



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
*[Through Physical hearing/VC Mode (Hybrid)]*

**ITEM No.11**  
**C.P (IB) No. 143/BB/2024**

**IN THE MATTER OF:**

M/s. Fuso Glass India Pvt Ltd	....	Petitioner
Vs		
M/s. Milestone Aluminium Company Pvt Ltd	....	Respondent

**Order under Section 9 of I & B Code, 2016**

**Order delivered on: 08.09.2025**

**CORAM:**

**SHRI. SUNIL KUMAR AGGARWAL**  
**HON'BLE MEMBER (JUDICIAL)**

**SHRI. RADHAKRISHNA SREEPADA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Petitioner : Shri Gaurav Kumar  
For Respondent : None

**ORDER**

1. Heard the matter.
2. **C.P is admitted by separate order.**
3. **List on 06.11.2025 for updation by IRP.**

-Sd-  
**RADHAKRISHNA SREEPADA**  
**MEMBER (TECHNICAL)**

-Sd-  
**SUNIL KUMAR AGGARWAL**  
**MEMBER (JUDICIAL)**

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**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**  
*[Through Physical hearing/VC Mode (Hybrid)]*

**CP (IB) No.143/BB/2024**  
*(U/s. 9 of the IBC, 2016 r/w Rule 6 of the IBC (AAA) Rules, 2016.)*

**IN THE MATTER OF:**

**M/s. Fuso Glass India Private Limited**

Fuso House 91, Poonamalle High Road,  
4<sup>th</sup> Floor, Egmore, Chennai- 600084.

... Petitioner/Operational Creditor

*Versus*

**M/s. Milestone Aluminium Company Private Limited**

No. B-171/202, 4<sup>th</sup> Main, 2<sup>nd</sup> Stage,  
Peenya Industrial Estate  
Bangalore- 560058.

... Corporate Debtor

**Order delivered on: 08.09.2025**

**Coram:** 1. Hon'ble Shri. Sunil Kumar Aggarwal, Member (Judicial)  
2. Hon'ble Shri. Radhakrishna Sreepada, Member (Technical)

**ORDER**

1. The present petition is filed on 07/11/2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by **M/s. Fuso Glass India Private Limited** (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Professional Process against **M/s. Milestone Aluminium Company Private Limited** (hereinafter referred as 'Corporate Debtor'/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of **Rs. 3,73,08,725.45/-** (Rupees Three Crores Seventy-Three Lakhs Eight Thousand Seven Hundred and Twenty-Five and Four Five Paise Only). The date of default mentioned in the Part IV of Form 5 is **31/08/2021**, which is also mentioned in the

**CP (IB) No.143/BB/2024**



Record of Default in Form D issued by NESL, at pg. 363. Affidavit U/s 9(3)(b) is placed at page 332 as *Annexure V*, while Demand Notice dated 15.07.2022 under Section 8(1), Form 3 was attached at Page 11, as *Annexure I* of the Petition.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:
  - i. The Operational Creditor placed orders with the Corporate Debtor for supply of glass. Invoices for the same has been raised from 09.04.2014 up to 31.08.2021, marked as *Annexure V* to the Petition.
  - ii. Payment has been due from Invoice No. 10116170104217 dated 31.12.2026, which is a running account. Last invoice no. CH1920103471 was raised on date 30.10.2019 and last payment was received on 31.08.2021.
  - iii. The principal amount of INR. 1,70,09,556.85 (Rupees One Crore Seventy Lakhs Nine Thousand Five Hundred Fifty-Six and Eight Five Paise Only) and INR 1,94,32,443.60/- (Rupees One Crore Ninety-Four Lakhs Thirty-Two Thousand Four Hundred Forty-Three and Six Zero Paise Only) is an interest amount at the rate of 24% p.a. calculated from the date of each invoice.
  - iv. An amount of INR. 8,66,725/- is the differential tax liability due to delay in submission of Form C by the Corporate debtor. The workings of differential tax liability have been attached on page 19 of the Petition.
  - v. Demand Notice was sent by the Petitioner to the Corporate Debtor, marked as *Annexure I* to the Petition, both via post and email dated 15.07.2022. A reply to the same was received on 28.07.2022, denying the liability, marked as *Annexure VII* to the Petition.
3. On 07/10/2024, the Respondent filed its statement of objection, vide Diary No: 5747 and contended as under:
  - i. The Application is not maintainable and the claim is barred by limitation admittedly the Operational Creditor is claiming the amounts in respect of the invoices allegedly raised in 2016. The Application is filed in 2024 after a delay of 8 years.



- ii. It is settled position of law that the insolvency proceedings are not money recovery suits. The Corporate Debtor is a solvent viable company and has made profits, tax returns for the same are produced as **Annexure 1**. The Application is malafide and is liable to be dismissed with exemplary costs. Therefore, the remedy of the Applicant is to approach the civil courts and file a suit for recovery of money. The Applicant has filed a fraudulent application to try and recover a non-existent debt which even by their own pleadings is barred by limitation.
  - iii. The Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, as held by the Hon'ble Supreme court in *B.K Educational Services Pvt Ltd vs. Parag Gupta and Associates*.
  - iv. It is settled position of law as held by the Hon'ble Supreme court that the invoices for a period of 3 years prior to date of filing the application have to be looked into and the said invoices have to cross the threshold of Rs 1,00,00,000/- Rupees One Crore. Admittedly the last invoice raised by the Applicant is 30-10-2019 and therefore the entire case is hopelessly barred by limitation.
4. The Learned Counsel for the Petitioner filed its rejoinder vide Diary No:6461 dated 18/11/2024 as under:
- i. The respondent's argument that the application is barred by limitation, is vehemently denied. It is submitted that the application was e-filed on 28.10.2022, (Snapshot of DMS attached as *Annexure 1*) and date of default is, 31.08.2021. Subsequently, it is a well-established principle that the date of default in a running account is the last date of payment and period of limitation commences from that period and in the present case is 31.08.2021 which is the last payment remitted by the corporate debtor to the Applicant. The same view was held by the Hon'ble NCLAT in *Style Fashion vs. Aditya*



*Birla Fashion and Retail Limited, Company Appeal (AT) (Insolvency) No. 1679 of 2023:*

*“12. In view of the last payment having been made on 28.04.2017 as noted above, the fresh period of limitation would start from that date and the Operational Creditor was entitled for taking benefit of 3 years' period of limitation from the date of the last payment..”*

- ii. The Respondent is deliberately attempting to mislead the Hon'ble NCLT regarding the due date and default of the debt. A co-joint reading of Section 3(11) and 3(12) of the IBC clarifies that “debt” refers to any liability arising from a claim, including financial and operational debts, and “default” occurs when the debt, or any part of it, becomes “due and payable” but remains unpaid by the debtor. In this case, the payments were made on ad hoc basis and outstanding amount for the invoices are taken on FIFO, detailed in Annexure 5, Volume 2, Page 331 of the petition. The default date is thus recorded as 31.10.2021.
- iii. In addition to above, the default date of 31.08.2021 is clearly recorded in Form D of Nesl. This status under Regulation 21 of the IU Regulations confirms that the debtor was notified three times to confirm or dispute the default, with no response received, thus solidifying the default. Thereby, it is treated as acknowledgment of the debt, leaving no room for dispute. Thereby the date of default is crystalised.
- iv. Subsequently, the respondent overlooks that limitation can be extended if the corporate debtor acknowledges the debt in any form, including part payments. This was concurred by the Hon'ble NCLAT in *Jayprakash Vyas vs Prabhat Steel Traders Pvt. Ltd and other, Company Appeal (AT) (Insolvency) No. 1238 of 2019* wherein: *“Thus, it is clear that when part payment is made before the expiration of the prescribed period of limitation by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made.”*
- v. The email correspondences between the Corporate Debtor and the Applicant, dated from February to March 2020 illustrate the Corporate Debtor's conduct. Throughout this correspondence, the Corporate Debtor repeatedly presented various excuses to delay the payment to the Applicant,



which highlights a continuous acknowledgment of the outstanding debt. Such behaviour undermines the Respondent's assertion that the application is barred by limitation, as each acknowledgment or partial payment resets the limitation clock in accordance with Sections 18 and 19 of the Limitation Act, 1963. The Applicant relies on the case of *M/S. SSP Private Limited Vs M/S. Govind Jee Dairy Milk Private Limited in Company petition (IB) No. 532 of 2022* by the Hon'ble NCLT New Delhi Bench wherein it was held that; “17. However, it is also trite now that an application under Section 9 of the Code, 2016 would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of default when the debt became due, if there were an acknowledgment of the debt Or part payment by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years as envisaged under Section 18 of the Limitation Act, 1963 or under Section 19 of the Limitation Act, 1963 respectively...”

- vi. Moreover, it is submitted that the bank statements provided by the applicant clearly show that the corporate debtor made several payments between 04.02.2017 and 31.08.2021, Attached in Annexure -3 of Volume 2 of the Petition page no 207-323. These payments act as acknowledgments of debt.
5. The Counsel for the Petitioner & Respondent have filed Written Submissions vide Diary Nos. 3212 and 3248 dated 16/06/2025 and 17/06/2025 respectively, wherein contentions made earlier have been reiterated and the same is taken on record.
6. The Respondent has relied and placed on record the following citations:
  - i. *B.K Educational Service Pvt Ltd Vs Parag Gupta and Associates (CDJ 2018 SC 1062 equivalent 2018 AIR SC 5601)*
  - ii. *M/s Next Education India Pvt Ltd Vs M/s K12 Techno Services Pvt Ltd (LiveLaw (SC) 270)*
  - iii. *M/s Invent Asset Securitisation and Reconstruction Pvt Ltd Vs M/s Girnar Fibres Ltd. LiveLaw (SC) 423*
  - iv. *Hindustan Forest Company Vs Lalchand and Others (CDJ 1959 SC 078 equivalent 1959 AIR SC 1349)*
  - v. *State of Punjab versus Gurudev Singh (1991) 4 SCC 1*



7. The Operational Creditor/ Petitioner has filed, vide diary no. 4658 dated 22.08.2025, Audited Financial Statements for the Financial Year 2013-14 and 2016-17, which are taken on record. We have pursued the records available and also heard Learned Counsels based on which we observe the following:
8. The primary contention raised by the Respondent pertains to the issue of limitation. The present Petition has been filed on 07.11.2022, whereas the date of default, as indicated in Form 5, is reflected as 31.08.2021, being the date of the last payment made by the Corporate Debtor. The said date is further corroborated by the Record of Default in Form D issued by NeSL. Accordingly, the Petition is well within the prescribed period of limitation.
9. The last invoice was issued on 30.10.2019. Even if the said date is considered as the date of default, the last payment having been made on 31.08.2021, the present Petition is within the period of limitation. In this context, reference may be made to the judgment of the Hon'ble NCLAT in *In Style Fashion vs. Aditya Birla Fashion and Retail Limited*, Company Appeal (AT) (Insolvency) No. 1679 of 2023, wherein, in paragraph 12, it has been observed and held that:

*"12...We also notice that part payment of Rs. 51,823 made on 28.04.2017 by the Corporate Debtor has also been brought on record and the relevant bank statement has been placed at pages 125-126 of the APB. In view of the last payment having been made on 28.04.2017 as noted above, the fresh period of limitation would start from that date and the Operational Creditor was entitled for taking benefit of 3 years period of limitation from the date of last payment. Therefore, the Section 9 application was filed well within time. Hence the objection on the ground of limitation raised by the Corporate Debtor basis the date of default mentioned in the demand notice while choosing to ignore the date of default shown in the Section 9 application lacks merit."*
10. Further as per the case of *Dena Bank Vs. C. Shivakumar Reddy and Anr. in Civil Appeal No.1650 of 2020* it is clear that even an offer of One-Time Settlement made within the period of Limitation can be construed as an 'Acknowledgement of Debt'. Any acknowledgement in the Balance Sheets, or any part payments made thereunder can be construed as an 'Acknowledgement' under 'Section 18 of the Limitation Act. Therefore, limitation is satisfied.
11. It is certified that the Trade Receivables, in the financial statements filed by the Petitioner, include amount due from the Corporate Debtor. Further, the Record of



Default issued by NeSL in Form D reflects that the status of the debt is 'deemed to be authenticated' and that the debt is not 'disputed.' The Respondent has not raised any contention regarding the existence of a pre-existing dispute, either in reply to the demand notice or in the present proceedings. In accordance with the ratio of the judgement of Hon'ble Apex Court *Mobilox Innovations Private Limited v. Kerusa Software Private Limited*, if there is no record of dispute in the information utility, nor any documents submitted to show any dispute, it cannot be held that there is a pre-existing dispute.

12. However, the Respondent, in its reply to the Demand Notice dated 28.07.2022, has disputed the claimed default amount of ₹3,73,08,725.45/-. However, no material in support of such dispute has been placed on record, nor has any specific plea substantiating the same been mentioned in the objections filed before this Tribunal. Hence, the default amount, as reflected in Form 5, is ₹3,73,08,725.45 (comprising ₹1,70,09,556.85 towards the principal and ₹1,94,32,443.60 towards interest). Even if the component of interest is excluded from consideration, the principal amount alone satisfies the threshold requirement of being well above ₹1,00,00,000/- as stipulated under the Code.
13. Accordingly, this adjudicating authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Corporate Debtor. Therefore, the instant Company Petition bearing **CP (IB) No. 143/BB/2024 is admitted** against the Corporate Debtor **M/s. Milestone Aluminium Company Private Limited** and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14 of the Code, imposing following prohibitions to be complied with by all concerned:
  - a. The institution of suits or continuation of pending suits or proceedings against the Project of 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 Securitization 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;
14. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
15. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
16. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.;
17. This bench appoints **Ms. Rashmi Jadhav**, Registration No. IBBI/IPA-001/IP-P02863/2024-2025/14399, having registered address: No. 18, Trupti, 3rd Cross, 3rd Stage, Binny Layout, Bangalore, Karnataka, 560040, e-mail: **rashmi@vkca.com** as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC. The IRP shall file his written consent within one week from today.
18. The Operational Creditor shall deposit a sum of **Rs 2,00,000/- (Rupees Two Lakhs 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.



19. The Interim Resolution Professional shall after collation of all the claims received against Milestone Aluminium Company Private Limited and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send monthly progress reports to this Authority.
20. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. **The Registry is also directed to send the copy of this order to the Interim Resolution Professional at her e-mail [rashmi@vkca.com](mailto:rashmi@vkca.com) address forthwith.**

**-Sd-**

**(RADHAKRISHNA SREEPADA)  
MEMBER (TECHNICAL)**

**-Sd-**

**(SUNIL KUMAR AGGARWAL)  
MEMBER (JUDICIAL)**