

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**



C.P.(IB)-738(MB)/C-III/2023

*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

M.K. Metals

Registered office at:

133, Kika Street, Gulal Wadi, 2nd Floor,
Mumbai - 400004

... Operational Creditor

Vs.

Kundan Industries Limited

402, Lukhi Empire, 4th Floor, SV Road, Near
Bali Ram Compound, Yadav Nagar, Dahisar
(East) Mumbai - 400068

... Corporate Debtor

Order pronounced on: 26.08.2025

Coram:

Sh. Hariharan Neelakanta Iyer
Member (*Technical*)

Ms. Lakshmi Gurung
Member (*Judicial*)

Appearances:

For the Operational Creditor : Adv. Shyam Kapadia a/w Adv. Kashish
Mainkar & Adv. Sonal Sengar i/b
Wadia Ghandy & Co.

For the Corporate Debtor : Adv. Amir Arsiwala a/w Adv. Ashwini
Gawde i/b ASR & Associates



Per: Sh. Hariharan Neelakanta Iyer, Member (Technical)

1. This Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**Code**) by M. K. Metals (**Operational Creditor/Petitioner**) for initiating Corporate Insolvency Resolution Process (**CIRP**) against M/s. Kundan Industries Limited (**Corporate Debtor/Respondent**) for alleged default in repayment of **Rs. 11,76,00,543/-** and interest amounting to Rs. 17,73,372/- plus additional interest thereon @ 9% p.a. as on 31.03.2023.
2. **Background of the case**
 - 2.1 The Petitioner is a partnership firm and is involved in the business of ferrous and non-ferrous metals. The Corporate Debtor is in the business of manufacturing stainless steel fasteners.
 - 2.2 It is stated the partners of the Petitioner and the directors/promoters of the Corporate Debtor are closely associated with each other.
 - 2.3 Since the year 2015, the Corporate Debtor procured raw materials from the Petitioner to manufacture and sell finished products and accordingly, invoices were raised by the Petitioner. It is submitted that the Corporate Debtor also sold the finished products to the Petitioner for which payments were made by the Petitioner.
 - 2.4 The Petitioner submits that the Corporate Debtor had been making delayed payments, however, given the close relations between the two companies, the Petitioner granted extensions. Further, at the Corporate Debtor's request, the amounts payable by the Petitioner to the Corporate Debtor against the sale of finished products, were also agreed to be partially set-off towards the payments payable by the Corporate Debtor to the Petitioner against the invoices raised for supply of raw materials.



- 2.5 Since the Corporate Debtor further delayed in making the payment. Since the outstanding dues rose to Rs. 12 crores, the Petitioner stopped supplying raw materials to the Corporate Debtor on and from 01.04.2021.
- 2.6 Thereafter, meetings were held between the management of the Corporate Debtor and the Shah Family Group of which the Petitioner is a part. In the said meeting, the Corporate Debtor confirmed that as on 31.05.2021, a principal amount of Rs. 35,91,62,678/- is due and payable by the Corporate Debtor towards all the entities of the Shah Family Group of which principal amount of Rs. 12,69,73,927/- was payable to the Petitioner. Though some miniscule payments made, however, the outstanding dues remained largely undischarged.
- 2.7 Thereafter, between May 2022 and August 2022, the management of the Corporate Debtor once again discussed with the Shah Family Group to formulate a repayment schedule and once again confirmed the outstanding amounts payable to all the entities of the Shah Family Group including the Petitioner.
- 2.8 Pursuant thereto, a Settlement Agreement dated 20.09.2022 was entered into between the Corporate Debtor and the Shah Family Group wherein the Corporate Debtor agreed to pay an amount of Rs. 35,76,21,386/- to the Shah Family Group. It is submitted that the Settlement Agreement *inter alia* records that Corporate Debtor owed a sum of Rs. 12,59,32,635/- to the Petitioner.
- 2.9 It is submitted that the Corporate Debtor made payments towards the instalments between October 2022 till December 2022 under the Settlement Agreement, however, from January 2023, the Corporate Debtor defaulted.
- 2.10 Consequently, the Shah Family group through its Advocates, issued a letter dated 08.03.2023 calling upon the Corporate Debtor



to make the outstanding payment. However, the Corporate Debtor failed to make payment.

2.11 On 14.04.2023, the Petitioner issued a Demand Notice under section 8 of the Code calling upon the Corporate Debtor to pay a sum of Rs. 11,93,73,915/- being the outstanding principal amount as on 31.03.2023.

2.12 The Corporate Debtor sent reply to the demand notice on 23.04.2023, denying any amounts due and payable by it to the Petitioner. The Petitioner through its Advocates sent letter dated 17.05.2023 as a response to the aforesaid reply.

2.13 Since no payment was forthcoming, the present petition has been filed. The date of default is stated to be 30.01.2023 and the present Petition has been filed on 26.07.2023.

2.14 The Petitioner submits that it was agreed that in case of default in making the payment, the amount shall be recovered along with interest thereon at the rate of 9% per annum from the date of default.

3. **Affidavit by the Petitioner**

3.1 The Petitioner has filed affidavit dated 28.08.2023 placing on record the Balance Sheet of the Corporate Debtor for the financial year 2021-22.

4. **Reply by Corporate Debtor**

The Corporate Debtor filed its reply and has, *inter alia*, raised the following objections:

4.1 The present Petition is not maintainable since the alleged default arises out of a settlement agreement. It is submitted that section 5(21) of the Code defines 'operational debt' as a debt claimed on the basis of goods or services rendered and unpaid instalments



under the settlement agreement cannot be treated as operational debt.

- 4.2 It is submitted that the companies under the Shah Family Group which includes the Petitioner, are mentioned as 'Creditors' and nowhere in the settlement agreement is there any indication that the alleged dues are based on any acknowledged invoice to be classified as operational debt.
- 4.3 As regards the claim of the Petitioner, it is submitted that no segregation or calculation has been given as to how and on what invoices basis that the final amount has been arrived.
- 4.4 The Corporate Debtor submits that the invoice which allegedly remains unpaid is prior to March 2020 and therefore, the petition is time-barred.
- 4.5 It is submitted that the ledger accounts from the financial years beginning 2015-16 to 2020-21 maintained by the Corporate Debtor with respect to the invoices raised by the Petitioner shows that for the period 25.03.2020 to 24.03.2021, the ledger balance with respect to the Petitioner is an excess amount of Rs. 34,77,308/-. Further, as per standard procedure, the payments made by the Corporate Debtor during the period 25.03.2020 to 24.03.2021 were to be adjusted towards the earlier pending invoices. Therefore, an excess payment of Rs. 34,77,308/- would go to show that up until 25.03.2020, all invoices stood cleared.
- 4.6 It is submitted that as per the Demand Notice sent by the Petitioner, the last invoice raised was on 19.03.2021 and admittedly, after 01.04.2021, the Petitioner stopped the services. Therefore, since the last invoice was raised on 19.03.2021, the Petition is also hit by the bar under section 10A of the Code.



- 4.7 It is further submitted that during the years 2018-2021, there were certain emails that were exchanged between the parties whereby the Corporate Debtor raised certain disputes with regards to disruption in the supply of raw materials. It is submitted that in the email dated 06.12.2018, the Corporate Debtor had pointed out that the Petitioner had promised that it would be supplying 400 tons material starting from 01.10.2019, however, the Petitioner had failed to deliver the same which had led to the Corporate Debtor to suffer losses.
- 4.8 It is submitted that the Corporate Debtor sent reminders to the Petitioner to reconcile and confirm the accounts/ledgers, however, no response came forth.
- 4.9 As regards the settlement agreement, it is contended that it was only because of the undue influence, pressure and force that the Corporate Debtor had signed the settlement agreement. It is submitted that the alleged dues had already been paid and further, the ledger accounts maintained by the Corporate Debtor with respect to the transactions that have taken place between the parties shows that excess payments have been made to the Petitioner.
- 4.10 As far as the interest is concerned, it is submitted that the Corporate Debtor never agreed upon the interest rate of 9% p.a. which finds mention in the Settlement agreement dated 20.09.2022 and the same has been inserted unilaterally by the Petitioner.

Analysis & Findings

5. We have heard the Ld. Counsel for parties and carefully perused the records.



6. Based on the averments, it is noticed that the Corporate Debtor had transactions with the entities belonging to one Shah Family Group. The Petitioner is a part of the Shah Family Group and is involved in the business of ferrous and non-ferrous metals. The Petitioner is stated to have supplied raw materials to the Corporate Debtor and raised invoices accordingly. It is also observed that the Corporate Debtor sold the finished goods to the Petitioner for which the Petitioner was making payments. However, neither any documents nor any invoices relating to the arrangement/transactions between the Petitioner and Transactions are annexed to the Petition.
7. It is the case of the Petitioner that the Corporate Debtor had failed to make the payment and consequently, the Petitioner stopped supplying raw material to Corporate Debtor from 01.04.2021.
8. Subsequently, a Settlement Agreement dated 20.09.2022 was executed between the Corporate Debtor and the Shah Family Group whereunder the Corporate Debtor had acknowledged that an amount of Rs. 35,76,21,386/- is due and payable by the Corporate Debtor to different entities of the Shah Family Group. In particular, an amount of Rs. 12,69,73,927/- was acknowledged by the Corporate Debtor to be payable to the Petitioner.
9. It is submitted that the Corporate Debtor paid the instalments from October 2022 to December 2022 and started defaulting from January 2023 onwards.
10. The Petitioner issued a Demand Notice dated 14.04.2023 under section 8 of the Code against the alleged breach under the Settlement Agreement. The Corporate Debtor sent reply on 23.04.2023, denying any amounts due and payable by it to the Petitioner. The Petitioner through its Advocates sent letter dated 17.05.2023 as a response to the aforesaid reply. Subsequently, the present Petition has been filed by the Petitioner under section 9 of the Code.



11. During the course of the hearings on the Petition, the parties to this Petition had sought repeated adjournments on the ground of settlement talks. However, since no settlement was brought on record, the matter was proceeded.
12. In reply to the Petition, the Corporate Debtor, though, not denied the transactions between the Petitioner and the Corporate Debtor, however, had challenged the maintainability of the Petition on following grounds:
 - (i) Pre-existing dispute;
 - (ii) Default under a settlement agreement cannot be treatment as an operational debt as the same does not fall within the definition of operational debt under section 5(21) of the Code;
 - (iii) There is no debt as the dues under the invoices stood discharged;
 - (iv) The claim is time-barred and is also hit by section 10A of the Code.
13. The Corporate Debtor has annexed a series of email exchanges alleging pre-existing dispute between the Petitioner and Corporate Debtor. Pertinently, the same set of email correspondences are annexed to the Petition itself by the Petitioner. Perusal of the emails show that the Corporate Debtor had expressed its displeasure on the services of the Corporate Debtor vide email dated 06.12.2019. Thereafter, reconciliation of accounts was attempted.
14. Subsequently, after the last invoice dated 24.03.2021, the Corporate Debtor vide email dated 17.05.2021 stated that there are no pending dues against the Petitioner. Relevant extract is reproduced below:

“M/s M K Metals

Dear Sir,

With reference to our previous requests and reminders in relation to the Account Statements as regards the Raw Materials Supply, we note that you have neither responded nor communicated to us for the same.

Hence, we would like to intimate you that the Raw Materials Accounts for M/s MK Metals stands negative .i.e. the payments made by us are in excess of your dues (no pending dues).



In view of the same, we would like to unilaterally revoke the Share Pledge Agreement dated October 2015 with immediate effect and we request you to kindly return our Equity Shares pledged under the Share Pledge Agreement.

We thank you for your support.

Yours Faithfully,

Kundan Industries Limited

Ripudaman Gupta Chairman

15. In response to the above email, the Petitioner sent reply dated 04.06.2021, *inter alia*, stated as follows:

Our reply to all of your allegations are as under.

2. Para 2 of your Email

Hence, we would like to intimate you that the Raw Materials Accounts for M/s MK Metals stands negative. i.e., the payments made by us are in excess of your dues (no pending dues).

Our Response

It is blatantly incorrect on your part to state without giving any Account that payments made by you are in excess of our Dues.

In this connection, we request you to provide us Copy of our Account in your Books of Account."

16. Certain emails have also been annexed by the Corporate Debtor alleging dispute between the parties with respect to their respective statements of account.
17. It is the case of the Corporate Debtor that there is no amount which is due and payable to the Petitioner under any of the invoices and it is submitted that the Corporate Debtor has in fact paid an amount excess to the outstanding due. To support this contention, the Corporate Debtor has annexed its Ledger Accounts showing that invoices raised by the Petitioner stood cleared.
18. On the other hand, the Petitioner has also placed on record the Ledger Account of the Corporate Debtor in the books of the Petitioner to substantiate its case of alleged default on part of the Corporate Debtor.



Further, upon a direction from this Tribunal, the Petitioner placed on record the financial statement of the Corporate Debtor for the year ended 31.03.2022. On perusal of the financial statement, we note that the 'Trade Payables' is shown as *nil*.

19. However, subsequently, as mentioned earlier, the parties executed a Settlement Agreement on 20.09.2022. It is pertinent to note that the Petitioner has filed the present Petition solely on the basis of alleged default committed by the Corporate Debtor under the Settlement Agreement dated 20.09.2022.
20. The arguments challenging the Settlement Agreement are two-fold. Firstly, Mr. Amir Arsiwala, Ld. Counsel appearing for the Corporate Debtor, submitted that there was no free consent and it was only because of the undue influence, pressure and force that the Corporate Debtor had signed the settlement agreement.
21. However, it is seen that there is nothing shown to suggest that the Corporate Debtor had taken any steps to challenge the Settlement Agreement which was executed on 20.09.2022. In fact, on the contrary, we note that the Corporate Debtor has paid the instalments of the period from September 2022 till December 2022 as per the Settlement Agreement and defaulted thereafter. Thus, the said contention cannot be considered as a tenable argument to render the Settlement Agreement invalid.
22. Secondly, Mr. Arsiwala contended that once a Settlement Agreement is executed between the parties, the same changes the nature of debt and such debt no more falls in the category of 'Operational Debt' as defined under section 5(21) of the Code. Reliance is placed on the following judgments:
 - i) *Permal Wallage Pvt. Ltd. vs. Narbada Forest Industries Pvt. Ltd.*
[NCLAT- Company Appeal (AT) (Ins) No. 36 of 2023]
 - ii) *Bajaj Rubber Company Pvt. Ltd. V. Saraswati Timber Pvt. Ltd.*
[NCLT- Company Petition No. (IB) No. 1441 of 2018]



- iii) *Nitin Gupta v. International land Developers Pvt. Ltd. [NCLT Company Petition No. (IB) No. 507 of 2020]*
- iv) *Delhi Control Devices (P) Limited Versus Fedders Electric and Engineering Ltd. [NCLT - Company Petition No. (IB) No. 343 of 2018]*

23. Per contra, Mr. Shyam Kapadia, Ld. Counsel for the Petitioner, submitted that the Settlement Agreement is merely in the nature of acknowledgements of the amounts due and payable by the Corporate Debtor to the Petitioner. It is further submitted that by and under the Settlement Agreement, the Petitioner has merely provided a payment mechanism/structure to the Corporate Debtor for payment of *inter alia* the claim amount, and therefore, the same cannot alter the nature of the debt. Reliance is placed on **Ahluwalia Contracts (India) Ltd. vs. Logix Infratech Pvt. Ltd. [2022 SCC Online NCLAT 3797]** and **Priya Kantilal Patel vs. IREP Credit Capital Pvt. Ltd. & Anr. [2023 SCC Online NCLAT 51]**.

24. We refer to **M/s Ahluwalia Contracts India Ltd. vs. Jasmine Buildmart Private Limited [Company Appeal (AT) (Ins) No. 1164/2023]**, decided on 01.09.2023, wherein the Hon'ble NCLAT after referring to its previous judgment passed in **Ahluwalia Contracts (India) Ltd. vs. Logix Infratech Pvt. Ltd. [2022 SCC Online NCLAT 3797]**, held as follows:

"11. In the above judgment, it is clearly held that Memorandum of Understanding entered between the parties was only with regard to mode and manner of payment and that too after final bill certificate which was duly signed by both the parties. It was held that Application under Section 9 ought not to have been rejected. Present is also a case where the operational debt arose out of contract awarded by the Corporate Debtor to the Operational Creditor, with regard to which RA Bill Nos.49 and 50 final bills were issued. Present is not a case that Corporate Debtor denied his liability to pay the bills rather during pendency of earlier Section 9 Application entered into settlement dated 16.12.2017 for payment of the amount. The above Judgment fully support the submissions of Appellant."



25. Hon'ble NCLAT in **Jasmine Buildmart** (*supra*) also looked into its judgment passed in **Trafigura India Private Limited vs. TDT Copper Ltd [Company Appeal (AT) (Ins) No. 742/2020]** and observed that:

"14. Learned Counsel for the Respondent has placed reliance on the judgment of this Tribunal in Company Appeal (AT) (Ins.) No.742 of 2020- "Trafigura India Private Limited vs. TDT Copper Ltd." for the proposition that breach of settlement agreement does not give any rise to operational debt.

This Tribunal in the said judgment made following observations: -

"The Adjudicating Authority has considered the Settlement Agreement and rightly come to the conclusion that default of instalment of Settlement Agreement does not come within the definition of 'operational debt' as it does not fall within the definition of additional debt as per Section 5(21) of the IBC and further prayer made by the Corporate Debtor that the matter be referred to the Arbitration under Section 8 of the Arbitration and Conciliation Act, the Adjudicating Authority has also rightly held that the role of National Company Law Tribunal is very limited while exercising its power under Section 7, 9 and 10 of the IBC, 2016, it is beyond the scope of Section 9 of the IBC."

15. We have already noticed the nature of operational debt claimed in Section 9 Application, which arose out of construction contract granted to the Operational Creditor by the Corporate Debtor. Settlement during earlier Section 9 proceeding was only mode of payment to the operational debt. The facts of the present case are clearly distinguishable. The judgment of this Tribunal in "Trafigura India Private Limited vs. TDT Copper Ltd." does not come to any aid to the Appellant.

26. From the above, it is clear that in cases where parties enter into a settlement agreement merely for the purpose of acknowledging the debt and structuring the repayment schedule, it need not necessarily change the nature of debt when it is concreted with sufficient evidence. Thus, guided by the above judgment, it is imperative to look into the nature of debt and the purpose of the Settlement Agreement to understand whether the Petition is maintainable or not.



27. In order to ascertain the character of the Settlement Agreement, it is important to see the relevant terms of the Settlement Agreement dated 20.09.2022 entered into between the Corporate Debtor (Debtor) and the Shah Family Group (Creditors) which are reproduced below:

*“C. Parties are family friends and have been having business relations with each other since more than a decade. In or around 2010, Debtors required financial assistance to keep their business running. On account of the close relations between the Parties, at the request of the Debtors, **the Creditors began advancing monies to the Debtors under various arrangements agreed by and between them.***

*D. While the Debtors have made some repayments to the Creditors, **a large portion of the monies advanced by the Creditors to the Debtors continue to remain outstanding.** In fact, the Debtors have acknowledged and confirmed that as on 31st May 2021, a principal amount of Rs. 35,91,62,678/- [Rupees Thirty Five Crores Ninety One Lac Sixty Two Thousand Six Hundred and Seventy Eight Only] continues to remain payable by them to the Creditors;*

*E. The Debtors further acknowledge and confirm that as on 31st July 2022, a total amount of Rs. 35,76,21,386 [Rupees Thirty Five Crores Seventy Six Lakhs Twenty One Thousand Three Hundred Eighty Six only] is payable by the Debtors to the Creditors [hereinafter referred to as the **“Outstanding Amount”**], a break-up whereof has been set out in Schedule – I hereto.*

2. Parties agree, accept, confirm and declare that in the event of the Debtors making payment of a total sum of Rs. 40,00,00,000 [Rupees Forty Crores Only] [“Settlement Amount”] to the Creditors strictly in the manner set out hereunder, then the Creditors may



accept the same in full and final settlement of the Outstanding Amount.

- a. A minimum sum of Rs. 25,00,000/- [Rupees Twenty Five Lac] per month to be paid on or before the 30th day of each month on and from 1st October 2022 till 31st March 2023;*
- b. A minimum sum of Rs. 50,00,000/- [Rupees Fifty Lac] per month to be paid on or before the 30th day of each month on and from 1st April 2023; and*
- c. The Debtors shall ensure that they pay to the Creditors and the Creditors receive from the Debtors the entire Settlement Amount i.e., Rs. 40,00,00,000 [Rupees Forty Crores Only] on or before 30th September 2027.*

3. Parties agree, accept, confirm, declare and clarify that in the event the Debtors commit any delay/ a single default in the payments to be made in each month as mentioned in Clause 2 above, then the Debtors shall be jointly and severally liable to forthwith pay to the Creditors and the Creditors shall be absolutely entitled to forthwith recover from the Debtors, the Outstanding Amount less amounts paid by the Debtors under this Agreement, if any, together with interest thereon at the rate of 9% p.a. from the date of default till the date of actual receipt/realization thereof by the Creditors.

4. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by a Sole Arbitrator to be appointed jointly by Mr. Shailesh Shah, Mr. Pankaj Shah on the one hand and Mr. Ripudaman Gupta, Chairman and Managing Director of Kundan Industries Limited on the other hand and arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996”

(Emphasis Supplied)



28. The definition of ‘operational debt’ is given in section 5(21) of the Code which reads as follows:

*“5(21) **“operational debt”** means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.”*

29. An operational creditor under section 5(20) of the Code means “a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”.

30. In **Mobilox Innovations Private Limited v. Kirusa Software Private Limited [2018 (1) SCC 353]**, the Hon’ble Supreme Court has observed as follows:

“28. ... The operational creditors are those creditors to whom an operational debt is owed, and an operational debt, in turn, means a claim in respect of the provision of goods or services, including employment, or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Government or to a local authority.”

31. In the present case, the demand notice dated 14.04.2023 was emphasising only on the default under the Settlement Agreement. It is pertinent to observe the Schedule I to the Settlement Agreement which is reproduced below:

SCHEDULE – I

M.K. METALS	12,01,38,198	
Add: Pending despatch of purported invoices	57,94,437	
	-----	12,59,32,635
R.B. METALS	12,21,48,532	
Add: Pending Interest	2,01,95,219	



	-----	14,23,43,751
INDIA METAL PRODUCTS	50,00,000	
Add: Pending Interest	9,00,000	
	-----	59,00,000
S. SITARAM EXIM PVT LTD	65,00,000	
Add: Pending Interest	13,65,000	
	-----	78,65,000
PREFERENCE SHARE CAPITAL OF 49,50,000 PREFERENCE SHARES OF RS. 10 EACH IN THE NAME OF THE FIRMS & FAMILY MEMBERS OF THE CREDITORS	4,95,00,000	
Add: PENDING PREFERENCE DIVIDEND FOR F. Y. 2018-19	28,80,000	
	-----	5,23,80,000
TOTAL OUTSTANDING PRINCIPAL AMOUNT PAYABLE BY KUNDAN INDUSTRIES LTD AS AT 31/07/2022		33,44,21,386
LOAN GIVEN BY SITARAM C. SHAH HUF (Rs. 50,00,000) & PANKAJ S. SHAH (Rs. 20,00,000) & M.K. METALS (Rs. 50,00,000) TO KUNDAN INDUSTRIES LTD DIRECTOR (BHARAT BHUSHAN GUPTA)		1,20,00,000
(Loan given to Krishan Kumar Gupta of Rs. 20,00,000 and to Ripu Daman Gupta of Rs. 20,00,000 by Sitaram C. Shah HUF not included & also Loan given to Krishan Kumar Gupta by Pankaj S. Shah (HUF) of Rs. 10,00,000 & by Shailesh S. Shah (HUF) of Rs. 10,00,000 not included here. Similarly payments received from Kundan Industries Ltd. in Sitaram C. Shah of Rs. 40,00,000 and in Pankaj S. Shah of Rs. 20,00,000 have not included. This is mentioned here just for		



information and understanding as these are cross entries of payments and repayments.		
LOAN GIVEN BY R.B. METALS TO FASTENER MULTITRADE INDIA PVT LTD		64,00,000
LOAN GIVEN BY M.K. METALS (33/- LAKHS) AND R.B. METALS (15/- LAKHS) TO VINAYAK METAL INDUSTRIES		48,00,000
TOTAL OUTSTANDING PRINCIPAL AMOUNT PAYABLE AS AT 31/07/2022		35,76,21,386

32. The Schedule, *inter alia*, records that Corporate Debtor owed a sum of Rs. 12,59,32,635/- towards the Petitioner. It is pertinent to note that the “pending dispatch of purported invoices” has been referred only in the Schedule to the Settlement Agreement. The Settlement Agreement, however, does not either explicitly acknowledge the existence of any invoice relating to goods or services or mention default, if any, in the payment under such invoice. Be that as it may be. Even if the purported invoice mentioned in Schedule I is to be considered, the amount is only Rs. 57,94,437/-, which is less than the threshold limit of Rs. 1 crore prescribed under section 4(1) of the Code.
33. It is further noted that in the present case, clause 1(C) of the Settlement Agreement states that, “... *On account of the close relations between the Parties, at the request of the Debtors, the Creditors **began advancing monies to the Debtors** under various arrangements agreed by and between them.*” The Settlement Agreement thus seem to be related to monies advanced by the entities of Shah Family Group, including the Petitioner, to the Corporate Debtor.



34. In view of the observations mentioned above, we are of the considered view that the dues under the Settlement Agreement dated 20.09.2022 cannot be regarded as 'operational debt' under section 5(21) of the Code.

35. Accordingly, the present Company Petition is **dismissed**.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)