



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CP (IB) No. 298/Chd/Pb/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:

Uno Minda Limited

(CIN L74899DL1992PLC050333)

Registered Address: B-64/1,
Wazirpur Industrial Area Delhi-110052

....Petitioner/Operational Creditor

VS

Marshall Machines Limited

Registered Address:C- 86 Phase V,
Focal Point, Ludhiana, Punjab

...Respondent/Corporate Debtor

Order delivered on: 29.08.2025

**CORAM: KHETRABASI BISWAL, MEMBER (JUDICIAL)
: KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)**

Present: -

For the Petitioner Companies

: Mr. Mr. Shailendera Singh, Advocate

For the Respondent

: Mr. Anand Chhibbar, Senior Advocate
with Mr. Vaibhav Sahni, Advocate,
Ms. Swati Saluja, PCA



JUDGEMENT

The instant application was filed on 23.11.2023 by **Uno Minda Limited** (Operational Creditor/Applicant), through its Authorised Representative Mr. Rahul Vardhan, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**” or “**IBC**”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as ‘CIRP’) against **Marshall Machines Limited** (Corporate Debtor/Respondent) for the default amount of Rs. 1,54,39,636 /- as on 12.10.2023. The date of default is 13.01.2023.

2. The averments made by the Operational Creditor/Applicant in its Application and as argued by the learned counsel are summarised as under:

i. The Operational Creditor issued Purchase Order bearing number 4200028427 dated 23.09.2022 ("PO No.1") and another Purchase Order bearing number 4200028773 dated 21.10.2022 ("PO No.2") to Corporate Debtor. Both PO No.1 and PO No.2 are collectively referred to as the "Purchase Orders", and pertain to the supply of CNC Robotic Automation Cell with Auto Gaging Machines and CNC Pre-Cut Machine (hereinafter referred to as the "Machineries"). It was agreed between the Operational Creditor and the Corporate Debtor that the Machineries



would be delivered within 12 to 16 weeks from the date of issuance of the respective Purchase Orders, and that time was of the essence. The Machineries under PO No.1 were valued at INR 4,46,04,000/- (Rupees Four Crore Forty-Six Lakh Four Thousand only), and under PO No.2 at INR 68,44,000/- (Rupees Sixty-Eight Lakh Forty-Four Thousand only).

ii. On 24.09.2022 the Corporate Debtor acknowledged the Purchase Orders reiterating the delivery terms as within "12-16 weeks".

iii. On 03.10.2022, the Operational Creditor paid an advance amount of INR 1,13,40,000/- (Rupees One Crore Thirteen Lakh Forty Thousand only) towards the supply of under PO No.1. On 11.11.2022, a further advance of INR 17,40,000/- (Rupees Seventeen Lakh Forty Thousand only) was paid in respect of PO No.2.

iv. The date of delivery expired on 16.12.2022 for PO No.1 and on 13.01.2023 for PO No.2. On 08.04.2023 the Operational Debtor demanded that the Corporate Debtor must refund the advance amount on an immediate basis.

v. On 13.05.2023 the Managing Director of the Corporate Debtor in response to the demand of the Operational Creditor for refund of the advance amount acknowledged that there is "shaking of confidence of suppliers and customers" of the Corporate Debtor and admitted to a severe financial crisis. The communication dated 13.05.2023 is annexed as Annexure A-9 to the petition.



- vi. On 17.06.2023 in response to Operational Creditor's demand for refund of advance, the Managing Director of the Corporate Debtor once again admitted that it was facing solvency issues and that it was producing only small machines to keep the operations running.
- vii. Upon the Corporate Debtor's continued failure to refund the advances, the Operational Creditor issued a legal notice on 20.06.2023, citing the time-bound nature of the contract and the Corporate Debtor's failure to supply the Machineries or return the advance, and indicated that it would initiate appropriate legal proceedings by the end of June 2023.
- viii. On 11.07.2023, the Managing Director of the Corporate Debtor, once again admitted the liability and communicated that the Corporate Debtor had been attempting to raise funds from its investors.
- ix. On 12.10.2023, the Operational Creditor issued a notice under Section 8 of the Code, which was duly delivered on 13.10.2023.
- x. On 07.11.2023, the Corporate Debtor responded to the Section 8 of the code notice dated 12.10.2023, admitting the outstanding liability but failing to make the requisite payment.
- xi. As per part IV of the petition, the default amount is Rs. 1,54,39,636 /- as on 12.10.2023. The date of default mentioned is 16.12.2022 for PO No.I and 13.01.2023 for PO No. 2. Vide order dated 23.09.2024, petitioner was directed to choose one date of default. In



compliance, the petitioner filed an affidavit and chose 13.01.2023 as date of default.

3. In this context, defense placed by the corporate debtor in its affidavit in reply and submissions made thereon and as presented/argued by the learned counsel for the corporate debtor are summarized as under:

- i. The present petition is devoid of merit and has been filed with the sole intent to harass and malign the reputation of the Respondent.
- ii. The application under Section 9 of the Code has been wrongly invoked as a tool for recovery, contrary to the settled legal position that IBC is not a substitute for civil recovery proceedings.
- iii. The applicant has not approached this Tribunal with clean hands and has initiated the proceedings with a malafide intent to extract undue benefits by invoking the provisions of the IBC.
- iv. The Applicant has failed to establish the existence of an operational debt or any default as defined under the IBC. The Corporate Debtor denies liability towards the alleged outstanding amount.
- v. The present application is misconceived and legally untenable as the Applicant does not fall within the meaning of an 'Operational Creditor' in terms of settled judicial interpretation by the Hon'ble Supreme Court.
- vi. The Respondent is engaged in the design, development, and manufacture of advanced machine tools, including patented multi-spindle CNC machines, robotic automation systems, and intelligent IOT-enabled



equipment. Given the complexity of such products, the Respondent manufactures machines as per customer-specific requirements and accepted proposals. Once the quotation is approved, the manufacturing begins, requiring significant capital investment.

vii. The Petitioner has stated two dates of default being 16.12.2022 and 13.01.2023.

viii. The present petition is not maintainable before this Tribunal in view of Clause 17 of the Purchase Orders dated 23.09.2022 and 21.10.2022, which confers jurisdiction upon the courts in Delhi in case any dispute arises between the parties.

ix. The Respondent suffered significant financial losses in FY 2022–23 due to strikes, industrial unrest, and agitations, resulting in disruption of business operations and depletion of working capital. To revive its operations, the Respondent secured investment through a rights issue, announced on the NSE in October 2023, and funds were infused into the company in November 2023 after compliance formalities.

x. The Respondent endeavours to deliver Machineries on time, but delays beyond its control cannot be attributed as default. This limitation was clearly stated in the quotation forming the basis of the Purchase Orders (Annexure R/2 of the reply).

xi. The Respondent had kept the Applicant informed of its financial position and manufacturing progress through emails dated 13.05.2023,



17.06.2023, and 11.07.2023, and reassured delivery of the machines at the earliest opportunity.

xii. The Applicant issued a demand notice under Section 8 on 12.10.2023 seeking recovery of approximately ₹1.54 crore for the two Purchase Orders, although PO dated 21.10.2022 had already been cancelled by the Applicant via email dated 08.04.2023. The Respondent responded to the said notice on 07.11.2023, reiterating its commitment to deliver the machines and prioritise completion of the remaining order.

xiii. Following infusion of investor funds in October–November 2023, the Respondent resumed manufacturing of the customized machinery ordered by the Applicant, on which an amount of approximately ₹2.5 crore had already been spent and which remains in semi-finished form.

xiv. The Applicant had specifically cancelled PO No. 4200028773 (i.e. PO No. 2) and instructed adjustment of the advance against PO No. 4200028427 (i.e. PO No. 1). This communication was made via email dated 04.08.2023.

xv. The PO dated 23.09.2022 has never been cancelled and continues to subsist. The Applicant has acknowledged its validity on several occasions, including ongoing WhatsApp communications regarding the machine's delivery (Annexure R/4 of the reply).

xvi. On 18.11.2023, the CEO of the Applicant sought a delivery schedule and asked the Respondent to coordinate with its purchase head. A meeting



was scheduled for 21.11.2023, whereas the present petition was filed prematurely on 20.11.2023.

4. In this context, rejoinder was placed by the applicant, the submissions made thereon, apart from reiterating facts already placed in the petition, are summarized as under:

i. The applicants have denied the averments made by the Corporate debtor which are contrary to the submissions made by the applicant.

ii. There are two more separate insolvency proceedings other than the present petition pending against this Corporate Debtor filed by two separate creditors, which the Corporate Debtor has managed to keep it pending by adopting protraction tactics. The reply of the Corporate Debtor is a similar attempt in the present case. The debt in the present case arises out of advance payments made by the Operational Creditor for supply of certain Machineries within 12 weeks. The parties agreed that time was of utmost essence. The contract was rescinded by the Operational Creditor due to failure of the Corporate Debtor to supply the Machineries on time and demand for advance payment was made, but the Corporate Debtor is unable to repay this debt.

5. The Petitioner also filed written statements on 14.08.2024. The submissions as made therein are summarised hereunder:



- i. The Corporate Debtor's assertion that the contract remains alive is contradicted by the legal notice dated 20.06.2023, which clearly stated the consequences of non-performance within the specified time.
- ii. The Operational Creditor, through the notice, gave the Corporate Debtor a final opportunity to perform by June 2023, failing which the contract would be rescinded and legal proceedings would follow. The contract was accordingly terminated, and the Operational Creditor procured the Machineries from alternate sources to mitigate loss.
- iii. The Corporate debtor relies on an incomplete WhatsApp message regarding a meeting scheduled on 21.11.2023. However, the full message shows that the Operational Creditor's employee declined to engage, citing legal involvement.
- iv. Despite service of Section 8 notice and filing of this petition, the Corporate Debtor continues to assert the contract is subsisting, which is untenable.
- v. Reliance was placed on the Delhi High Court case of ***Andard Mount v Curewel (India) Ltd.*** AIR 1985 Delhi 45 where it has repeated the legal principle that ordinarily in contracts for sale of goods time is of essence because the goods are a link in the chain of supply. In this case the contract specifically provided that time is of essence, and because it was to be used for further supply the Operational Creditor rescinded the contract and bought the goods from other vendors. It held that in contracts for sale of



goods, time is ordinarily of the essence, particularly when the goods are part of a supply chain. Here, the contract specifically included such a clause.

vi. The High Court further held that repudiation of contract can be implicit or explicit and where the supplier does not perform despite reasonable time having elapsed, the contract stands repudiated. In this case the repudiation has been explicit through the legal notice dated 20.06.2023 and the section 8 notice. Therefore, upon repudiation of the voidable contract (because of time having elapsed), the parties ought to be restored in the same position as if there had been no contract

vii. The Corporate debtor is facing insolvency, with two other pending IBC petitions before this Tribunal, and has failed to appear in one of them. The Corporate debtor also owes ₹33.77 crores to financial creditors, further demonstrating its financial distress.

viii. The claim is in respect of machineries and the Operational Creditor therefore qualifies as Operational Creditor. Reliance is placed on judgement by the Supreme Court in **Consolidated construction consortium limited v Hitro Energy SC CA 2839/2020**. In Hitro Energy, the Supreme Court reminded that where the dispute is not on quality of service or recovery of damages but simply recovery of advance payment, it cannot be termed as a recovery proceedings. The facts of the present case are similar to Hitro Energy and the Corporate debtor in the present case is clearly facing solvency issues. Therefore, the Petition ought to be admitted at the earliest.



6. We have heard the learned counsel for the applicant as well as for the respondent and perused the material available on record carefully.

7. The admitted position that emerges from the record is that the Operational Creditor placed two Purchase Orders dated 23.09.2022 and 21.10.2022 pursuant to an invitation to offer made by the Corporate Debtor dated 11.10.2022. In furtherance of these Purchase Orders, the Operational Creditor paid advance amounts of ₹1,13,40,000 and ₹17,40,000 respectively, aggregating to ₹1,30,80,000. The agreed delivery period was 12–16 weeks, and the delivery deadlines, therefore, expired on 16.12.2022 and 13.01.2023, respectively at the end of 12 weeks and on 13.01.2023 and 10.02.2023 respectively at the end of 16 weeks.

8. The Corporate Debtor failed to deliver the machineries within the stipulated time. Thereafter, the Operational Creditor repeatedly demanded refund of the advance payments. The communications placed on record—particularly emails dated 13.05.2023 and 17.06.2023 from the Managing Director of the Corporate Debtor—clearly admit the existence of a financial crisis and an inability to complete the order. These communications also record the Corporate Debtor’s continuing promise to deliver the machineries, although no delivery ultimately occurred.



9. On 20.06.2023, the Operational Creditor issued a legal notice specifically invoking breach of contract and warning that failure to perform by the end of June 2023 would lead to rescission of the contract and initiation of legal proceedings. The Corporate Debtor again acknowledged its inability to refund the advance and instead stated that it was attempting to secure funding.

10. In these circumstances, the Operational Creditor treated the contract as rescinded. The Operational Creditor proceeded to source the required machineries from alternative vendors to mitigate loss. Vide email dated 08.04.2023 by the Applicant, PO-2 was cancelled and advance was to be adjusted upon the PO-1. This would mean that as on the day, the Applicant gave indirect assent for continuous contract as for PO-1. For ready reference, the email dated 08.04.2023 is reproduced below

From: Gaurav Sarup
Sent: 04/08/2023 07:53 +00:00
To: Arjun Pawar/LPS/NPC/BAWAL; Kailas Labde/AWTW/MFG/SUPA; avp.projects@marshallcnc.com; 'Siddhant Sarup'
Cc: Faruk Namiyar/AWTW/MFG/SUPA; Rajaram Shinde/AWTW/MFG/SUPA; Govind Biradar/AWTW/MFG/SUPA; Rajiv Ranjan/AWTW/FIN/SUPA; Prashant Thorat/AWTW/MFG/SUPA; Dipak Hon/AWTW/MFG/SUPA; Rajesh Gaikwad/AWTW/MFG/SUPA; Tanmay Gupta/CORP/MATL/MNSR; Sachin Tambe/AWTW/FIN/SUPA; Sachin Tambe/AWTW/FIN/SUPA; Surender Singh/LPS/DMEO/BAWAL; Deepak Pathak/AWTW/MFG/SUPA; Rajesh Goel/AWTW/OH/SUPA; Kishor Dukare/AWTW/BH/SUPA
Subject: RE: VERY BEST PRICE for Pre-Cut Machine

EXTERNAL EMAIL: This email originated from outside of Uno Minda. Do not click or open attachments or URLs unless you recognize the sender and know the content is safe.



Dear Sirs,

Please see the mail received on 16th March. The same was intimated to our office & fed into our ERP.

As our Plant is going to ready for production so can not wait further, hence we are cancelling the PO.

Do not process this machine, PO No 4200028723 attached for your reference.

Against this PO we have released advance of INR 17,40,000, This will be adjusted against PO No 4200028427.

Thanks & Regards,

Kailas Labde
Supply Chain Management
UNO Minda Limited
(Formerly known as Minda Industries Ltd.)
(LPS Domain / Alloy Wheel 2W Division)

11. However, even after that assent, the delivery was not made. The Operational Creditor issued a legal notice on 20.06.2023 and a statutory demand notice under Section 8 of the IBC was issued on 12.10.2023, duly delivered on 13.10.2023. The Corporate Debtor responded on 07.11.2023 admitting the liability, yet failed to discharge the outstanding dues.

12. The objection raised by the Corporate Debtor that the contract remains valid is not supported by facts. Once the Operational Creditor had rescinded the contract on account of non-performance, vide issuing the legal notice, there was no legal basis for the Corporate Debtor to unilaterally treat the contract as subsisting.

13. It is noted that the plea of pre-existing dispute is misconceived. The communications exchanged after the expiry of the delivery period were at best attempts to delay performance and do not constitute any real or genuine dispute.



There is no record of any invocation of arbitration, suit for specific performance, or any tangible legal proceeding initiated by the Corporate Debtor to assert its rights under the alleged subsisting contract. On the contrary, the Corporate Debtor has throughout admitted its inability to perform the contract due to financial difficulties.

14. The Corporate Debtor's reliance on a jurisdiction clause in the Purchase Orders is also unsustainable. The present application has been filed under a special statute, and it is well-settled that jurisdiction clauses in commercial contracts cannot override the statutory jurisdiction conferred upon the NCLT under the IBC. Reliance can be placed on judgment of Hon'ble NCLAT in ***Binani Industries Limited vs. Bank of Baroda and Anr.*** Company Appeal (AT) (Insolvency) No. 82 of 2018 wherein it was held that 'Corporate Insolvency Resolution Process'/ insolvency proceedings is not a 'suit' or a 'litigation' or a 'money claim' for any litigation; No one is selling or buying the 'Corporate Debtor' a 'Resolution Plan'; It is not an auction; it is not a recovery, which is an individual effort by the creditor to recover the dues through a process that had debtor and creditor on opposite sides; and it is not liquidation. The object is merely to get resolution brought about, so that the Company does not default on dues.

15. The Corporate Debtor also contends that the petition amounts to a recovery proceeding and is not maintainable under Section 9. We are not inclined to accept



this submission. In the present case, the default arises not from any dispute over quality or partial delivery, but from complete non-performance and retention of advance amounts. The Hon'ble NCLAT, New Delhi in the matter of **Sanam Fashion & Design Exchange Limited vs Ktex Nonwovens Private Limited** Company Appeal (AT) (Ins.) No. 1234 of 2023 has held that a debt arising out of an advance paid towards the supply of goods and services would constitute an Operational debt in terms of Section 5(21) of the code. Hence, the claim is thus squarely covered under the definition of “operational debt” as per Section 5(21) of the Code.

16. We also find that the Operational Creditor had initially indicated two dates of default corresponding to the two Purchase Orders. Upon direction by this Tribunal, the Applicant opted for 13.01.2023 as the date of default by affidavit dated 04.10.2024. Thus, the question of limitation or defect in the filing does not arise.

17. We are of the considered view that the present petition satisfies the necessary conditions under Section 9(5)(i) of the Insolvency and Bankruptcy Code, 2016. The operational debt is above the statutory threshold, the default is clearly established, there is no pre-existing dispute, and the statutory notice under Section 8 has been duly issued and responded to without discharge of the debt.



18. In the view of facts, it is clear that the Respondent has defaulted in the payment of its debts. On the basis of the facts the application is otherwise defect free & on record. Accordingly, we admit this application and order as under:

i. Corporate Debtor – **Marshall Machines Limited** is admitted in the Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016.

ii. The moratorium under section 14 of the Insolvency & 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, 2002;

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.

iii. The order of moratorium shall have 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



the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

iv. As proposed by the Operational Creditor, we appoint Kanti Mohan Rustagi having registration No. IBBI/IPA-002/IP-N00097/2017-18/10240; to act as an IRP under Section 13(1)(c) of the IBC, 2016 in respect of the CIRP of the corporate debtor. IRP shall conduct the Corporate Insolvency Resolution Process of the corporate debtor as per the provisions of the Insolvency & Bankruptcy Code, 2016 read with Regulations made thereunder.

v. The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

vi. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

vii. The IRP shall perform all functions as contemplated, inter alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and



co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

viii. The IRP shall be under 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 Insolvency & Bankruptcy Code, 2016.

ix. The Operational Creditor is directed to pay an advance of Rs. 4,00,000/- (Rupees Four Lacs only) to the IRP to meet out the initial CIRP cost within two weeks from the date of receipt of this order for smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per Rules.

x. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven working days and upload the same on website immediately after pronouncement of the order.



xi. The IRP shall also serve a copy of this order to various departments such as Income Tax, GST, State Trade Tax and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/ employee's associations so that they are timely informed about the initiation of CIRP against the corporate debtor.

xii. The commencement of the Corporate Insolvency Resolution process shall be effective from the date of this order.

19. As a result, the Company Petition CP (IB) No. 298/Chd/Pb/2023 stands allowed.

Sd/-

(Kaushalendra Kumar Singh)
Member (Technical)

Reet

Sd/-

(Khetrabasi Biswal)
Member (Judicial)