NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-671(ND)2021

IN THE MATTER OF:

M/s. Hukum Singh & Sons
(Partnership Firm)
2380, Chatta Shahji Chowk,
Chawri Bazar, North Delhi,
Delhi - 110006

...Applicant/Operational Creditor

VERSUS

US Graphics Private Limited
C-14 Okhla Industrial Area,
Phase 1, South Delhi,
Delhi-110020

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on: 12.07.2022

CORAM:

SHRI. DHARMINDER SINGH, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	: Mr. Gulshan Kr. Sachdev, Adv.
For the Respondent	: None

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. Hukam Singh & Sons (for brevity **'Applicant/Operational Creditor'**), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. US Graphics Private Limited (for brevity **'Respondent/Corporate Debtor'**).

2. That the Corporate Debtor namely, M/s. US Graphics Private Limited is a Company incorporated on 17.12.1996 with CIN U29294DL1996PTC083873 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at C-14 Okhla Industrial Area, Phase 1, South Delhi – 110020. Hence, the jurisdiction lies with this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 25,00,000/- and Paid-up Share Capital is Rs. 23,68,000/- as per the Master Data of the Corporate Debtor.

4. It is stated by the Operational Creditor it is engaged in the business of paper products. It is added that the Corporate Debtor is involved in printing press industry.

5. It is stated by the Operational Creditor that it has supplied goods to the Corporate Debtor against various invoices raised from 20.12.2017 to 11.02.2020

6. It is stated by the Operational Creditor that it had issued Demand Notice dated 07.07.2021 under Section 8 of IBC, 2016 to the Corporate Debtor.

7. The details of particulars of Operational Debt including the total amount of debt and date of default as mentioned in Part IV of the application, are reproduced below :

PART – IV

PARTICULARS OF OPERATIONAL DEBT		
1.	Total Amount of Debt,	**TOTAL AMOUNT OF DEBT:** As on date, the Corporate Debtor is liable to pay to the Operational Creditor a total sum of Rs. 14,16,633/- (Rupees Fourteen Lakh Sixteen Thousand Six Hundred and Thirty Three Only) including an amount of interest of Rs. 5,84,529/- (Rupees Five Lakh Eighty Four Thousand Five Hundred and Twenty Nine Only) @ 24% per annum as per the terms of Outstanding Invoices from the due date of invoices till the date of the demand notice.
	Details of Transactions on Account of which debt fell due,	**DETAILS OF TRANSACTIONS:** Certain paper products of different GSM were supplied by the Operational Creditor to the Corporate Debtor for which the invoices were raised and for the same default has occurred. The copy of the invoices raised by the Operational Creditor to the Corporate Debtor is hereby marked as **Exhibit – C.**
	The date from which such debt fell due	**DATE FROM WHICH SUCH DEBT FELL DUE:** The Operational Creditor had issued the invoices in the name of ***US Graphics Private Limited*** for which default is made and for the same interest is charged @ 24% per annum as per the terms of Outstanding Invoices from the due date of invoices i.e. from 23rd December 2017 to 14th February 2020 in respect of the outstanding invoices dated from 20th December,

<table>
<tr><td></td><td></td><td>2017 to 11th February, 2020.
The copy of the Ledger of Corporate Debtor in the books of accounts of Operational Creditor is hereby marked as Exhibit – D.</td></tr>
<tr><td>2.</td><td>Amount claimed to be in default and the date on which the default occurred

(Attach the working for computation of amount and dates of default in tabular form).</td><td>The Corporate Debtor is liable to pay to the Operational Creditor an amount of Rs. 8,32,104 (Eight Lakh Thirty Two Thousand One Hundred Four only) along with an amount of Rs. 5,84,529/- (Rupees Five Lakh Eighty Four Thousand Five Hundred Twenty Nine Only) being interest @ 24% per annum as per the terms of outstanding invoices total amounting to Rs. 14,16,633/- (Rupees Fourteen Lakh Sixteen Thousand Six Hundred and Thirty Three Only) from the due date of the invoices till the date of the Demand Notice.

<table>
<tr><th>Date of Invoice</th><th>Due Date of Invoice</th><th>Outstanding Amount</th><th>Interest @24 % p.a.</th></tr>
<tr><td>20th Dec, 2017 to 11th Feb, 2020</td><td>23rd December, 2017 to 14th February, 2020</td><td>8,32,104</td><td>5,84,529</td></tr>
<tr><td colspan="2">Total Outstanding Dues</td><td colspan="2">14,16,633/-</td></tr>
</table>

(The copy of the computation showing the details of the outstanding amount and the date of default along with the calculation of interest is hereby marked as Exhibit – E)</td></tr>
</table>

8. During the course of final hearing held on 06.07.2022, while going through the Part IV of the Application, it was observed by this Adjudicating Authority that the Applicant has claimed dues of Rs.14,16,633/- as the unpaid operational debt, out of which Rs. 8,32,104/- is the Principal Amount and Rs. 5,84,529/- is the interest amount. Since the claim of the Operational Creditor is less than the threshold limit of Rs. 1 Crore, therefore, the Applicant was heard on the maintainability of the Application.

9. While going through the records, it is seen that in order to support maintainability of the present application, the Ld. Counsel for the Applicant has annexed one order dated 01.04.2022 passed by the Hon'ble Supreme Court in the matter of Civil Appeal No. 7032/2021 in the Jumbo Paper Products Vs. Hansraj Agrofresh Private Limited. Other than this, no other explanation or document has been provided by the Applicant that as to how the present application meets the pecuniary jurisdiction of this Tribunal.

10. At this juncture, we refer to the Judgement of Hon'ble High Court of Kerala passed in the matter of **M/s. Tharakan Web Innovations Pvt. Ltd. Vs. National Company Law Tribunal Kochi Bench and Anr. in WP(C) NO. 27636 OF 2020 & 14158 of 2021 dated 01.02.2022.**

> *"24. In Ext.P9 order, the Tribunal has held that the notification dated 24.03.2020 is prospective in nature and it is not retrospective or retro-active in nature. It is further stated by the Tribunal that notification will not apply to pending*

applications before the concerned Adjudicating Authority under the IBC prior to the issuance of the aforesaid notification. Ext.P9 was an order of the Tribunal at New Delhi and the issue was concerning an application which had been filed and was pending before the Tribunal. The order of the National Company Law Appellate Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Ins) No.813 of 2021 was placed before the Court in which the order Ext.P9 was also considered. The Appellate Tribunal found that on facts, in the case considered in Ext.P9 demand notice under Section 8 was issued on 31.7.2019 and the application under Section 9 was filed on 5.9.2019 which were both before 24.3.2020, on which date the threshold limit was increased to Rs.1 Crore. The Tribunal hence found that the said decision cannot be relied upon to decide whether a petition can be maintained for an amount of less than Rs.1 Crore after 24.3.2020. The Appellate Tribunal went on to hold that the threshold limit will be applicable for applications filed under Section 7 or Section 9 on or after 24.3.2020, even if the debt is on a date earlier than 24.3.2020. The above view of the Tribunal is in consonance with the decision of the Hon'ble Supreme Court in ***Manish Kumar (supra).***

25. Even otherwise, the Tribunal has in my opinion, gone wrong in its interpretation of Section 4 of the Act. Section 4, after amendment on 24.3.2020 clearly says that Part II of the IBC shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of default is Rs.1 Crore. As per Section 3(12) of the IBC, "default" means nonpayment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. What is to be noted is that Corporate debtors *who are in default of less than Rs.1 lakh prior to the amendment and Rs.1 Crore after the amendment, also are defaulters. However, whether a proceeding for insolvency or liquidation of such corporate debtor should be initiated would depend on the amount in default. It is only if the Corporate debtor has incurred a default of at least the minimum amount stated in Section 4 that a proceeding under the provisions of the IBC under Part II can be initiated. The minimum amount of default is statutorily fixed, with power available to the Government to refix, upto a sum of Rs.1 Crore. Once the Government has exercised the said power by issuance of a notification fixing the minimum amount of default as Rs.1 Crore, the Section will have to be read by replacing the words "one lakh rupees" by "rupees one crore".* ***As such, from the date of amendment, Part II of the IBC can apply only to matters relating to insolvency and liquidation of corporate debtors, where the minimum amount of default is Rs.1 Crore.*** *(emphasis supplied). Once that is the position, the application of Part II itself is taken away with effect from 24.03.2020 as far as defaults less than Rs.1 Crore are concerned and hence no application can be filed after 24.03.2020 regarding an amount where the default is less than Rs.1 Crore. By application of Section 10A, even in cases where the default is more than Rs.1 Crore, an application cannot be filed for a period of six months from 24.3.2020. There can be no other understanding of the statutory provisions, as there is no ambiguity in the language. It is well settled that the grammatical and ordinary sense of the words of the Statute should be adhered to, unless that would lead to absurdity, or some repugnance or inconsistency with the rest of the provisions of the statute. In the words of* ***Viscount Simon L.C.*** *"The golden rule is that the words of a statute must prima facie be given their ordinary meaning...... Judges* *are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction" (see* ***Nokes v. Doncaster Amalgamated Collieries Ltd., [(1940) AC 1014 (HL)], Chandvarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447] and B. Parmanand v. Mohan Koikal [(2011) 4 SCC 266)].*** *The above observations are fully supported by the judgment of the Apex Court in* ***Manish Kumar (supra),*** *wherein the Hon'ble Supreme Court categorically held that the litmus test is whether there exists a default as defined in Section 4 of IBC, on the date of the application...."*

11. Further, the Hon'ble NCLAT in the matter of **Jumbo Paper Products Vs. Hansraj Agrofresh Pvt. Ltd. in Company Appeal (AT) (Ins) No. 813 of 2021 dated 25.10.2021** has held the following:

"10. The other judgments cited by learned Counsel for Appellant broadly lay down that any statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. It is seen that notification dated 24.3.2020 (supra) makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.3020 even if debt is of a date earlier than 24.3.2020. Since the application under section 9 which is the subject matter of this appeal was filed on 13.9.2020, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case..."

12. Though the Ld. Counsel for the Applicant has stated that the aforesaid Judgment of Hon'ble NCLAT is challenged before the Hon'ble Supreme Court in the matter of Civil Appeal No. 7032/2021 in Jumbo Paper Products Vs. Hansraj Agrofresh Private Limited, he failed to bring on record any order staying the aforesaid decision. Hence, the Judgements of the Hon'ble High Court of Kerala passed in the matter of M/s. Tharakan Web Innovations Pvt. Ltd (supra) and the Hon'ble NCLAT passed in the matter of Jumbo Paper Products (Supra) are binding precedents as on date.

13. In view of the aforesaid discussion, we are of the considered view that since the total claim of the Applicant is less than Rs. 1 (one) Crore and the Application having been filed on 24.09.2021, the Application does not meet the minimum threshold limit and is barred by Section 4 of IBC, 2016.

14. **The Application is accordingly Dismissed.**

-Sd-

(L. N. GUPTA)
MEMBER (T)

-Sd-

(DHARMINDER SINGH)
MEMBER (J)