



**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024

***A petition under section 9 of the Insolvency and Bankruptcy Code,
2016 read with Rule 6 of the Insolvency and Bankruptcy (Application
to Adjudicating Authority) Rules, 2016;***

In the matter of:

Kushal Polysacks Pvt. Ltd.

...Operational Creditor /Applicant

Versus

Samarth Fablons Private Limited

...Corporate Debtor

Date of Pronouncement of order: 10.09.2025

Coram:

Smt. Bidisha Banerjee

:Member (Judicial)

Cmde. Siddharth Mishra

: Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. D. N. Sharma, Sr. Adv.] For the Operational Creditor

Mr. Niloy Sengupta, Adv.]

Mr. Ankit Agarwala, Adv.]

Mr. Sujit Banerjee, Adv.]

Mr. Ratnanko Banerji, Sr. Adv.] For the Corporate Debtor

Mr. Kanisk Kejriwal, Adv.]

Mr. Yash Badkur, Adv.

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

O R D E R

Per Bidisha Banerjee, Member (Judicial):

- 1) The Court convened through hybrid mode.
- 2) Ld. Counsels for the parties were heard at length.
- 3) This Petition has been preferred by the Petitioner / **Kushal Polysacks Pvt. Ltd. (The Operational Creditor / OC)** seeking initiation of Corporate Insolvency Resolution Process ("CIRP") in respect of the **Respondent / Samarth Fablons Private Limited (the Corporate Debtor / CD)** under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code") for a total default of INR **18,26,33,734/- (Rupees Eighteen Crores Twenty-six Lakhs Thirty-three Thousand Seven Hundred and Thirty-four only)** as on 31.03.2023 as per particulars reproduced below:

Sl. No.	Particulars	Amount in INR
1.	Total amount due on account of payment made to Indian Oil Corporation Ltd. on behalf of the Corporate Debtor	18,18,62,912.00
2.	Total interest paid to Indian Oil Corporation Ltd. on behalf of the Petitioner, as on 31.03.2023.	7,70,822.00
Grand Total		18,26,33,734.00

4) Submissions of the Operational Creditor(OC):


- a. **OC** is the **Del Credere Agent (DCA)** of Indian Oil Corporation Limited (**IOCL**), as will appear from DCA Agreement dated June 22, 2010 [pages.36-52 of CP].

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024

- 
- b.** As per the norms of **IOCL**, M/s Samarth Fablons Pvt Ltd (**CD**) purchased goods/polymer granules from the IOCL, tagging the OC as their DCA.
- c.** As per the DCA agreement, any purchaser of good is required to raise indent, through their DCA with the IOCL and once goods supplied, IOCL will raise invoice upon the Purchaser, tagging the enlisted DCA. DCA is required to pay the Invoice within 48 hours, otherwise 36% interest will be charged upon the DCA or existing bank guarantee of DCA will be invoked in terms of Clause 5.2 of the DCA Agreement.
- d.** In the present case, CD the Purchaser after tagging the OC the Del Credere Agent (DCA) has been purchasing goods/polymer granules since the Financial Year 2011-12 to 2023-24 and OC has been continuously paying the value of the goods by maintaining running and continuous account.
- e.** The lastly found dues are of Rs.18,26,33,734/- only as on 30th June, 2023 which the CD was unable and neglected to pay even after repeated reminders from OC and Indian Oil, resulting of which the IOCL (Supplier) marked the CD (the Purchaser) as defaulter and banned it to lift any IOCL material Pan India basis since.
- f.** As **OC** is the **DCA**, invoices were raised by **IOCL** and some of the invoices had been annexed in CP at pages-57 to 70. Therefore, in the present case, question of any invoice being raised by OC directly upon CD will not arise because of the special nature of the DCA Agreement.

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024

In any event, operational debt under **Section 5(21)** of the IBC refers to claim arising out of goods or services.

- g.** In the present case, purchaser of goods/CD raised indents for purchasing granules upon **IOCL** through OC/**DCA**. Once IOCL approves the requisitioned indent received from CD and agrees to supply the goods, **IOCL** raises invoice upon CD with copy marked to the OC and on tagging the enlisted **OC/DCA**. All the details of the invoices have been set out in the ledger statements which were all part of the statutory notice dated July 6, 2023 issued by OC upon CD [Pages 480-471] The ledger statements have also been annexed to the main Company Petition.
- h.** At no point of time did CD raise any dispute against any single invoice raised by **IOCL** as mentioned in the ledger statements which were part of the statutory notice dt. 06.07.2023 also. This will appear from the reply to the statutory notice dt. 13.07.2023 [pages. 782-868] of the CP at.
- i.** That the IOCL followed SAP software whereby, each and every detail of the transaction always provided to CD which includes Invoices. Physical copy of the invoices were always forwarded with the transporter and CD always confirmed the same.
- j.** OC as a **Del Credere Agent (DCA)** of **Indian Oil Corporation Limited (IOCL)** as will appear from DCA Agreement dated June 22, 2010 stood guarantee for payment of the total amount of value of the

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024

goods/polymer granules which was sold by **IOCL** to its customers (here CD) [Clause 5.1.1 of DCA Agreement at Pg-43 of CP].

- k. OC** is solely responsible to recover dues from customers of **IOCL**. Payment made by OC on behalf of the CD to IOCL has been credited against the account of the CD and hence the present dues are limited between the CD and the OC. IOCL has already realized the default committed by the CD from the OC.
- l.** The payment for the goods supplied and sold by **IOCL** to its customers through the recorded **DCA** which, in the present case is OC, will appear from **Clause 5.2 of DCA Agreement** at pages 44 of CP.
- m.** On September 23, 2021, CD being one of the customers of IOCL issued a letter to **IOCL** tagging **OC** as the authorized **DCA** in respect of the transaction for supply of goods by IOCL/seller to CD/ buyer/customer (pg-50 of CP). CD thereafter submitted document before IOCL and official email of CD (pg-51 of CP) is dheerajagarwal@beekaygroup.co and thus the CD always accepted the terms and conditions of the DCA Agreement.
- n.** From the Financial Year 2011-12, the CD started to lift/buy/purchase goods from **IOCL** and tagged **OC** as the registered **DCA**. **IOCL** raised invoices upon CD with copy marked to OC. Particulars of the invoices will appear from the ledger statements for financial year 2023-24 (pages 241-244 of Rejoinder of CP) wherein the Code Number of OC as the DCA has been recorded.



- o. Clause 5.2 of DCA** agreement (pg-44) also provides that DCA will be responsible to ensure timely payments within 48 hours, for the goods supplied and sold by **IOCL** to its customers and failing which high rate of interest @ 36% per annum will be levied upon **DCA** by **IOCL** apart from the right available to **IOCL** to invoke the performance back guarantee or to encash the cash deposit furnished by **OC/DCA**.
- p. Clause 5.2.5 of DCA** further provides [Pg-44 of CP] that the recovery of money from the customer will be the exclusive responsibility of **DCA** and **IOCL** is not responsible for the same but if the customer fails to pay the value of the goods supplied to IOCL, the recorded **DCA** will have to pay the money on behalf of the customer to IOCL, and thereafter, the recorded DCA will be responsible to recover the same from the customer.
- q.** It is admitted that the CD, as the customer of IOCL, did not pay the entire amount payable to IOCL during the financial years 2011-12 to 2023-24 and it was found that a sum of Rs.18,26,33,734/- was unpaid by CD to IOCL, which was paid by the **OC** to **IOCL**, on behalf of the CD and therefore, OC as the DCA was compelled to make such payment to IOCL on behalf of CD.
- r.** It is further claimed that as CD was unable to make payment for the goods purchased from **IOCL**, **OC** as the **DCA** had to come forward to make such payment, failing which huge interest component and penalty would be levied upon OC. The OC would be held responsible for

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

payments otherwise IOCL would invoke the Bank Guarantee and shall charge an interest @ 36% p.a., which CD was well-aware.


- s.** Accordingly, statutory notice under Section 8 of the IBC dated July 6, 2023 was issued by the Advocate of OC upon CD. The Ld. Advocate of CD gave a combined reply to the statutory notice dated July 6, 2023 which was issued on behalf of OC and another statutory notice dated July 5, 2023, which was issued on behalf of OC but to another entity namely, Shree Ram Electrocast (Jharkhand) Private Limited (hereinafter referred to as 'SAMARTH'), which is the CD in another IBC petition before this Ld. Tribunal being CP(IB) No.15/KB/2024. The combined reply of two statutory notices is annexed at pg-66-352 of CP.
- t.** Date of Default is March 31, 2023 (Para 18 of Page 24-2 of CP), the reply of the statutory notice 792, 805 and 806 of CP.
- u.** The claim of OC is admitted by CD as will appear from email dated July 4, 2023, which was issued from the official email ID of CD, namely, dheerajagarwal@beekaygroup.co, one of the director of the CD.
- v.** The CD in the email of July 4, 2023 has admitted that a sum of Rs.2,57,51,636/- is payable by CD to OC.
- w.** In the sur-rejoinder filed by CD affirmed on July 29, 2024, CD has stated that email dated July 4, 2023 was not issued by CD because this email has been issued from dheerajagarwal@deekaygroup.co. Aforesaid attempt to deny the admission by way of an affidavit of the CD is complete fraud, upon this Tribunal. This stand of CD is false and incorrect because CD has registered the same email ID, i.e.

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024



dheerajagarwal@beekaygroup.co before IOCL while submitting its documents for registration, thus, CD cannot disown its own email ID i.e. dheerajagarwal@deekaygroup.co. From the very inception, the CD had maintained the entire transaction from this registered Email of said Dheeraj Agarwal, one of the directors and authorized person of CD, with the IOCL, and not from any other email.

- x.** The CD/SFPL has admitted that after factoring various purported deductions and discounts to which CD was entitled to that the net outstanding amount. However, CD claims that it is entitled to set off a sum of Rs.4.68 crore in view of the family settlement, which is an afterthought, only after hearing of IBC notice.
- y.** It is urged that this Adjudicating Authority is not empowered to adjudicate or decide set off or counterclaim which is beyond the jurisdiction of the Adjudicating Authority as has been authoritatively held in several judgments/decisions as under:-
- i. 2019 (4) SCC 17 [Swiss Ribbons](Paras-52, 61, 63);**
 - ii. 2020 SCC Online NCLAT 442 [Vishal Doshi vs. Bank of India]- (Paras-11, 16, 17)**
 - iii. 2019 SCC Online NCLAT 549 [AP Coated Drums and Barrels Pvt. Ltd. Vs. Haresh Dharmani](Para-8)**



5) Submission on behalf of Corporate Debtor (CD)

a. Preliminary objections of the CD on maintainability of Petition

i) Petition is defective since there is no valid authorization in favour of the deponent by the Board of OC/Kushal.

ii) The Board Resolution dated 18.11.2022 of p.35 of CP appears to have been signed by Mr. Naresh Kumar Agarwal, as Director, authorizing Mr. Saumil Dutta, inter alia, to represent and file “*IBC proceeding or any recovery proceeding against those attached listed companies before the competent court of laws ...*”

iii) However, no such list of companies has been disclosed against whom Mr. Dutta is allegedly authorized to file proceedings.

iv) Therefore, there is no valid authorization in favour of the said Mr. Dutta to file the present petition against Samarth Fablon Pvt. Ltd (“Samarth”).

v) Mr. Naresh Kumar Agarwal and Mr. Kushal Agarwal, the two directors of the OC/Kushal as on 18.11.2022. Both resigned from their position as Directors of OC/Kushal as on 22.11.2022 (DIR-12 of Mr. Naresh Kumar Agarwal at Page 857 and Pages 858-861 of CP, Resignation & DIR-12 of Kushal Agarwal at Page 847 of CP).

vi) Both the directors of OC/Kushal resigned from the company on 22.11.2022 immediately after the alleged authorization. There is no authorization from the existing Board of Directors of the Company to initiate the present proceedings that was registered on

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

19.01.2024. As such, the present proceedings is not maintainable and should be dismissed.

b. The claim of OC/Kushal arises out of sale of goods made by IOCL under invoices raised by IOCL. There is no case of guarantee made out in the Petition. Invoices claimed to be outstanding have not been disclosed or identified.

- i)** The claim of OC/Kushal admittedly arises out of sale of polymer granules from **IOCL** to **Samarth**. (Para 10, Page 9/CP where narration of supply of goods has been stated from 2011-12 till 2023-24.).
- ii)** Demand Notice by **OC/Kushal** dated 05.07.2023 (pp.480-506) where, at page 504 under “(viii) List of documents attached to this application in order to prove the existence of operational debt and the amount in default”, the OC has listed “1. Statement of Accounts” and “2. Bills”.
- iii)** The OC has also issued Form No.4 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which requires “(b) a copy of an invoice attached with a notice in Form 4”.
- iv)** The OC has admitted that its claim arises from bills raised against supply of polymer granules by **IOCL** to **Samarth**. **OC** has annexed no invoice whatsoever. The statement of sales produced by OC at page 53 of CP shows sale amount of more than Rs.2,138.50 crore from 2011-12 till 2023-24.

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024

v) The OC has claimed a sum of about Rs.18.26 Crore. However, the OC has not produced any invoices for the same sum and not disclosed which invoices are unpaid.

vi) The CD/Samarth relies on the following judgments for the proposition that if the claim of an Operational Creditor is based on invoices claimed to be outstanding, then such invoices must be made part of the notice under Section 8 and also in the petition a. **Neeraj Jail vs Cloudwalker Streaming Technologies Ltd – reported in 2020 SCC Online NCLAT 445- para 43 – 46, 68, 71, 81.**

(1) **DAE leasing (Ireland) 8 Ltd vs Turbo Megha Airways Ltd – CP(IB) No.210/0/HDB/2022 - 08.05.2024 – Para 29-32.**

c. OC/Kushal is using the present proceedings for purposes other than insolvency resolution (family disputes) and as recovery tool.

i) Admittedly, there are serious family disputes between the promoters of OC/Kushal and Samarth, that are pending adjudication before the civil courts. Admittedly, the OC and CD are family companies that were earlier jointly held by the brothers till their partition. The present proceedings are a counter blast to the failure of family settlement between the brothers.

ii) The CD relies on the following judgments for the proposition that IBC proceedings cannot be used as a recovery tool against solvent companies –

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024

- a) **S.S. Engineers vs HPCL – 2022 SCC Online SC 1385 (Para 31)**
- b) **Anita Jindal vs Jindal Buildtech Pvt Ltd – 2022 SCC Online NCLAT 3748 – (Para 10, 13-17)**
- c) **Pratiksh Pramod Rai vs Mylaw Learning Resources Pvt Ltd – CP (IB) 195/MB/2019.**
- d) **Tricolite Electrical Industries Ltd vs Wipro Ltd – Trns App (AT) No.227/2021.**

d. There are serious disputes regarding the claims of OC. OC and CD are admittedly family companies and there are several family disputes between the promoters, pending before Civil Court.

- i) Kushal/OC and Samarth/CD are family companies that were jointly held by brothers – Mr. Naresh Kr. Agarwal and Mr. Bishnu Agarwal respectively.
- ii) The brothers entered into 2 family settlements, first on 11.12.2011 (pages 53 – 58 of Reply) and second on 27.08.2018 (pages 90 of Reply). Joint Family companies and assets were divided under such settlements. It is evident that all transactions inter se the families and companies were settled under such global family settlements.
- iii) Kushal itself has contended that **“The said sum of Rs.12 crore was in fact payment made under the said terms of settlement/partition. The said sum of Rs.12 crore was paid from the account of the corporate debtor into the account of the operational creditor,** Kushal Polysacks (P) ltd having regard inter alia to the fact that the corporate debtor was a company held, owned, managed and controlled by the branch of Bishnu Agarwal while the

operational creditor is ... by the branch of Naresh Kumar Agarwal.”

(Para III(B) (k) – (1) pages 15 -16 of CP)

- iv)** Therefore, it is an admitted position by the OC/Kushal that both OC and CD are family companies that have been divided between the brothers under a family settlement. There is admittedly disputes regarding the family settlement and the promoter of OC has filed a civil suit claiming reversal of shareholding and assets of the group companies. The OC/Kushal has also admitted that large sums of payment made between family companies were towards family settlement.
- v)** Naresh Kr Agarwal, promoter of OC/Kushal has filed a civil suit before Ld. Alipore District Court, being T.S. No.722/2013 (**Pages 133 – 164 of Reply**), inter alia, praying for injunction on shareholding, board and funds of Samarth, for performance of the family settlements and for other reliefs (**Page 158 of Reply**). CD/Samarth is Defendant No.2 and OC/Kushal is Proforma Defendant No.11. Therefore, both OC and CD are parties to the said suit.
- vi)** The said Naresh Kr Agarwal also filed a civil suit before the Hon’ble High Court at Calcutta, being CS No.127 of 2020. The plaint in such suit was never served upon the defendants. The short cause title of the said suit, which appears on the website of the Hon’ble Court, appears to be identical to the short cause title of the Alipore Court title suit. Samarth filed IA (IB) No.393/KB/2025 seeking copy of the

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

plaint. However, OC/Kushal has refused to disclose the same. This Hon'ble Tribunal should draw adverse inference based on the conduct of the OC.


- vii)** On the other hand, by email dated 01.08.2018 (p.138 of Reply) the OC/Kushal confirmed that a sum of Rs.12 crore paid by Samarth and a sum of Rs.3.30 crore from "Kushal Polysacks" had been credited to the account of Samarth as on 31.03.2018.
- viii)** Thus, the OC is trying to approbate and reprobate regarding the sums paid by Samarth towards supplies made by IOCL. **There is clearly a dispute of more than Rs.15.34 crore regarding the sum claimed by the OC.** The huge difference between the amount claimed by OC in the Company Petition and the amounts already admitted to have been received by OC towards supplies, shows the fraudulent nature of the Company Petition.
- ix)** This Tribunal cannot be called upon to adjudicate as to which transaction forms part of the family settlement and which does not. The issue of payments under the family settlement has been made a subject matter of the pending suit.
- x)** In an appeal filed from the title suit, before the Hon'ble High Court at Calcutta, all parties (including OC/Kushal and Samarth) have agreed to refrain from altering their position in relation to assets and liabilities. However, in the present proceedings the OC/Kushal is acting against the above undertaking, by attempting to initiate CIRP against Samarth.

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024



xi) Having failed to arrive at a settlement, it is evident that the IBC proceedings have been filed as a counter blast to such failure. IBC proceedings cannot be used to settle scores in family disputes. Samarth relies on the following judgments –

(a) Manishaas Infratecho Solutions Pvt Ltd vs Bhonu Hulshi Real Estate Pvt Ltd – 2024 SCC Online NCLAT 822 – (paras 7, 8, 22);

(b) Deepak Vegpro Pvt Ltd vs Shree Hari Agro Industries Ltd – CP(IB) 265/KB/2018 – (paras 37, 38);

e. OC/Kushal has all along acted as an agent of IOCL. Invoices for supply were raised by IOCL. Claim in the petition is arising out of invoices/supplies by IOCL. Therefore, OC cannot file present proceedings in its own name as per provisions of Indian Contract Act, 1872 and Transfer of Property Act, 1882.

i) Some invoices disclosed by Samarth as sample (Pages 239 – 244 of CP) show that the invoices have been raised by IOCL. Kushal is only an agent. The claim of OC/Kushal admittedly arises out of sale of polymer granules from IOCL. Therefore, Kushal is not the “Operational Creditor” of Samarth under IBC. OC/Kushal cannot file the present proceedings in its name, being an agent of IOCL. (See Sections 5(21) and 5(22) of IBC)

ii) Under Section 230 of the Indian Contract Act, 1872, an agent cannot personally enforce contracts entered into by himself on behalf of

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

principal. Therefore, Kushal claiming to be an agent of IOCL, has no locus to file the present proceedings in its own name.

- iii)** The Petition does not disclose any instrument transferring claims of IOCL in favour of Kushal. For such reason also, Kushal cannot claim under the invoices raised by IOCL. (Section 130 of Transfer of Property Act, 1882) The petition also does not disclose any proof of payment having been made to IOCL for the alleged supplies made by Samarth. Only ledger account, maintained by Kushal himself, has been disclosed, which is a self-serving document.
- iv)** Clause 5.2 of the DCA Agreement (Page 43 of CP) does not in any way assign any claims of IOCL to Kushal. Under Section 230 of the Indian Contract Act, Kushal is barred from filing proceedings in its own name and without specific authorization from its principal – IOCL.
- v)** The CD would rely upon Samarth relies on the following judgments for the proposition that an agent cannot enforce agreements in his own name. Please see –

(a) Alturas Trading Corporation vs. VRMX Concrete Pvt Ltd – CP(IB)179/CHE/2021 – Order dt.04.10.2021 (paras 9, 10, 11);

(b) Radhakrishnan Sivadutta Rai & Ors vs Tayeballi Dawoodbhai – AIR 1962 SC 538 – paras 2, 3, 4, 16 (extracted below);

“16. ... It would be remembered that Section 230 of the Indian Contract Act provides that in the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. ...”

(c) Hindustan Fertilizer Corp. Ltd vs Great Eastern Shipping

Co. Ltd – (1998) 74 DLT 82 – paras (7.2.9, 8, 8.2 and 9).

f. There is no admission by Samarth for the entire claim of Kushal, as alleged.

i) Kushal is misreading and misinterpreting the email of Samarth dated 04.07.2023 (pages 425 – 426 of Rejoinder) to allege that Samarth has admitted the claim of OC.

ii) In the email dated 04.07.2023, there has been discussion regarding the claims and counter claims of all group companies. Therefore, no admission can be culled out against Samarth.

iii) To contend that NCLT has considered the issue of group-wise settlement of accounts reliance is placed on the following judgments:

(a) Visen Industries Ltd vs Peekay Agencies Pvt Ltd – CP(IB)

122/KB/2024 – dt.11.11.2024 – (paras 17,18,19);

iv) Furthermore, the OC has filed petition with a claim of Rs.18.26 crore whereas the OC seeks to rely on alleged admission of Rs.2,57,51,636 crore to contend that Samarth should be admitted to CIRP.

v) CD further would rely on the following judgments for the proposition that documents cannot be dissected in order to extract or rely on isolated sentences or portions thereof as admission.

(a) **Karamadai Naichen Vs R. Rahu Pillar & Anr. – AIR 1949**

Mad 401 = 61 LW786 – (pg.787);

(b) **Union of India & Ors vs. N. Murugesan & Ors – 2022 (2)**

SCC 25 (paras 26, 27);

g. Judgments relied upon by OC/Kushal support the contention of

Samarth –

i) The judgment of the Hon'ble NCLAT in **Madras Chemicals & Polymer Vs. Mijay Aqua Pipes Pvt Ltd** was passed in entirely on different set of facts and the issue being considered in that case was wholly different from the present case –

ii) Para 14 of the said judgment states that the invoices raised by “*Chemplast Sanmar Limited*” mentioned that “*payment in respect of this Invoices should be made only in favour of Madras Chemicals and Polymers. There is an interest payment of 21% per annum at Column No.3 and the same is seen in all the invoices.*” However in the present case, there is no such noting in the invoices raised by IOCL.

iii) In para 16 – the Hon'ble NCLAT noted that the CD in that case had received debit notes from Madras Chemicals and Polymers which is absent in the present case.

iv) In para 56 – the hon'ble NCLAT observed that the DCA Agreement permitted the agent to file legal proceedings in the name of the supplier i.e. Chemplast Sanmar Limited and that too only for recovery of outstanding sums.



v) At para 52 – the Hon’ble NCLAT held that proceedings under IBC are not “Debt Enforcement Procedure” therefore, the present proceedings should not be entertained.

vi) Therefore, the above judgment actually supports the contention of Samarth that the present proceedings cannot be entertained and should be dismissed as barred by law.

vii) The judgment in **Pederson Consultants India Pvt. Ltd. Vs. Nitesh Estates Ltd. – 2019 SCC Online NCLAT 422** – is wholly irrelevant in the present case. In that case the CD had raised disputes after issuance of demand notice. However, in the present case, there have been pending issues regarding adjustment of group of companies claims and counter claims. Further there is a huge disparity regarding the claim made by the OC while ignoring its email of 01.08.2018 where credit of Rs. 15.30 Crore was granted to Samarth.

6) We have heard Ld. Sr. Counsels / Counsels for the parties and perused the records.

7) Analysis and Findings:

a. The issues that fell for determination the following:


i) Whether Mr. Shaumik Dutta has a **valid authorization** to file the present Company Petition, and the present Company Petition is as such maintainable.

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024

- 
- ii) Whether Kushal Polysacks is an agent of IOCL** and as such it is entitled to file this Petition under Section 9 of the IBC, 2016 as an Operational Creditor against **Samarth Fablon Pvt. Ltd.** the Corporate Debtor.
- iii)** Whether there are **pre-existing disputes** between the parties which would render this Petition a *non starter*.
- iv)** Whether the **present dispute stands already settled** by way of a family settlement.

8) On valid authorization [Issue No.(i)]

- a.** The authorization in question is extracted verbatim herein below for clarity:

“EXTRACT OF BOARD RESOLUTION

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED IN THE MEETING OF THE BOARD OF DIRECTOR OF M/S KUSHAL POLYSACKS PRIVATE LIMITED HELD AT ITS OFFICE AT "GANDHI HOUSE", 16, GANESH CHANDRA AVENUE, 4TH FLOOR, KOLKATA 700013 ON 18/11/2022 AT 04.30 P.M.

RESOLVED THAT as our company is dealing with the Delcredere Commission Agent under the Indian Oil Corporation Limited and dealing with the 422 customers, who are purchasing the Polymer products from the Indian Oil

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024



Corporation Limited, tagging us with their DCA and list of the said customers are enclosed herewith, as a part of this Resolution and in case there their accrues any dues of those customers, found pending for more than 2 months, our company shall take an immediate steps to recover the same including initiation of proceeding under the Insolvency & Bankruptcy Code, 2016;

RESOLVED FURTHER that, Mr. Saumik Datta, son of Late Tapan Kumar Dutta, our, Sales Manager, do hereby authorized to represent Kushal Polysacks Private Limited in the matters related to said IBC proceeding or any recovery proceeding against those attached listed companies before the competent court of laws and/or before the Hon'ble NCLT Kolkata Bench and/or the Hon'ble NCLAT, New-Delhi, and we do hereby authorize him to Mile and execute and affirm such cases, replies, affidavits and/or appear before Department/Authority/Court and do all such deeds and things incidental to or connected with the same.

FURTHER RESOLVED THAT for the best interest of the company Mr. Saumik Datta will sign, verify and affirm all petitions, affidavit, appointing advocate(s), Vakalatnama and other necessary papers/documents, for maintaining

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

*those legal proceedings, on behalf of M/s Kushal Polysacks
Private Limited.”*

- b.** It is discernible from the records and is not in dispute that Shaumik Dutta was duly authorized by Mr. Naresh Kumar Agarwal, vide Board Resolution dated 18.11.2022. (page 35 of the CP) to represent **Kushal Polysacks** in all IBC related proceedings before NCLT and NCLAT.
- c.** Admittedly, both Mr. Naresh Kr. Agarwal and Mr. Kushal Agarwal were Directors of the Company till they resigned on 22.11.2022.
- d.** Thus, as on the date of authorization (18.11.2022) they were fully authorized to appoint Mr. Shaumik Dutta to represent **Kushal Polysacks Private Limited** in the matters related to any IBC proceeding or any recovery proceeding against those attached listed companies before the competent court of laws and / or before this Bench and / or the Hon'ble NCLAT, New-Delhi, and to authorize him to file and execute and affirm such cases, replies, affidavits and / or appear before Department / Authority / Court and do all such deeds and things incidental to or connected with the same.
- e.** Page No. 35 of the Company Petition shows that Shaumik Dutta is duly authorized to act on behalf of the Company.
- f.** There is nothing on record to show that this Authority was revoked subsequently at any point of time.


Hence, we hold that

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024

- 
- i.** The authorization to file IBC proceedings was legally granted to the said Shaumik Dutta by the Company as on 18.11.2022.
 - ii.** The Authority having never got revoked subsequently, neither expressly nor impliedly by operation of law as on the date of filing of the present Company Petition (i.e. 22.11.2022) the authorization was still valid.
 - iii.** Thus the **CP is filed by an Authorized Representative of the Kushal Polysacks (OC).**

9) Whether Kushal is an agent of IOCL [Issue No. (ii)]

a. Determination of true nature of relationship between the parties:

- i)** *One of the cardinal principles of interpretation of documents, is that the nomenclature of any contract, or document, is not decisive of its nature. An overall reading of the document, and its effect, is to be seen by the courts. [State of Orissa V. Titaghur Paper Mills Co. Ltd. 1985 Supp SCC 280];*
- ii)** *This principle was reiterated in [Prakash Roadlines (P) Ltd. V. Oriental Fire & General Insurance Co. Ltd. (2000) 10 SCC 64];*

That the task of Court is to, upon an overall reading of the materials presented by the parties, discern the true nature of the relationship between the parties and the nature of the service provided.

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

iii) In the case of C.C., C.E. and S.T. Bangalore (Adjudication) & Ors.

Vs. Northern Operating Systems Pvt. Ltd., it is held “ *One of the cardinal principles of interpretation of documents, is that the nomenclature of any contract, or document, is not decisive of its nature. An overall reading of the document, and its effect, is to be seen by the courts.*”

iv) In the case of **B.K. Muniraju V. State of Karnataka & Ors.**, reported in **2008 (4) SCC 451**, it was held “*a sentence or a term in a contract does not determine the real nature of the contract. It is true that the Courts should not rewrite the contract while making an attempt to interpret it.*”

v) In the case of **D.N. Revri & Co.**, reported in **AIR 1976 SC 2257**, it was held that “*a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it.*”

To determine whether Kushal Polysacks is an agent of IOCL and entitled to prefer this application. It would be necessary to extract the **Del Credere Associate Agreement (DCA)** made on 22.06.2010.

b. “DEL-CREDERE ASSOCIATE AGREEMENT

This Del-Credere Associate Agreement is made on this 22 day of Jun, 2010, at Delhi by and between

1. **M/s. Indian Oil Corporation Limited**, a company incorporated, existing and functioning under the laws of India, presently having its registered office at G9, Ali Yavar

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024

Jung Marg, Bandra (East), Mumbai-400 051 and part of Corporate Office at, Indian Oil Bhavann, Yusuf Sarai New Delhi-110016 (hereinafter referred to as IOCL).

XXX

XXX

XXX

2. ***M/s Kushal Polysacks Private Ltd.***, having its principal/registered office at 16, Ganesh Chandra Avenue, Gandhi House, 4th Floor, Kolkata-700013 acting through the Managing Director/***duly authorized representative appointed as Del Credere Associate at Kolkata (West Bengal)*** (hereinafter referred to as the '***DCA***'), which expression shall, unless repugnant to the context or meaning, be deemed to include its successors, administrators, legal representatives and permitted assigns) of the Second Part.

Whereas

- A. ***IOCL*** is in the process of setting up a Polymer Plant at Panipat Refinery, Panipat, Haryana, India which is intended to produce 1.25 MMIPA of polymers namely, BORELL LLDPE, HDPE and PP.
- B. *IOCL* wishes to appoint del-credere associates for securing, prompt payments to *IOCL* against sale of Products) by *IOCL* to its Customer.
- C. ***The DCA has represented to IOCL that it has adequate resources and experience to render services as a del-credere associate for securing payments owed to IOCL by its Customers*** and for promotion of its Products, and *IOCL* has agreed to engage the services of the *DCA* on a non-exclusive basis during the Term (as defined below), subject to and in accordance with terms and conditions set forth herein,

Now, therefore, Parties agree as follows:

DEFINITIONS AND PRINCIPLES OF INTERPRETATION

XXX

XXX

XXX

Allocated Customer means the ***Customer allocated by IOCL*** in accordance with Clause 4.1.2.

Customer shall mean the any Person desirous of purchasing the Product(s) and or who purchases the Product(s)

Confirmation of Indent means the confirmation with respect to the Indent, issued by *IOCL*.

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024



XXX

XXX

XXX

DCA Representative means person(s) duly authorized by **DCA** for implementation of this Agreement and communicated to IOCL in writing.

XXX

XXX

XXX

Event of Default shall mean the failure or neglect to comply with any obligation under the Agreement, and without prejudice to the generality of a foregoing occurrence of any or all of the following:

XXX

XXX

XXX

Indent shall mean the purchase order placed by the Allocated Customer through the DCA in the form prescribed by IOCL from time to time.

Invoice shall mean the invoice raised by IOCL for sale of Product(s) to the Allocated Customer.

XXX

XXX

XXX

Service Charge shall mean INR 350 (Three Hundred and Fifty only) per metric ton of Product (excluding Service Tax and Education Cess) or such rates as may be decided by IOCL from time to time as per market conditions for the services rendered by the DCA and as per terms and conditions of this Agreement.

XXX

XXX

XXX

2. EFFECTIVE DATE

This Agreement shall come into full force and effect on 1st May, 2010.

3. SCOPE

IOCL hereby appoints the DCA as one of its associates on del-credere basis for securing prompt payments to IOCL against sale of Product(s) to its Customers and promotion of the Product(s), during the Term, on terms and conditions contained herein;

DISTRIBUTION / SALE OF PRODUCT(S)

Customer Registration and Allocation

4.1.1 **A Customer shall be required to obtain registration with IOCL and DCA shall facilitate the same.**

4.1.2 **IOCL shall, at its discretion, allocate Customers to the DCA.** However, any such allocation of Customers by IOCL shall, as far as practicable, take into consideration the legitimate concerns of the DCA. The DCA acknowledges That



IOCL reserves the right to allocate a Customer to more than one DCA.

4.2 Indent and Confirmation of Indent

*A Customer desirous of purchasing the Product(s) shall place an **Indent with the DCA**. The **DCA** shall forward to IOCL, the Indent received from an Allocated Customer in the prescribed manner. **IOCL**, at its sole discretion and depending on production and availability of the Product(s), issue the Confirmation of Indent to such Allocated Customer pursuant to the Indent, **under intimation to the DCA***

4.3 Sale of Products

*4.3.1 Point of Sale. **The sale of Product(s) by IOCI, to the Allocated Customer** shall be Ex-Works and or Ex-IOC Warehouse, based on the production and availability, and upon terms and conditions to be specified from time to time by IOCL.*

***Invoice raised by IOCL** shall include VAT/CST as applicable.*

4.3.2 The Products shall be sold as per rates stipulated in the Price List, unless specified otherwise by IOCI, with respect to an Allocated Customer.

4.3.3 The terms of sale of the Product by IOCL to the Allocated Customer shall be as determined by IOCL The DCA acknowledges that such terms of sale may change with mutual agreement of IOCL and the Allocated Customer.

5.1 Security

*5.1.1 **The DCA shall stand guarantee for the full amount due from the Allocated Customer** (including price of Product, applicable taxes and duties). **The DCA shall furnish security in the form of an irrevocable and unconditional bank guarantee or cash deposit or both.** The security amount / extent of security shall not be less than INR 1,00,00,000 (Indian Rupees One Crore Only) and shall be subject to revision by IOCL from time to time based on market conditions.*

5.1.2 The Bank Guarantee shall;

- i. Be in the format attached hereto as Annexure 2 or any other modified format that IOCL may require.*
- ii. **Be from a bank acceptable to IOCL.** Such bank shall be a Scheduled bank under the Reserve Bank of India and which shall not be a co-operative bank,*

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

iii Be continuing in nature and accordingly be kept renewed from time to time anti renewals shall be furnished at least one month before the expiration of the same;

XXX XXX XXX

5.1.3 IOCL shall be entitled to invoke the security (Bank Guarantee and / of Cash Deposit) in case of loss or damage caused to/suffered or would be caused to or suffered by IOCL by reason of any breach or event of default **by the DCA or representatives of the DCA** of any of the terms or conditions contained in the Agreement.

XXX XXX XXX

5.1.5. The DCA shall, at the option of IOCL, simultaneous with the furnishing of the security, deliver a Letter of Authorization to IOCL, in the form and manner acceptable to IOCL **whereby IOCL, shall be authorized to debit the designated bank account of the DCA, upto limits stipulated by IOCL, with respect to any amounts due and payable by the DCA to IOCL** in accordance with this Agreement.

5.2 Payment for sale of Product

5.2.2. In case timely payments are not realized by IOCL from the Allocated DCA Customer, IOCL will be entitled to recover the monies from the DCA.

*In case IOCL, for whatever reason, **fails to recover the monies from the DCA, the DCA shall be responsible for making such payments to IOCL together** with Applicable Interest Applicable Interest shall mean such rate of interest as may be specified in the terms of sale of the Product to the Allocated Customer, which shall be not less than SBI Prime Lending Rate plus 2% on all sums due calculated from the due date of payment.*

5.2.3. The DCA acknowledges that amounts recovered by IOCL, from the DCA in accordance with this Agreement shall be credited to the account of the concerned Allocated Customer, and in such event, the DCA shall have recourse to the Allocated Customer but it shall have no recourse to IOCL;

IOCL shall also have the right to realize the payment along with the interest by invoking the security (Bank Guarantee and/or Cash Deposit).



5.2.5. **The DCA alone shall be responsible for recovery of monies from an Allocated Customer**, at its risk, cost and consequence and IOCL shall not be responsible in case, for whatever reason, the DCA fails to recover monies from the concerned Allocated Customer.

XXX

XXX

XXX

7. DCA COVENANTS

7.1. Engagement of Employee

The DCA shall engage adequate number of competent sales persons, accounts, computer operators or any other manpower, etc., as may be required to comply with this Agreement. The DCA shall arrange regular trainings for its employees at its own cost.

7.2. Periodic Reports

XXX

XXX

XXX

7.2.3. The DCA shall furnish such other reports and records in a timely manner. as per the formats and periodicity advised by IOCL from time to time.

XXX

XXX

XXX

7.3 Customer Relationship

7.3.1 The DCA shall appropriately attend to Customers at the office;

7.3.2 The DCA shall cultivate and maintain good relationship with Customers. in accordance with sound commercial practice and make best efforts to inspire the Customers to purchase the said Products from IOCL

XXX

XXX

XXX

7.3.4 The DCA shall provide day to day services to the Allocated Customers, co-ordinate with the Allocated Customer as well as IOCL for timely supplies.

XXX

XXX

XXX

7.3.5 The DCA shall be assigned targets for sales volume and customer addition with mutual consent of the Parties;

7.6 Liability for Payments

The DCA shall be solely and completely responsible for any expense (whether by way of salary or other benefits or compensation, statutory or otherwise) to be made to any person including its employees or any other persons retained by the DCA or the account of such person, **who is involved**



in providing any part of implementation of this Agreement.

XXX

XXX

XXX

7.8 Cost and Expenses

The DCA shall be responsible for all costs and expenses incurred in complying with its obligations under this Agreement;

7.9 Compliance with Requirements

The DCA shall ensure compliance with all Requirements and maintain all records (including statutory records and documentation) as may be applicable in the performance of the Agreement.

7.10 Recovery from Allocated Customer

The DCA shall not, under any circumstance, recover from the Allocated shall Customers in excess of the amount(s) due and payable by the Customers to IOCL with respect to the sale of the Products made by IOCL.”

A bare perusal of the Clauses extracted supra would exemplify and demonstrate that this DCA Agreement confers all the rights upon the IOCL, the principal and Kushal the present OC, acts as an Agent. The Agreement empowers the present OC alone to recover the dues from an allocated customer of IOCL. Such overt clause in the DCA agreement empowers the OC the sole Authority to file the present proceedings against the CD.

c. Effect of DCA Agreement

The DCA agreement between the IOCL and the DCA Kushal is explicit on the following:

i) The Supplier:

IOCL is the supplier of goods which acts through its agent DCA (here Kushal)





ii) The DCA

Kushal Polysaks as Del Credere Agent (DCA) is

- a. appointed by IOCL as one of its associates on Del Credere basis.
- b. bound to secure against payments owned to IOCL by its customers (allocated customers including the CD Samarth).

iii) The Allocated Customer

Samarth is the allocated customer.

iv) Procedure of Placing Indent

IOCL allocated the customer **Samarth** to DCA under the following process:

- a. Samarth Fablon the Corporate Debtor is an allocated Customer, as a customer, it approaches IOCL for specified goods.
- b. A customer is required to obtain registration with IOCL (the supplier);
- c. The DCA facilitates such registration;
- d. The IOCL at its discretion allocates customers to a DCA or to more than one DCA.
- e. The allocated customers (here Samarth) then places indent through the DCA.

v) Role of the DCA

- a. The DCA will then forward the indent to IOCL;
- b. The IOCL depending upon production and availability of products, issue confirmation of indent to such Allocated Customers under intimation to the DCA.
- c. The products would be sold by IOCL as per terms of sale decided by the IOCL;

- d. Invoice shall be raised by IOCL.
- e. **Thus invoices are not required to be issued by the DCA.**

vi) Liability of the DCA to repay the Supplier in the event of default of Customer.

- a. The DCA shall stand guarantee for the full payment from the Allocated Customer (here Samarth);
- b. The DCA shall forthwith security in the form of an irrevocable and (Anx. 19) unconditional bank guarantee in the format accepted by the IOCL;
- c. Ensure full and timely payment by allocated customer to IOCL for the products purchased by Allocated Customer (here Samarth) from IOCL, shall alone be responsible for recovery of dues of IOCL from allocated customers.
- d. In case IOCL fails to get timely payments from the customers, IOCL will recover its dues from the DCA with interest.
- e. Thus, although issues are not raised by the DCA, it stands guarantee for the full payment from allocated customer and is liable to pay the IOCL if allocated customer fails to pay IOCL.

vii) Remedy of the DCA

- a. DCA shall have recourse to the allocated customer (here Samarth) but not to the IOCL (the Supplier).
- b. Thus, DCA having paid the IOCL for the default of allocated customers can only sue the allocate customer (Samarth) and not the IOCL.



viii) RIGHTS of IOCL

- a.** To allocate Customers to DCA.
- b.** Issue confirmation of indent to allocated customers under intimation to DCA.
- c.** Raise invoice upon the allocated customer tagging the DCA.
- d.** Issue bank guarantee (BG) from the DCA to ensure its prompt payments from the allocated customers.
- e.** Invoke the BG by reason of default by DCA to realize payments from Allocated Customers.

ix) OUTCOME:

- a.** Thus, evidently and irrefutably, the DCA (here Kushal) as an agent of the IOCL, upon default in payment of an allocated customer (Samarth) to the IOCL (the Supplier) for the products sold and delivered by IOCL to the customer (Samarth) through DCA, against invoices issued by IOCL tagging the DCA, is bound to repay the IOCL and recover its dues from the customer (Samarth);
- b.** The IOCL has in fact assigned its right to sue, to the DCA.
- c.** Hence, this present petition filed by the DCA Kushal against the allocated customer Samarth, for payments, it has made to the supplier IOCL for goods supplied by IOCL to Samarth, and dues of Samarth towards payments against such dues, which are recovered by IOCL from DCA Kushal, can maintain this Section 9 application against the allocated customer (Samarth).



d. LEGAL PROVISIONS

Chapter VIII of the Contract Act, 1872 deals with "Of Indemnity and Guarantee". Section 124 defines "Contract of indemnity" and Section 126 defines "Contract of guarantee". Section 126 which is relevant for the present case is as follows:

“Guarantee” defined under Section 126 of the Contract Act, thus:

i) “126. “Contract of guarantee”, “surety”, “Principal debtor” and “creditor”. – *“contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the “surety”; the person in respect of whose default the guarantee is given is called the “principal debtor”, and the person to whom the guarantee is given is called the “creditor”. A guarantee may be either oral or written.”*

A contract becomes a guarantee when the contract is to perform the promise or discharge the liability of a third person in case of default. *Thus, when a person enters into a contract to perform or discharge the liability of a third party, the contract becomes a contract of guarantee.*

In the present case Kushal the OC guarantees to perform its promise to “Creditor” IOCL to discharge the liability of a “third party” (allocated customer, here Samarth) the “principal debtor” who owes to the “Creditor” IOCL.



ii) Section 127 of the Contract Act reads thus:

“127. Consideration for guarantee.-Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Hence, any promise made or anything done for the benefit of principal debtor may be sufficient consideration to the surety for giving guarantee.”

iii) In Phonix ARC Pvt. Ltd. (citation) Hon’ble Apex Court has held that

“As is clear from the definition a "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

XXX

XXX

XXX

*A contract of guarantee contains a guarantee "to perform the promise or discharge the liability of third person in case of his default". Thus, key words in Section **126 are contract "to perform the promise", or "discharge the liability",** of a third person. Both the expressions "perform the promise" or "discharge the liability" relate to "a third person."*

iv) We have noted that Clause 5.2.2, 5.2.3 and 5.2.4 are very clear that the Creditor Kushal or the DCA has undertaken to discharge the liability of Samarth in case Samarth fails to repay IOCL against the

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

operational debt. Thus this Petition under Section 9 of IBC is clearly maintainable by Kushal as a Guarantor.

v) We are fortified in our view by the decision of Hon'ble NCLAT in the case of **Madras Chemicals & Polymers Vs. Vijay Aqua Pipes (P) Ltd. Company Appeal (AT) (CH) (INS) No. 298/2021 (2023) SCC OnLine NCLAT 574**) that "*in cases relating to DCA, the appropriate remedy is to file a Section 9 Application as the debt accrued by a DCA on behalf of a principal is an 'Operational debt' and not a 'financial debt'*".

vi) Thus the decisions relied upon the CD, being **Alturas Trading Corporation, and Radhakrishnan Sivadutta and Hindustan Fertilizer Corp. Ltd (Supra)** will not apply here.

Here, **Kushal** is bound by its promise to the **IOCL** the "Creditor" for the benefit of the principal debtor **Samarth** which is the consideration for the guarantee.

vii) **The relationship *inter se* between the parties:**

The DCA Agreement Clause 5.2.2, 5.2.3. & 5.2.5 (extracted *supra*) are very clear that

***"5.2.2. In case timely payments are not realized
by IOCL from the Allocated DCA Customer, IOCL***

will be entitled to recover the monies from the DCA.

In case IOCL fails to recover the monies from the DCA, the DCA shall be responsible for making such payments to IOCL together with Applicable Interest.

XXX XXX XXX

5.2.3. The DCA shall have recourse to the Allocated Customer but it shall have no recourse to IOCL;

XXX XXX XXX

5.2.5. The DCA alone shall be responsible for recovery of monies from an Allocated Customer, at its risk, cost and consequence and IOCL shall not be responsible in case, for whatever reason, the DCA fails to recover monies from the concerned Allocated Customer.”

Thus the DCA (Kushal) is bound to discharge the liability of the Allocated Customer. We have already noted its available recourse is only against the allocated customer.


10) Pre-existing disputes if any (3rd issue):

Coming to the third issue whether pre existing dues would mar the prospect of this application, we have discerned the following:

- i)** The DCA Agreement was executed on 22.06.2010.


**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

- 
- ii)** The family settlement was probably entered on 11.12.2011 amended on 27.08.2018;
- iii)** Section 8 Notice was issued on July 6, 2023.
- iv)** A Civil suit, being Title Suit No.722 of 2023 has been preferred in the year 2023 before the Learned Civil Judge (Senior Division) 4th Court at Alipore.
- v)** The said Civil Suit filed by Naresh Agarwal, inter-alia, against Bishnu Agarwal is sought to restrain this Tribunal from passing any order in Section 9 petition. It is only for enforcement of the family settlement dated December 11, 2011 as amended, on August 27, 2018. Thus it has no bearing with the cause of action of the present CP, nor it constitutes a pre existing disputes.
- vi)** The suit was filed because Bishnu Agarwal had acted in breach of a family settlement had failed to pay the revised amount of Rs.21 crores as mentioned in the amended family settlement dated August 27, 2018.
- vii)** However, the amount, which is claimed to be default by CD, which is the subject matter of the present section 9 IBC application, being CP (IB) No.15/KB/2024, has not been claimed by Naresh Agarwal as the plaintiff in Title Suit No.722 of 2023.
- viii)** The civil suit being not filed for realization of the value of the unpaid debt of CD to OC arising out of non-payment for the goods supplied by IOCL to CD, has no bearing in the present case.

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

- 
- ix)** Further, CD has admitted the dues of OC as will appear from email dated July 4, 2023, issued from the official email ID of CD, namely, dheerajagarwal@beekaygroup.co (page-51 of CP and page-14 of Rejoinder of OC).
- x)** By way of an email of July 4, 2023, Shree Ram Electrocast has admitted that a sum of Rs.2,32,86,934/- is payable by it to OC and if IOCL agrees to give credit for Rs.81,22,896/-, then a sum of Rs.1,51,64,308/- is payable by it to OC. In para-1 of the said email, Shree Ram Electrocast admits that a sum of Rs.2,57,51,636.18 is payable by the Group Company of CD, namely, Samarth to OC, which is the subject matter of this IBC proceeding under Section 9 of the Code.
- xi)** This email is issued from dheerajagarwal@beekaygroup.co which appears to be the registered email id, i.e., dheerajagarwal@beekaygroup.co before IOCL while submitting its documents for registration.
- xii)** This Adjudicating Authority is not empowered to adjudicate or decide set off or counterclaim which is beyond the jurisdiction of the Adjudicating Authority as has been succinctly held in several judgments/decisions cited in the matter which are as under:-
- i. 2019 (4) SCC 17 [Swiss Ribbons] (Paras 52, 61, 63).**
 - ii. 2020 SCC OnLine NCLAT 224 [Vishal Doshi vs. Bank of India] (Paras 11, 16, 17).**

iii.2019 SCC OnLine NCLAT 549 [AP Coated Drums and Barrels Pvt. Ltd. vs. Haresh Dharmai] (Para 8).

xiii) It is also a settled law that personal affairs of Directors cannot bind the Company as the Company is a legal and distinct entity as held in:

iv. Sunil Bharati Mittal vs CBI (2015) 4 SCC 609 (Para).

v. S. K. Alagh vs State of Uttarpradesh (2008) 5 SCC 662

vi. Sanjay Dutt vs State of Hariyana – SC – decided on 02.01.2025.

We, thus, record absence of any “**pre-existing dispute**” that would render this petition a non-starter.

11) Coming to the fourth issue, we would notice as under:

- a. The DCA was executed on 22.06.2010.
- b. The family settlement dates back to 2011, post DCA, but does not refer to any DCA agreement entered into by the CD Samarth with the IOCL / OC as a DC agent of IOCL.
- c. Thus family settlement cannot have an effect of off-setting the dues that have admittedly emanated out of the DCA Agreement.
- d. The defence of the CD is thus not tenable.



12) Conclusion

a. Thus, in view of the foregoing discussions, we deem it appropriate to admit the present company petition.

13) In view of the order passed in C.P (IB) NO. 14/KB/2024, the application **vide IA(I.B.C)/393(KB)2025 is disposed of** accordingly.

ORDER

14) Accordingly, we pass the following orders:

(a) The application bearing C.P (IB) NO. 14/KB/2024 filed by **Kushal Polysacks Pvt. Ltd.**, Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Samarth Fablons Private Limited**, the Corporate Debtor, is admitted.

(b) There shall be a moratorium under section 14 of the IBC.

(c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024

the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(e) Mr. Swarup Ghosh having Registration No. IBBI/IPA-003/N00438-C01/2017-2018/11661 phone no. 9143091430, email: swarupghosh1@yahoo.co.in, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18,19, 20 and 21 of the Code.

(f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which

**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

**IA(I.B.C)/393(KB)2025
CP (IB) No. 14/KB/2024**

coercive steps will follow. There shall be no future opportunities in this regard.

- (g)** The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard. h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (h)** The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i)** In terms of section 9(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

In the National Company Law Tribunal

Division Bench, (Court-I), Kolkata

IA(I.B.C)/393(KB)2025

CP (IB) No. 14/KB/2024

(j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

15) C.P.(IB)/14(KB)2024 to come up on **17.10.2025** for filing the progress report.

16) The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

17) Urgent certified copies of this Order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Siddharth Mishra
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this, the 10th day of September, 2025

M. Jana (P.S.)