 demanding payment of monies and a reply was received on 5<sup>th</sup> February, 2021 was received. As per the reply of the Corporate Debtor it is observed that the default has been denied for the reasons that there was pre-existing dispute before settlement and as per the email dated 19<sup>th</sup> May, 2017 the agreement was conditional to make payment subject to:

- i) getting benefit of accrued incentives to the Corporate Debtor;
- ii) further reconciliation; and
- iii) future business expectations
- iv) The restrictions during Covid 19 period mentioned in letter dated April 22, 2020.

a. Further, the Operational Creditor has submitted that the application arises out of the invoice No.600216740 dated 16 February 2017 for USD 3,384,635.94 only payable on 22 April 2017, equivalent to RS 24,71,27,834.91 which has been accepted by the Corporate Debtor. Further, it was not revival of earlier proceedings which involved two other invoices dated 20 March 2017 and 25 March 2017 which were withdrawn on account of settlement agreement and these invoices were not part of the earlier proceedings. Further, it is stated by the Operational Creditor that the Corporate Debtor had in its COVID 19 filing before NSE on 10<sup>th</sup> September 2020 had admitted to paying only 11 of the 18 installments under the Settlement Agreement which is also a categorical admission of the liability of the Corporate Debtor to the Operational Creditor. The relevant clause of the Settlement Agreement is reproduced below:

*“7(a) The Corporate Debtor admits its liability for the sum of US \$9,168,059.62 under the 3 invoices being Invoice No. 600215293 dated 31.01.2017, Invoice No. 600215295 dated 31.01.2017 and **Invoice No. 600216740 dated 16.02.2017.**”*

15. As regards limitation, the Operational Creditor states that the invoice was to be paid within 75 days from date of Bill of Landing and accordingly was due on 22<sup>nd</sup> April, 2017. It was specifically acknowledged in writing by settlement agreement on 26<sup>th</sup> December, 2018 and accordingly limitation sets in as per Sec 18 of the Limitation Act from that date and the present application filed on 18<sup>th</sup> March, 2021 is well within the limitation period.
16. An Intervener M/s CFM Asset Reconstructions Pvt Ltd who is an NBFC (stated to have acquired the debt of the Corporate Debtor) filed an affidavit on 30<sup>th</sup> July, 2023 stating:

It seeks the disclosure of subrogation form/Agreement entered into with its Insurer with respect to the payments made by the Insurer under the claim acceptance letter dated 2 January 2019;

From the affidavit filed on 1<sup>st</sup> September, 2022 subrogation agreement filed in CP (IB) 204 of 2020 (Another application by Operational Creditor against the Corporate Debtor which is

pending before this Tribunal), a subrogation deed dated 4<sup>th</sup> Dec 2017 executed by the Operational Creditor in favor of the Insurer at the time of Interim Settlement by the Insurer, whereby the Operational Creditor has inter alia assigned all its rights and remedies in favour of the Insurer. It was pointed out by the Intervener that the Operational Creditor had not placed on record the relevant Subrogation Deed/other agreement executed by the Operational Creditor at the time of Interim Settlement by the Insurer nor has any averment been made as to what is the nature of the agreement that was executed between the Operational Creditor and the Insurer when the Operational Creditor received moneys from the Insurer.

17. The learned Counsel for the Operational Creditor filed detailed reply in the matter. The main contention on the insurance policy was addressed stating that the Corporate Debtor was aware of an insurance policy obtained by the Operational Creditor and produced a minutes of the meeting dated 6<sup>th</sup> July, 2017 in Dubai, wherein the JBF group was represented by its COO and Director and there were 2 representatives from the Insurer. As per minutes, the insurer advised on the risks associated for entire group with defaults including the reputation to the entity

as the default would be conveyed to all its creditors. The learned counsel for the Operational Creditor also argued that it is a belated argument after the application was filed and the Corporate Debtor had not raised the issue in the Demand Notice served under Section 8 as per IBC 2016. Also the Operational Creditor had disclosed all documentation and information in relation to the issue of insurance in the other IA 638 of 2022 in its reply on 1<sup>st</sup> September, 2022 and additional affidavits dated 6<sup>th</sup> October, 2022, 10<sup>th</sup> July, 2023 and reply dated 30<sup>th</sup> July, 2023 in IA 874 of 2022. Also it was filed in the main matter CP IB 55 of 2021 on 6<sup>th</sup> October, 2022. Further, receipt of a claim from a third party insurer does not relieve the Corporate Debtor of its liability.

18. Further by an affidavit reply filed on 28<sup>th</sup> November, 2023, the counsel for the Operational Creditor, given the reasons why the insolvency petition needs to be admitted in spite of the submission of the Corporate Debtor that it does not have any assets including a list of IAs filed in the matter. The Operational Creditor stated that he recently came across case details available in the public domain of proceedings before the Debts Recovery Appellate Tribunal, Ahmedabad (“DRT Ahmedabad”) as well as the Debts Recovery Appellate Tribunal, Mumbai (“DRAT, Mumbai”) wherein Respondent no. 2 is a party. The Operational

Creditor wishes to bring on record such case details (“DRT Proceedings”) because it believes that the same is germane to the present proceedings. The learned counsel for the Intervener and the Learned Counsel for the Operational Creditor and the respondent (Corporate Debtor) were heard 16<sup>th</sup> October, 2023 and 21<sup>st</sup> November, 2023 perused written submissions filed by all parties.

19. **Observations:**

- i. The amount due and pending in this proceeding is US\$3384635.94 from the Corporate Debtor. The date of default is 22.04.2017 and thereafter it falls due on 01.02.2022. The Operational Creditor has issued demand notice on 04.01.2021 under Section 8 of the Code. It was replied on 05.02.2021. According to Corporate Debtor, the Operational Creditor had failed to perform its obligations under the contract and therefore, it has to suffer losses. It has also taken a defence of pandemic situation. According to Operational Creditor, the Corporate Debtor had admitted the debt as settlement agreement was executed. The Operational Creditor submitted in its argument that the various decision of Hon’ble NCLT and Hon’ble NCLAT held that Insolvency Petition can be admitted even on account of debt arising

consent terms provided that there is a default in making payments of the outstanding debt.

ii. In support of his contentions, he (Operational Creditor) relied upon:

- a. *Order dated 14.07.2020 of the Hon'ble NCLAT, New Delhi Bench in Vivek Bansal v Burda Druck India Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 552 of 2020*
- b. *Order dated 28.04.2022 of the Hon'ble NCLAT, Chennai Bench in ICICI Bank V/s. OPTO Circuits (India) Ltd. and Ors, Company Appeal (AT) (Insolvency) 146/2021.*
- c. *Order dated 08.07.2021 of the Hon'ble NCLT, Mumbai Bench in Satish Sadashiv Rane Vs. Shah Group Builders Limited CP (IB) 2207/2019*
- d. *Order dated 18.10.2019 of the Hon'ble NCLT, Mumbai Bench in Krupa Polymers (India) Pvt. Ltd. V. Nakshatra Distillers & Breweries Ltd. CP (IB) 1797/2019.*

iii. According to Corporate Debtor, there was delay by the Operational Creditor so he has to suffer losses. It is brought to the notice of Operational Creditor by the Corporate Debtor in various meetings and emails. The email correspondence and discussions clearly disclosed existence of disputes between them. On perusing the emails annexed as Exhibit A

to E, it appears that though some points were raised regarding delay and non-payments of rebate etc. no serious dispute is mentioned. Therefore, it cannot be said that there was pre-existing dispute between the parties.

- iv. The Corporate Debtor also raised an objection that the Operational Creditor is not an Operational Creditor, in view of the subrogation deed dated 04.12.2017 executed between Operational Creditor and its insurer.
- v. The Corporate Debtor further submitted that all its properties were sold under SARFAESI Act. The Corporate Debtor does not possess any immovable properties. There exists no business opportunities and there is no possibilities of resolution plan likely to be received if CIRP is initiated against it.
- vi. These points need not to be considered at the time of allowing Section 9 application. To allow the application under Section 9, the Tribunal has to consider only whether it is necessary to see date of default, whether notice is issued, whether any dispute is raised by Corporate Debtor and the application complied with other provisions of Section 9 of the IBC.
- vii. The intervener by filing an application RP for rejection of the application or in the alternative to appoint IRP of its choice the intervener is heavily relying upon the subrogation deed

between the Financial Creditor and the insurer Tawuniya. It is pertinent to note that the intervener is in no way concerned with this agreement between FD and insurer. Therefore, he has no locus standi to object the application on this ground, the insurer if so desires may come to object the petition. It was agreed between the parties that if the Tawuniya is legally unable to commence proceedings in its own name, it will be initiated in the name of Operational Creditor. In such circumstances, the application cannot be dismissed on the ground of subrogation agreement.

- viii. This is a commercial debt involving purchase of raw materials on a continuing basis on which one of the invoice (of 3) has not been paid was negotiated for a settlement and an agreement was reached. The corporate debtor has received the consignment for which evidence has been provided but payment has not been made.
- ix. The disputes that existed prior to the agreement were due to certain delays in shipment, absence of concessions agreed and orders of further consignments which were stopped by Operational Creditor due to non-payment of invoices by the Corporate Debtor. An invoice due and to be paid has been rescheduled and a fresh schedule made for a payment by

installments of which certain installments were paid by the Corporate Debtor.

20. Claiming of an insurance involving cross border transaction by operational creditor was a master document covering the risk where the subrogation rights were available for the insurer and which has been explained by the Operational Creditor in his arguments. The debt is due and is different even if the insurance claim was settled externally with inherent caveats of the insurer and does not absolve the liability of the Corporate Debtor as it was not a grant or write off of the receivables of the Operational Creditor. It is a matter of non-payment of goods received wherein its quality or quantity is not disputed and evidenced to have been received in good condition and consumed by Corporate Debtor and the stated agreement does not prohibit the rights of the Operational Creditor to seek recourse available under IBC 2016. Irrespective of whether the assets of the Corporate Debtor which could have been eroded, does not dissolve the liability of the debtor nor if any insurance claim has been received with a right of subrogation available under such policy which is a matter between the Operational Creditor and his Insurer.

21. The detailed affidavits and documents submitted by the Operational Creditor does not make them defective, even if certain additional documents had been placed through other IAs in support of the claim. Filing before the NeSL was not mandatory at that time but additionally, it is observed that the Corporate Debtor is already before the other Recovery Tribunal like DRT and has defaulted other debts due to be paid as admitted.
22. The Corporate Debtor has specifically acknowledged outstanding under the invoice in writing before expiration of period of limitation in the settlement agreement dated 26.12.2018. Thus, fresh period of limitation as per Section 18 of the Limitation Act will commence from that date. The Operational Creditor relied upon *Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal* [(2021) 6 SCC 366]. As this petition is filed on 18.03.2021, it is perfectly within the limitation.
23. There are compliances when a consignment has been imported under regulations (evidences of import provided in the application) which includes payment of the amount due on a consignment received which has not been complied by the Corporate Debtor. Corporate Debtor has not made the payment as per installments nor provided a BG as per agreement. By way

of agreeing to postpone the debt, the Operational Debtor has in effect provided a short term debt to the Corporate Debtor. Dispute of not paying the amount for concessions not received/delay in shipments cannot be the basis for rejection of payment.

a) Therefore, the present application meets the threshold limit as given under section 4 of the IB code. Thus, the present application is complete and accordingly can be admitted in terms of Section 9(5) of the IB Code, 2016.

24. The Operational Creditor relied upon *Economic Transport Organisation Vs. Charan Spinning Mills (P) Ltd. reported in (2010) 4 SCC 114*, wherein it was held that “*Subrogation does not terminate nor puts an end to the right of the assured to sue the wrong doer and recovery the damages for the loss. Subrogation only entitles the insurer to receive back the amount paid to the assured in terms of the principles of subrogation*”.

25. The Operational Creditor has not suggested name of any IRP and left the discretion with the Tribunal. We hereby appoint Mr Dhaval C Khamar, Registration No. IBBI/IPA-001/IP-P-02574/2021-2022/13944 as Interim Resolution Professional. He shall conduct the CIRP as per the provision of the IBC code 2016 r.w regulation made thereunder:

26. Hence we pass the following order.

**ORDER**

- i. Application is allowed.
- ii. IRP shall submit Form B within 7 days from the date of this order.
- iii. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the IRP proposed by the intervener, to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within two weeks from the date of receipt of this order by the operational creditor. The amount however is subject to adjustment by the Committee of Creditor(s), as accounted for by IRP, and shall be paid back to the Operational Creditor.
- iv. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate Debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium

period, terms of Section 14(2) to 14(4) of the Code shall come into force.

- v. A copy of the order shall be communicated to the Operational Creditor, Corporate Debtor, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. The operational creditor is also directed to provide a copy of the complete paper books/documents to the IRP.
- vi. Accordingly, CP(IB) 55 of 2021 is disposed off.

Sd/-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

Sd/-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**