

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1244 of 2025

[Arising out of the Impugned Order dated 12.06.2025 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench in C.P. (IB) No. 734/(ND)/2021].

In the matter of:

Chemical Suppliers India Private Limited

(CIN: U24299DL1997PTC090695)

507 Plot No-D-4,5,6 5th Floor

Krishna Apra Business,

Square N.S.P Pitampura,

Delhi-110034

chemicalpeople@gmail.com

...Appellant

Versus

Kanodia Technoplast Limited

(CIN: U74899DL1995PLC067544)

A-54 Wazirpur Industrial Area,

New Delhi D1 110052

cs@kanodiaindia.com

.... Respondent

Present:

For Appellant : Mr. Sunil Fernandes, Sr. Advocate with Mr. Nikhil Kumar, Mr. Mahak Agarwal and Mr. Kapil Sharma, Advocates.

For Respondent : Mr. Abhishek Anand, Mr. Karan Kohli and Ms. Palak Kalra, Advocates.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 12.06.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-IV) in C.P. (IB) No. 734/ND/2021. By the impugned order, the Adjudicating

Authority has dismissed the Section 9 application filed by the Appellant-Chemical Suppliers India Pvt. Ltd. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-Operational Creditor.

2. Coming to the chronology of events of this present matter, we notice that the Appellant-Operational Creditor had been engaged by the Respondent-Corporate Debtor for supply of chemicals and raw materials. The materials were supplied by the Appellant but as the Respondent had purportedly failed to discharge their payment obligations of an outstanding amount of Rs 7,84,94,085/- which included the principal and interest component of Rs 6,13,26,856/- and Rs 1,71,67,229/- respectively, the Appellant had filed C.P No. 734 of 2021 under Section 9 on 22.11.2021 before the Adjudicating Authority to initiate CIRP against the Respondent. The Section 9 application was dismissed by the Adjudicating Authority on 16.10.2023 on the ground of non-maintainability by holding that the default had occurred based on invoices pertaining to the suspended period under Section 10-A of IBC. This Section 9 dismissal order was challenged by the Appellant before this Tribunal. This Tribunal observed that what was relevant to be seen was as to whether the outside Section 10-A period invoices in the Table of invoices set out by the Operational Creditor exceeded Rs 1 Cr. This Tribunal after noticing that there were several invoices exceeding Rs 1 Cr. which fell outside the Section 10-A period and remained unpaid, this Tribunal on 09.07.2024 restored the Section 9 application and remanded the matter back to the Adjudicating Authority to proceed further in accordance with law. In pursuance of the above order of this Tribunal, the Adjudicating Authority on 24.02.2025 directed the matter to be

listed for hearing on 20.03.2025. However, this order of the Adjudicating Authority was challenged by the present Appellant on the ground that the order of this Tribunal dated 09.07.2024 *ipso facto* meant admission of the Section 9 application. However, this appeal came to be dismissed by this Tribunal on 02.04.2025 following which Adjudicating Authority proceeded with the hearing of CP No. 743 of 2021. The Adjudicating Authority noticed that the Corporate Debtor had tendered a Demand Draft dated 26.03.2025 amounting Rs 1,65,89,311/- to square off the operational debt in respect of the invoices which fell outside the protective ambit of Section 10-A which the Appellant-Operational Creditor had claimed in their Section 9 application. The Adjudicating Authority further noticed that inspite of this offer of payment by Corporate Debtor to settle the enforceable portion of the debt, the same was rejected by the Appellant as partial/conditional payment. Holding the rejection by the Appellant of the offer made by the Corporate Debtor to settle the debt to be misuse of the insolvency process tantamount to using IBC as a recovery mechanism which is inconsistent with the objectives of the IBC, the Adjudicating Authority by its order dated 12.06.2025 directed the Corporate Debtor to deposit an amount of Rs 1,65,89,311/- in an interest-bearing Fixed Deposit Receipt (FDR) with the NCLT Registry, to be retained in safe custody for an initial period of six months and rejected the Section 9 application filed by the Appellant. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

3. Making submissions on behalf of the Appellant-Operational Creditor, Shri Sunil Fernandes, Ld. Sr. Counsel had submitted that the Adjudicating Authority erroneously dismissed the Section 9 petition as it is a settled position in law that

the scope of adjudication under Section 9 of the IBC is limited to determining whether an operational debt is due and payable and whether any default has occurred in relation to such debt and if the amount of default exceeds the statutory threshold outlined under Section 4 of the IBC. Once these conditionalities are established, the Adjudicating Authority is mandatorily required to admit the Section 9 petition as long as the Corporate Debtor fails to establish the existence of a pre-existing dispute or show any other legally sustainable defence which is well settled in terms of the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd.*** **(2108) 1 SCC 353.**

4. It was further submitted that in the present case, there is a clear admission of debt and default above Rs 1 Cr. in terms of the invoices raised by the Operational Creditor and there being no grounds of pre-existing dispute raised by the Corporate Debtor, the Section 9 applicable should have been admitted. It was vehemently contended that the Adjudicating Authority has erroneously held that the outstanding liability is only Rs 1.65 Cr. The Adjudicating Authority has failed to take into cognisance that in the list of 60 invoices submitted by them, apart from the 7 invoices amounting Rs 1.65 Cr. which clearly fall outside the Section 10-A period, there were two other invoices which fell outside the Section 10-A period. By factoring in these 2 invoices, the outstanding liability of the Corporate Debtor stood at Rs 2.26 Cr. and not Rs 1.65 Cr. However, the Corporate Debtor had offered to only pay Rs 1.65 Cr. which did not meet the entire debt liability. It is the case of the Operational Creditor that when the Corporate Debtor did not clear the full payment of

outstanding dues, the Operational Creditor retained its rights to refuse to accept the part payment offered by the Corporate Debtor. The Adjudicating Authority also does not possess statutory jurisdiction to compel the Operational Creditor to accept any such part or conditional settlement. Non-acceptance of part payment cannot be held against the Operational Creditor as if they were pursuing the Section 9 application for causing harassment to the Corporate Debtor to demand more payment. It was contended that the Operational Creditor cannot be deprived of exercising his option to accept or reject the partial payment offered by the Corporate Debtor and cannot be deprived of their statutory rights to follow up on the Section 9 proceedings.

5. Refuting the submissions made by the Appellant, Shri Abhishek Anand, Ld. Counsel for the Respondent submitted that the Appellant has issued a Demand Notice under Section 8 of the IBC by adverting attention to 60 invoices out of which 53 invoices were between 01.07.2020 to 23.03.2021 which clearly fell within the Section 10-A period and only 7 invoices between 31.03.2021 till 03.06.2021 fell outside the Section 10-A period. The Corporate Debtor in their reply dated 08.10.2021 to the Section 8 Demand Notice had categorically pointed out that the invoices in question were barred under Section 10-A of IBC as they were raised after 25.03.2020. However, the Appellant filed C.P. IB No. 734 of 2021 under Section 9 basis a list of 60 invoices which was segregated into Table-A comprising of 53 invoices amounting Rs 4.15 Cr. falling in the Section 10-A period and Table-B comprising of 7 invoices amounting Rs 1.65 Cr. falling beyond the Section 10-A period. The said Section 9 petition was initially dismissed by the Adjudicating Authority on 16.10.2023 which on appeal had

been remanded on 09.07.2024 by this Tribunal to the Adjudicating Authority. Submission was pressed that even when the matter was remanded back to the Adjudicating Authority by this Tribunal, even at that stage the list of invoices submitted by the Operational Creditor in their Section 9 application was not interfered with. It was added that the Appellant has now raised the issue of modification of the invoices in Table-A and Table-B with respect to Section 10-A which cannot be agitated at this stage.

6. Submission was pressed by the Corporate Debtor that the Section 9 application was not filed with the purpose of resolution of the Corporate Debtor but for the purpose of recovery. It was asserted that the Adjudicating Authority had rightly taken notice that the Corporate Debtor had offered to make payment of Rs 1.65 Cr. to the Operational Creditor to clear the outstanding liability in terms of the Table-B invoices which had been submitted by the Operational Creditor in the Section 9 application as invoices which fell outside the Section 10-A period. The Corporate Debtor had already demonstrated its bonafide intention to discharge its liability as it had tendered the entire non 10-A liabilities by way of Demand Draft which also goes to vindicate that the Corporate Debtor was financially capable and not financially insolvent. It was the Operational Creditor who was trying to pitch for an expanded non 10-A liabilities which was a clear deviation from their earlier claim which shows that they were trying to misuse the provisions of the IBC as a recovery mechanism rather than as a means of resolution. The Corporate Debtor being a financially solvent company cannot be pushed into the rigours of CIRP. Since the Appellant had adamantly refused to accept Rs 1.65 Cr. and instead insisted upon payment of

Rs 2.26 Cr., the Adjudicating Authority had rightly relied on the judgment of this Tribunal in ***M/s SNJ Synthetics Ltd. Vs PepsiCo India Holdings Pvt. Ltd. in CA(AT)(Ins) No. 386 of 2025*** to hold that rejection by the Appellant of the offer made by the Corporate Debtor's bonafide offer to settle the enforceable portion of the debt showed an ulterior motive behind their conduct which amounted to misuse of the insolvency process as a recovery mechanism which is inconsistent with the objectives of the IBC.

7. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

8. The short question to be answered is whether the Adjudicating Authority had erred in rejecting the Section 9 application after noticing that the Corporate Debtor had agreed to discharge their outstanding liabilities of Rs 1.65 Cr. arising out of 7 invoices which fell outside the Section 10-A period.

9. It is the case of the Operational Creditor that out of the 53 invoices which have been held to be covered by Section 10-A, 2 invoices at Sl. No. 52 & 53 were beyond the Section 10-A period as the invoices were payable after 90 days. While the Invoice no. 52 for an amount of Rs 30.45 lakhs became payable on 15.06.2021, Invoice no. 53 amounting Rs 30.46 lakhs became payable on 23.06.2021 making them both fall outside the purview of Section 10-A period. If these invoices are added then the outstanding principal amount stood at Rs 2.26 Cr. and not Rs 1.65 Cr. as has been held in the impugned order. Since the Corporate Debtor did not make any offer to clear the outstanding liability arising out of these 2 invoices, the Section 9 application could not have been dismissed by the Adjudicating Authority. It was also asserted that when the matter had

been considered by this Tribunal on 09.07.2024, this Tribunal had not looked into the number of invoices which fell beyond the Section 10-A period but had only looked into whether the invoices relied upon by the Operational Creditor crossed the threshold of Rs 1 Cr. for the purpose of maintaining the Section 9 application. Since no finding had been returned by this Tribunal as such on individual invoices, there is no restriction operating on the Operational Creditor to identify the final set of invoices beyond the 10-A period basis which the operational debt claim could be quantified. It is also contended by the Appellant that the Adjudicating Authority has wrongly relied on the judgment of ***Pepsico India Holdings supra*** as the facts of that case differ from the facts of the present case. In that case, there was no principal amount which was due which is why the Operational Creditor was not allowed to agitate the interest component, whereas in the present case, the principal operational debt remains partly paid by the Corporate Debtor. Hence, the Operational Creditor was well within its rights to claim full dues and merely because full payment was sought by the Operational Creditor, it cannot be inferred that the Section 9 petition was being used as a recovery tool.

10. Coming to our analysis and findings, when we look at the Section 9 application filed by the Operational Creditor which is placed at page 70 of the Appeal Paper Book, we find that it is the Operational Creditor who have themselves submitted the invoices in two separate tables and the same tables have been followed both by the Adjudicating Authority in its order dated 16.10.2023 and by this Tribunal in its remand order dated 09.07.2024. Further, when we look at the order of this Tribunal dated 09.07.2024 remanding the

matter back to the Adjudicating Authority, we find that at para 7 therein, a clear reference has been made to the list of invoices which was arrayed by the Appellant before the Adjudicating Authority in the CP No. 734 of 2021. This list of invoices as extracted out in the order of this Tribunal on 09.07.2024 is as reproduced below:

S.No.	Date of Invoice	Invoice No.	Amount	Balance Amount
1.	01.07.2020	1303	16,46,855/-	16,46,855/-
2.	09.07.2020	1326	1,63,288/-	1,63,288/-
3.	18.07.2020	1384	3,96,480/-	3,96,480/-
4.	20.07.2020	1390	2,53,747/-	2,53,747/-
5.	21.07.2020	1393	16,65,853/-	16,65,853/-
6.	26.07.2020	1408	7,57,159/-	7,57,159/-
7.	27.07.2020	1414	14,39,600/-	14,39,600/-
8.	01.08.2020	1435	2,33,640/-	2,33,640/-
9.	04.08.2020	1438	5,49,585/-	5,49,585/-
10.	06.08.2020	1452	14,39,600/-	14,39,600/-
11.	09.08.2020	1463	3,27,096/-	3,27,096/-
12.	15.08.2020	1499	14,39,600/-	14,39,600/-
13.	19.08.2020	1513	3,27,096/-	3,27,096/-
14.	21.08.2020	1549	1,36,998/-	1,36,998/-
15.	21.08.2020	1550	1,36,998/-	1,36,998/-
16.	21.08.2020	1551	5,47,992/-	5,47,992/-
17.	26.08.2020	1586	6,54,192/-	6,54,192/-
18.	16.09.2020	1703	3,60,301/-	3,60,301/-

19.	18.09.2020	1708	3,84,987/-	3,84,987/-
20.	18.09.2020	1708	3,84,987/-	3,84,987/-
21.	21.09.2020	1722	3,84,987/-	3,84,987/-
22.	22.09.2020	1724	2,37,534/-	2,37,534/-
23.	23.09.2020	1728	3,88,881/-	3,88,881/-
24.	25.09.2020	1740	4,43,137/-	4,43,137/-
25.	30.09.2020	1772	4,47,291/-	4,47,291/-
26.	06.10.2020	1793	3,75,911/-	3,75,911/-
27.	08.10.2020	1808	3,56,075/-	3,56,075/-
28.	11.10.2020	1820	2,31,867/-	2,31,867/-
29.	15.10.2020	1828	4,48,146/-	4,48,146/-
30.	22.10.2020	1840	3,16,448/-	3,16,448/-
31.	07.11.2020	1873	5,80,942/-	5,80,942/-
32.	12.11.2020	1883	4,87,735/-	4,87,735/-
33.	18.11.2020	1890	2,69,419/-	2,69,419/-
34.	20.11.2020	1893	17,94,001/-	17,94,001/-
35.	22.11.2020	1896	1,98,743/-	1,98,743/-
36.	01.12.2020	1903	3,78,237/-	3,78,237/-
37.	04.12.2020	1905	5,68,940/-	5,68,940/-
38.	07.12.2020	1908	5,68,950/-	5,68,950/-
39.	10.12.2020	1911	5,68,950/-	5,68,950/-
40.	14.12.2020	1913	5,33,683/-	5,33,683/-
41.	17.12.2020	1919	22,19,119/-	22,19,119/-
42.	19.12.2020	1922	7,65,107/-	7,65,107/-

43.	28.12.2020	1940	5,11,4711/-	5,11,471/-
44.	29.12.2020	1944	24,75,607/-	24,75,607/-
45.	03.01.2021	1949	4,77,373/-	4,77,373/-
46.	09.01.2021	1957	4,43,275/-	4,43,275/-
47.	15.01.2021	1963	5,25,671/-	5,25,671/-
48.	15.01.2021	1962	5,25,6711/-	5,25,6711
49.	19.01.2021	1970	4,32,558/-	4,32,558/-
50.	23.01.2021	1973	24,31,501/-	24,31,501/-
51.	13.03.2021	2124	22,01,329/-	22,01,329/-
52.	15.03.2021	2131	30,45,160/-	30,45,160/-
53.	23.03.2021	2160	30,46,683/-	30,46,683/-
		A	4,15,41,479/-	4,15,41,479/-
54.	31.03.2021	2182	38,08,354/-	38,08,354/-
55.	26.04.2021	GST/21-22/071	33,52,189/-	33,52,189/-
56.	15.05.2021	GST/21-22/105	4,58,888/-	4,58,888/-
57.	16.05.2021	GST/21-22/106	12,15,434/-	12,15,434/-
58.	16.05.2021	GST/21-22/107	5,20,900/-	5,20,900/-
59.	17.05.2021	GST/21-22/109	33,52,189/-	33,52,189/-
60.	03.06.2021	GST/21-22-222	38,81,357/-	38,81,357/-
		B	1,65,89,311/-	1,65,89,311/-
		Total (A+B)	5,81,30, 790/-	5,81,30, 790/-

11. The invoice list of the Operational Creditor as expressly recorded by the Adjudicating Authority in its order dated 16.10.2023 finds a replica reflection in

the order of this Tribunal dated 09.07.2024. It is clear from the list reproduced in the immediately preceding paragraph that the Operational Creditor had relied on 60 invoices basis which the operational debt has been claimed in the Section 9 application. These invoices were categorized into two Tables of which 53 invoices in Table-A fell in the prohibited period of Section 10-A and 7 invoices in Table-B fell outside the Section 10-A period as they were dated between 31.03.2021 to 03.06.2021. The order of this Tribunal dated 09.07.2024 while remanding the CP No. 734 of 2021 to the Adjudicating Authority had not interfered in any manner with respect to the list of invoices which formed the basis of the claim preferred by the Operational Creditor in their Section 9 application. When the matter was remanded back to the Adjudicating Authority by this Tribunal on 09.07.2024, the Operational Creditor had not challenged the categorization of the invoices in Table-A relating to invoices barred by Section 10-A and Table-B relating to invoices unaffected by Section 10-A. Thus, the Operational Creditor having expressly acknowledged at the time of filing Section 9 application that only 7 invoices amounting Rs 1.65 Cr. fell outside the protective shield of Section 10-A, the Operational Creditor cannot be seen to claim subsequently that there were other invoices apart from the aforementioned 7 invoices which also fell outside the ambit of Section 10-A. This stand never having been taken by the Operational Creditor earlier either before the Adjudicating Authority or before this Tribunal cannot now alter their stand as it would be in direct contradiction to the submissions and pleadings made by the Operational Creditor before the Adjudicating Authority and this Tribunal earlier. The present claim of adding 2 more invoices to the earlier list of 7 invoices as

invoices falling outside the Section 10-A period amounts to shifting the goal-post which cannot be accepted. This amounts to be an attempt to improving their own case to inflate the quantum of default and arm-twist the Corporate Debtor into parting with more than what was envisaged in the original Section 9 application. We are of the firm view that the Operational Creditor cannot now canvass for reopening for segregation of invoices afresh from what was originally depicted by them while filing the Section 9 application. Once the Operational Creditor had on their own volition admitted the operational debt to be Rs 1.65 Cr. qua 7 invoices not hit by Section 10-A, it cannot alter, modify, expand or shrink the list of invoices originally set up by themselves in Table-A and Table-B which had been set out by them in their Section 9 application.

12. We also notice that the Corporate Debtor had offered to pay the entire amount of Rs 1.65 Cr. by way of Demand Draft to the Corporate Debtor towards meeting the claim amount arising out of the 7 invoices which undisputedly fell outside the purview of Section 10-A. This clearly affirms the bonafide intention of the Corporate Debtor to discharge their liabilities arising out of the 7 undisputed invoices not covered by Section 10-A. This commitment given to clear their liabilities coupled with deposit of FDR of the said amount with the NCLT Registry also demonstrates that the Corporate Debtor was not only keen to discharge its outstanding liabilities but also financially solvent. The Appellant by not accepting the amount of Rs 1.65 Cr. which has already been deposited by the Corporate Debtor shows that the Operational Creditor was using the Section 9 application as a coercive recovery tool and not as a resolution mechanism.

13. The decision of the Operational Creditor not to accept the payment proposal of the Corporate Debtor to liquidate their debt by asking for an amount more than what was indicated by them earlier goes to show that their demand was not to further the spirit and objective of IBC of reorganisation and resolution of the Corporate Debtor but to subject the Corporate Debtor to debt recovery procedure thereby making their denial to accept payment from the Corporate Debtor arbitrary and unsustainable. In such circumstances, we have no reasons to disagree with the Adjudicating Authority that it would not be in consonance with the objective of IBC to drag the Corporate Debtor into insolvency. The objective of IBC is for the revival, resolution and rejuvenation of a Corporate Debtor from financial distress rather than leverage the provisions of IBC as a coercive recovery tool to abandon the Corporate Debtor to face the peril of corporate death and extinction. We would like to add that the protective shield of Section 10-A does not extinguish or wipe out the liability but only renders it unenforceable in Section 7 and 9 proceedings. The Operational Creditor can always enforce the liability arising out of invoices falling within the Section 10-A period by taking recourse to civil remedies and not by way of Section 9 proceedings.

14. In view of the foregoing discussion, we are in agreement with the impugned order rejecting the Section 9 application in view of the fact that the amount of Rs 1.65 Cr. stands deposited by the Corporate Debtor by FDR with NCLT Registry for making the same available to the Appellant towards discharge of operational debt in terms of Table-B of the invoices alongwith liberty to the Appellant to avail other remedies in accordance with law. We do not find any

good ground to interfere with the above order of the Adjudicating Authority. There is no merit in the Appeal. The Appeal is dismissed with no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 07.01.2026

Abdul