



**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI**

**CP (IB) No.148/MB/2022 ALONG WITH IA No.2846/2023**

*[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:

**ROHIT PLASTOPACK PRIVATE LIMITED**

[CIN: U65100MH1989PTC160499]

Plot No.57, FGH/B-1, 1<sup>st</sup> Phase

GIDC, Vapi- 396195

Gujarat.

**...Operational Creditor/Applicant**

Vs.

**DENTSU COMMUNICATIONS INDIA PRIVATE LIMITED**

[CIN: U74300MH1986PTC039002]

Devchand House, C Block, 2<sup>nd</sup> Floor Shivsagar Estate

Dr. Annie Besant Road

Worli, Mumbai-400018

Maharashtra.

**...Corporate Debtor/Respondent**

**Pronounced: 04.04.2025**

**CORAM:**

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

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

Operational Creditor : CS Alpa Jain.

Corporate Debtor : Sr. Adv. Ashish Kamat, a/w Adv. Anindita Roy Chowdhury, Adv. Vatsala Rai, Adv. Sushrut Garg & Adv. Mitansh Shah i/b AZB & Partners.



## **ORDER**

***[PER: SANJIV DUTT, MEMBER (TECHNICAL)]***

### **1. BACKGROUND**

- 1.1 This Application, bearing C.P.(IB) No.148/MB/2022, was filed by Rohit Plastopack Private Limited, the Operational Creditor/Applicant, on 21.12.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") through its Director, Mr. Prince Shah, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Dentsu Communications India Private Limited, the Corporate Debtor.
- 1.2 The Corporate Debtor, while running a social campaign called 'NEED TO FEED' under Pradhan Mantri Garib Kalyan Anna Yojna (PMGKAY), placed orders with the Operational Creditor for agricultural products, which were sourced from Suumaya Agro Limited. Several invoices were raised for orders dated 08.06.2021 and 15.06.2021, but despite confirming the quality and quantity of the goods, the Corporate Debtor failed to make the payment.
- 1.3 A Demand Notice dated 22.10.2021 was issued under Section 8 of the Code, demanding the alleged principal amount of operational debt of Rs.5,19,76,264/- along with interest at 18% per annum amounting to Rs.22,31,739/-, totalling Rs.5,42,08,003/- (Five Crore Forty-Two Lakh Eight Thousand and Three Rupees). However, the Corporate Debtor neither made the payment within 10 days of receipt of the Demand Notice nor furnished any reply. Consequently,



the Operational Creditor has approached this Tribunal, seeking initiation of CIRP in respect of the Corporate Debtor.

## **2. AVERMENTS OF OPERATIONAL CREDITOR**

- 2.1 The Corporate Debtor, under the 'NEED TO FEED' program and Pradhan Mantri Garib Kalyan Anna Yojana (PMGKAY), required agricultural goods on a 45-day credit basis, calculated from the date of confirmation of quality and quantity. These agricultural goods/dry rations were to be distributed among school children and poor people as part of its Corporate Social Responsibility Corporate Social Responsibility (CSR) activities. The Corporate Debtor placed an order on 08.06.2021 and Suumaya Agro Limited delivered the goods on behalf of the Operational Creditor. The Corporate Debtor confirmed the receipt on 10.06.2021, after which the Operational Creditor made the payment to Suumaya Agro Ltd.
- 2.2 A second order was placed on 15.06.2021, delivered by Suumaya Agro Ltd., and confirmed by the Corporate Debtor on 21.06.2021. The payment for the first order was due on 25.07.2021 for all the invoices dated 08.06.2021 and for the second order on 05.08.2021, for all the invoices dated 15.06.2021. However, the Corporate Debtor failed to make payments for these invoices on the due dates.
- 2.3 Despite multiple follow-ups and assurances from the Corporate Debtor, on 08.10.2021, the Corporate Debtor unexpectedly denied the claim *vide* email without any specific reason. Subsequently, the Operational Creditor issued a Demand Notice under Section 8 of the Code in Form 3 on 22.10.2021, claiming the principal amount along with interest @18% per annum. The Corporate



Debtor neither replied to the Demand Notice nor paid the outstanding dues of Rs.5,42,08,003/-, leading to the filing of the present Application. Hence, the Operational Creditor prays that CIRP may be initiated in respect of the Corporate Debtor.

### **3. CONTENTIONS OF CORPORATE DEBTOR**

- 3.1 The Corporate Debtor, in its Affidavit-in-Reply dated 06.04.2022 has denied the allegations made by the Operational Creditor and raised a number of objections.
- 3.2 The Corporate Debtor is, *inter alia*, engaged in creative services, media buying, planning strategy and communication consultancy. In 2017, it launched a CSR advisory programme through its division 'InDeed' to assist clients in implementing CSR initiatives.
- 3.3 The present Application is based on bogus and sham transactions executed by former employees of 'InDeed' in collusion with the Operational Creditor. These transactions were unauthorised and conducted without the approval of the Corporate Debtor's management. Since January, 2019, 'InDeed' was managed by Mr. Sahil Arora, Senior Vice President, along with Mr. Shubham Tiwari, Project Coordinator and Mr. Sarthak Behl, Business Manager. These individuals, along with Mr. Robin Gupta, an employee of Corporate Debtor, are accused of facilitating these fraudulent transactions. The Corporate Debtor became aware of these sham transactions in August, 2021. Upon initiation of internal inquiries, the Former Employees resigned on 30.09.2021. Further, the Corporate Debtor filed criminal complaints against them before the Ld. Chief Judicial Magistrate, Gurugram. The Corporate Debtor raised concerns



regarding these fraudulent transactions with the Ministry of Corporate Affairs (MCA) through representations dated 14.10.2021; 10.11.2021 and 10.02.2022.

3.4 The Operational Creditor relies on emails dated 07.06.2021 and 12.06.2021 to substantiate the alleged purchase of agricultural goods. However, these emails lack details regarding the type, quality and quantity of the goods. For instance, it is stated by the Corporate Debtor that in the case of rice, there are multiple varieties such as Indian Long Grain White Rice IR 64, PR-11 Long Grain Steam Rice, etc. The absence of such specifics indicates the lack of a genuine transaction. It is inconceivable and completely lacking in rationale and bona fides that a purchaser seeking quotes for agricultural goods would not have determined which variety of such goods is intended to be purchased. The Corporate Debtor is in possession of similar email exchanges with other vendors, showing identical quotations to the decimal point, even when requested months apart. This further establishes the fraudulent nature of the transactions. Further, these emails relied upon by the Operational Creditor were exchanged solely between the Operational Creditor and the former employees of the Corporate Debtor, without the knowledge or consent of the Corporate Debtor's management.

3.5 There is no record of actual delivery of goods to the Corporate Debtor. The alleged delivery location, "Binola Industrial Area, NH8, Gurgaon," is vague and the Corporate Debtor has no business operations or warehouse at that location. Incidentally, as disclosed in the annual reports of Suumaya Industries Ltd., Suumaya Agro Ltd., its wholly owned subsidiary, has a warehouse in Binola (Haryana) which was further verified by site visits. The timeline is unrealistic, as



the purchase order for 4,24,000; kg of rice, 7,41,000 kg of wheat and 1,21,000 kg of toor dal was issued by a former employee (i.e. Shubham Tiwari) on 07.06.2021 at 12:01 AM (overnight) via email and the consignment of such large quantities of agricultural goods was allegedly loaded and dispatched the next day. The lorry receipts relied upon by the Operational Creditor contain incorrect truck registration numbers, with some numbers belonging to three-wheelers. Further, freight charges and taxes are missing from the documents. It is pertinent to note that the terms and conditions of the alleged Purchase Order issued by the former employee of the Corporate Debtor do not contain any interest clause. Hence, in the absence of such a clause, the Operational Creditor cannot claim interest at the rate 18%.

- 3.6 The invoices issued on 09.06.2021 mentioned delivery at Hari Nagar Complex, Bhiwandi, Maharashtra, while revised invoices dated 10.06.2021 changed the delivery location to Binola Industrial Area, Gurgaon. Such contradictions further expose the fraudulent nature of the transactions. The Operational Creditor failed to provide details of the individuals who received and inspected the goods despite repeated requests from the Corporate Debtor *vide* email dated 08.10.2021. Moreover, the alleged purchase orders refer to materials, workmanship and design which are irrelevant to agricultural goods, further proving that the documents were fabricated. The delivery locations mentioned in the documents are inconsistent, ranging from Haryana to Maharashtra and Gujarat, indicating a mere paper trail with no actual delivery.
- 3.7 The consignor of the goods, Suumaya Agro Limited, a subsidiary of Suumaya Industries Limited, is directly involved. The Operational Creditor failed to



establish any contractual arrangement between the Corporate Debtor and Suumaya Agro Limited. The Operational Creditor acted as an intermediary without any legal authority. The Operational Creditor's claim is based on the price margin between the purchase order received from the Corporate Debtor and the order placed with Suumaya Agro Limited. Therefore, the Operational Creditor is itself confused as to whether it is in the position of a 'financial creditor' or an 'operational creditor' under the Code, or for that matter a 'creditor' at all which can file an Application under the provisions of the Code.

3.8 The modus operandi employed by the Corporate Debtor's former employees was similarly executed against other vendors, including Capalpha Trade Private Limited ("Capalpha"), which led Capalpha to file FIR No. 08/2022 on 12.02.2022 against the Suumaya Group, the Corporate Debtor and its ex-employees before the Worli Police, Mumbai. The FIR exposed fake lorry receipts, bogus invoices and non-existent deliveries under the "Need to Feed" program. The Mumbai Police filed a charge-sheet on 12.10.2022 in Police Case PW No. 4700624/2022 before Ld. CJM, Esplanade, Mumbai, clearing the Corporate Debtor and its senior officials of any involvement, while charging the Suumaya Group and the Corporate Debtor's ex-employees with cheating and criminal breach of trust. The criminal case is still pending.

3.9 The Operational Creditor's charter document (MoA) was amended on 01.07.2021 to include establishment of business connected with agricultural activities, further proving the fraudulent intent. This shows that at the time of issue of alleged POs on 07.06.2021 ad 12.06.2021, the Operational Creditor had no legal authority under its MoA to transact in agricultural activities. Further,



the Corporate Debtor's internal investigation revealed that the Operational Creditor's revenue spiked from Rs.3.30 million in FY 2019-20 to Rs.51.98 million in June, 2021 alone, indicating an afterthought to justify the sham transactions.

- 3.10 The Corporate Debtor disputed the claim in a Notice of Dispute dated 08.10.2021, well before the delivery of the Demand Notice dated 22.10.2021. The Corporate Debtor disputed any amounts being due and payable to the Operational Creditor. The Operational Creditor even requested a meeting on 15.10.2021 to discuss the alleged overdue payment, thereby acknowledging the existence of a pre-existing dispute. As per ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353***, an Application under Section 9 of Code is not maintainable in case of a pre-existing dispute.
- 3.11 The Application has been filed without any proof of actual delivery of the Demand Notice dated 22.10.2021. Since the issuance and receipt of the alleged Demand Notice is itself disputed, the Application is liable to be dismissed on this ground alone.
- 3.12 The Operational Creditor is attempting to misuse the Code as a recovery mechanism, which is impermissible as per ***Chryso (India) Pvt. Ltd. Vs. Sri Chowdeshwari Concrete Pvt. Ltd., 2021 SCC OnLine NCLT 237***. The Corporate Debtor submits that fraudulent transactions do not constitute operational debt under Code, as held in ***Zoom Communications Pvt. Ltd. Vs. Par Excellence Real Estate Pvt. Ltd.*** Further, allegations of fraud cannot be adjudicated by this Tribunal, as per ***Shelmira Kumar Sharma Vs. DSC Ltd., 2019 SCC OnLine NCLAT 1274***.



3.13 In light of the above facts and legal precedents, the Corporate Debtor prays for the rejection of Section 9 Application.

#### 4. REJOINDER BY THE OPERATIONAL CREDITOR

4.1 The Operational Creditor filed a limited rejoinder dated 18.04.2022, denying all submissions made by the Corporate Debtor in its reply. The Operational Creditor also produced the courier receipt evidencing that the Demand Notice was duly served and received by the Corporate Debtor on 25.10.2021. Subsequently, a detailed rejoinder was filed on 17.02.2023 in order to counter the reply of the Corporate Debtor.

4.2 Internal disputes within the Corporate Debtor cannot be classified as a "pre-existing dispute" to dismiss the Section 9 Application. The Corporate Debtor's allegations against its employees regarding unauthorised Purchase Orders are purely internal matters and were never communicated to the Operational Creditor. This is evident from the Corporate Debtor's email dated 08.10.2021, where no such issues were raised. To substantiate its contention, the Operational Creditor relied on several judgments that establish the principle that internal disputes within the Corporate Debtor do not qualify as a "pre-existing dispute". Reliance is placed in this regard on judgments of Hon'ble NCLAT in **Switching AVO Electro Power Ltd. vs. Ambient Computronics Pvt. Ltd.** [CA (AT) (Insolvency) No.525 of 2020], **Optinova AB vs. Bio-Med Health Care Products Private Limited** [(CA (AT)(Insolvency) No.1359 of 2022] and **Gangadhar Udayan Dravid vs. Saurav Keshan** [CA (AT)(Insolvency) No.01 of 2021)].



- 4.3 Since the Corporate Debtor acknowledged the Demand Notice, any dispute raised after default is merely an afterthought to avoid payment. As per Section 9(5)(d) of the Code, any dispute should have been communicated within 10 days of receipt of the Demand Notice or logged in the Information Utility, which the Corporate Debtor failed to do.
- 4.4 Certain contentions of Corporate Debtor are vague and unjustified. For instance, Corporate Debtor's argument that the delivery address in the Purchase Order is incomplete is baseless, as the address was provided by the Corporate Debtor's own employee. Clause 3(b) of the Purchase Order's Terms and Conditions clearly mentions that goods will be delivered as per the instructions in the Purchase Order. The Corporate Debtor's objection to the 18% interest charged by the Operational Creditor is invalid, as the invoices (Annexure VII, Pages 36-123 of the Application) clearly mention that interest @18% per annum will be charged on payments beyond the 30-day credit period.
- 4.5 During the course of arguments also, a false narrative was projected that the FIRs, charge sheet were filed. In fact, such submission has no bearing on the Operational Creditor's claim. The name of the Operational Creditor, is nowhere mentioned in the FIR. The Corporate Debtor took no action against internal fraud, while the Operational Creditor proactively filed a petition under Sections 213(b)(i), 221 and 447 of the Companies Act, 2013 before this Tribunal, Mumbai Bench seeking an investigation into the affairs of the Corporate Debtor.



## 5. ANALYSIS AND FINDINGS

5.1 Upon due consideration of the pleadings along with the materials available on record including Written Submissions and hearing both the Ld. Counsel for the Operational Creditor and Corporate Debtor, our findings are as under: -

5.2 It is well-established that while considering an application under Section 9 of the Code, the Adjudicating Authority will have to determine:-

- (i) Whether there is an 'operational debt' as defined exceeding the threshold limit under Section 4 of the Code;
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid debt is due and payable and has not yet been paid; and
- (iii) Whether there is existence of a dispute between the parties or the record of pendency of a suit or arbitration proceeding filed before the receipt of the Demand Notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is found to be lacking, the application would have to be rejected [*Mobilox Innovations Private Limited (supra)*]. However, an application under Section 9 of the Code has to be mandatorily admitted, if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) are satisfied.

5.3 Before proceeding to deal with the merits of the Application, it is necessary to first address **IA No.2846 of 2023** filed by the Operational Creditor seeking an amendment to the main Application under Rule 155 and Rule 11 of the NCLT Rules, 2016. The amendments sought included (i) submission of revised



invoices; (ii) filing of an affidavit under Section 9(3)(b) of the Code; (iii) filing of GST returns and (iv) submission of a Board Resolution authorising the initiation of proceedings. The Operational Creditor relied on Rule 155, which allows amendments within 30 days from the completion of pleadings, read with Rule 153, which permits an extension of time in the interest of justice and Rule 11, which provides inherent powers to the Tribunal to make orders necessary for meeting the ends of justice. It relied on certain case laws such as ***Rajendra Bhai Panchal Vs. Jay Manak Steels (NCLAT, 2020)***, ***Zebronics India Pvt. Ltd. Vs. Times Internet Ltd. (NCLT, 2022)*** and ***Dena Bank v. C. Shivakumar Reddy (SC, 2020)***, wherein it has been held that clerical mistakes and inadvertent omissions should be treated as curable defects. However, the Corporate Debtor opposed to the amendment, relying on the judgment of Hon'ble NCLAT in the matter of ***Harish Raghavji Patel Vs. Shapoorji Pallonji Finance (NCLAT, 2021)*** and submitting that Rule 11 cannot override statutory time limits.

- 5.4 Upon considering the submissions of both parties, it is proposed to evaluate whether the amendments sought by the Operational Creditor are procedural corrections or substantive changes that would alter the nature of the claim. It is observed that the Affidavit under Section 9(3)(b) of the Code is a procedural requirement to confirm that there is no notice of dispute given by the Corporate Debtor regarding the unpaid operational debt. Since this affidavit merely formalises an existing assertion in prior pleadings, allowing its submission would not prejudice the Corporate Debtor. Similarly, GST returns serve as documentary proof of debt and default and can be accepted as additional



supporting documents and do not introduce a new claim, as clarified in the *Dena Bank* (*supra*).

- 5.5 However, we find that the invoices sought to be replaced directly pertain to the core claim amount and impact the substantive pleadings. Although the Corporate Debtor's reply acknowledges receipt of the revised invoices, it does not admit liability based on them. Since oral arguments have already been concluded, accepting these invoices at this belated stage would prejudice the Corporate Debtor. Moreover, the submission of a fresh Board Resolution is not a mere correction of a clerical error but a procedural lapse. Therefore, allowing it also at this juncture would alter the core pleading and would cause potential prejudice to the Corporate Debtor.
- 5.6 It is a generally accepted principle of law that courts ought to allow prayer for amendment of pleadings provided the amendment does not result in injustice to the other side and by virtue of such amendment, the party seeking amendment does not seek to withdraw any clear admission made by the party which confers a valuable right on the other side. However, it is also well-settled that no amendment of pleadings can be allowed where the amendment changes the very nature of the cause of action so as to set up an entirely new case foreign to the case set up in the application or takes away a valid defence available to the other side. In view of this legal position, the IA filed by the Operational Creditor is allowed to the extent of incorporating the Affidavit under Section 9(3)(b) of the Code and GST returns while the remaining two amendments stand rejected as legally impermissible. **Accordingly, IA No.2846/2023 is partially allowed and disposed of.**



- 5.7 Coming now to the merits of the main Application, it is well-settled that an application under Section 9 of the Code, *inter alia*, requires strict proof of debt and default. The Applicant must prove with credible evidence and materials that there is an 'operational debt' owed to it by the Corporate Debtor and that there has been a default in payment of such debt on the date on which it fell due and payable. In the present case, it is observed that in order to prove the existence of debt, the Applicant has placed on record copies of relevant Purchase Orders (POs), GST Tax Invoices, Lorry Receipts, Bills of Supply from Suumaya Agro Limited, Bank Account statement showing payments made to Suumaya Agro Limited and email confirmations of goods supplied. In Part-IV of the Application, the Operational Creditor has claimed a total principal debt of Rs.5,19,76,264/- along with interest of Rs.22,31,739/- @18% in respect of unpaid invoices raised in respect of the two POs dated 07.06.2021 and 12.06.2021 respectively.
- 5.8 On perusal of the PO dated 07.06.2021 and 12.06.2021, it is noted that the orders were placed through emails sent by Mr. Shubham Tiwari (the then Project Coordinator of the Corporate Debtor/ex-employee) to Mr. Prince Shah (Director of the Applicant). However, it is noticed that although 4,240 quintal of rice; 7,410 quintal of wheat; and 1,210 quintal of toor dal, were purportedly ordered *vide* email dated 07.06.2021, the said email did not bear essential commercial details such as product specifications, price breakdown and quality standards of the agricultural goods to be supplied i.e., rice, wheat and toor dal. Further, the delivery location mentioned in the Purchase Order, i.e., "Binola Industrial Area, NH8, Gurgaon (Haryana)" appears vague and does not match with the delivery address mentioned in the invoices. Further, it is an undisputed fact that the Corporate



Debtor does not have any office or warehouse located at "Binola Industrial Area, NH8, Gurgaon (Haryana)". Incidentally, it is not the Corporate Debtor but, in fact, Suumaya Agro Limited, which has a warehouse in Binola Industrial Area (Haryana), as evident from perusal of Annual Report of Suumaya Industries Ltd. for 2020-2021 placed on record by the Corporate Debtor. Such glaring discrepancies cast serious doubts on the authenticity of the entire transaction.

5.9 Upon perusal of the facts and records, it is observed that the first communication for the quotation of agricultural products was made *vide* an email dated 06.06.2021 at 11:21 PM, by Mr. Shubham Tiwari (former employee) to the Operational Creditor. Surprisingly, on the very same day, i.e., 06.06.2021, the Operational Creditor, within minutes responded to the former employee *vide* email at 11:47 PM, providing quotations of the agricultural goods without any enquiry about the variety, category, quality or quantity of such agricultural goods. Within the next fifteen minutes, i.e., on 07.06.2021 at 12:01 AM, the Corporate Debtor's former employee issued the PO to the Applicant for 4,24,000 kgs of rice, 7,41,000 kgs of wheat and 1,21,000 kgs of toor dal. Thereafter, the entire consignment for 12,86,000 kgs of agricultural goods was allegedly procured from Suumaya Agro Ltd., loaded and dispatched on the same day, which raises serious doubts about the feasibility of executing such a massive order within an impossibly short timeline. A similar pattern was followed for the second Purchase Order dated 12.06.2021.

5.10 Further, Clause 14 of the POs explicitly prohibits the seller from assigning the order to any third party without the prior written consent of the buyer. However, it is noticed from the record that the Applicant placed back-to-back orders with



Suumaya Agro Limited for the supply of goods intended for the Corporate Debtor. This act of assignment, without prior written consent from the Corporate Debtor, is in direct violation of the terms of the POs. It thus emerges that the Applicant did not directly supply the agricultural goods to the Corporate Debtor, as mandated under the POs. The claim raised by the Applicant is essentially for the price margin between the rate at which it procured goods from Suumaya Agro Limited and the rate at which the alleged POs were issued by the Corporate Debtor. This indirect involvement and absence of actual supply of goods or services by the Operational Creditor disqualifies it from being classified as an 'Operational Creditor' under Section 5(20) of the Code. Further, what emerges is that the Applicant had close nexus with Suumaya Group of Companies in so far as the goods were purportedly procured from Suumaya Agro Limited as per the Bills of Supply; the goods were purportedly "dispatched by Suumaya Industries Limited" as per Remark 1 on the original invoices as reproduced in succeeding para 5.11 and such goods were purportedly delivered at "Binola Industrial Area, NH-8 Gurgaon" where Suumaya Agro Limited had its warehouse. Furthermore, on perusal of the bank statement of the Applicant, it is noticed that an RTGS payment of Rs.4,67,95,257/- was made to Suumaya Agro Limited on 11.06.2021 and for this purpose, funds aggregating to Rs.4.64 Crore were transferred from bank accounts of Mr. Prince Ketan Shah (Director of Applicant Company), Ms. Jigna Ketan Shah, Mr. Ketan Keshavaji Shah and Ms. Feona Ketan Shah on 21.05.2021, 02.06.2021 and 10.06.2021. Further, a perusal of the said Bank Statement for the period between 01.04.2021 and 20.12.2021 also shows sums received by the Applicant from Suumaya Industries Ltd. through RTGS during the month of October, 2021. This also indicates that the



Applicant was closely connected with other entities of Suumaya Group and was not a “gullible outsider” as claimed in the Written Submissions.

5.11 Coming now to the purported GST Tax Invoices issued by the Applicant which form the basis of its claim, it is noticed that the Applicant had issued such invoices twice. While copies of the original invoices were annexed to the Application, the Applicant attempted to place on record the revised invoices by way of the IA referred to above. The only difference in the original and revised invoices lies in the following “Remarks” on the original invoices which are missing from the revised invoices:-

**“Remarks:**

1. *Dispatch by Suumaya Industries Limited (GSTN Number:27AAF4357R1ZL) vide invoice number of SIS/22/0528/0017.*
2. *Delivery at Hari Har Complex, Building No.E12, Gala No.13 to 16, Dapode Villegam Mankuli Naka, Bhivandi-421302, Maharashtra.”*

A careful perusal of the 47 tax invoices alleged to be in default reveals that the invoices purportedly issued by the Applicant on 08.06.2021 bear Invoice Nos.RPPL/21-22/00001 to RPPL/21-22/00044 and those issued on 15.06.2021 bear Invoice Nos. RPPL/21-22/00045 to RPPL/21-22/00047. It is thus surprising and intriguing to note that no sales of agricultural goods were made to any other party and no invoices were raised by the Applicant from 01.04.2021 to 07.06.2021 and again from 09.06.2021 to 14.06.2021. On perusal of the relevant Bills of Supply, which are issued not by Suumaya Industries Ltd. but by Suumaya Agro Ltd., the delivery address is shown as “Binola Industrial Area, NH-8, Gurgaon”. As per the terms of delivery mentioned on the Bills of Supply, “*lifting will be done from Alipur, Delhi PIN 110036*” and goods would be dispatched through S.D. Freight Carrier. Upon perusal of the lorry receipts annexed to the Application, it is evident that S.D. Freight Carrier, the transporter, is based out of Jaipur, Rajasthan and



does not appear to have any presence either in Alipur (Delhi) or in Binola (Haryana), where goods were allegedly loaded and unloaded.

5.12 Further, the lorry receipts submitted by the Operational Creditor suffer from glaring irregularities and lack essential details such as freight charges, driver's information and tax components. Above all, none of the Goods Receipts (GRs) is found to have been signed and acknowledged by the Corporate Debtor or its employees as proof of receipt of goods. All these discrepancies further weaken the Operational Creditor's claim that a legitimate business transaction took place between the parties in the ordinary course of business. In view of the above facts and circumstances, the alleged transaction between the Applicant and the Corporate Debtor appears to be dubious and lacks credibility and, hence, no operational debt within the meaning of Section 5(21) of the Code can be said to have arisen under Section 9 of the Code. The absence of essential commercial details in the POs, the contradictory delivery locations in the invoices and the irregularities in the transportation records raise serious doubts on the genuineness of the transaction. At this stage, it would not be out of place to take note of the Press Release dated 12.12.2024 issued by the Directorate of Enforcement (ED), Mumbai Zone relevant extract of which is reproduced below:-

*“Directorate of Enforcement (ED), Mumbai Zonal office conducted search operations on 10.12.2024, under the Prevention of Money Laundering Act (PMLA), 2002 at 19 locations in Mumbai, Delhi and Gurgaon as part of an ongoing probe in Summaya-Dentsu case..... ED initiated investigation on the basis of FIR registered by Worli Police Station against M/s Dentsu Communications India Private*



*Limited, M/s Suumaya Industries Ltd and its promoters including others. They are accused of conspiring together and embezzling the funds to the tune of Rs.137 Crore under the guise of promising future “Need to Feed programme’ advantages. ED investigation so far has revealed that .....Accused persons have not received any contract from Government and there was no such program ever in existence either. Accused entities have in fact never supplied any Agro product materials for any such program. However, in order to create fake impression that it is supplying Agro products, the accused persons in this case connived and created fake records including fake lorry receipts and fake invoices”.*

5.13 In view of peculiar facts and circumstances of the case, the Applicant’s reliance on alleged confirmation emails dated 10.06.2021 and 21.06.2021 sent by former employees of the Corporate Debtor, without any primary evidence such as delivery challans, transportation records etc., cannot substantiate the claim of actual delivery of goods. The Applicant has failed to produce any documentary evidence, such as weighbridge slips, delivery receipts, etc. to establish actual delivery of goods to the Corporate Debtor. The burden of proof lies upon the Applicant to demonstrate that goods were actually delivered to the Corporate Debtor, which it has failed to discharge in the present case. Moreover, mere submission of GST returns by the Applicant wherein the agricultural goods purportedly sold to the Corporate Debtor were shown to be exempted from levy of GST will not be sufficient to prove actual delivery of goods to the Corporate Debtor. Thus, we conclude that no actual delivery of goods has taken place between the parties and,



therefore, no 'operational debt' is established under Section 9 of the Code. As held by the Hon'ble NCLAT in ***Mascot Petrochem Private Limited V/s Midaas Construction Company Private Limited [CA (AT)(Insolvency) No.1399/2019]***, in the absence of unimpeachable proof of delivery of goods to establish the existence of an operational debt, a Section 9 application deserves to be rejected.

5.14 As regards the claim of interest of Rs.22,31,739/- made by the Operational Creditor, it is noticed from the record that the purchase orders did not make mention of any interest liability for delayed payment. The claim of interest so made by the Operational Creditor rests primarily on the unilateral terms of payment specified in the tax invoices. However, it is now settled in the context of the Code that if interest is not agreed upon between the parties, it cannot form a part of 'operational debt' within the meaning of Section 5(21) of the Code. Hence, no such interest can be claimed in an application under Section 9 of the Code.

5.15 In light of the above discussions, it clearly emerges that the Applicant has failed to establish the existence of an operational debt exceeding the prescribed threshold limit under Section 4 of the Code due and payable by the Corporate Debtor but remaining unpaid which is the *sine qua non* for admission of an application under Section 9 of the Code. In these circumstances, we are of the considered view that the present Application filed by the Operational Creditor under Section 9 of the Code is not maintainable and deserves to be rejected.



**ORDER**

In view of the aforesaid findings, this Application bearing **C.P.(IB) No. 148/2022** filed under Section 9 of the Code by Rohit Plastopack Private Limited, the Operational Creditor, for initiating CIRP in respect of Dentsu Communications India Private Limited, the Corporate Debtor is **rejected** and consequently, **IA No. 2846/2023 is partly allowed.**

We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The rejection of this Application shall not cause any prejudice to the right of the Operational Creditor to pursue such other remedies as may be available in accordance with law.

**Sd/-  
SANJIV DUTT  
MEMBER (TECHNICAL)**

**Sd/-  
K. R. SAJI KUMAR  
MEMBER (JUDICIAL)**

*//LRA-Deepa//*