



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH - COURT-II**

**CP (IB) 232/NCLT/AHM/2021**

*(An 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:**

**Mr. Rasiklal Vadilal Sandesara  
Karta of Sandesara Rasiklal Vadilal HUF  
HUF is the proprietor of ADITYA AND ADITYA**

**...Petitioner/Operational Creditor**

**VERSUS**

**Sorich Foils Limited  
(formerly known as Sorich Foils Private Limited)  
CIN: U27203GJ2011PLC063709**

**...Respondent / Corporate Debtor**

**Order pronounced on: 31/07/2023**

**CORAM:**

**MR. SHAMMI KHAN  
HON'BLE MEMBER (JUDICIAL)**

**MR. AJAI DAS MEHROTRA  
HON'BLE MEMBER (TECHNICAL)**



## MEMO OF PARTIES

**Mr. Rasiklal Vadilal Sandesara**  
**Karta of Sandesara Rasiklal Vadilal HUF**  
**HUF is the proprietor of ADITYA AND ADITYA**

Having its registered office at:  
 3B, Shital Baug, Ashram Road,  
 Old Vadaj, Ahmedabad – 380013, GJ, IN  
 GST No. 24AAHHS9635Q1Z9

Acting through its Representative:

Mr. Bharat Rasiklal Vadilal s/o Rasiklal Vadilal Sandesara  
 Age - 61 years  
 Address -3B, Shital Baug, Ashram Road,  
 Old Vadaj, Ahmedabad – 380013, IN  
[E-mail-adityapapers@gmail.com](mailto:E-mail-adityapapers@gmail.com)  
 PAN No.- AAHHS9635Q  
 Mobile No.-+91-9033048201

**...Petitioner /Operational Creditor**

**VERSUS**

**Sorich Foils Limited**  
**(formerly known as Sorich Foils Private Limited)**  
**CIN: U27203GJ2011PLC063709**

Having its registered office at:  
 Shed No.3, Survey No.66/ paikee-8,  
 B/h A B Rolling Mills, Village Manda,  
 Sarigam, Valsad - 396155

**...Respondent/Corporate Debtor**

**Appearance:**

**For Applicant:** Ms. Sakshi Jain, Adv.  
**For the Respondent:** Dr. S.K. Jain, PCS

## ORDER

1. This application is filed on 26.11.2021 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 the authorised representative Mr. Bharat Rasiklal Vadilal s/o Rasiklal Vadilal Sandesara, Karta of Sandesara Rasiklal Vadilal HUF, where HUF is the proprietor of **M/s. Aditya And Aditya** (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency Process (CIRP) against **Sorich Foils Limited** (for brevity 'Corporate Debtor').

2. The applicant is a proprietorship concern of Mr. Rasiklal Vadilal Sandesara having GST No.24AAHHS9635Q1Z9 registered under the Micro, Small and Medium Enterprise Act, 2006 engaged in the trading of Papers and having its office at 3B, Shital Baug, Ashram Road, Old Vadaj, Ahmedabad-380013.
3. The Corporate Debtor is a limited company, incorporated on 19.01.2011 under the provisions of the Companies Act, 1956 duly registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U27203GJ2011PLC063709, having registered office at Shed No.3, Survey No.66 / Paikee - 8, B/h A.B. Rolling Mills, Village Manda, Sarigam, Valsad-396155. The nominal share capital of the corporate debtor is Rs. 10,00,00,000/- and the paid-up share capital of the company is Rs. 5,83,33,340/-. The corporate debtor is engaged in the business of manufacturing and supplying a varied range of aluminium foils.
4. It is submitted by the applicant that the Corporate Debtor approached the Operational Creditor, for the supply of Nath Perl Chromo Papers. During the course of business, both the parties transacted with each other and huge outstanding has been




created in favour of the Corporate Debtor and the Corporate Debtor had failed to make the payment of the material supplied by the applicant.

5. It is submitted that the applicant had raised the invoice against the goods supplied as demanded by the Corporate Debtor vide the invoices dated 05.07.2016 to 19.03.2017 for an amount of Rs.76,74,200/- (Rupees Seventy-Six Lakh Seventy Four Thousand Two Hundred only) out of which Rs.69,56,877/- (Rupees Sixty Nine Lakh Fifty Six Thousand Eight Hundred and Seventy Seven only) remains outstanding, where the default has occurred. It is further submitted that the Corporate Debtor is also liable to pay interest on the outstanding dues amounting to Rs.79,45,996/- (Rupees Seventy-Nine Lakh Forty-Five Thousand Nine Hundred and Ninety-Six only) being interest @ 24% per annum from the due date of invoices, i.e., from 04.08.2016 to 18.04.2017 till the date of demand notice. Thereafter, the applicant filed an additional affidavit and submitted that the revised total default amount is Rs.1,37,66,474/- (Principal amount due is Rs. 69,56,877/- and interest of Rs.68,09,597/- is levied as per the invoices wherein the rate of interest @ 24% p.a. on delayed payments is specified. In the revised calculation of interest, the application has ignored the invoices wherein the interest is not specified. The revised outstanding is Rs. 1,37,66,474/- instead of Rs.1,49,02,873/- mentioned in part IV of the application and the said submission was also recorded in daily order dated 19.05.2023.
6. It is submitted by the applicant that after giving several reminders, the Operational Creditor had issued a statutory



Demand notice in Form-3 along with Form-4 dated 22.10.2021 to the Corporate Debtor as required under Section 8 of the IBC, 2016, a copy of the Demand notice issued by the Operational Creditor to the Corporate Debtor is annexed with the application.

7. It is submitted by the applicant that the applicant again reminded the Corporate Debtor to clear the outstanding dues, but the same remains unpaid till date and no reply has been received by the Operational Creditor nor any dispute is raised by the Corporate Debtor post the issue of demand notice. Thereafter, the applicant filed an application under Section 9 of the IBC, 2016 on 26.11.2021.
8. The Corporate Debtor filed its affidavit in reply, inter alia, stating that:
  - i. The entire Operational Creditor's claim is vehemently disputed by the Corporate Debtor as bona fide disputes exist in relation to the goods supplied by the Operational Creditor and the same has been raised on various occasions through emails by the Corporate Debtor. The outstanding invoice no. MR-1159 & 174 of the Operational Creditor are disputed as the goods were defective and are of an extremely unmerchantable quality and the same was much inferior to the standards as had been assured to be supplied by the Operational Creditor to the Corporate Debtor. As a result of the supply of such inferior-quality goods, the Corporate Debtor's production process was drastically hampered and enormous losses have been suffered by the Corporate Debtor. Being disappointed with the supply of such defective goods, the Corporate Debtor immediately brought the aforesaid defects to the notice of




the Operational Creditor on several occasions in writing. It is noteworthy that the unmerchantable and defective goods supplied by the Operational Creditor were being stored by the Corporate Debtor in anticipation that the same would be replaced with such goods as has been requested by the respondent, however, the Operational Creditor had failed to do so and in the year 2018, both the parties had amicably settled the disputes wherein the petitioner assured the respondent that the remaining outstanding shall be waived off on the condition that the respondent shall not file any damage petition against the petitioner. The aforementioned circumstances amounting to the existence of disputes between the parties herein were repeatedly brought to the knowledge of the Operational Creditor and the same were also set out by the Corporate Debtor vide emails.

- ii. The Operational Creditor's claims are disputed as the same is inaccurate and not calculated properly. The ledger of the Operational Creditor does not reflect the actual and correct outstanding amount and therefore the same is disputed.
- iii. The Operational Creditor has also calculated interest @ 24% on the alleged invoices No.16-17/082, 16-17/093, 16-17/099 whereas the Operational Creditor had never mentioned any such interest charges on those invoices, hence, the Operational Creditor cannot demand any interest amount on those invoices where he himself never mentioned or demanded any interest and therefore, the petition amount itself becomes disputed.



- iv. The alleged invoices are issued in the year 2016 to 2017 and the Operational Creditor had filed the IBC petition in the year 2021, hence, the said matter is already time-barred, hence, the application should be dismissed.
- v. The claim demanded by the Operational Creditor is time-barred as all the alleged outstanding invoices are issued in the year 2017 and the last invoice was raised on 19.03.2017, without any due date hence the petition is time-barred.
- vi. The outstanding amount demanded in the said petition is disputed and the claim demanded by the Operational Creditor is defective goods under dispute, and hence the tribunal cannot entertain the said matter.
- vii. The certificate in the form of affidavit u/s 65(b) of the Indian Evidence Act, 1872 in support of electronic copies of the E-mails is annexed.
- viii. The Corporate Debtor had received Form-3 dated 22.10.2021 and the dispute is from 2016-2017, and moreover, due to covid most of the employees are changed or laid off hence, the Corporate Debtor was trying to locate the old invoices and checking documents in relation to the aforesaid matter, but unfortunately before reply to the demand notice, the Operational Creditor has filed this petition and the Corporate Debtor was unable to reply on time. The Corporate Debtor was not aware of such urgency for complying with the statutory provisions u/s 8 of IBC,




2016, therefore, failed to reply to the petitioner's demand notice.

9. The Operational Creditor filed a rejoinder, inter alia, stating that:-

- i. the Corporate Debtor has averred that the goods received from the Operational Creditor were of extremely unmerchantable quality, damaged and much inferior to the quality assured to be supplied by the Operational Creditor which drastically hampered its production process and resulted in enormous losses to the Corporate Debtor. In this regard, the Operational Creditor submits that the aforesaid allegation is outrightly incorrect, wrong and untenable. It is submitted that the complaints/grievances with regard to the goods, if any, were duly addressed and resolved by the Operational Creditor despite not being in the scope of the contract.
- ii. that firstly damage if any caused to the goods delivered was outside the scope of work agreed upon between the Operational Creditor and Corporate Debtor as the said goods were sold and transferred by the Operational Creditor to the Corporate Debtor and suffered loss during the course of transit. This can be evidenced by the terms of delivery mentioned in the invoices sent to the Corporate Debtor which clearly stipulated "L.R. Sold in Transit Against C Form". It is submitted that the legal maxim of **res perit domino** is well recognized in law which means that a thing is lost to its owner. Thus, the person who is the owner of the goods that were destroyed is the one who has




to bear their loss. The aforesaid principle is also enshrined in Section 30 of the Sale of Goods Act, 1930, which talks of risk prima facie passes with the property. Even in terms of Section 40 of the Sale of Goods Act, 1930, the buyer is liable to bear the risk of deterioration in the goods which happens naturally during the course of transit. Thus, the liability towards such damaged goods was that of the Corporate Debtor and not that of the Operational Creditor as it had already transferred the ownership of such goods during the course of transmission. Secondly, the goods received by the Corporate Debtor which are alleged to be of extremely unmerchantable quality, inferior and damaged which have drastically hampered the production process and resulted in enormous losses are only 1% or even less of the total goods supplied by the Operational Creditor. This can even be evidenced by various emails dated from 12.12.2015 to 20.03.2017 sent by the Corporate Debtor mentioning the quantum of allegedly damaged goods received by it. In the ordinary course of business, damage caused to the goods during the course of transit to the extent of 1% or less is considered a minimal /reasonable loss that any prudent and rational businessmen could expect. Thirdly, even if the loss incurred to the Corporate Debtor due to the damage of goods in transit is to be considered, it ought to have been borne by the transporter and not by the Operational Creditor. Thus, it is submitted that the goods supplied by the Operational Creditor were duly received, used and merchanted by the Corporate Debtor and thus, the Corporate Debtor is required to make good the payment towards entire goods supplied by the Operational Creditor,




and even if the Operational Creditor is made accountable for the goods damaged to the tune of 1% of the total goods supplied, it cannot be made to suffer towards the rest 99% of the total goods supplied by the Operational Creditor which were duly received, used and merchanted by the Corporate Debtor.

- iii. the Corporate Debtor has referred to the defects raised against the materials supplied by the Operational Creditor from December 2015 till May, 2016. In this regard, the Operational Creditor submits that the invoices against which the Corporate Debtor has raised the alleged defects are not referred to be due by the Operational Creditor in its Demand Notice and instant Petition. Further, Nath Pulps & Paper Mills Ltd vide e-mail dated 28.03.2016 responded to the complaints raised by the Corporate Debtor, wherein the Nath Pulps & Paper Mills Ltd had asked the Corporate Debtor to refrain from using the said goods if there are any quality issues and that it will arrange the inspection and will attend to the complaint. It is submitted that the said complaints/grievances of the Corporate Debtor were duly addressed and resolved by Nath Pulps & Paper Mills Ltd along with the Operational Creditor (despite being not in its scope of work) by visiting the Plant of the Corporate Debtor. Furthermore, despite having so many complaints about the goods delivered by the Operational Creditor, the Corporate Debtor continued giving orders to the Operational Creditor only because of its malafide intentions to keep using/merchanting the goods supplied and not honouring the payments by making one excuse or the other. Even the




alleged wastage caused to the Corporate Debtor in the production can be attributed to default/malfunctioning of the Corporate Debtor's own machineries.

- iv.* Further, the Corporate Debtor has failed to bring to the notice of this Hon'ble Tribunal that the Operational Creditor along with Nath Pulps & Paper Mills Ltd had visited the Corporate Debtor's Plant on 15/07/2016 to address the complaints received against the material supplied vide invoice no. 082 dated 05/07/2016. The complaints of the Corporate Debtor were duly resolved and settled wherein the Transporter namely, MRTC which was made to bear the compensation as mutually agreed between the Corporate Debtor, the Operational Creditor and the Nath Pulps & Paper Mills Ltd. This can be evidenced vide email dated 02/11/2016, which was sent by Nath Pulps & Paper Mills Ltd. to the Corporate Debtor and Operational Creditor confirming the receipt of the amount and closure of grievances/ complaints till date.
- v.* In Point. No. Q, the Corporate Debtor has disputed an amount of Rs.7,88,011/- debited in the ledger of the Operational Creditor in the name of 'Citizen Pharma Packaging' ('Other Party') and has stated that since the said amount is not charged in name of the Corporate Debtor, it cannot be made liable to pay that amount. In this regard, the Operational Creditor submits that the said amount of Rs. 7,88,011 was credited in the name of 'Other Party' on the request of the Corporate Debtor itself. The Corporate Debtor had issued Purchase order no. SF/90/14-15 vide e-



mail dated 22/08/2014 wherein it had asked the Operational Creditor to issue the invoice in the name of 'Other Party'. As per the directions of the Corporate Debtor, the Operational Creditor had issued two invoices in the name of the Other Party.

- vi. the Corporate Debtor has stated that due to the defects, shortcomings and damage on goods sold by the Operational Creditor, both parties had come to a settlement as per which the Operational Creditor had agreed to waive off the due amount of the Corporate Debtor in order to compensate the losses incurred by the Corporate Debtor and decided to commence new transactions from 2018 onwards. The Corporate Debtor has also stated that as per the terms of such alleged settlement, it had also paid an advance amount of Rs. 5,00,000/- and Rs. 1,00,000/-. In this regard, the Operational Creditor clearly negates and denies the aforesaid averment and submits that there has never been any talk about a settlement between both parties. The Corporate Debtor has failed to adduce any evidence to substantiate its claim of having such a settlement. Further, the amount that the Corporate Debtor has referred to as 'advance' paid for commencing new transactions between both parties was actually paid and adjusted by the Operational Creditor towards the total outstanding amount only. It is pertinent to note here that the amount of Rs. 5,00,000/- & Rs. 1,00,000/- was paid in the month of October, 2018 and October, 2019, respectively, however no goods were ordered by the Corporate Debtor after March, 2017. Hence, the amount of



Rs. 6,00,000/- as paid by the Corporate Debtor was towards the outstanding amount it owes to the Operational Creditor and it is only a brazen attempt of the Corporate Debtor to evade its liability towards the Operational Creditor by continuously concocting false stories without any evidence to substantiate the same.

- vii. the Operational Creditor submitted Affidavit cum Certificate under Section 65-B of the Evidence Act for admission of all the computer-generated documents produced by the Operational Creditor before this Hon'ble Tribunal.
- viii. the Corporate Debtor has further averred that a settlement arrived in 2018 between Operational Creditor and Corporate Debtor wherein the Operational Creditor had agreed to waive off the outstanding amount of the Corporate Debtor on a condition that the Corporate Debtor will not file any damage petition against the Operational Creditor for the defective goods supplied. In this regard, the Operational Creditor submits that the Corporate Debtor has failed to adduce any evidence to substantiate its claim about any settlement arrived between the parties in the year 2018. In fact, there has never been any settlement talk between the parties.
- ix. Further, the Corporate Debtor has raised certain Grounds for not admitting the Petition filed by the Operational Creditor bearing CP IB no.232/AHM/2021. The said Grounds are summarized and refuted by the Operational Creditor as under:




- x. In point no. (a) of the Grounds, the Corporate Debtor has stated that the claim of Operational Creditor is disputed and there exists a pre-existing dispute in relation to the goods supplied by the Operational Creditor. In this regard, the Operational Creditor submits that there exists no dispute in relation to supply of goods to the Corporate Debtor. It is only owing to the malafide intentions of the Corporate Debtor in not making full payment for the goods supplied by the Operational Creditor that such contentions have been brought up. The Operational Creditor submits that the e-mails correspondences that has been shown by the Corporate Debtor to evidence existence of dispute are outrightly unsustainable, malafide, and evasive in view of the definition of the term 'Dispute' under the Code and various judicial precedents. The complaints/grievances mentioned in the said e-mails sent by the Corporate Debtor as relied upon by the Corporate Debtor to evidence dispute', were duly resolved and closed by Nath Pulps & Paper Mills Ltd. along with the Operational Creditor. The word 'dispute has been defined in Black's Law Dictionary in the following manner: "Dispute" A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other..". It is submitted that the e-mail correspondences produced by the Corporate Debtor itself show that the alleged dispute is not a real one but an evasive, artificial, and malafide one and such dispute is no dispute at all.



- xi. The Operational Creditor places its reliance on the decision of the *Hon'ble Apex Court in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd (2018) 1 SCC 353* wherein it focused on the word genuine dispute while interpreting the word 'Dispute' under section 8(2) of the Code. The court said that the word 'Genuine Dispute means, a dispute which is bonafide and truly exists in fact and the grounds for alleging the existence of a dispute are real and not spurious, hypothetical, illusory or misconceived. Further, in *DF Deutsche Forfait AG and Another v. Uttam Galva Steel Limited, Civil Appeal No: 20041 of 2017*, the Mumbai Bench of NCLT held that " the 'existence of a dispute' means that a suit or arbitration proceedings must be pending before an operational creditor serves a demand notice. Recently, the NCLAT, New Delhi vide its judgment dated 17.11.2021 in the matter of *Henan Boom Gelatin Co. Ltd. vs. Sunil Healthcare Limited* has held that "The pre-existing dispute which may be ground to thwart an Application under Section 9 has to be real dispute a conflict or controversy, a conflict of claims or rights should be apparent from the reply as contemplated by Section 8(2). The Corporate Debtor is not to raise bogie of disputes but there has to be a real substantial dispute." Further, in *Colliers International (India) Property Services (P) Ltd. v. Logix City Developers (P) Ltd., 2022 SCC On Line NCLT 37*, decided on 22.3.2022, it was observed that "...this authority has to only satisfy itself regarding default in payment by the corporate debtor towards the operational creditor and there is no pre-existing dispute".



- xii. In the instant case, the Corporate Debtor has failed to adduce any evidence about any pending suit or arbitration filed before the date of the Demand Notice, nor has it justified with real evidence that there exists a dispute between the parties. Thus, it cannot be said that there exists a bonafide dispute between Corporate Debtor and Operational Creditor. The documentary evidence furnished by the Operational Creditor with the application shows that the aforesaid debt is due and payable and has not yet been paid. Accordingly, in light of the aforesaid settled position in law, the application filed by the Operational Creditor is liable to be admitted.
- xiii. the Corporate Debtor has averred that the Ledgers and amount claimed by the Operational Creditor in its Petition for claiming the outstanding amount are incorrect. In this regard, the Operational Creditor submits that the Operational Creditor has duly checked its books of accounts and bank statements and has correctly incorporated the outstanding amount standing against the Corporate Debtor.
- xiv. the Corporate Debtor has disputed the interest amount charged by the Operational Creditor in its invoices no. 16-17/082; 16-17/093; 16-17/099. In this regard, the Operational Creditor submits that in clarification of the said interest amount charged on the said invoices and as per the order dated 24.03.2022 of this Hon'ble Tribunal, it has already submitted an Additional Affidavit under filing no. 2401105015532021 wherein the Operational Creditor



has placed on record that the interest @ 18% p.a. charged by the Operational Creditor on Invoices no. 16-17/082, 16-17/093 and 16-17/099 dated 5<sup>th</sup> July 2016, 20<sup>th</sup> July 2016 and 27 July 2016 respectively is not reflected on the invoices as the said invoices were issued by the Operational Creditor's employee directly through the Accounting Software "Tally" and the original invoices on the Letterhead were not issued. The alleged interest amount has been deducted and a new calculation sheet has been attached with the said Additional Affidavit.

- xv. In point no. (d) and (e) of the Grounds, the Corporate Debtor has challenged the maintainability of the Petition being time-barred and liable to be dismissed. In this regard, the Operational Creditor firstly submits that the last invoice raised by the Operational Creditor is for Rs. 8,16,840/- on 19.03.2017. Secondly, the Corporate Debtor has last acknowledged its liability by making a payment of Rs. 1,00,000/- on 19.10.2019 to the Operational Creditor towards its total outstanding amount. The said payment discharged by the Corporate Debtor amounts to an acknowledgement of debt under Section 19 of the Limitation Act, 1963. Thus, in the instant case, a fresh period of limitation has started from 20.10.2019. Further, the Operational Creditor places its reliance on the decision of the Hon'ble Supreme Court in the case titled ***In Re, Cognizance for Extension of Limitation, Suo Motu Writ Petition (C) No. 3 of 2020, dated 23.03.2020***, wherein after taking suo-moto cognizance of the Covid-19 situation,

the Apex Court extended limitation period w.e.f 15.03.2020 until further orders. The Court observed:

*" To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f.15th March 2020 till further orders to be passed by this Court in present proceedings. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities"*

- xvi. Furthermore, the Hon'ble Supreme Court vide its Order passed in the case titled *In Re: Cognizance for Extension of Limitation, Miscellaneous Application No. 21 of 2022, dated 10.01.2022* yet again extended the limitation period under the general law of limitation or under any special laws on the filing of all appeals, suits, petitions, applications and all other quasi proceedings. The Hon'ble Supreme Court observed that:


*"the order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

- I. Consequently, the balance period of limitation remaining as of 03.10.2021, if any, shall become available with effect from 01.03.2022.
- II. In cases where the limitation would have expired during the period between 15.03.2020 till



28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

- xvii. Thus, in view of the above, since the fresh limitation period has commenced from 20.10.2019 due to acknowledgement of debt under the Limitation Act and since the period from 15.03.2020 till 28.02.2022 is excluded for the purposes of limitation by the Order dated 10.01.2022 passed by Hon'ble Supreme Court, the present petition filed of the Petitioner is well within the limitation period and thereby liable to be accepted.
- xviii. It is important to note that along with the other emails filed by the Corporate Debtor in its Reply to the Petition, it has failed to attach the email dated 02/11/2016, which was sent by Nath Pulps & Paper Mills Ltd to the Corporate Debtor and Operational Creditor confirming the receipt of the amount of compensation by the Corporate Debtor and closure of its' grievances/ complaints till date.
- xix. In Para no. 16, the Corporate Debtor has tried to give unjustifiable reasons for not giving a reply to the Demand Notice sent by the Operational Creditor under section 8 of the Code. The fact is that all the stories that have been averred by the Corporate Debtor in the Reply filed against the main Petition are nothing more than an afterthought / concocted story of the Corporate Debtor to only evade its liabilities towards the Operational Creditor. In essence, the




Corporate Debtor has lost substratum in the Company and is in immediate need of initiation of the insolvency resolution process.

10. The Operational Creditor and the Corporate Debtor filed their written submissions which reiterated the submissions made in their reply and rejoinder.
11. We have perused the documents available on record and also heard counsels for both sides based on which we observe the following:-

**Issue of maintainability:**

- i. The issue as raised by the Ld. Counsel of the CD is about maintainability of the application being principal operational debt claim of only Rs.69,56,877/- which is below the minimum threshold limit of Rs.1 crore and interest amount cannot be taken for working out the threshold under Section 4 of the IBC, 2016.
- ii. The issue raised by the Ld. Counsel of the CD is regarding pre-existing dispute about damage material. In this regard, we noted that the email dated 02.11.2016 was sent to the OC and CD by the manufacturer/supplier, i.e. M/s. Nath Pulp & Paper Mills Ltd. wherein it is mentioned that as on date all the quality issues/complaints are settled and closed from their end subsequent to payment full & final compensation. Further issue raised by the Ld. Counsel of the CD is regarding pre-existing dispute about inferior quality of goods. In this regard, we noted that the CD



submitted in its reply at *Para T* that in the year 2018 for issue raised after 2016, both parties had amicably settled the disputes wherein the petitioner assured the respondent that the remaining outstanding shall be waived off. In view of the above, the issue raised by the CD regarding pre-existing dispute does not survive, as after settlement in 2016 and 2018, no further correspondence regarding it was made by the CD.

**Issue of Charing of Interest:**

- i. We have perused the 9 invoices out of 12 issued by OC raised against CD on Page No. 31 to 39 of the application and noticed that it has clearly been mentioned under the terms and conditions “ interest at 24% will be charged on all bills not paid in stipulated time”. We also perused the Ledger Account of the CD in the books of the OC wherein there are several entries regarding interest received by the OC from the CD were recorded. Hence, it is clear that the interest charged by the OC is supported by past bilateral conduct.
- ii. Another objection of the CD is regarding clubbing of interest payable with principal amount to determine whether the debt is above threshold prescribed in section 4 of IBC, 2016. The said issue has been answered by the Hon’ble NCLAT in the judgment of ***Prashant Agarwal vs. Vikash Parasrampuriah & Anr.***” ***Company Appeal (AT) No. 690 of 2022.*** The relevant para of the said judgment is reproduced below:

*“9(vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It is noted that the total principal debt amount of Rs. 97,87,220/- along with interest the total debt makes total outstanding as Rs. 1,60,87,838/-. Thus, the total debt outstanding of OC is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O I205 (E) dated 24.3.2020 (Supra), and meets the criteria of Rs.1 crore as per Section 4 of IBC and Application is therefore maintainable in present case. We concur with the orders of Adjudicating Authority on this issue also.”*

Therefore, as per revised calculation sheet total default amount is Rs.1,37,66,474/- (Principal amount due is Rs. 69,56,877/- and interest of Rs.68,09,597/- is levied as per the invoices wherein the rate of interest @ 24% p.a. on delayed payments which is above the threshold limit as per section 4 of the Code.

**Issue of limitation:**

As regard time-barred claims as per the Limitation Act, it is noted that the outstanding **invoices attached with the application were dated 05.07.2016 to 19.03.2017** and part payment was done by the CD on 30.10.2018 and 19.10.2019, and the date of filing of this application before this Authority is 26.11.2021. **Even otherwise, Hon’ble Supreme Court in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation held that the period i.e. 15.03.2020 to 28.02.2022 is to be excluded for calculating the period of limitation.** Therefore Section 9 Application is well within the limitation.



12. In view of the above, the present application is complete in terms of Section 9 of the Code. The Applicant/Operational Creditor has established the operational debt and default. The outstanding debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.
13. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-
- (i) The Respondent/Corporate Debtor M/s. Sorich Foils Limited is admitted in Corporate Insolvency Resolution Process under section 9 of the Code.
  - (ii) As a consequence thereof, a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
    - a. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
    - b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*




- c. *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022;*
  - d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*
  - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.



- (v) The applicant has proposed the name of the Interim Resolution Professional (IRP) Mr. Lokesh Khadaria and the consent Form 2 is also attached with the application. We hereby appoint **Mr. Lokesh Khadaria**, having Registration No. IBBI/IPA-001/IP-P-02070/2020-21/13228 and having e-mail id: [khadaria@gmail.com](mailto:khadaria@gmail.com) and Mob. No. +91-9374724262 subject to the condition that no disciplinary proceedings are pending against him and he has valid Authorisation for Assignment. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.



- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/-** as fees and expenses arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. A copy of



the order may be communicate to the IBBI for their record and for getting status of the CD updated in MCA portal.

(xiii) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed timely of the initiation of CIRP against the Corporate Debtor timely.

(xiv) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

14. Accordingly, this Application **CP(IB)/232/AHM/2021** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**S/d-**

**AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**

**S/d-**

**SHAMMI KHAN  
MEMBER (JUDICIAL)**

**R.S./LRA**