



**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI**

**CP (IB) No. 13/GB/2022**

**Coram:**

**Hon'ble Shri Deep Chandra Joshi, Member (J): Hearing through  
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.04.2023**

In the matter of:

M/S Web Printz

... Operational Creditor

Versus

The Managing Director

The Assam State Textbook Production & Publication Corporation Ltd.

... Corporate Debtor

Section: Under Section 9 of IBC, 2016 under Rule 6 of the Insolvency and  
Bankruptcy (Application to Adjudicating Authority) Rules, 2016

S. NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	NONE	-	-	Present in Video Conference
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**ORDER**

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, through Video Conferencing vide separate sheet.

**Sd/-**

**(Prasanta Kumar Mohanty)  
Member (Technical) &  
Adjudicating Authority**

**Sd/-**

**(Deep Chandra Joshi)  
Member (Judicial) &  
Adjudicating Authority**



**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH  
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**CP (IB) No. 13/GB/2022**

**Coram:**

**Hon'ble Shri Deep Chandra Joshi, Member (J):**                    **Hearing through**  
**Hon'ble Shri Prasanta Kumar Mohanty, Member (T):** **Video Conference**

Under Section 9 of IBC, 2016 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:

**Web Printz**

Hatichila, Khankar Gaon  
Guwahati-Chandrapur Road  
P.S- Pragjyotishpur PIN- 781150  
Assam

... Operational Creditor

Versus

**The Managing Director**

**The Assam State Textbook Production and Publication Corporation Limited**

Registered office:  
G.N.B Road, Panbazar  
Guwahati-781001

... Corporate Debtor

**Order delivered on 13.04.2023**

**ORDER**

**[Per: Hon'ble Shri Prasanta Kumar Mohanty, Member (T)]**

1. The present Petition has been filed by the Operational Creditor, i.e. M/s Web Printz 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 to initiate Corporate Insolvency Resolution Process in respect of the Corporate Debtor, namely, The Assam State Textbook Production and Publication Corporation Ltd., seeking the following reliefs:





3.4 A Demand Notice was issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor to release the outstanding payments, but no payment has been made to the applicant within 10 (Ten) days from receipt of the Demand Notice. However, the Corporate Debtor is unable to pay the legitimate claim of the applicant. Hence this application.

4. The details of the amount of debt due and the date from which such debt due has been mentioned in Part-IV of the application which is as follows:

<b>PART IV: PARTICULARS OF OPERATIONAL DEBT</b>		
1	Total amount of debt, details of Transactions on account of which debt fell due, and the date from which such debt fell due	Total Amount of Debt Rs. 4,14,09,620.00 (Rs. <b>15,35,087.00</b> + Rs. 3,98,74,533.00 Bank interest rate@13% per annum and 3 times compounded with monthly rests under the MSMED Act, 2006) as on 24.04.2022 Details of Transactions has been annexed. <b>The Debt Fell Due on 11.03.2019 and is continuing till date.</b>
2	Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and dates of default in tabular form)	Rs. 4,14,09,620.00 as on 24.04.2022. 11/03/2019 (Last Cheque payment received).  Workings for computation of amount and dates of default in Tabular Form has been annexed.

5. The Applicant/Operational Creditor vide written submissions dated 02.03.2023 submits that:

5.1 The Applicant is a proprietorship firm and a 4 colour Web offset printing press registered under Micro Small Medium Enterprise (MSME) in the year 2014 represented by its proprietor Mrs. Aparajita Rajkhowa, having EM PART-2 No. - 18061202345, Udyog Aadhar No- AS03B0000841, UDYAM Registration No- UDYAM- As-03-0003223 and covered under the Micro Small Medium Enterprise Development Act (MSMED in short) act, 2006.



- 5.2 It has received totals 12 nos. work orders from the Corporate Debtor i.e., the Assam State Textbook Production and Publication Corporation Ltd. and successfully completed all the said 12 nos. work orders and delivered the ordered textbooks/goods in good condition at the Central Godown of the ASTPPCL.
- 5.3 After successful completion of delivery of the ordered quantity in full, the Applicant duly submitted ten nos. bills amounting to Rs. 1,19,95,486.00 along with the delivery challans and forwarding letters against each and every bill at the registered office of the Corporate Debtor.
- 5.4 The Corporate Debtor unconditionally without any protest accepted the total bill amounting to Rs. 1,19,95486.00 raised against 12 nos. of work orders of the Corporate Debtor but failed to make the payment within 15 days as mandated under the Micro Small Medium Enterprise Development Act, 2006. A copy of the detail workings for computation of amount, dates and number of delay in each bills of the applicant default in tabular form has been annexed.
- 5.5 With the enactment of the Micro, Small and Medium Enterprises Development (MSMED), Act 2006, for the goods and services supplied by the MSME units, payments have to be made by the buyers as per the MSMED Act 2006 If the buyer is company- Every company that has obtained services or goods from an MSME supplier and has outstanding payment for more than 45 days must disclose it to the ROC by filing the MSME-1 return.
- Non-compliance with filing MSME-1 by the specified companies will attract a penalty under Section 405(4) of the Companies Act, 2013. The Applicant on 13.12.2017, lodged an online petition **against 3 nos.** bills at the MSME SAMADHAN and the Micro Small Enterprises Facilitation Council (MSEFC) passed the “Award” against the said 3 no’s, bills of the applicant as per the MSMED Act, 2006. The decision /award passed by the Hon’ble MSEFC is as follows: *“the Managing Director, Assam State Textbook Production and Publication Corporation*



*Ltd. will pay interest amount as per section 16 of the MSMED Act, 2006”.*

- 5.6 The Corporate Debtor neither paid off its outstanding Operational Debt due towards the Applicant’s 3 nos. bills nor raised any disagreement/ dispute with regard to the Award passed by the concerned MSEFC within the stipulated period of one month from issue of the said minutes of the said 9th MSEFC meeting. Finding no other alternatives, the Applicant had to file a Writ Petition, registered as W.P.(C)- 39/2022 before this Hon’ble Gauhati High Court to execute the Award passed by the MSEFC, Assam.
- 5.7 On 28.04.2022 the Applicant issued a Demand Notice/ Invoice Demanding Payment to the Corporate Debtor Form 3 and 4 in respect of the unpaid Operational Debt under section 8 of the Insolvency and Bankruptcy Code (IBC), 2016 for repayment of the unpaid Operational Debt raised against total 10 Nos. submitted bills an amounting to Rs. 4,14,09,620.00 (Rupees Four Crore Fourteen Lakh Nine Thousand Six Hundred Twenty Only) as per provisions the MSMED Act, 2006. However, in spite of receipt of the said Demand Notice the Corporate Debtor neither made any payment nor issued any notice of dispute or pendency of the suit or arbitration proceedings with regard to the existence or unpaid operational debt amounting to Rs. 4,14, 09,620.00 within the stipulated period of 10 (Ten) days as mandated in the Demand Notice issued under the Insolvency and Bankruptcy Code, 2016.
- 5.8 During the pendency of the above Company Petition: - C.P. (IB) 13/GB/2022, the Corporate Debtor has instituted a Writ Proceedings WP(C)-4794/2022 on dated 29.07.2022 before the Hon’ble Gauhati High Court to quash the Award passed by the MSEFC, Assam as well as the minutes of the 9th MSEFC meeting held on dated 09.03.2021.
- 5.9 The Corporate debtor has challenged only 3 nos. bill out of total 10 nos. in their writ petition WP(C)-4794/2022 which against the MSEFC, Assam has already conferred the Award on dated 22.02.2021 as per the MSMED Act, 2006. Further there has been no



record of any dispute or pendency of suit or arbitration proceedings in relation to the dispute filed before the receipt of the demand notice dated 28.04.2022 available in respect of the remaining 7 nos. bills out of total 10 nos. of the applicant.

- 5.10 In the proceedings WP(C) - 4794/2022, the Hon'ble High Court has observed that the Corporate Debtor is liable to make payment to the applicant as per the MSMED Act, 2006 and therefore the Hon'ble High Court with consent of the Corporate Debtor vide order dated 18.08.2022 gave liberty to the MSEFC to call the contesting parties for Conciliation. Accordingly, in pursuant to the order of the Hon'ble High Court, the Commissioner of Industries and Commerce, Assam had called for its 14th meeting of MSEFC, vide letter No- CI&C (V) DP/93/2020/39/6819 dated 05.09.2022 but the Corporate debtor wilfully absented in person to reach out for out of court settlement through Conciliation Through the Corporate Debtor in the WP(C)-494/2022 proceedings dated 18.08.2022 consented to conciliate the Award amount before the Hon'ble High Court still the Corporate Debtor wilfully absented in the MSEFC meeting in person as it is not financially stable and unable pay its debts towards the applicant.
- 5.11 After failure of the said Conciliation Process instituted by the MSEFC, Assam **the Hon'ble High Court further observed that, the Corporate Debtor has a large liability of money towards the Applicant and therefore vide an order dated 16.12.2022 and 30.01.2023 the Hon'ble High Court appointed a trained mediator Mr. R.K. Bhatra to reach an out of court settlement through mediation within 03.03.2023.** Further, despite of the Hon'ble High Court Order and consent of the Corporate Debtor, neither the Corporate Debtor itself nor any authorized persons of the CD had participated in four nos. sittings of the mediation organized by the learned mediator of the Hon'ble High Court since its commencement dated 09.01.2023. Moreover, the Corporate Debtor on 27.02.2023 sought adjournment mediation as the Corporate Debtor is unable to discharge its debts and liabilities of Rs. 5,72,95,257.00 (Rupees Five



Crore Seventy-Two Lakh Ninety-Five Thousand Two Hundred Fifty-Seven Only) as on 27.02.2023 towards the Applicant.

5.12 The Writ Petition WP(C) 39/2022 was filed by the Applicant before the Hon'ble Gauhati High Court only to execute the 'Award' passed by the MSEFC, Assam on dated 22.02.2021 in respect of 3 nos. of bills issued against 3 nos. Work orders of the Corporate Debtor that too prior to issue of the Demand Notice dated 28.04.2022. The applicant has not filed the said petition seeking Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor before the Hon'ble High Court. Therefore, it cannot be referred as Forum Shopping.

5.13 The Applicant has filed this present petition C.P (IB) No. 13 of 2022 seeking CIRP in respect of non-payment of the Operational debt of Rs. 4,14,09,620.00 as on dated 24.04.2022 incurred against total 10 nos. Bills raised against 12 nos. work orders of the Corporate Debtor but the Corporate debtor has been challenging only 3 nos. bill out of total 10 nos. in their reply affidavit as well in their written submission filed with this Tribunal.

The Corporate Debtor in the reply Affidavit filed with the Hon'ble Tribunal itself submitted that, it made a part payment of Rs. 1,79,000.00 on 12.04.2017 against Applicant's bill no-007 dated 12.04.2017 but in the same reply Affidavit the Corporate Debtor has inserted the payment approved for payment as **"NIL' against** the same bill in the Payment. The Corporate Debtor has deliberately made such false and misleading computation merely to get rid of the operational debt of Rs. 5,72,95,257.00 only as on 27.02.2023 and as well to dispose of the above petition.

5.14 The Default amount i.e. Rs. 3,72,64,731.00 (Rupees Three Crore Seventy-Two Lakh Sixty-Four Thousand Seven Hundred Thirty-One only) as on 28.02.2023 incurred against the 7 nos. bills out of total 10 nos. bill of the Applicant which the Corporate Debtor is liable to pay under the MSMED Act, 2006. Moreover, the Corporate Debtor had never raised any dispute with regard to the supplied goods as



well the bill amount raised in the said 7 nos. bills till date itself exceeds the threshold limit under Section 4 of Insolvency and Bankruptcy Code, 2016.

- 5.15 Without prejudice, the Applicant states and submits that the written submission being frivolous and lack jurisdiction and being instituted suppressing material facts and misrepresenting facts contrary to the records and is liable to be dismissed with cost.
- 5.16 Based on the above facts and circumstances as narrated herein above, the applicant humbly submits that, the operational debt is undisputed, true and authentic. And therefore, the Hon'ble Tribunal may accept the application filed by the Operational Creditor under section 9 of the Insolvency and Bankruptcy Code, 2016.
- 5.17 In view of the above circumstances and facts of the case, this tribunal may graciously be pleased to:
  - a. Admit the application, filed by the Applicant/ Operational Creditor and initiate Corporate Insolvency Resolution Process (CIRP) against the Respondent/ Corporate Debtor. Declare moratorium and appoint an Interim Resolution Professional.
  - b. And pass such other/ orders and further order/orders or directions as your Lordships may deem fit and proper for the ends of Justice.

6. The Respondent/Corporate Debtor vide its written submission dated 11.02.2023 submits that:

- 6.1 The facts, in brief, are that the Assam State Textbook Production & Publication Corporation Ltd. issued 10 (ten) supply orders on various dates to M/s Web Printz for supply of free textbooks to students under the Sarba Siksha Abhiyan (SSA). Clause 1 of the Terms and Conditions in each of these supply orders clearly stated that payments would be made to the Petitioner/Operational Creditor **only upon receipt of funds from the SSA. All payments in full have already been made to the Petitioner/Operational Creditor against all the work orders after making permissible deductions.**



A copy of the chart depicting payment details against each supply order including permissible deductions has been annexed.

6.2 Even after such payment, the Petitioner/Operational Creditor on **20.12.2017** approached the Commissioner of Industries and Commerce, Assam for initiation of action against the Respondent/Corporate Debtor by the Micro and Small Enterprises Facilitation Council (MSEFC) under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) for the alleged non-payment of dues in respect of 3 supply orders dated 25.10.2016, 08.12.2016 and 11.01.2017. In response, the Respondent/Corporate Debtor vide letters dated 01.12.2020 and 04.01.2021 **clarified that final payments had already been made to the Petitioner/Operational Creditor on 06.12.2018, which were accepted without protest.**

6.3 Despite such clear and unequivocal stand, vide Minutes of the Meeting dated 09.03.2021, the MSEFC passed a purported 'Award' directing the Respondent/Corporate Debtor to pay interest as per Section 16 of the MSMED Act, 2006. In doing so, the MSEFC not only committed grave procedural error by failing to conduct reconciliation/arbitration as prescribed under Section 18, but also failed to quantify the amount of interest as well as the period for which such interest is to be paid to the petitioner/operational creditor. In fact, the said Minutes clearly record that there has been no reconciliation of the interest amount and in fact, shifted the onus of the operational creditor and the corporate debtor to reconcile the same. It is pertinent to note that as per Section 73 and 74 of the Arbitration and Conciliation Act, 1996, **a settlement agreement achieves the status of an Award only if it is acceptable to both the parties and signed by both of them. This statutory requirement had been disregarded by the MSEFC while passing the unilateral 'Award' in its meeting dated 09.03.2021.**

6.4 Since the MSEFC failed to quantify the interest amount, **the Petitioner/Operational Creditor filed a writ petition registered as**



**W.P.(C) No. 39/2022 before the Hon'ble Gauhati High Court for clarification, enforcement and execution of the purported 'Award'**. During the pendency of the writ petition, in an apparent act of forum shopping, The Petitioner/Operational Creditor issued a Demand Notice dated 28.04.2022 under the provisions of the Insolvency and Bankruptcy Code, 2016 to the Respondent/Corporate Debtor for payment of purported operational debt. within 10 working days, vide letter dated 10.05.2022, the Respondent/Corporate Debtor replied to the demand notice denying any outstanding liabilities However, on 23.06.2022, the Petitioner/Operational Creditor filed an application under Section 9 of the IBC, 2016 before the National Company Law Tribunal, Guwahati Bench praying for initiating Corporate Insolvency Resolution Process (CIRP) against the respondent/corporate debtor.

6.5 Meanwhile, being aggrieved by the purported 'Award' dated 09.03.2021, the Respondent/Corporate Debtor also filed a writ petition registered **as W.P. (C) No. 4794/2022 before the Hon'ble Gauhati High Court on 19.07.2022**. In the said writ petition, the purported 'Award' passed by the MSEFC was inter alia put to the challenge. The fact of the institution of parallel proceedings before this Hon'ble Tribunal was also brought to the notice of the Hon'ble High Court and the same was taken into record in its Order dated 29.07.2022. Vide the said Order, the operation of the purported 'Award' dated 09.03.2021 was stayed till the next returnable dated and thereafter, extended until further orders. Though the petitioner/operational creditor had entered appearance in the said writ petition on 18.08.2022 and filed Vakalatnama 24.08.2022, the fact of the operation of the interim stay Order was deliberately suppressed before this Tribunal.

6.6 On 16.12.2022, in the proceedings before the Hon'ble Gauhati High Court, the counsel for the Petitioner/Operational Creditor consented to appointment of a trained mediator to conciliate the differences between itself and the Respondent/Corporate Debtor. The Standing



Counsel, Industries and Commerce Department admitted that the purported 'Award' dated 09.03.2021 was not passed strictly in accordance with the provisions of the MSMED Act, 2006. Accordingly, vide Order dated 16.12.2022, in an attempt to facilitate an out of court settlement, **the Hon'ble High Court appointed a trained mediator of the Court to carry out mediation proceedings between the Petitioner/Operational Creditor and the Respondent/Corporate Debtor. The purported 'Award' was also stayed until further Orders.** The mediation proceedings which commenced on 09.01.2023 is being monitored by the Hon'ble High Court. Vide Order dated 30.01.2023, the time period for mediation proceedings have been extended till 03.03.2023.

6.7 As such, the instant application filed before this Tribunal under Section 9, IBC, 2016 is liable to be dismissed on the following grounds:

- a. No operational debts are owed by the Respondent/Corporate Debtor to the Petitioner/Operational Creditor as evident from the Chart at annexed. All bills raised against the 10 supply orders have been duly paid after making permissible deductions for short supply by the petitioner/operational creditor and cost of materials. The only claim of the Petitioner/Operational Creditor is for interest which has neither been granted nor quantified by any competent court of law.
- b. The instant application has been filed in contravention of Section 4 of IBC, 2016, the notification dated 24.03.2020 as well as the Judgment of the Hon'ble Apex Court in *Manish Kumar vs. Union of India & Anr*, (2015) 5 SCC 1 (para 168) whereby it has been made clear that **the threshold of Rs. 1 Crore shall be applicable on the applications filed on or after 24.03.2020.** In the instant case, the principal amount itself has not been established and the Petitioner/Operational Creditor has falsely claimed an amount of Rs. 4,14,09,620.00 out of which **only Rs. 15,35,087.00 is the alleged principal amount.** The additional



amount has been arbitrarily added as interest, merely to Overcome the threshold limit. Moreover, as per the UDYAM Registration Certificate the Petitioner/Operational Creditor **was registered as an MSME Enterprise only on 14.03.2021**. As such, the remedies availed by it before the MSEFC since filing of the complaint dated 13.12.2017 as well as all subsequent actions which culminated in the purported 'Award' dated 09.03.2021 are illegal and void ab-initio.

- c. No amount has been quantified by any Court of law including the MSEFC as payable by the Respondent/Corporate Debtor to the Petitioner/Operational Creditor. As such, **the issue of payment of interest does not arise.**
- d. The Petitioner/Operational Creditor by consenting to mediation proceedings has admitted that the amount purportedly payable by **the Respondent/Corporate Debtor has not been quantified and the same is subject matter of dispute.** In fact, the Petitioner/Operational Creditor itself had filed a writ petition before the Hon'ble High Court **for clarification of the purported 'Award'** before approaching this Tribunal under the IBC, 2016. Subsequently, mediation proceedings had been initiated with the consent of both parties, implying that the amount claimed is a disputed amount.

6.8 Therefore, the instant application is wholly without merit and the same may be dismissed by this Hon'ble Tribunal.

### **ORDER**

7. Heard the Counsels of both the Petitioner/Operational Creditor and the Respondent/Corporate Debtor at length and perused the documents submitted.

8. During the last hearing on 02.03.2023, the learned Counsel of the Corporate Debtor submitted that they had paid the principal amount and there were no dues of interest to be paid to the Petitioner. The learned



Counsel of the Petitioner/Operational Creditor had submitted during the hearing that the outstanding principal amount was Rs **15,35,087.00** only plus interest accrued thereon.

**9.** The Petitioner/Operational Creditor has admitted that the outstanding principal amount is Rs. **15,35,087.00** only plus interest calculated thereon. The petitioner couldn't submit any documents to prove that there was a clause in the supply order for payment of interest in case, the payment from CD is delayed. Rather the Terms and Conditions in each of these supply orders were that payments would be made to the Petitioner/Operational Creditor only upon receipt of funds from the SSA. Since the principal amount claimed by the OC is Rs **15,35,087.00 which is below the threshold limit for filing an application under IBC, this Application needs to be rejected.**

**10.** It is also found that the Operational Creditor/Petitioner here has filed a Writ Petition, registered as W.P.(C)- 39/2022 before Hon'ble Gauhati High Court to execute the Award passed by the MSEFC, Assam. Further, the Corporate Debtor/Respondent being aggrieved by the Award dated 09.03.2021 also has filed writ petition registered as W.P. (C) No. 4794/2022 before the Hon'ble Gauhati High Court on 19.07.2022 and vide Order dated 16.12.2022, the matter was referred to mediation to make an endeavour to reach an out of Court of settlement. **Shri RK Bhatra has been appointed as mediator of the Court to carry out mediation Proceedings between the Operational Creditor and the Corporate Debtor. The purported 'Award' has also been stayed until further Orders. The mediation proceedings are being monitored by the Hon'ble High Court.**

**11.** Hence, it is clearly established that **there is an existence of dispute** prior to issuing of demand notice. Shri RK Bhatra has been appointed as mediator of the Court to carry out mediation between the Petitioner Creditor and the Corporate Debtor and the purported 'Award' has also been stayed until further Orders. The mediation proceedings which commenced on 09.01.2023 is being monitored by the Hon'ble High Court. **Hence dispute**



prior to the issue of Demand Notice by the OC is clearly established One of the main provisions under Section 9 of IBC is that, if there is an existence of dispute prior to issuing of demand notice by the OC, then the said Application needs to be rejected.

12. Considering the points of threshold limit as well as the existence of dispute prior to issuing of demand notice by the OC, this application is necessarily to be rejected.

13. Hence the CP (IB) No. 13/GB/2022 filed under Section 9 of IBC is hereby rejected so as to no cost.

14. However, we are making it clear that this application is rejected only under the Section 9 of IBC but the Applicant/OC may proceed, if otherwise eligible, in accordance with the provisions of law before an appropriate forum.

15. An authentic copy of this order is to be communicated by the Registry to the Operational Creditor as well as to the Corporate Debtor immediately.

**Sd/-**

**(Prasanta Kumar Mohanty)  
Member (Technical) &  
Adjudicating Authority**

**Sd/-**

**(Deep Chandra Joshi)  
Member (Judicial) &  
Adjudicating Authority**