



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

CP IB NO. 763/(ND)/2024

*An Application 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. Silver Collections Private Limited

A company registered under
The Companies Act, 1956,
Having its registered office at
J-123, 2nd Floor, Bhaiya's, Ashok Vihar,
Phase-I, Delhi- 110 052.

...Operational Creditor/Applicant

Versus

M/s. Paragon Knits Ltd.

A company registered under
The Companies Act, 1956
Having its registered office at
A-106, Lajpat Nagar-I,
New Delhi- 110 024.

...Corporate Debtor/Respondent

Order Delivered on: 04.06.2026

CORAM:

**SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)**

**MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant : Adv. Prateek Agarwal

For the Respondent : Adv. Rakesh Kumar, Adv. Ankit Kumar



ORDER

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**‘the Code’**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s Silver Collections Pvt. Ltd. (‘Operational Creditor’)** for initiation of Corporate Insolvency Resolution Process (**‘CIRP’**) against **M/s Paragon Knits Limited (‘Corporate Debtor’)**.
2. The present petition has been filed by M/s Silver Collections Pvt. Ltd. to initiate CIRP proceedings under Section 9 of the Code. The total default amount claimed is Rs. 2,33,45,477/- (Rupees Two Crores Thirty-Three Lakhs Forty-Five Thousand Four Hundred Seventy-Seven) which includes Principal amount of Rs. 2,05,45,920/- and interest of Rs. 27,99,557/- up till 28.06.2024. The date of default is stated to be 09.02.2024.

3. Submissions on Behalf of the Operational Creditor

- a. The Corporate Debtor had placed various orders for supply of “Yarn” through emails w.e.f. 05.05.2023 to 31.10.2023, with the Operational Creditor. Accordingly, the Operational Creditor supplied Yarn to the Corporate Debtor w.e.f. 09.05.2023 to 17.11.2023. The said supplies are supported by tax invoices, e-way bills and goods receipts as placed on record as Annexure-A-5 of Petition.
- b. The Corporate Debtor had made last “On Account” payments in respect of the said invoices on 09.02.2024, thus, making 09.02.2024 as the date of default. Further, an invoice dated 28.06.2024 towards interest on delayed payment was sent to the Corporate Debtor. In return, the Corporate Debtor issued Credit Note dated 30.06.2024 in respect thereof, thereby accepting the liability of interest on delayed payments.
- c. Corporate Debtor had issued seven cheques towards the discharge of its liability during the period of 02.11.2023 to 30.04.2024. However, they were dishonoured on presentment to the banker.



- d. A demand notice dated 07.09.2024 was issued by the Operational Creditor in Form No. 3 along with documents at the registered office of the Corporate Debtor. A reply dated 23.09.2024 to the demand notice, recording existence of pre-existing dispute, was sent by the Corporate Debtor to the Operational Creditor. However, no pre-existing dispute exists between the parties as no evidence or document has been placed on record by the Corporate Debtor to support this contention, neither at the time of filing reply nor at the time of filing additional documents. Further, no payment was made by the Corporate Debtor to the Operational Creditor. Thereafter, the instant Petition was preferred by the Operational Creditor on 28.10.2024.
- e. However, after two months during the pendency of the present Petition, the Corporate Debtor approached the Operational Creditor to sign a Settlement Deed dated 08.01.2025, wherein the Corporate Debtor unequivocally acknowledged its liability towards the Operational Creditor and issued 24 cheques towards the payment of the Operational Debt. The Settlement Deed dated 08.01.2025 has been placed on record as a separate document.
- f. However, pursuant thereto, the Corporate Debtor has again failed to adhere and comply with the terms and conditions of Settlement Deed as 14 cheques issued by the Corporate Debtor qua the said Settlement Deed have dishonored and separate proceedings under Section 138 of NI Act are pending against the Corporate Debtor. Further, during the pendency of the present proceedings, the Corporate Debtor has separately paid a sum of Rs. 25,00,000/- only.
- g. Operational Creditor reserved its legal rights under the law under Clause 4 of the said Settlement Deed wherein it reserved its right to proceed with the Petition in case the cheques issued by the Corporate Debtor get dishonored and the terms of Settlement Deed are breached by the Corporate Debtor.
- h. It is the admitted position of the Corporate Debtor that it is suffering from financial crunch and perpetual losses because of which the



Corporate Debtor has failed to clear the payments of the Operational Creditor. Further, the conduct of the Corporate Debtor, including issuance of dishonored cheques, failure to clear admitted dues, and seeking time on the ground of financial distress, establishes that the Corporate Debtor is commercially insolvent and unable to pay its debt in the ordinary course of business.

- i. The facts and circumstances of the instant case establishes the existence of operational debt, occurrence of default and absence of any pre-existing dispute. Therefore, the Operational Creditor pleads for admission of the instant Petition and for the initiation of CIRP against the Corporate Debtor.

4. Submissions on behalf of the Corporate Debtor

- a. The Applicant has attempted to bypass various procedures of law by filing the instant Petition, only to extract money from the Respondent wrongfully, and to exert undue pressure on the Respondent.
- b. The Respondent had countless times raised concerns over the quality issues of Yarn supplied by the Applicant to the Respondent and had even requested the Applicant to take back the same but no response was received from the Applicant. The inferior quality of the yarn supplied is one of the reasons behind non-clearance of its payment by the Respondent.
- c. Further, there exists no Agreement in respect of interest amount. The Applicant has demanded the interest amounts and raised credit notes, which do not attract the provision of Section 9 of the Code. Also, the reconciliation of statement filed by the Applicant is false and manipulated as the management of Respondent is not aware about the delivery of the said reconciliation of statement to Applicant.
- d. A Settlement Deed was entered into, between the Corporate Debtor and Operational Creditor. As per Clause 1.1. of the Settlement Deed, the Respondent herein, agreed to make payment of entire liability by making monthly payment of Rs. 10,00,000/- (Rupees Ten Lakhs Only)



and handed over signed cheques to Operational Creditor for discharge of alleged total liability of Rs. 2,33,45,477/-.

- e. As per Clause 1.2 of the said Settlement Deed, the Operational Creditor and Corporate Debtor agreed that Corporate Debtor will try to make payment exceeding Rs. 10.00 Lakhs per month depending upon the availability of funds/resources.
- f. Also, the Operational Creditor agreed to withdraw the instant Application on receipt of the above said cheques and signing of the said Settlement Deed. However, the Operational Creditor failed to withdraw the instant Application and even attempted to conceal the said fact from this Adjudicating Authority, despite part-payment in terms of settlement being made by the Corporate Debtor.
- g. Thus, the default of claim mentioned in the Application is no longer in existence. There exists no subsisting default as all the grievances of the Operational Creditor have been addressed in terms of the said Settlement Deed. Hence, there is neither debt of default or default of claim amount in existence. Additionally, the decisions of Hon'ble NCLAT have been referred to by the Corporate Debtor to state that if a matter is amicably settled and the settlement deed is entered into between the parties before the initiation of CIRP, then the debt in question ceases to exist.
- h. In light of the above-stated contentions, the Corporate Debtor seeks rejection of the instant Application with exemplary costs.

ANALYSIS

5. We have heard the Learned Counsels for the Operational Creditor and Corporate Debtor, and further perused the averments made in the Petition, Reply, and Written Submissions presented by the Operational Creditor and Corporate Debtor. Since, the registered office of the Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of CIRP under Section 9 of the Code, against the Corporate Debtor.



6. Hon'ble Supreme Court in the case of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353** has laid down that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:

- a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
- b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
- c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice if the unpaid operational debt in relation to such dispute?

Supreme Court has further stated that if any one of the aforesaid conditions is lacking, the application would have to be rejected.

7. It is the case of the Operational Creditor that the cause of action for Section 9 of the Code arises on account of Corporate Debtor's default in making payments against the invoices raised by the Operational Creditor for the supply of Yarn, and further on account of failure to fulfill the terms of the Settlement Deed dated 08.01.2025, entered into between the Operational Creditor and Corporate Debtor, whereby the Corporate Debtor undertook to repay the total default amount of Rs. 2,33,45,477/-. To clear the payment of said amount, the Corporate Debtor undertook to issue 24 cheques of Rs. 10,00,000/- (Rupees Ten Lakhs) each, as per Clause 1.1 of the Settlement Deed.

8. It is noted that between 22.01.2025 and 28.06.2025, only a sum of Rs. 25,00,000/- has been paid by the Corporate Debtor to the Operational Creditor. Further, the 14 cheques issued by the Corporate Debtor qua the



Settlement Deed have been dishonored and thereby the Corporate Debtor has failed to adhere to and comply with the terms and conditions of the Settlement Deed. Therefore, in light of the conduct of the Corporate Debtor, including issuance of dishonored cheques and failure to clear admitted dues, the Operational Creditor seeks initiation of CIRP against the Corporate Debtor.

9. However, it is the case of the Corporate Debtor that pursuant to the signing of Settlement Deed, the default mentioned in the instant Company Petition is no longer in existence as the claims of Operational Creditor have already been addressed in terms of the said Deed.

10. Thus, in light of the submissions and material available on record, the issue in the instant case pertains to the legal effect and consequence of the Settlement Deed dated 08.01.2025 executed between the parties. Therefore, the issue which arises before us for consideration is whether there is existence of Operational debt within the meaning of Section 5(21) of the Code, pursuant to entering of a Settlement Deed between the Operational Creditor and Corporate Debtor.

11. We find it pertinent to reproduce hereinunder, the statutory definitions of the terms ‘debt’, ‘operational debt’ and ‘corporate debtor’ as defined in Section 3(11), 5(21) and 3(8) of the Code, for proper adjudication of the said issue.

“3(11) ‘debt’ means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.”

5(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.

3(8) “corporate debtor” means a corporate person who owes a debt to any person”.

12. The default in payment arising out of the original transaction of supply of Yarn between the Corporate Debtor and Operational Creditor undoubtedly falls



within the ambit of “Operational Debt” under Section 5(21) of the Code as it constitutes a claim in respect of provision of goods, and also the default in making payment has been admitted by the Corporate Debtor in its Reply. However, the default in making payment pursuant to the execution of Settlement Deed doesn’t fall within the ambit of “Operational Debt” as envisaged under the Code, as has been held by the Hon’ble NCLAT in the matter of ***Trafigura India Private Limited v. TDT Copper Limited, Company Appeal (AT) (Insolvency) No. 742 of 2020***. The relevant portions of the said order are reproduced hereinunder:

“17.The Adjudicating Authority has considered the Settlement Agreement and rightly come to the conclusion that default of instalment of Settlement Agreement does not come within the definition of ‘operational debt’ as it does not fall within the definition of additional debt as per Section 5(21) of the IBC and further prayer made by the Corporate Debtor that the matter be referred to the Arbitration under Section 8 of the Arbitration and Conciliation Act, the Adjudicating Authority has also rightly held that the role of National Company Law Tribunal is very limited while exercising its power under Section 7, 9 and 10 of the IBC, 2016, it is beyond the scope of Section 9 of the IBC.....”

13. Also, the Hon’ble NCLAT in the matter of ***Basant Kumar Upadhyay, Ex-Director of Gardenia India Ltd. v. Kuber Shree Construction Company & Anr., Company Appeal (AT) (Ins.) No. 957 of 2025*** has held that where a settlement takes place between the parties prior to initiation of CIRP, there exists no debt for the purpose of admission of Section 9 Application. The relevant extract of the said decision is reproduced hereinunder:

“6.The present is a case where admittedly settlement took place prior to initiation of CIRP and the reason due to which the said settlement could not be informed to the court has already been mentioned by the Operational Creditor in his affidavit who has filed Section 9



application. *Ld. Counsel for the IRP submits that IRP has already issued publication in pursuance of the order 30.06.2025. **In the facts of the present case, we are of the view that in view of the settlement between the parties on 28.06.2025 prior to order date 30.06.2025 there were no debt existing for admission of Section 9 application hence we close the CIRP. Ld. Counsel for the appellant has undertaken to pay the fee of the IRP and expenses incurred by the IRP within two weeks from today.***

14. Further, as per the Clause 2 of the Settlement Deed dated 08.01.2025, the Operational Creditor undertook to withdraw the instant Application. The relevant extract of the clause is reproduced hereinunder:

“That on receipt of the above cheques and signing of this Settlement Deed, the first party shall withdraw the complaint/application for an Insolvency and Bankruptcy before the Hon’ble National Company Law Tribunal, Delhi vide C.P.(IB) 763/2024;”

Admittedly, signed cheques were issued to the Operational Creditor by the Corporate Debtor and the said Settlement Deed was duly executed between the parties. Therefore, as per the Clause 2 of Settlement Deed, the rights and liabilities of the Corporate Debtor and Operational Creditor ought to be governed by the executed Settlement Deed, as the instant Application ought to be withdrawn by the Operational Creditor. Therefore, in light of the fresh obligations as envisaged in the terms of Settlement Deed, the present claim cannot be treated as Operational Debt, as was also held by the co-ordinate Ahmedabad Bench in the matter of **Suwarna Buildcon Pvt. Ltd. v. Sadbhav Engineering Ltd., CP (IB) No. 52 of 2023 with I.A. No. 500 of 2026**. The relevant extract of the said decision is reproduced hereinunder:

“13.14 Accordingly, though the original relationship between the parties arose from execution of operational works and provision of services by the Operational Creditor, this Adjudicating Authority is of the considered opinion that after execution of the agreement



dated 08.07.2020, the enforceable rights and liabilities of the parties came to be governed substantially by the substituted contractual arrangement embodied therein. In view of the fresh obligations, structured payment schedules, conditional payment mechanism and supersession clause contained in the said agreement, the present claim cannot be treated as a pure and independent “Operational Debt” simpliciter arising directly from provision of goods or services under Section 5(21) of the Code. Accordingly, the original cause of action arising from operational transactions does not survive independently and cannot be enforced dehors the substituted agreement.”

15. Therefore, in light of the judgements mentioned **supra**, we are of a considered view that pursuant to the execution of Settlement Deed between the Corporate Debtor and Operational Creditor, pending the initiation of CIRP under Section 9 of the Code, the claim of the default amount does not constitute as Operational Debt as per Section 5(21) of the Code. Further, in view of settled position, if any default arises out of the Settlement Agreement, the same shall be recovered before an appropriate forum as this Adjudicating Authority is not a recovery forum.

16. Thus, in light of the above considerations in respect of default arising out of settlement deed not constituting as Operational Debt, the instant Petition bearing C.P. IB NO. 763 of 2024 filed by **M/s. Silver Collections Private Limited**, under Section 9 of the Code read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s. Paragon Knits Ltd.** is liable to be dismissed, and is accordingly **dismissed**.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

SD/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

SD/-
MAHENDRA KHADELWAL
MEMBER (JUDICIAL)