

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-III

(IB) -427(ND)/2024

Order 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:

Global Water Solutions Limited

Having Its Registered Office at:

5th Floor, 37 Esplanade, St. Helier, Jersey,
JEI, 2TR, Channel Islands.

..... Operational Creditor

VERSUS

Vinyl Pipes Private Limited & 4 Ors.

1. Vinyl Pipes Private Limited

Having Its Registered Office at:

N-29, Green Park Extension
New Delhi-110016.

..... Respondent No. 1/Corporate Debtor

2. Ms. Deepjyoti Baruah

Director of Vinyl Pipes Private Limited

..... Respondent No. 2

3. Mr. Raju Saini

Director of Vinyl Pipes Private Limited

..... Respondent No. 3

4. Mr. Bhavya Jain

Erstwhile Director of Vinyl Pipes Private Limited

..... Respondent No. 4

5. Mr. Sarth Jain

Erstwhile Director of Vinyl Pipes Private Limited

..... Respondent No. 5

Order Pronounced On: 01.08.2025

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

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Date of Order: 01.08.2025

APPEARANCES:

For the Applicant : Mr. Tariq Muneer, Mr. Chandan Saggu,
Ms. Chanchal Gupta, Mr. Mayank Chitkara, Advs.

For the Respondents

No. 1 to 4 : ex-parte vide order dated 15.05.2025

For the Respondent

No. 5 : Mr. Anil K. Khaware, Mr. Yogendra Kumar, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by Global Water Solutions Limited, the Applicant/Operational Creditor, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against Vinyl Pipes Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the total amount of default of \$136,713.43 (US Dollars One Hundred thirty-six thousand seven hundred thirteen and forty-three cents) along with an interest of 18%. As mentioned by the Applicant, in Part-IV of this Application, the date of default in the present matter is 11.04.2022.

2. Submissions of the Applicant/Operational Creditor:

- i.** The Operational Creditor is a company incorporated in the United States and duly represented by its Authorized Representative, Mr. Shariq Anwar. The company lawfully carries on its business as a manufacturer of tanks and water treatment products.
- ii.** The Corporate Debtor/Respondent No. 1 is the company incorporated under the provisions of the Companies Act, 2013, having CIN: U74999DL2018PTC343120 and carrying on the business as to manufacture, process, fabricate, design, buy, sell, import, export or

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otherwise deal in all kinds of Rigid P.V.C. pipes, fittings, profile P.V.C. sheets, plastic and P.V.C. hoses and pipes and accessories, P.V.C. compound, relevant, Chemicals, adhesives and P.V.C. solvent cement for jointing.

- iii.** It is the case of the Applicant that both parties are in the business of manufacturing water treatment products, due to which they have been in a business relationship of transaction of goods from India to the USA for many years, hence efficiently worked together for years. The Operational Creditor used to make an advance payment to Vinyl Pipes Private Limited, the Corporate Debtor, pursuant to the order placed by the Corporate Debtor for the supply of goods.
- iv.** The Operational Creditor placed an order for the supply of products by the Corporate Debtor via several purchase orders and has also paid an advance amount of \$1756599.18 to the Corporate Debtor against the supply of goods-Standard/Medium/Heavy/Superheavy uPVC column pipes and Top/Bottom adapter of amount \$251545.00, on several dates as per the attached ledger however, goods were neither delivered as per the decided timeline nor the advance amount has been refunded to the Operational Creditor except for a partial shipment for an amount of \$39885.75 worth of products that has been received until April 18, 2023 and a balance of \$136713.43 along with 18% interest is due and outstanding.
- v.** The Operational Creditor was constrained to cancel the freight booking due to the failure of the Corporate Debtor to ship the products on time. The Operational Creditor had to incur cancellation fees, which have been paid by the Operational Creditor and included in the amount due for reimbursement from the Corporate Debtor. To date, a balance outstanding due to be reimbursed to Corporate Debtor is \$136,713.43 (US Dollars One Hundred thirty-six thousand seven hundred thirteen and forty-three cents). The Applicant has placed on record a Copy of ledger account, relevant Invoices and Proof of Payment.
- vi.** Despite repeated reminder by the Operational Creditor, including email dated 16th September 2022, and a demand letter dated 11th October

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2022, no refunds have been received from the Corporate Debtor till date despite repeated assurances from them. The Corporate Debtor failed to repatriate export proceeds within the stipulated time frame, "engaged in unauthorized retention of foreign exchange". The Applicant has placed on record a copy of the Email Correspondence.

- vii.** Due to the inaction of the Corporate Debtor, the Operational Creditor was left with no option but to issue a demand notice dated 06.10.2023 in terms of Rule 5 of the Insolvency and Bankruptcy (application to adjudicating authority) Rules, 2016 to the Corporate Debtor at their registered office through speed post, demanding a sum of \$136,713.43 (US Dollars One Hundred thirty-six thousand seven hundred thirteen and forty-three cents) at interest rate of 18%. However, there was no response to said notice from the Corporate Debtor. The Applicant has placed on record a Copy of the demand notice dated 06.10.2023.
- viii.** Subsequently, the Operational Creditor issued a second demand notice dated 14.06.2024 to the Corporate Debtor. The said speed post was received at the registered address of the Corporate Debtor; however, the outstanding debt is still due and payable. The Applicant has placed on record a Copy of the demand notice dated 14.06.2024 sent by the Operational Creditor along with postal receipt and tracking reports.
- ix.** Hence, the present application has been filed.

3. **Submissions of the Respondent No. 5, Mr. Sarth Jain, Erstwhile Director of Vinyl Pipes Private Limited:**

- i.** The Respondent No. 5 has filed his reply affidavit denying the allegations made by the Applicant and submitted that the present application is not maintainable as the answering respondent is an Ex-Director, which is apparent from the Memo of Party filed by the Operational Creditor. The Insolvency application, if otherwise in order, shall lie only against the Corporate Debtor Company and against no one else. The Director shall not be a necessary or proper party. The answering Respondent being Ex-Director, and hence, the present application is not maintainable qua him. It is stated that arraying the

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answering respondent in the Memo of Party is misconceived in law and fact.

- ii.** It is further submitted that there is no guarantee or personal guarantee executed by the answering respondent in favour of the Operational Creditor Company and therefore on this premise as well, arraying the answering Respondent is unwarranted and without any semblance of cause and therefore, the name of the answering respondent is required to be deleted from the array of parties.

4. **Analysis and Findings**

- i.** We have heard the Ld. Counsel for the Operational Creditor and the Respondent No. 5. We have also perused the records.

- ii.** On 02.08.2024, this Adjudicating Authority passed the following order:

The Applicant is directed to file an affidavit on the maintainability of the present application as to how the Applicant falls under the definition of Operation Creditor as defined under Section 5(20) of the IBC, 2016 and as to how the amount in question falls under the definition of Operation Debt within the meaning of 5(21) of the Code.

- iii.** In compliance of the order dated 02.08.2024, the Applicant filed an Affidavit dated 12.08.2024 with respect to the maintainability of the present application wherein the Applicant stated that, in view of the judgment passed by the Hon'ble Supreme Court in the case of **“M/s. Consolidated Construction Consortium Limited vs. M/s. Hitro Energy Solutions Private Limited”**, Civil Appeal No. 2839 of 2020 dated 04.02.2022, a debt which arises out of advance payment made to a Corporate Debtor for supply of goods or services, would also be covered within the ambit of Operational Debt as defined under Section 5(21) of the IBC, 2016.

- iv.** On 27.08.2024, after hearing the arguments of the Ld. Counsel for the Applicant on the issue of maintainability, this Adjudicating Authority issued notice to the Respondents. Despite service of notice through the **(IB) – 427(ND)/2024**
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normal course, no one appeared on behalf of the Respondent Nos. 1 to 4 and therefore, vide order dated 02.01.2025, the Applicant was directed to publish the notice in two newspapers with respect to Respondent No. 1 Company.

- v. On 04.12.2024, this Adjudicating Authority passed the following order:

“*****

The Applicant is also directed to file an affidavit and clarify as to why Respondent Nos. 2 to 5 have been arrayed as parties in an application filed under Section 9 of Insolvency and Bankruptcy Code, 2016, who are Directors and Ex-Directors of the Respondent No. 1-Company and are not necessary parties, within one week.

*****”

- vi. In compliance of the order dated 04.12.2024, the Applicant filed an Affidavit dated 31.12.2024 stating that “7. I further state that in the present petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, Corporate Debtor No. 1, the company itself, is already a party to these proceedings. It is submitted that while no relief has been sought against the other Defendants, the inclusion of Corporate Debtor Nos. 2 to 5, in their capacity as current and former directors of the company, is only for the purpose of clarifying the company's affairs and ensuring that the correct legal entities and individuals are held accountable in the event that any corporate decisions or actions related to the dispute are found to have been taken under their authority. It is further submitted that impleadment of Corporate Debtor Nos. 2 to 5 will not have any adverse impact on the adjudication or outcome of the present proceedings.”
- vii. On 02.01.2025, this Adjudicating Authority passed the following order:
- “***** We further direct the Applicant to file an affidavit stating that the present application filed under Section 9 of IBC, 2016 is not a collusive one and also an affidavit to the effect that the initial payment of Rs. 2 Lakhs and thereafter the cost to be incurred in CIRP will be paid in case the petition is admitted.*****”



- viii.** In compliance of the order dated 02.01.2025, the Applicant filed affidavits on 16.01.2025 and 30.01.2025, stating that the Operational Creditor has not filed the present application under Section 9 in collusion with the Corporate Debtor. The said application has been filed in good faith and strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, with the sole objective of resolving the Corporate Debtor. The Applicant further undertook to pay an initial amount of ₹2,00,000 (Rupees Two Lakhs Only) towards the CIRP costs, as per the applicable rules and regulations.
- ix.** On 15.05.2025, since no one appeared on behalf of Respondent Nos. 1 to 4, despite due service of notice, dasti notice, and paper publication. Respondent Nos. 1 to 4 were set ex parte.
- x.** Learned Counsel appearing for Respondent No. 5, Mr. Sarth Jain, erstwhile Director of Vinyl Pipes Private Limited, submitted that no contractual agreement or personal guarantee exists on behalf of Respondent No. 5 and therefore Respondent No. 5 cannot, by any legal stretch of reasoning, be considered either a necessary or proper party to the proceedings.
- The Respondent No. 5 prayed for the deletion of the name from the array of parties.
- xi.** Learned Counsel for Respondent No. 5 relied upon the Judgment of the Hon'ble Supreme Court of India in the matter of **Swiss Ribbon (P) Ltd. Vs Union of India** reported in (2019) 4 SCC 17, wherein it was held that *"28.... The interests of corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in the management.....The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects its creditors and workers by seeing that resolution process goes through as fast as possible so that another management can, through its entrepreneurial skill, resuscitate the corporate debtor to achieve all these end."*
- xii.** Learned Counsel for the Applicant, in rebuttal, submitted that Respondent Nos. 4 and 5, being Directors of Corporate Debtor No. 1 at




the relevant time of the transaction, have been impleaded as parties to the present application purely by way of abundant caution, owing to the ambiguous and uncertain status of Corporate Debtor No. 1. It was contended that concerns existed regarding the company's operational viability, managerial framework, and corporate decision-making mechanisms. Therefore, in order to attain complete clarity and to substantiate the factual matrix surrounding the disputed transaction, Respondent Nos. 4 and 5 were arrayed as a parties to enable a thorough inquiry into the affairs of the Corporate Debtor.

- xiii.** Strangely, the Applicant/Operational Creditor has arrayed the Directors and Ex-Directors of the Respondent No. 1 Company as Respondents who are otherwise not necessary parties in an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016. It is a settled principle of law that the applications filed under Sections 7 and 9 of the Code are essentially between the Applicant, i.e., Financial Creditor or the Operational Creditor, as the case may be, and the Corporate Debtor. The third parties, i.e., Promoters, Directors, Ex-Directors, and employees, are not the necessary parties in these proceedings. The Insolvency proceedings are in the nature of proceedings *in personam* at the pre-admission stage, and become *in rem* proceedings upon admission of the Insolvency Application.
- xiv.** The Hon'ble Supreme Court of India in **Swiss Ribbon (P) Ltd.** (*supra*), has held that the Corporate Debtor, its Promoters, and other associated parties are treated distinctly. Proceedings initiated by the Operational Creditor shall be maintainable only where a valid case for initiation of CIRP is established. Furthermore, in the absence of any personal guarantee, no legal action shall lie against the concerned Director or Directors.
- xv.** In light of the aforementioned legal position, we are of the considered view that the Respondent Nos. 2 to 5, are not necessary parties to the present Section 9 Application and the present Application suffers from the misjoinder of the Parties.



- xvi.** The present application, filed by the Operational Creditor in Form 5, seeks initiation of the CIRP against the Corporate Debtor based on the outstanding dues specified in Part-IV of the application, amounting to \$136,713.43 (US Dollars One Hundred thirty-six thousand seven hundred thirteen and forty-three cents) along with an interest of 18%, equivalent to Rs. 1,16,91,733/- (Indian Rupees One Crore Sixteen Lakhs Ninety-One Thousand Seven Hundred Thirty-Three Only), with the date of default recorded as 11.04.2022.
- xvii.** The underlying facts giving rise to the debt and subsequent default reveal that, pursuant to a commercial understanding between the parties, the Operational Creditor remitted a total sum of USD 175,199.85 to the Corporate Debtor as an advance. These payments were made through formal banking channels in multiple tranches: USD 45,199.85 on 01.04.2022, USD 50,000 on 20.04.2022, USD 9,480 and USD 28,440 on 14.06.2022, and USD 42,080 on 16.06.2022. The aforesaid payments were specifically intended to secure the price of goods in accordance with the Proforma Invoices issued by the Corporate Debtor.
- xviii.** In Part-IV of Form 5 of the Present Section 9 Application, the Operational Creditor indicated the alleged default amount as USD 136,713.43 (United States Dollars One Hundred Thirty-Six Thousand Seven Hundred Thirteen and Forty-Three Cents), without providing the corresponding value in Indian Rupees. Subsequently, the Operational Creditor unilaterally converted the said amount into Indian currency and represented it as INR 1,16,91,733/- (Indian Rupees One Crore Sixteen Lakhs Ninety-One Thousand Seven Hundred Thirty-Three Only) in the Written Submissions dated 03.06.2025, without mentioning the exchange rate prevailing at the relevant point of time.
- xix.** The Applicant has placed reliance on the Proforma Invoices dated 30.03.2022, 31.03.2022, 09.06.2022 and 24.02.2023, as well as a Commercial Invoice dated 18.04.2023. However, upon meticulous examination of the said documents, it is evident that neither the foreign

exchange conversion rate nor any denomination in Indian Rupees has been indicated.



xx. The Applicant has not furnished any evidence substantiating the applicable foreign exchange rate at the relevant stages, namely, at the time of advance payment made to the Corporate Debtor, at the issuance of demand notices dated 06.10.2023 and 14.06.2024, and at the time of filing the present Section 9 Application.

xxi. Because of the failure on the part of the Corporate Debtor to refund the advance money to the Operational Creditor, the Applicant issued two demand notices dated 06.10.2023 and 14.06.2024 under Section 8 of IBC, 2016. The Applicant sent the first demand notice dated 06.10.2023 to Respondent Nos. 1, 4, and 5. Whereas the Applicant sent the second demand notice dated 14.06.2024 to all Respondents, namely Respondent Nos. 1 to 5. Such a procedure adopted by the Applicant is not in accordance with the provisions of the Code i.e., because Section 8 of the Code contemplates that the demand notice is to be issued only to the Corporate Debtor and not to the Directors/Ex-Directors.

xxii. Further, the Applicant issued multiple demand notices to the Corporate Debtor. Even though there is no provision in the IBC under which the Operational Creditor is required to give multiple demand notices. For better understanding, the Section 8 is extracted below:

“8. Insolvency resolution by operational creditor. (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor-

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;



(b) the [payment] of unpaid operational debt-

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding [payment] of the operational debt in respect of which the default has occurred."

xxiii. Section 8 of IBC, 2016 contemplates that only one demand notice is to be issued to the Corporate Debtor. This Adjudicating Authority in the matter of **M/s. Ultratech Cement Ltd. Vs. M/s. Universal Journeys India Pvt. Ltd.** in (IB)-1027(ND)/2020 held that *"We find that the Operational Creditor issued multiple demand notices to the Corporate Debtor which is not acceptable. The IBC, 2016 is a procedural Code and the process stipulated therein needs to be followed in the letter and spirit. There is no such provision in the IBC, 2016 and in the Regulation made thereunder that allows the Operational Creditor to issue multiple demand notices to the Corporate Debtor. Hence, we are of the view that the multiple demand notices are beyond the ambit of the IBC, 2016."*

The IBC does not provide for repeated demand notices and doing so may indicate that the debt is not clearly crystallized.

xxiv. The Learned Counsel for the Applicant submitted that, despite the receipt of payment, the goods were neither delivered within the stipulated timeline nor was the advance amount refunded to the Operational Creditor, except for a partial shipment amounting to USD 39,885.75, which was received on April 18, 2023. It was further submitted that, on certain occasions, the Corporate Debtor routed deliveries through its affiliate entity, Vinyl Tubos Pvt. Ltd., and the benefit of such partial supply has been duly acknowledged by crediting the corresponding amount of USD 39,885.75 to the Corporate Debtor's account. This adjustment is reflected in the ledger maintained by the

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Operational Creditor. It is submitted that, even after accounting for the aforementioned partial supply, the outstanding claim continues to exceed the statutory threshold prescribed under the Code.

- xxv.** The Applicant in support of his case submitted that it had given advance of an amount of \$136,713.43 (US Dollars One Hundred thirty-six thousand seven hundred thirteen and forty-three cents) along with an interest of 18% to the Corporate Debtor and has placed on record copies of the bank statements as well as copies of the performa invoices.
- xxvi.** There is no mention of any interest to be charged in case of delayed payment in the terms and conditions of any of the invoices. The Applicant has also not placed on record any agreement entered into by it with the Corporate Debtor with respect to the transactions involved. It is, therefore, not possible to hold that the rate of interest as claimed by the Applicant, i.e., 18%, has been agreed upon by the parties.
- xxvii.** Therefore, in the absence of any agreement with respect to the interest rate, it is not possible to accept the contention raised by the Applicant that the total default amount or the total amount as mentioned in Part-IV, i.e., \$136,713.43 (US Dollars One Hundred thirty-six thousand seven hundred thirteen and forty-three cents) along with an interest of 18% is inclusive of principal and interest.
- xxviii.** Upon perusal of the records, it is noted that the Board Resolution dated 27/10/2023 issued by Global Water Solutions Ltd expressly authorizes Mr. Shariq Anwar, Director of Global Water Solutions India Private Limited, to execute legal documentation solely for the purpose of submitting a demand notice for monies owed to the Company in the amount of USD 136,713.43. Furthermore, Mr. Anwar is authorized to sign the said documentation on behalf of Mr. Sean P. Natarajan, Managing Director of Global Water Solutions Ltd, pursuant to the authority vested in him by Mr. Natarajan and the Board of Directors of Global Water Solutions Ltd. The said authorization is limited strictly to the submission of the demand notice and does not extend to any further legal action.



xxix. It is further observed that the aforementioned Board Resolution dated 27/10/2023 does not confer upon Mr. Shariq Anwar any authority to initiate or institute legal proceedings or file any applications, petitions before any Court of Law, Tribunal, including the present application under Section 9 of the Code.

xxx. In view of the foregoing, we are of the considered view that the present Section 9 application has not been filed under a valid authorization, nor is it supported by a duly executed Board Resolution conferring requisite authority for the same.

xxxi. In the present matter, in the absence of any agreement stipulating an applicable rate of interest, it remains uncertain whether the default amount stated in Part IV of the application includes both the principal sum and accrued interest. Further, the selective and inconsistent issuance of demand notices, initially excluding certain parties and subsequently including them, reflects procedural ambiguity and weakens the claim of direct liability against Respondent Nos. 2 to 5. The impleadment of said Respondents, therefore, appears to be neither legally necessary nor procedurally appropriate for effective adjudication of the dispute. It is pertinent to observe that the IBC does not contemplate or endorse repeated issuance of demand notices. Such conduct indicates that the alleged debt lacks definitive crystallization. Moreover, the filing of the present Section 9 application is not backed by valid authorization and lacks the support of a duly executed Board Resolution conferring specific authority for such legal action. Consequently, the claim, as presented, does not satisfy the procedural rigour envisaged under the Code.

xxxii. In view of the above observations, we are of the view that the present application filed under Section 9 of the IBC, 2016 ought to be dismissed.

5. **Order**

In view of the above facts and circumstances and the foregoing discussion, we are not satisfied that the present Application fulfills the criteria laid down under Section 9 of the Code. It is accordingly, ordered as follows: -

- a)** The Application bearing **(IB)-427(ND)/2024** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed**.
- b)** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
- c)** A certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

No order as to costs.

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)