IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI

COURT - IV

C.P. (IB) No. 906/MB/2024

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016]

In the matter of

Surbhit Impex Private Limited
(CIN: U51100MH1998PTC113972)
…Operational Creditor

V/s.

Shirdi Panel Industries Limited
(CIN: U51900MH1993PLC075613)
…Corporate Debtor

Pronounced: 16.11.2026

***CORAM*:**

ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)

K.R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

Appearances: Hybrid

For Applicant	:	Adv. Bhanu Chopra a/w. Adv. Jahan Ajay Chokshi, Adv. Mohit Shah, Adv. Adit Furia, Adv. Ayush Ramesh i/b. KJAC & Associates
For Corporate Debtor	:	Adv. Nausher Kohli, Adv. Jehan Fouzdar a/w. Adv. Aditya Trivedi i/b. Indus Law.

ORDER

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code/IBC) by Surbhit Impex Private Limited, the Operational Creditor, seeking initiation of the Corporate Insolvency Resolution Process (CIRP) in respect of Shirdi Panel Industries Limited (formerly Shirdi Industries Limited), the Corporate Debtor, for an alleged default of Rs.1,18,78,053.06/- (One Crore Eighteen Lakh Seventy-Eight Thousand and Fifty-Three Rupees and Six Paise). The date of default, as specified in Part-IV of the Application, is 12.03.2024.

2. Submissions of Applicant/Operational Creditor

2.1 The present Application is filed in respect of four (4) invoices issued by the Operational Creditor for supply of Melamine to the Corporate Debtor or its agent BRL Transport & Logistics, as detailed below:

a. Invoice dated 26.08.2023, for supply of 25,000 Kg of Melamine for a total sum of Rs. 27,43,500/-, pursuant to the purchase order dated 25.08.2023 issued by the Corporate Debtor.

b. Invoice dated 27.09.2023, for supply of 25,000 Kg of Melamine for a total sum of Rs. 29,79,500/-, pursuant to the purchase order dated 22.09.2023 issued by the Corporate Debtor.

c. Invoice dated 19.10.2023, for supply of 23,050 Kg of Melamine for a total sum of Rs. 26,38,303/- pursuant to the purchase order dated 28.10.2023 issued by the Corporate Debtor.

d. Invoice dated 12.12.2023, for supply of 21,000 Kg of Melamine for a total sum of Rs. 24,03,660/- pursuant to the purchase order dated 08.12.2023 issued by the Corporate Debtor.

2.2 Out of the four invoices forming the subject matter of the present Application, invoices 1, 2 & 4 were issued by the Operational Creditor, and Invoice No. 3 was issued by Kumar Mahindra Exim (KME). KME subsequently assigned the amount under Invoice No.3 to the Operational Creditor under a stamped and

registered deed of assignment dated 06.05.2024. It is submitted that the payments under the invoices were to be made within 90 days from the date of delivery of the merchandise, and the Corporate Debtor issued post-dated cheques for payment of the sums mentioned in the invoices. The Operational Creditor further states that the post-dated cheques, when presented, were returned for either 'insufficient funds' or 'account blocked', as some of the cheques were issued in the erstwhile name of the Corporate Debtor, i.e., Shirdi Industries Limited.

2.3 The Operational Creditor submits that the Corporate Debtor has made part payments of Rs. 7,00,000/- on 21.02.2024 and Rs. 5,00,000/- on 12.03.2024. However, despite multiple false assurances, the Corporate Debtor failed to make any further payments. In the circumstances, the Operational Creditor, through its advocate, issued a demand notice under Section 8 of the Code, which the Corporate Debtor duly received on 13.06.2024. Upon receipt of the Section 8 notice, the Corporate Debtor issued a reply dated 13.06.2024 calling for a reconciliation and settlement of accounts between the parties. As per the Corporate Debtor, only an amount of Rs. 43041/- was payable.

2.4. It is submitted that the Operational Creditor, through its advocate's email and letter dated 13.07.2024, issued a detailed response to the Corporate Debtor, to which the Corporate Debtor has also issued a response dated 24.07.2024. In the circumstances, the Operational Creditor has filed the present Application.

3. Submissions of Corporate Debtor

3.1 The Corporate Debtor filed its reply affidavit denying the averments made in the Application.

3.2 The Corporate Debtor contends that the Operational Creditor has relied on a Deed of Assignment dated 06.05.2024 by KME, which is a related party, to bring the outstanding amounts up to the minimum threshold amount of Rs.1,00,00,000/-. It is contended that the Deed of Assignment was executed between related parties on 06.05.2024, immediately before the Operational Creditor sent its demand notice to the Corporate Debtor under Section 8 of the

Code on 12.06.2024. The amount involved in this assignment is Rs. 26,38,303/, without which the outstanding debt would fall below the threshold. It is submitted that two different creditors' claims have been deliberately and maliciously consolidated to file an application under Section 9 of the Code that meets the minimum threshold, which is not permissible. The Deed of Assignment is also contested on the ground that no notice of the assignment was given to the Respondent.

3.3 The Corporate Debtor states that the Operational Creditor has had a long commercial relationship and has been a vendor supplying Melamine to the Applicant prior to 2017. KME also had a similar long-standing commercial relationship with the Corporate Debtor.

3.4 It is submitted that a previous Corporate Insolvency Resolution Process was initiated against the Corporate Debtor on 18.05.2007 (previous CIRP), which resulted in approval of a Resolution Plan by the Adjudicating Authority on 12.11.2017. During the said CIRP, the Operational Creditor did not file any claim with the Resolution Professional (RP), and the RP did not admit any claim of the Applicant. Even after the Resolution Plan was approved, the Operational Creditor and the Corporate Debtor continued to do business together, but the Operational Creditor with mala fides misappropriated payments made by the Corporate Debtor towards dues, which were owed to the Operational Creditor prior to the approval of the Resolution Plan. It is contended that the pre-CIRP dues have been extinguished as per the Resolution Plan and hence the Operational Creditor has not properly accounted for payments made by the Corporate Debtor. Thus, there are disputes between the parties as regards the reconciliation of the accounts. It is contended that the Respondent raised these disputes on numerous occasions earlier. However, the Operational Creditor has now with mala fides taken advantage of the provisions of the Code solely to pressurise the Corporate Debtor into making payments to it.

3.5 The Corporate Debtor submits that the Operational Creditor is owed a sum of Rs. 16,24,739/- and KME is owed a sum of Rs.43,041/-. Another related entity,

i.e., B. M. Jain & Sons Pvt Ltd, is also a family-run business of KME and is owed approximately Rs. 24,99,851/-.

3.6 The Corporate Debtor denies that interest at 24% per annum, or any rate whatsoever, is due or payable on the invoices raised by the Operational Creditor or KME. No interest has been agreed upon by the Corporate Debtor. Therefore, computing interest on the alleged principal debt of Rs 97,52,671.24/- is not permissible, as it will take the debt amount below the threshold prescribed under the Code. In view of the above, the Corporate Debtor submits that the Application is not maintainable.

4. Rejoinder by Operational Creditor

4.1 The Operational Creditor filed its affidavit in rejoinder, submitting that each payment made by the Corporate Debtor is against a distinct invoice, as evidenced by the letters dated 13.06.2024 issued by the Corporate Debtor to the Operational Creditor. Further, each post-dated cheque provided by the Corporate Debtor mentioned the exact amount due under specific invoice. Thus, there is no question of the Operational Creditor adjusting payments made against a specific invoice against any prior dues, much less as alleged by the Corporate Debtor, which admittedly stand extinguished.

4.2 It is submitted that the Corporate Debtor raised the allegation for the first time *vide* letter dated 13.06.2024, after the receipt of the Section 8 Demand Notice and almost 7 years after the conclusion of the previous CIRP of the Corporate Debtor, where the Resolution Plan dated 12.12.2017 was approved. It is reiterated that a sum of Rs. 1,10.90,078/- is due and payable by the Corporate Debtor to the Operational Creditor alone, and a sum of Rs. 75,84,841/- is due and payable by the Corporate Debtor to KME, which, by virtue of the Deed of Assignment dated 06.05.2024, now becomes due and payable to the Operational Creditor.

4.3 As regards the interest payable on the outstanding invoices, it is submitted that each invoice specifically mentions that interest at 24% per annum is payable. When interest is clearly stipulated in the invoice, it will constitute part of the debt

as defined under Section 3(11) of the Code. It is also submitted that the purported accounts maintained by the Corporate Debtor, as annexed to the letters dated 13.06.2024 issued by the Corporate Debtor to the Operational Creditor, also show that the Corporate Debtor regularly paid interest on outstanding payments due to the Operational Creditor.

4.4 The Operational Creditor submits that there is no embargo in law keeping an Operational Creditor from assigning receivables to a third party.

5. Analysis and findings

5.1 We have heard both the Ld. Counsel for the parties and perused the available records.

5.2 It is an admitted fact between the parties that the Operational Creditor and KME supplied merchandise to the Corporate Debtor under four (4) invoices, which form the subject matter of the present Application. While invoices 1, 2, & 4 were issued by the Operational Creditor for an aggregate principal debt of Rs.81,26,660/-, KME issued invoice No. 3 for a principal debt of Rs. 26,38,303/. The Operational Creditor states that KME has assigned the amount under invoice No. 3, along with applicable interest thereon, to the Operational Creditor for consideration received thereupon.

5.3 The primary contention of the Corporate Debtor is that the principal amount involved in the invoices issued by the Operational Creditor falls below the threshold specified under the Code. The assignment by KME, which is one of the related parties of the Operational Creditor, was made immediately prior to the issue of the Section 8 Notice on 12.06.2024 for the purpose of meeting the threshold under the Code. It is contended that the Operational Creditor cannot file a joint application against a debtor, and each creditor has to file application under Section 9 individually. Since the Operational Creditor and KME are two separate creditors, masquerading under a purported deed of assignment is not permissible.

5.4 As per Section 5(20) of the Code, “Operational Creditor” means a person to whom an operational debt is owed and *includes any person to whom such debt*

has been legally assigned or transferred. Consequently, the expression "Operational Creditor" encompasses any person to whom a debt has been assigned, and there is no provision in the Code that prohibits the assignment of an operational debt to another operational creditor. Once an operational debt is acquired, no distinction should be made between the debt originally held by the creditor and the debt it has acquired. While Section 9 of the Code does not envisage filing a joint application by operational creditors, it does not preclude aggregating various claims arising from different invoices, purchase orders, or debts acquired by the operational creditor. Therefore, the Corporate Debtor's objection to filing a single application under Section 9 of the Code, for debts related to invoices 1, 2, & 4, alongside invoice 3, which has been legally assigned, lacks merit.

5.5 This brings us to the next contention of the Corporate Debtor that the pre-CIRP dues under the previous CIRP were adjusted by the Operational Creditor. The Corporate Debtor asserts that under the previous CIRP, the Operational Creditor had not filed any claim, and the payment mechanism for the Operational Creditor under the sanctioned resolution plan was only 15% of the outstanding operational debt, with the remaining balance to be relinquished. It is also argued that the Operational Creditor and the Corporate Debtor maintained a business relationship both before and after the previous CIRP. Given that the parties maintained a running account for the supply of merchandise, it can reasonably be concluded that the Operational Creditor has been illegally adjusting payments made by the Corporate Debtor for the current supplies against the pre-CIRP dues. Accordingly, the Corporate Debtor disputed the amount of debt outstanding to the Operational Creditor.

5.6 The record shows that the previous CIRP was initiated pursuant to an admission order dated 18.05.2017, and the Resolution Plan was approved by the Adjudicating Authority on 12.11.2017. The transaction forming the basis of the present Application arises out of purchase orders issued on 25.08.2023, 22.09.2023, 18.10.2023 and 08.12.2023. Evidently, all these purchase orders have been issued almost six years after the culmination of the previous CIRP. Further, the Corporate Debtor has not produced any record to show that the

amounts paid thereafter in respect of these invoices were adjusted towards pre-CIRP dues. It is also pertinent to note that the Corporate Debtor did not raise any dispute at any time prior to the issue of the Section 8 notice regarding the adjustment of pre-CIRP dues. If there was a wrongful adjustment of pre-CIRP dues, contrary to the agreement between the parties, at least one letter/other evidence objecting to it would have been available and brought on record before this Tribunal. As regards the running account, the Hon'ble Bombay High Court in *Wilsons Jacobs v. Lucid Prints & Ors.* [2018 SCC OnLine BOM 1998], has observed:

"7. There is then an argument that between the parties there was a running account. ***The fact that there were continuous transactions does not make it a running account. Again, the concept of a running account in commercial practice is well-kown. It must be demonstrated that there are debits and credits going on simultaneously or on a regular basis and that balances are struck with some periodicity; not that there are a number of invoices, some of which remain unpaid.*** *Nonpayment of invoices and payment without specifying a particular invoice does not make the transactions a "running account".*

(Emphasis Supplied)

In the present case also, there are continuous transactions between the parties. However, no record has been produced to show that the account balances were reconciled regularly. Furthermore, the post-dated cheques were issued corresponding to specific invoice values. Hence, we are of the view that the mere assertion that the parties maintained a running account is insufficient to substantiate the contention. Additionally, the entries in the statement of accounts annexed by the Corporate Debtor to its letter dated 13.06.2024 indicate that payments were made against specific invoices.

5.7 It is also pertinent to observe that the invoices specifically mention that interest at 24% p.a. is payable for delayed payments. Further, the account statement annexed to the letter dated 13.06.2024, issued by the Corporate Debtor to the Operational Creditor, also shows that the Corporate Debtor used to pay interest

on outstanding payments due to the Operational Creditor. It is settled law that when interest on delayed payment is clearly stipulated in invoices, it will constitute part of debt as defined under Section 3(11) of the Code. The Hon'ble NCLAT in *Prashat Agarwal v. Vikash Parasrampuria* [Company Appeal (AT) (Ins) No. 690 of 2022], upheld the inclusion of interest stipulated in the invoice for the purpose of calculation of minimum threshold and observed as under:

"(vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It is noted that the total principal amount of Rs.97,87,220/- along with interest the total debt makes total outstanding as Rs.1,60,87,838/-. Thus, the total debt outstanding of OC is above Rs.1 crore as per requirement of Section 4 IBC read with notification No. S. O 1205 (E) dated 24.03.2020 (supra), and meets the criteria of Rs.1 crore as per Section 4 of IBC and Application is therefore maintainable in present case."

5.8 In the present case, it is observed that the Applicant is claiming a debt and default of Rs.1,06,78,053.06/ consisting of a total principal amount of Rs.97,52,717.24/-, total outstanding interest of Rs.7,55,588.42/- and GST of Rs.1,69,793.40. Thus, the principal, together with the interest, exceeds the threshold of Rs.1 Crore stipulated in the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under Section 9 of the Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

ORDER

In view of the above discussions and findings, **C.P. (IB) No. 906/MB/2024** is hereby **admitted,** and the initiation of the Corporate Insolvency Resolution Process (CIRP) is ordered in respect of **Shirdi Panel Industries Limited,** viz., the Corporate Debtor. We declare moratorium under Section 14 of the IBC with consequential directions as mentioned below:

(a) We prohibit-

I. 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;

II. transferring, encumbering, alienating, or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

III. 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 SARFAESI Act;

IV. the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

V. That 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.

VI. the order of moratorium shall have effect from the date of this Order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.

VII. the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.

(b) This Bench hereby appoints **Mrs. Hetal Gaurang Kothari**, a registered Insolvency Professional having Registration No **IBBI/IPA-001/IP-P-01610/2019-2020/12500**, e-mail ID: iphetalkothari@gmail.com Mob. No. 7738226617, having valid Authorisation for Assignment up to

30.06.2027, as the IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The fee payable to the IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

(c) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the Corporate Debtor are directed to provide effective assistance to the IRP as and when she takes charge of the assets and management of the Corporate Debtor. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.

(d) The IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

(e) In exercise of the powers under Rule 11 of the NCLT Rules, the Operational Creditor is directed to deposit a sum of Rs. 5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

(f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

(g) A copy of the Order shall also be forwarded to the IBBI for record; dissemination on their website; and for maintaining data.

(h) The Registry is directed to immediately communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by way of Speed Post, E-mail/WhatsApp.

(h) Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)