

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-III**

**CP (IB) NO. 284/MB/2022**

**APPLICATION BY OPERATIONAL CREDITOR TO INITIATE  
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE  
INSOLVENCY AND BANKRUPTCY CODE, 2016.**

*(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**

**M/S KIMIKA GMPSOL PVT. LTD.  
(U74999MH2018PTC309627)**

Registered Office: A-304, Alpine, Timber  
Green Park, Western Espress Highway,  
Dahisar (East), Mumbai- 400068

.... Operational Creditor

**Versus**

**Vital Laboratories Pvt. Ltd.**

**CIN: U24100MH1998PTC113058**

Registered Office at: Plot No. 48, 2<sup>nd</sup> floor,  
Service road, Western Expressway, Near  
Hanuman Temple, Vile Parle (East), Mumbai  
400057

.... Corporate Debtor

**Order pronounced on: 20.07.2023**

**Coram:**

**Hon'ble Shri H.V. Subba Rao, Member (Judicial)**

**Hon'ble Ms. Madhu Sinha, Member (Technical)**

**Appearance:**

**For the Petitioner:** Adv. Raghav Gupta a/w Ms. Treesa Ann Benny,

**For the Respondent:** Adv. Shyam Kapadia a/w Adv. Dhruva Gandhi

**Per: Ms. Madhu Sinha, Member (Technical)**

1. This Company Petition is filed by *M/s KIMIKA GMPSOL PVT.LTD.* (hereinafter called “Operational Creditor”) seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against *Vital Laboratories Pvt. Ltd.* (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved “Operational Debt” of Rs. 1,12,18,968/- (Rupees One Crore Twelve Lakhs Eighteen Thousand Only).
2. The brief submissions of the Operational Creditor are as follows:
  - a. In the year 2008, Dr. Anil Balkrishna Ghogare, was appointed as a consultant of Vital Laboratories Pvt. Ltd. (“Corporate Debtor”). Dr. Ghogare was later inducted as a director on the board of directors of the Corporate Debtor in 2014.
  - b. The Operational Creditor was incorporated in 2018 by Dr. Ghogare and his family members inter alia to promote and continue the family’s consultancy services. Since incorporation of the Operational Creditor, the arrangement between Dr. Ghogare and the Corporate Debtor was that consultancy fees would be paid in some proportions to the Operational Creditor as Dr. Ghogare would often provide his services to the Corporate Debtor through the Operational Creditor. This arrangement is buttressed by the fact that the Operational Creditor has raised invoices on the Corporate Debtor from time to time and the same have been paid by the Corporate Debtor without any objection or dispute. As per this agreement and arrangement between parties, the Operational Creditor was raising invoices in the sum of Rs.6,25,000/- + GST per month since January, 2020.
  - c. These terms of payment by the Corporate Debtor to the Operational Creditor were later recorded in a separate consultancy agreement

dated 3<sup>rd</sup> September, 2021 entered into between the Corporate Debtor and the Operational Creditor which was expressly stated to be effective from 1<sup>st</sup> January, 2021. While the terms regarding confidentiality and exclusivity are disputed, the consultancy fee of Rs.6,25,000/- + GST is correctly captured in the said Consultancy Agreement.

- d. On 20<sup>th</sup> November 2020, in accordance with the terms of his employment contract, Dr. Ghogare submitted his resignation to the Corporate Debtor. At this time, many of Dr. Ghogare's invoices as well as invoices raised by the Operational Creditor were outstanding. The Corporate Debtor however refused to accept Dr. Ghogare's resignation and instead, undertook to clear all invoices raised by Dr. Ghogare and by the Operational Creditor by 31 March 2021.
- e. On 6 March 2021, upon instructions of the Corporate Debtor and pursuant to the agreement and arrangement between parties, the Operational Creditor raised an invoice of Rs.57,57,600/- on the Corporate Debtor in respect of past dues and in particular, outstanding performance bonus. The invoice was raised by the Operational Creditor as the arrangement and agreement between parties was that the amounts towards such performance bonus would be paid by the Corporate Debtor to the Operational Creditor. These were therefore dues payable to the Operational Creditor as per the arrangement and agreement between the parties and could therefore only be recovered by the Operational Creditor. The Corporate Debtor however did not make any payment against the said invoice.
- f. By its Email dated 15<sup>th</sup> May, 2021, whilst acknowledging receipt of the said invoice dated 6<sup>th</sup> March 2021 raised by the Operational Creditor, the Corporate Debtor requested the Operational Creditor to revise the amount of fees charged in the invoice from

Rs.57,57,600/- to Rs.54,20,715/- on the ground that the amount charged was not proportional to the annual turnover of the Corporate Debtor for the relevant years and that only an amount of Rs.54,20,715/- was actually due and payable by it. The said request for deduction was baseless and therefore not agreeable to the Operational Creditor. The Operational Creditor maintained its claim for the entire amount of Rs.57,57,600/- which was the correct amount payable by the Corporate Debtor. In the meantime, the Operational Creditor was separately raising its invoices on the Corporate Debtor for services rendered by it under the agreement between parties which was later recorded in the Consultancy Agreement dated 3<sup>rd</sup> September, 2021 [expressly stated to be effective from 1<sup>st</sup> January, 2021].

- g. The Corporate Debtor however once again started delaying payments to Dr. Ghogare and to the Operational Creditor. Left with no option, Dr. Ghogare informed the Corporate Debtor that he did not wish to continue providing services to the Corporate Debtor either by himself or through his companies, including the Operational Creditor. At this time too, the Corporate Debtor promised and assured Dr. Ghogare that all his dues and all dues of the Operational Creditor would be paid in full. Trusting the representations and assurances made by the Corporate Debtor, Dr. Ghogare continued to provide services to the Corporate Debtor by himself and through the Operational Creditor.
- h. By September, 2021, the Corporate Debtor made some payments to the account of the Operational Creditor and to Dr. Ghogare personally. The Corporate Debtor cleared monthly invoices raised by the Operational Creditor for the months of January, 2021, February, 2021 and March, 2021. However, invoices raised for the months of April 2021 to September 2021 remained outstanding. Further, the

invoice dated 6<sup>th</sup> March, 2021 for Rs.57,57,600/- also remained unpaid. Annexed as Annexure “F”, “G”, “H”, “I”, “J” and “K” of the petition are copies of the invoices raised by the Corporate Debtor for the months of April, 2021, May, 2021, June, 2021, July, 2021, August, 2021 and September, 2021 respectively, all of which remain due and payable by the Corporate Debtor.

- i. At the request of the Corporate Debtor, on 4<sup>th</sup> September, 2021. Dr. Ghogare addressed a letter to the Corporate Debtor stating inter alia that his salary and consultancy fees until March. 2021, were paid by the Corporate Debtor. Of course, this did not include the amounts due and payable by the Corporate Debtor against the said invoice dated 6 March, 2021, which the Corporate Debtor had admitted and acknowledged in its emails addressed to Dr. Ghogare.
- j. To the utter shock and surprise of the Operational Creditor, on 6<sup>th</sup> October 2021, Dr. Ghogare received a purported ‘letter of suspension’ from the Corporate Debtor wherein, the Corporate Debtor, for the first time, made all sorts of false allegations against Dr. Ghogare inter alia pertaining to alleged disclosure of the Corporate Debtor’s purported confidential information to third parties. Further, on 9<sup>th</sup> October 2021, the Operational Creditor also received a letter from the Corporate Debtor purportedly terminating its services under the Consultancy Agreements dated 3d September, 2021 alleging inter alia that the Operational Creditor had been providing parallel services to third parties and that it had illegally shared alleged confidential information of the Corporate Debtor.
- k. All of these allegations were false to the knowledge of the Corporate Debtor. It became rather clear to the Operational Creditor that the Corporate Debtor had no real intention of making payments to the Operational Creditor despite its repeated assurances in that regard and that the Corporate Debtor had orchestrated a devious and

mischievous setup of making serious and false allegations against Dr. Ghogare and the Operational Creditor with a view to escape its admitted liabilities.

1. The Corporate Debtor willfully refused to pay the Operational Creditor its dues. Instead, the Corporate Debtor sought to evade its liabilities by illegally terminating its contract with the Operational Creditor and by making false accusations against the Operational Creditor as a counter-blast to the Operational Creditor's legitimate monetary claims and demands.
- m. Dismayed at the mala fide and evasive conduct of the Corporate Debtor, the Operational Creditor addressed further letters Inter alia once again calling upon the Corporate Debtor to pay its outstanding dues. The Corporate Debtor however failed to make any payment and instead in response to the Operational Creditor's letters reiterated its false allegations of breach of contract and disclosure of confidential information with a view to somehow renege from its payment obligations to the Operational Creditor. The Operational Creditor craves leave to refer to and rely upon the communications exchanged between the Corporate Debtor and the Operational Creditor in this regard.
- n. Given the Corporate Debtor's willful refusal to pay the Operational Creditor its rightful dues, the Operational Creditor was constrained to issue its Demand Notice dated 26<sup>th</sup> October 2021 under Section 8 of the Insolvency and Bankruptcy Code, 2016 ('Code') to the Corporate Debtor for an amount of Rs.1,12,18,968/- together with interest thereon.
- o. Instead of making payment to the Operational Creditor, the Corporate Debtor through its Advocates' letter dated 24 November, 2021 responded to the Operational Creditor's Demand Notice dated 26<sup>th</sup> October 2021 once again making false and frivolous allegations.

The Operational Creditor through its Advocates, cleverly sought to create an illusion of a dispute regarding the outstanding dues of the Operational

- p. This was the first time any dispute was sought to be created as regards the Operational Creditor's dues. It was alleged that Dr. Ghogare was liable to compensate the Corporate Debtor for purported loss suffered by the Corporate Debtor on account of acts committed by Dr. Ghogare and therefore the Corporate Debtor could not be held liable to make payments to the Operational Creditor against its outstanding invoices, Pertinent to note that the validity and veracity of the invoices raised by the Operational Creditor was never disputed.
- q. The Operational Creditor submits that the allegations made by the Corporate Debtor in its reply to the demand notice are merely feeble arguments put forth to create a spurious dispute. The Corporate Debtor's allegations regarding Dr. Ghogare's and/ or the Operational Creditor's alleged liabilities for damages is a distinct and separate claim and cannot by any stretch of imagination be construed as a dispute regarding the amounts claimed by the Operational Creditor under valid invoices raised from time to time, which, as seen above, have never been disputed by the Corporate Debtor.
- r. Further, the Corporate Debtor's allegations that the Operational Creditor has breached its contractual obligation to render exclusive services to the Corporate Debtor is also a hollow argument intended only at creating impression of a dispute and to deny to the Operational Creditor its legitimate dues for services already availed by the Corporate Debtor. Assuming whilst denying that there is any such breach, it would at most enable the Corporate Debtor to terminate the services of the Operational Creditor but certainly not withhold payments for services which have already been availed by it.

- s. It is clear from the aforesaid that the Corporate Debtor has nowhere denied its liability to make payments against the outstanding invoices. The Corporate Debtor has also miserably failed in its attempt to create an impression of a 'pre-existing dispute. In fact, the Corporate Debtor has expressly admitted its liability atleast to the tune of Rs.54,20,715/- in so far as the invoice dated 6<sup>th</sup> March, 2021 is concerned. As regards the monthly invoices raised by the Operational Creditor for the months of April, 2021 to September, 2021, the Corporate Debtor has never raised any dispute whatsoever.
- t. Meanwhile, the Corporate Debtor, in furtherance of its mala fide intentions to pressurize Dr. Ghogare and the Operational Creditor instituted a Suit before the Hon'ble Bombay High Court against Dr. Ghogare, the Operational Creditor and SPA Biotech Pvt. Ltd., another entity controlled by Dr. Ghogare and his family, which was also providing consultancy services to the Corporate Debtor in the same manner as the Operational Creditor. In the said Suit, the Corporate Debtor sought inter alia a permanent injunction restraining the Defendants therein from using and/ or dissipating the alleged confidential information of the Corporate Debtor and for damages for purported loss caused to the Corporate Debtor on account of their alleged actions. The said Suit is pending adjudication before the Hon'ble Bombay High Court. Pertinent to note however that the subject matter of the Suit is only in respect of the alleged breach of contractual obligations of exclusivity and confidentiality by the Defendants therein. The Suit does not concern, even remotely, the amounts admittedly outstanding and payable by the Corporate Debtor to the Operational Creditor. Copies of the Demand Notice issued by the Operational Creditor is not even annexed to the Plaint filed in the said Suit. In any event, the Suit having been instituted much after the Demand Notice was issued by the Corporate Debtor,

the same does not and cannot constitute a 'pre-existing' dispute as contemplated under the Code.

3. The Corporate Debtor has filed affidavit in reply through Mr. Luis Das, authorized representative of the Corporate Debtor for opposing the admission of the above company petition. The main contentions of the corporate debtor are as follows:

**i. The petition is hit by Section 10A of the code and is, solely on this count, not maintainable:**

- Firstly, it is stated that the Petition is barred by Section 10A of the Code and, on that count alone, the claim is ex-facie not maintainable. In any event and without prejudice, it is respectfully submitted that there is no provision in law which entitles the Petitioner to prefer a Petition for initiation of a Corporate Insolvency Resolution Process ("CIRP") basis a Claim which is a combination of a supposedly maintainable component, and an ex-facie non-maintainable component. Therefore, even if a part of the claim as set out in the Petition is barred under Section 10A of the Code, the Petition it required to be rejected. Insofar as the claim is shown to have an explicitly barred / non-maintainable component, the Petition must be dismissed in toto and in limine.
- The Petitioner, in the present case, has approached this Tribunal on the basis of certain invoices which purportedly remained due and payable by the Respondent to the Petitioner. A tabulated list of these invoices, which according to the Petitioner allegedly remained due and payable by the Respondent, has been annexed to the Petition as Annexure "A" (page 19). The very first invoice mentioned in the Table at Annexure "A" is an invoice dated 6 March 2021 for an alleged sum of Rs.67,93,968/-. Annexure "A" to the Petition is to be read along with Point 2 in Part IV of the

Petition. In Point 2, under the entry “Dates on which default occurred”, the first date of default has been mentioned as 6<sup>th</sup> March 2021’. A bare perusal of Annexure “A”, Annexure “D” and Part IV of the Petition makes it apparent that the invoice under which the Petitioner claims that the alleged sum of Rs.67,93,968/- as being due and payable to it, fell due between the period commencing 25 March 2020 and ending, 24<sup>th</sup> March 2021. On the Petitioner’s own say so, the alleged default on this invoice has occurred in this time period.

- It is humbly submitted that it is now a settled position in law that no Petition whether under Sections 7, 9 or 10 of the Code can ever be filed for the initiation of CIRP for a default that occurred in the period commencing 25 March 2020 and ending 24<sup>th</sup> March 2021. Given that this invoice annexed at Annexure “D” to the Petition allegedly became due, and was thus allegedly defaulted upon in this period (as per the Petitioner’s own say so), the captioned Petition as filed under Section 9 of the Code is not maintainable. As referred to hereinabove, this Hon’ble Tribunal being a summary forum, cannot be confronted with the Petitions containing claims and/or portion of claims that are ex-facie barred by Section 10A, and then be asked to carry out the task of determining as to which claims are maintainable, and which are not. Such an exercise, it is humbly submitted, if at all such claim is maintainable, it can only be carried out by a Civil Court in recovery proceedings. As a result, it is respectfully submitted that the Petition in its entirety is defective, and merits dismissed in limine.
- Without prejudice to the above submission, it is stated that the Petition to the extent of a sum of Rs. 67,93,968/- is not maintainable for another reason as well. As will be elaborated

hereinbelow, the Petitioner Company was nothing but an instrumentality of Dr. Ghoghare. In a letter dated 4 September 2021 [annexed at Exhibit L, page No. 38-39, Petition). The said Dr. Ghoghare has himself stated:

*“From 1” January 2021, my salary is revised and the same is now paid to me in whole without any portion thereof being paid as consultancy fee.*

*Through M/s. Spa Biotech Pharma Pvt. Ltd. And M/s. Kimika GMpsol Pvt. Ltd. Consultancy services are provided for which Rs. 1,48,00,000 is being paid to them collectively.*

*I hereby confirm that basis what is stated hereinabove I have received the entire salary as stated in my Letter of Appointments issued from time to time. Also all the amounts payable under the consultancy agreement is fully paid till March 2021 to various companies/firms (all controlled and owned by me and my family)..”*

- The Petitioner has only baldly tried to wriggle out of this admission by contending that this letter dated 4<sup>th</sup> September 2021 did not cover the invoice dated 6 March 2021, annexed to the company petition. Hence the above company petition can be dismissed on this ground.
- ii. The petition is also hit by Section 4 of the Code, in that amount which can allegedly be claimed, and is not statutorily barred by Section 10A, falls below the minimum prescribed threshold of Rs. 1,00,00,000/-**
- It is clear from the narration hereinabove that the Petition at least to the extent of Rs.67,93,968/- is not maintainable, the only amount basis which the Petitioner could have approached this

Hon'ble Tribunal under Section 9 of the Code is that amount which according to it allegedly became due and payable under the invoices enlisted at Sr. Nos. 2 to 7 of Annexure "A" to the Petition. A bare perusal of Annexure-A makes it apparent that the total sum allegedly due and payable under those invoices is only Rs.36,87,500/- which falls far below the pecuniary threshold of Rs.1,00,00,000/- described in Section 4 of the Code for initiation of a CIRP. In these circumstances, it is respectfully submitted that the Petition even to the extent of Rs.36,87,500/- is statutorily barred.

- Therefore, when the two preliminary objections raised hereinabove are cumulatively considered, it becomes apparent that the Petition in its entirety is not maintainable. In light of these, it is humbly submitted that the captioned Petition deserves to be dismissed at the very threshold.
- Be that as it may and without prejudice to the aforementioned preliminary objections, this Reply will nevertheless proceed to deal with the Petition on merit as well. It is humbly submitted that there are several pre-existent disputes between the parties, which are currently pending adjudication and/or investigation before the Hon'ble Bombay High Court and/or before the Police Authorities, as the case may be. Therefore, on this ground as well, the captioned Petition ought to be dismissed.

### **FINDINGS & OBSERVATIONS**

1. Heard the submissions of Mr. Raghav Gupta, learned counsel appearing for the Operational Creditor and Mr. Shyam Kapadia, learned counsel appearing for the Corporate Debtor and perused the record.

2. Mr. Raghav Gupta, counsel appearing for the Operational Creditor invited the attention of this Bench to the subject matter of the following invoices basing on which the present company petition is filed. The details of the invoices are as follows:

**SCHEDULE OF DEFAULT AMOUNT**

<b>Sr. No.</b>	<b>Particulars of Invoices/receivables</b>	<b>Amount (INR) inclusive of GST</b>
<b>1.</b>	Invoice No. KGPL/001/2021-22 dated 06 <sup>th</sup> March, 2021	<b>67,93,968</b>
<b>2.</b>	Invoice No. KGPL/002/2021-22 dated 30 <sup>th</sup> April, 2021	<b>7,37,500</b>
<b>3.</b>	Invoice No. KGPL/005/2021-22 dated 31 <sup>st</sup> May, 2021	<b>7,37,500</b>
<b>4.</b>	Invoice No. KGPL/011/2021-22 dated 30 <sup>th</sup> June, 2021	<b>7,37,500</b>
<b>5.</b>	Invoice No. KGPL/015/2021-22 dated 31 <sup>st</sup> July, 2021	<b>7,37,500</b>
<b>6.</b>	Invoice No. KGPL/018/2021-22 dated 31 <sup>st</sup> August, 2021	<b>7,37,500</b>
<b>7.</b>	Invoice No. KGPL/020/2021-22 dated 30 <sup>th</sup> September, 2021	<b>7,37,500</b>
Net Outstanding Amount (INR)		<b>Rs. 1,12,18,968</b>

3. The counsel appearing for the Operational Creditor also invited the attention of this bench to the demand notice dated 26.10.2021 for which the Corporate Debtor replied though letter dated 24.11.2021. He further mentioned that the admitted facts therefore are two folds: (i) the Operational Creditor has raised its invoices which have been

received by the Corporate Debtor; and (ii) the Corporate Debtor has willfully refused to pay the same and the invoices thus remain outstanding. Thus, the company petition can be admitted.

He further invited the attention of this tribunal that the email dated 15.05.2021 is a straightforward admission of the Corporate Debtor's liability to make payment at least to the extent of Rs. 54,20,715/- despite admitting its liability to pay on 15.05.2021.

4. Mr. Shyam Kapadia, counsel appearing for the Corporate Debtor during the course of the arguments vehemently opposed the admission of the above company petition on the following grounds:
  - a. The above company petition is barred under Section 10A of the Code.
  - b. The above company petition does not satisfy the monetary threshold of Rs. 1 crore specified under Section 4 of the code;
  - c. The above company petition is not maintainable because there are several pre-existing disputes that had arisen between the parties prior to the issuance of the Demand Notice;
  - d. The amount claimed in the above petition is alleged to be payable under an exclusive consultancy agreement which the petitioner itself has alleged to be illegal and invalid.
5. In support of his arguments, the counsel appearing for the corporate debtor invited the attention of this bench to above tabular list of the invoices which according to the operational creditor are allegedly due and payable. He further mentioned that the Operational Creditor in Part-IV of the petition itself mentioned that "*Dates on which default occurred*" is the very first invoice dated 06.03.2021 for an amount of Rs. 67,93,968/-. It is very clear from the above that the alleged invoice dated 06.03.2021 being due and payable fell between the period commencing from 25<sup>th</sup> March 2020 to 24<sup>th</sup> March 2021 defined under Section 10A of the code which clearly states that 'no

petition under Section 7, 9 or 10 of the code can ever be filed for initiation of CIRP for a default that occurred in the period commencing between 25<sup>th</sup> March 2020 to 24<sup>th</sup> March 2021’.

6. In addition to the above contention, Mr. Kapadia also mentioned that a bare perusal of the invoice nos. 2 to 7 of the annexure A makes it clear that the total sum allegedly due and payable under those invoices is only Rs. 36,87,500/-, which falls below the pecuniary threshold limit of Rs. 1,00,00,000/- as described Section 4 of the code.
7. Mr. Kapadia also replied with regard to the email dated 15.05.2021 that assuming without conceding that the email in fact constituted an acknowledgement of liability it would only extend the period of limitation, it would not shift the purported date of default from 06.03.2021 to 15.05.2021. The counsel appearing for the Corporate Debtor also relied upon the order passed by the Hon’ble NCLAT in *Plus Corporate Ventures Pvt. Ltd. Vs. Transnational Growth Fund Ltd.* wherein the Hon’ble NCLAT dismissed the appeal by passing following order:

*“When we look into the proviso to Section 10A, the expression is “provided that no Application shall ever be filed for initiation of CIRP of a Corporate Debtor for the said default occurring during the said period” thus default which has been committed from 16.09.2020 to 28.02.2021, no Application could have ever been filed. The Appellant’s submission that cumulatively application can be filed taking all amounts, cannot be accepted. The said submission goes contrary to the statutory scheme delineated by Section 10A proviso as noted above. When Appellant could not have filed the Application for the default which was committed, the Adjudicating Authority did not commit any error in rejecting the Application as barred by Section 10A of the Code. In so far*

*as the last two default on 31st March, 2021 and 30th April, 2021 is concerned, the Adjudicating Authority has noticed that the total amount of the aforesaid two defaults is only Rs. 37,50,000/- which is below the threshold as provided under Section 4 of the Code.”*

8. After hearing both sides and upon perusing the material on record, this bench is of the considered view that the date of default mentioned by the Operational Creditor in Part-IV of the petition in respect of the first invoice dated 06.03.2021 for Rs. 67,93,968/-, falls between the period 25<sup>th</sup> March 2020 to 24<sup>th</sup> March 2021 which is hit by Section 10- A of the Code. As regards the rest of invoices nos. 2 to 7 of the annexure A, the total sum allegedly due and payable under those invoices is only Rs. 36,87,500/- which does not meet the prescribed threshold limit of Rs. 1 crore under the code for initiation of CIRP effective from 24.03.2020. Therefore, the above company petition is not maintainable as per the code as well as various case laws adjudicated in this regard by the Hon'ble NCLAT as well as Hon'ble Apex Court and is liable to be rejected.
9. Accordingly, the above company petition is dismissed without any cost. Since the above company petition is **dismissed** on the above ground, rest of the contentions raised by the Corporate Debtor need not be adjudicated.

**I.A. 958/2022**

The above application is filed by the Corporate Debtor under Section 65 read with Section 76 of the code seeking an order from this bench to punish Mr. Anil Balakrishna Ghoghare as per section 76 of the Code and pass appropriate order of penalty against the petitioner company under Section 65 of the code.

However, as the Bench has dismissed the above CP (IB) NO. 284/MB/2022 on the ground of Section 10A and Section 4 of IBC

without adjudication on the merit of other contentions raised by the CD, the above I.A. 958/2022 is also dismissed and is disposed of.

**Sd/-**  
**MADHU SINHA**  
**MEMBER (TECHNICAL)**

**Sd-**  
**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**