

**COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 109 of 2026

[Arising out of Order dated 13.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) in T.P. No. 02 of 2022 (C.P. No.240 of 2004)]

IN THE MATTER OF:

Mr. Navin Ashokkumar Aswani

Suspended Director of

Geeta Prints Ltd.

Having its address at:

Plot No. 150 GIDC, Pandesara,

Surat-394221, Gujarat

...Appellant

Versus

Falcon Industries

293, Naperol Tower,

Kidwai Marg, Wadala (West),

Mumbai-400031, Maharashtra

Rajendra Sanghi

B/2D Siddh Chhakra Appatment,

Near Sargam shopping center,

Parle point, Surat,

Gujarat 395007

...Respondents

Present:

For Appellant:

Mr. Krishnendu Datta, Sr Advocate with Mr. Mohit D Rom, Mr. Siddharth Ravi Kheshkari, Mr. Arnav Chaudhary, Mr. Harshit Chaudhary, Mr. Harsh Gurbani, Advocates.

For Respondents:

Mr. Malak Bhatt, Mr. Pavan Godiwala, Ms. Neeha Nagpal, Mr. Prithviraj Dey, Advocates for R-1.

Ms. Aishwarya Prasad, Mr. Niraj Chamyal, Advocates for R-2.

J U D G M E N T

Ashok Bhushan, J.

This appeal by a Suspended Director of the Corporate Debtor – Geeta Prints Ltd. has been filed challenging the order dated 13.01.2026 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) admitting application T.P. No.02 of 2022 (C.P. No.240 of 2004) filed by the Operational Creditor. Appellant aggrieved by the impugned order has come up in this appeal.

2. On 23.01.2026, an interim order was passed directing the Resolution Professional to collate the claims but not to take any further steps. Brief facts of the case necessary to be noticed for deciding this appeal are:

2.1 The Operational Creditor – M/s Falcon Industries supplied various products beginning from May, 2002. Various invoices were issued by the Operational Creditor to the Corporate Debtor – M/s Geeta Prints Ltd.

2.2 A letter dated 03.03.2004 was issued by the Operational Creditor for account confirmation to the Corporate Debtor mentioning an outstanding amount of Rs.7,62,500/- as on 28.02.2004. The account confirmation was duly signed by the Corporate Debtor. A letter dated 24.05.2004 was written by the Corporate Debtor to the Operational Creditor on the subject of reconciliation of accounts, it was mentioned in the letter that rates in the

invoices were exaggerated and was not commensurate with the items and their quality.

2.3 On 09.09.2004, the Operational Creditor sent a notice under section 433 and 434 of the Companies Act, 1956 to the Corporate Debtor informing that amount of Rs.7,62,500/- along with interest @ 24% per annum is due. The Corporate Debtor was asked to make the payment within 21 days from receipt of the notice.

2.4 The Corporate Debtor having not made any payment C.P. No.240 of 2004 was filed by the Operational Creditor before the High Court of Gujarat under Section 433 and 434 of the Companies Act, 1956 claiming an amount of Rs.7,62,500/- along with interest @ 24% per annum. A total amount of Rs.11,04,322/- as on 31.08.2004 was claimed. In the Company Petition reply was filed by the Corporate Debtor.

2.5 The Company Judge by order dated 22.03.2006 directed the Corporate Debtor to pay an amount of Rs.4,50,000/- by Demand Draft. By subsequent order dated 04.04.2006 – ‘Note for Speaking to Minutes’, the Hon’ble High Court directed to pay the said amount to the Advocate appearing for the Petitioner.

2.6 The Corporate Debtor aggrieved by the order dated 22.03.2006 and 04.04.2006 filed appeal O.J. Appeal No.41 of 2006 before the High Court of Gujarat in which an interim order was passed on 17.04.2006 to the following effect:

“Issue Notice. If the amount deposited with the Registry of this Court as directed by the learned Company Judge no cheque has been issued, the same shall not be issued in favour of the Falcon Industries till further orders.”

2.7 Learned Company Judge heard the Company Petition and by order dated 11.12.2006 after hearing submissions of the parties, admitted the Company Petition. The plea of the Corporate Debtor regarding dispute, was held not to be bonafide. The Company Judge directed for issuance of advertisement in the newspapers.

2.8 Against the order admitting Company Petition, the Corporate Debtor filed an Appeal No.06 of 2007, which appeal came to be dismissed by the High Court vide order dated 19.09.2008.

2.9 O.J. Appeal No.41 of 2006 filed by the Corporate Debtor challenging the order dated 04.04.2006 directing payment of Rs.4.5 Lakhs was also dismissed on 19.09.2008. While dismissing the appeal, the Division Bench held that the modified interim order i.e. the amount deposited with the Registry by respondent company was not parted with in favour of the petitioner; shall continue to operate till the Company Court takes up Company Petition No.240 of 2004 for hearing and disposal.

2.10 The Company Petition thereafter argued before the High Court. Publication was made in the newspaper as per order admitting Company Petition. Affidavit of reply was filed. The Company Petition was taken

thereafter by the High Court on 25.11.2021 and the Hon'ble High Court referring to the judgment of Hon'ble Supreme Court in ***Action Ispat and Power Pvt. Ltd. vs. Shyam Metalics and Energy Ltd., (2021) 2 SCC 641,*** transferred the Company Petition to NCLT, Ahmedabad Bench. In Para 8 of the order, transferring the Company Petition, following was observed:

“8. In view of the above Company Petition No. 240 of 2004 and Company Petition No.241 of 2004 is accordingly transferred to the National Company Law Tribunal, Ahmedabad Bench. Registry forward the papers to the Tribunal within period of four weeks from today along with order. Tribunal to do the needful in accordance with law to proceed with the matter from the stage at which it is transferred.”

2.11 Subsequent to the above order of the Gujarat High Court, the Operational Creditor filed an application to initiate Corporate Insolvency Resolution Process under the I&B Code by application dated 24.02.2022. In Part-IV of the application while giving particulars of the debt, Principal Amount was mentioned as Rs.7,62,500/- whereas interest upto date was mentioned as Rs.4,35,51,929/-. Transfer Petition No. 02(Ahm)2022 was registered arising out of C.P. No.240 of 2004.

2.12 The Adjudicating Authority passed an order on 06.04.2022 noticing that petition has been refiled under Section 9 of the I&B Code. The Adjudicating Authority observed that *“Learned Counsel for the applicant is required to satisfy the Bench with respect to maintainability considering*

threshold limit as per the amended section 4 of the IBC, 2016.”. Notice was issued to the Corporate Debtor. Corporate Debtor filed a reply to the Form-5. Corporate Debtor filed objections to the maintainability of the Section 9 application on the ground that there is a pre-existing dispute. The Corporate Debtor also disputed the amount claimed. It was submitted that there is no agreement or understanding for charging or levying compound interest of 24% between the parties. It was held that amount claimed is less than threshold for maintaining the application, hence, the application need to be rejected.

2.13 The Adjudicating Authority heard the parties. Both the parties also filed their written submission and by the impugned order dated 13.01.2026 has admitted the application. The Adjudicating Authority held that threshold limit of Rs.1 Lakh applied to the present matter. Dispute referred by the Corporate Debtor was a moonshine defence. The Adjudicating Authority, thus, admitted the Section 9 application and declared moratorium under Section 14 of the I&B Code.

3. We have heard Shri Krishnendu Datta, learned senior counsel for the Appellant, Shri Malak Bhatt, learned counsel appearing for the Operational Creditor and Shri Neeraj Chamyal, learned counsel for Resolution Professional.

4. Learned counsel for the Appellant challenging the impugned order submits that there has been pre-existing dispute between the parties which

was flagged by letter dated 24.05.2004 by the Corporate Debtor. There being pre-existing dispute which dated back to nearly two decades, the Adjudicating Authority erred in admitting the application. It is further submitted that the claim of interest by the Operational Creditor is unilateral stipulation of interest in invoices which was never accepted. There is no acceptance by the Corporate Debtor to pay 24% interest per annum as claimed by the Operational Creditor. The total Principal Amount claimed in the application in Winding up proceeding as well as in application under Section 9 is Rs.7,62,500/-. The Operational Creditor has added 24% interest compounded quarterly, which is impermissible. It is submitted that threshold for filing Section 9 application w.e.f. 04.03.2020 is Rs.1 Crore. Application did not fulfil the threshold, hence, was liable to be rejected on this ground alone. The Adjudicating Authority itself has passed order directing the Appellant to satisfy maintainability of the application including the threshold. The Adjudicating Authority, however, without appropriately considering the issue of maintainability has admitted Section 9 application, which needs to be interfered with. No interest amount could be added in the debt. NCLT is not bound by any previous admission by the High Court while adjudicating Winding up petition. Admission of the Winding up petition by the High Court does not tantamount to admission of Section 9 application. There has to be judicial determination of debt and default in Section 7 or Section 9 application. The NCLT could not have mechanically admitted Section 9 application. The Corporate Debtor is a solvent company with strong financial position. IBC cannot be used as a recovery proceeding.

The Corporate Debtor has deposited amount of Rs.4.5 Lakhs as directed by the High Court, which is still under deposit.

5. Learned counsel appearing for the Respondent refuting the submission of the Appellant submits that transfer of pending petition to NCLT should not be treated as fresh petition. In view of the transfer of the Winding up petition, the NCLT was required to deal with the such proceeding from the stage before its transfer. Winding up petition was admitted by the High Court, hence, proceeding has already commenced in rem. In so far as deposit of amount of Rs.4.5 Lakhs by the Corporate Debtor before the High Court, the Corporate Debtor itself has challenged the said order by filing an appeal and the fact that amount has still remained deposited before the High Court could not be reason to negate the admitted debt of the Applicant. There is no existence of any bonafide dispute. There was account confirmation by the Corporate Debtor on 03.03.2004, which has admitted the debt of Rs.7,62,500/-. Letter dated 24.05.2004 cannot be said to be raising any dispute. After account confirmation, the issues raised were moonshine defence which has rightly held so by the NCLT. The Corporate Debtor having confirmed the outstanding amount cannot now approbate and reprobate by contending that there was pre-existing dispute. The dispute raised by the Corporate Debtor is sham and illusionary. The submission of the Appellant that Section 9 application is to be dealt with in accordance with Part II of the Code is incorrect. No complex adjudication is required. Appellant cannot raise any issue on the threshold for initiating

proceeding under I&B Code since the proceedings were merely transferred in 2022, however, were initiated in 2004 and it should be threshold of Rs.1 Lakh only. Appellant has sought to challenge the claim of interest. Appellant accepted the invoices without protest and made part payments. Appellant is estopped from denying contractual rate of interest.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. From the submissions which have been raised by learned counsel for the parties and materials on record following are the issues which arises for consideration:

- I. Whether on transfer of the Winding Up Petition, which was already admitted by the High Court of Gujarat, the Adjudicating Authority while hearing the Section 9 application has to proceed from the stage i.e. from the stage of admission or has to pass an order of admission on Section 7 application?
- II. Whether the Operational Creditor who has converted Winding Up Petition in Section 9 application by filing Form-5 has to satisfy necessary conditions for admission of Section 9 application?
- III. Whether threshold for TP No.02(Ahm)2022 transferred by the High Court to the NCLT shall be Rs.1 Lakh or the Operational Creditor had to fulfil the threshold of Rs.1 Crore as applicable w.e.f. 04.03.2020?

- IV. Whether the application filed by the Operational Creditor, the threshold of Rs.1 Crore was met on adding interest @ 24% per annum claimed by the Appellant?
- V. Whether there was pre-existing dispute between the parties so as to reject the application filed by the Operational Creditor?

Question No. I and II

8. From the facts as noticed above, we have noticed that the Winding Up Petition – C.P. No.240 of 2004 was filed by the Operational Creditor in the High Court of Gujarat claiming Principal Interest of Rs.7,62,500/- along with interest @24% per annum. In the Company Petition order was passed by the Gujarat High Court on 04.04.2006 directing the Corporate Debtor to make payment of Rs.4.5 Lakhs to the Operational Creditor. Against which order, the Corporate Debtor filed an appeal O.J. No.41 of 2006, where interim order was passed by the Division Bench directing that if the amount has not been paid, the same shall not be paid. The interim order was subsequently modified to the effect that amount deposited with the Registry by respondent company be not parted with in favour of the petitioner. The Company Petition was admitted by the Company Judge by order dated 11.12.2006. After admitting the Company Petition, the Company Judge directed that the Company Petition be fixed for final hearing. In Para 10 of the order following was ordered:

“10. All the aforesaid points are required to be considered finally. Hence, both the Company Petitions are admitted. Both the company petitions are fixed for Final Hearing on 6th February 2007. Admission and hearing be advertised in two local newspapers, i.e., "Indian Express" [English] and "Gujarat Mitra" [Gujarati], both Surat Editions. Publication in Government Gazette is dispensed with.”

9. The Company Petition subsequently came to be transferred by the Gujarat High Court by order dated 25.04.2021 relying on the judgment of Hon'ble Supreme Court in **Action Ispat and Power Pvt. Ltd. vs. Shyam Metals and Energy Ltd., (2021) 2 SCC 641**. In Para 7 and 8 of the Gujarat High Court directed as follows:

“7. Having heard learned the respective parties it appears that after the advocates for order of admission and advertisement of the petition, no further orders are passed by the Court with regard to order of winding up of the company nor the Court has appointed the provisional Liquidator. In such circumstances and in view of the following observations of the Apex Court in case of Action Ispat and Power Pvt Ltd. vs. Shyam Metals and Energy Ltd. (supra), this petition is required to be transferred to the NCTL, Ahmedabad :

“22. Given the aforesaid scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are contemplated, with the Tribunal retaining the power to control the proceedings in a winding up petition even after it is admitted. Thus, in a winding up

proceeding where the petition has not been served in terms of Rule 26 of the Companies (Court) Rules, 1959 preadmission stage, given the beneficial result of the application of the Code, such winding up proceeding is compulsorily transferable to the NCLT to be resolved under the Code. Even post issue of notice and pre admission, the same result would ensue. However, post admission of winding up petition and after the assets of the company sought to be wound up become in custodia legis and are taken over by the Company Liquidator, section 290 of the Companies Act, 2013 would indicate that the Company Liquidator may carry on the business of the company, so far as may be necessary, for the beneficial winding up of the company, and may even sell the company as a going concern. So long as no actual sales of the immovable or movable properties have taken place, nothing irreversible is done which would warrant Company Court staying its hands on a transfer application made to it by a creditor or any party to the proceedings. It is only where the winding up proceedings have reached stage where it would be irreversible, making it impossible to set the clock back that the Company Court must proceed with the winding up, instead of transferring the proceedings to the NCLT to now be decided in accordance with the provisions of the Code. Whether this stage is reached would depend upon the facts and circumstances of each case.”

8. In view of the above Company Petition No. 240 of 2004 and Company Petition No.241 of 2004 is accordingly transferred to the National Company Law Tribunal, Ahmedabad Bench. Registry forward the papers to the Tribunal within period of four weeks from today along with order. Tribunal to do the needful in accordance with law to proceed with the matter from the stage at which it is transferred.”

10. After the transfer of the Winding Up Petition, the Operational Creditor filed application in Form 5 dated 24.02.2022. In Part IV of the application with regard to Principal Amount and interest following was stated:

Sr. No.	Particulars of Operational Debt	
1.	<p><i>Total Amount of Debt, Details of Transaction on account of which debt fell due, and the date from which such debt fell due</i></p>	<p>TOTAL AMOUNT OF DEBT: <i>The total of amount of debt amounts to Rs. 4,43,14,429 (Rupees Four Crores Forty Three Lakhs Fourteen Thousand Four Hundred Twenty Nine Only) which comprises of:</i></p> <p><i>i. Principal Amount: Rs. 7,62,500/- (Rupees Seven Lakhs Sixty Two Thousand Five Hundred only)</i></p> <p><i>ii. Interest up to the date of Petition (24% p.a.) amounting to Rs. 4,35,51,929/- (Rupees Four Crores Thirty Five Lakhs Fifty One Thousand Nine Hundred Twenty Nine Only)</i></p> <p>DETAILS OF THE TRANSACTIONS ON ACCOUNT OF WHICH THE DEBT FELL DUE:</p>

11. Company Petition came for hearing before the NCLT who passed following order on 06.04.2022:

“ORDER

CP 240 of 2004 was filed under the provisions of the Companies Act, 1956 under Section 433-434 of the Companies Act seeking winding up of the respondent company Geeta Print Limited. During the pendency of said petition in the year 2016 when the IBC, 2016 came into vogue, matters pending before the Hon'ble Gujarat High Court were directed to transfer to NCLT which was constituted in June 2016 as per the Companies Act, 2013. The petition is re-filed under section 9 of the IBC, 2016 in Form-5 as prescribed under the IBC, 2016. On perusal of the petition, it is seen that the amount of debt is Rs.7,62,500/- plus interest upto the date of filing of petition, totalling to Rs.4,43,14,429/-. The petition is converted into the application under Section 9 of IBC, 2016 on 04.03.2022 as per amended Section 4 of IBC, 2016. Learned Counsel for the applicant is required to satisfy the Bench with respect to maintainability considering threshold limit as per the amended section 4 of the IBC, 2016. In the meantime, notice be issued to the corporate debtor.

List on 30.05.2022.”

12. The above order clearly indicate that petition has been filed under Section 9 of the I&B Code and has been converted into Section 9 petition of the I&B Code. The Adjudicating Authority specifically directed the Applicant

to satisfy the bench as per the amended Section 4 of the IBC whether threshold is fulfilled or not. Section 434 deals with transfer of certain pending proceeding. Section 434 (c) deals with proceeding of winding up also. A proviso was added in the above Section by Act 26 of 2018 w.e.f. 06.06.2018. When we look into the order passed by the Gujarat High Court transferring the petition on 25.11.2021, the Gujarat High Court noticed the submission of the Corporate Debtor, who submitted that Company Petition is required to be transferred to the NCLT. The said submission is noticed in Para 6 of the order, which is as follows:

*“6. On the other hand, learned advocate appearing for the respondent-Company submitted that in view of the decision of the Apex Court in case of **Action Ispat and Power Pvt Ltd. vs. Shyam Metalics and Energy Ltd.** rendered in of Civil Appeal No. 404 of 2020 on 15.12.2020, the proceedings of the company petition are required to be transferred to the National Company Law Tribunal [‘NCLT’ for short].”*

13. The High Court has also noticed the judgment of the Hon’ble Supreme Court in **“Action Ispat and Power Pvt. Ltd. vs. Shyam Metalics and Energy Ltd., (2021) 2 SCC 641”**, which we need to notice at this stage. In the above case, the Hon’ble Supreme Court had occasion to consider Section 434(1)(c). In the above case, learned Single Judge of the Delhi High Court has transferred the Winding Up Petition before the NCLT, which judgment was upheld by the Division Bench. It was contended before the Hon’ble Supreme Court that once Winding Up order has been passed, Winding Up

proceeding must continue before the High Court. In Para 14 of the judgment, the Hon'ble Supreme Court noticed the transfer of the Winding Up proceeding. Para 14, 14.1, 14.2, 14.3 & 14.4 are as follows:

“14. What becomes clear upon a reading of the three judgments of this Court is the following:

14.1. So far as transfer of winding-up proceedings is concerned, the Code began tentatively by leaving proceedings relating to winding up of companies to be transferred to NCLT at a stage as may be prescribed by the Central Government.

14.2. This was done by the Transfer Rules, 2016 (supra) which came into force with effect from 15-12-2016. Rules 5 and 6 referred to three types of proceedings. Only those proceedings which are at the stage of pre-service of notice of the winding-up petition stand compulsorily transferred to NCLT.

14.3. The result therefore was that post notice and pre-admission of winding-up petitions, parallel proceedings would continue under both statutes, leading to a most unsatisfactory state of affairs. This led to the introduction of the 5th proviso to Section 434(1)(c) which, as has been correctly pointed out in Kaledonia [Kaledonia Jute & Fibres (P) Ltd. v. Axis Nirman & Industries Ltd., (2021) 2 SCC 403], is not restricted to any particular stage of a winding-up proceeding.

14.4. Therefore, what follows as a matter of law is that even post admission of a winding-up petition,

and after the appointment of a Company Liquidator to take over the assets of a company sought to be wound up, discretion is vested in the Company Court to transfer such petition to NCLT. The question that arises before us in this case is how is such discretion to be exercised?”

14. The order of Winding Up in the above case was upheld by the Hon'ble Supreme Court. In para 25 and 26 following was held:

“25. Given the aforesaid scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are contemplated, with the Tribunal retaining the power to control the proceedings in a winding-up petition even after it is admitted. Thus, in a winding-up proceeding where the petition has not been served in terms of Rule 26 of the Companies (Court) Rules, 1959 at a pre-admission stage, given the beneficial result of the application of the Code, such winding-up proceeding is compulsorily transferable to NCLT to be resolved under the Code. Even post issue of notice and pre-admission, the same result would ensue. However, post admission of a winding-up petition and after the assets of the company sought to be wound up become in custodia legis and are taken over by the Company Liquidator, Section 290 of the Companies Act, 2013 would indicate that the Company Liquidator may carry on the business of the company, so far as may be necessary, for the beneficial winding up of the company, and may even sell the company as a going concern. So long as no actual sales of the immovable

or movable properties have taken place, nothing irreversible is done which would warrant a Company Court staying its hands on a transfer application made to it by a creditor or any party to the proceedings. It is only where the winding-up proceedings have reached a stage where it would be irreversible, making it impossible to set the clock back that the Company Court must proceed with the winding up, instead of transferring the proceedings to NCLT to now be decided in accordance with the provisions of the Code. Whether this stage is reached would depend upon the facts and circumstances of each case.

26. *In the facts of the present case, the concurrent finding of the Company Judge and the Division Bench [Action Ispat & Power (P) Ltd. v. Shyam Metals & Energy Ltd., 2019 SCC OnLine Del 10424] is that despite the fact that the liquidator has taken possession and control of the registered office of the appellant Company and its factory premises, records and books, no irreversible steps towards winding up of the appellant Company have otherwise taken place. This being so, the Company Court has correctly exercised the discretion vested in it by the 5th proviso to Section 434(1)(c). Resultantly, the civil appeal arising out of SLP (Civil) No. 26415 of 2019 stands dismissed.”*

15. The proviso which was added in Section 434(1)(c) has been noticed by the Hon’ble Supreme Court in Para 7, which is as follows:

“7. Section 255 of the Code reads as follows:

“255. Amendments of Act 18 of 2013.—The Companies Act, 2013 shall be amended in the manner specified in the Eleventh Schedule.”

In pursuance of this section, the Eleventh Schedule to the Code made various amendments to the Companies Act, 2013. They have been set out in detail in Jaipur Metals [Employees Organization v. Jaipur Metals & Electricals Ltd., (2019) 4 SCC 227] in paras 10 and 11. Suffice it to say that the first step to transferring winding-up proceedings to NCLT was taken by the Companies (Transfer of Pending Proceedings) Rules, 2016 (“the Transfer Rules, 2016”), which compulsorily transferred all winding-up proceedings pending before the High Courts to NCLT at a stage prior to the service of the petition in terms of Rule 26 of the Companies (Court) Rules, 1959. By an amendment made on 17-8-2018, the 5th proviso to Section 434(1)(c) was added which states as follows:

“434. Transfer of certain pending proceedings.—(1) On such date as may be notified by the Central Government in this behalf—

(a)-(b) * * *

(c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:

* * *

Provided further that any party or parties to any proceedings relating to the winding up of companies pending before any court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application for transfer of such proceedings and the Court may

by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (31 of 2016).”

16. When we look into the above proviso to Sub-section (c) as referred to by the Hon’ble Supreme Court in **“Action Ispat and Power Pvt. Ltd. vs. Shyam Metalics and Energy Ltd.”** statutory scheme clearly directs that **the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (31 of 2016).**

17. In the present case, the Hon’ble Supreme Court having already transferred the proceeding to the NCLT, the transfer is not an issue. The only issue which has been raised and has to be answered is whether the proceeding which was transferred has to be conducted as per the I&B Code or the proceeding has to be treated to be admitted under the I&B Code by virtue of admission order passed in Winding Up Petition by the High Court, as noted above.

18. We may also refer to Rule 5 of Companies (Transfer of Pending Proceedings) Rules, 2016 issued by the Ministry of Corporate Affairs on 09.12.2016. Rule 5 provides as follows:

“5. [Transfer of pending proceedings of Winding up on the ground of inability to pay debts.- (1) All

petitions relating to winding up of a company under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and, where the petition has not been served on the respondent under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Companies Act, 2013 exercising territorial jurisdiction to be dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal upto 15th day of July, 2017, failing which the petition shall stand abated:

Provided further that any party or parties to the petitions shall, after the 15th day of July, 2017, be eligible to file fresh applications under sections 7, & or 2 of the Code, as the case may be, in accordance with the provisions of the Code:

Provided also that where a petition relating to winding up of a company is not transferred to the Tribunal under this rule and remains in the High Court and where there is another petition under clause (e) of section 433 of the Act for winding up against the same company pending as on 15th December, 2016, such other petition shall not be

transferred to the Tribunal, even if the petition has not been served on the respondent.]”

19. As noted above, after transfer of the Winding Up Petition, the Operational Creditor filed application in Form 5 to comply the procedural requirement and petition was converted in Section 9 petition which is recorded in the order of the Adjudicating Authority, as noted above, by order dated 06.04.2022. The Adjudicating Authority directed the Operational Creditor to satisfy the Bench with respect to maintainability considering the threshold.

20. Thus, the Operational Creditor has to fulfil the threshold as per amended Section 4 of the I&B Code, 2016, which is specifically noticed in order dated 06.04.2022. We thus are of the view that the mere fact that Winding Up petition was admitted by the Gujarat High Court vide its order dated 11.12.2006 could not be read to mean that Section 9 application in which it was converted after transfer has to automatically admitted.

21. Proceedings under Section 433 and 434 of the Companies Act are Winding Up proceedings and as per the statutory scheme of the Companies Act r/w Companies Court Rules, 1959, the transfer of said Winding Up petition has been made to the NCLT and has to be heard and decided as per the I&B Code.

22. When the Winding Up petition has been transferred to the NCLT, it has to be considered as per the scheme of the I&B Code to fulfil the

requirement for admission under Section 9 application which has to be fulfilled and admission of Winding Up petition under Section 433 and 434 of the Companies Act, 1956 shall not obviate consideration of Section 9 application for its admission. In the above context, we may also refer to the judgment of Hon'ble Supreme Court in **“(2021) 4 SCC 435, A. Navinchandra Steels (P) Ltd. vs. Srei Equipment Finance Ltd.”**, where Hon'ble Supreme Court had occasion to consider the provision of Section 7, 9 and 238 of the I&B Code in reference to Winding Up Petition under the Companies Act, 2013. The Hon'ble Supreme Court in the above case in Para 25 and 29 laid down following:

“25. A conspectus of the aforesaid authorities would show that a petition either under Section 7 or Section 9 IBC is an independent proceeding which is unaffected by winding-up proceedings that may be filed qua the same company. Given the object sought to be achieved by the IBC, it is clear that only where a company in winding up is near corporate death that no transfer of the winding-up proceeding would then take place to NCLT to be tried as a proceeding under the IBC. Short of an irresistible conclusion that corporate death is inevitable, every effort should be made to resuscitate the corporate debtor in the larger public interest, which includes not only the workmen of the corporate debtor, but also its creditors and the goods it produces in the larger interest of the economy of the country. It is, thus, not possible to accede to the argument on behalf of the appellant that given Section 446 of the Companies Act, 1956/Section 279 of the

Companies Act, 2013, once a winding-up petition is admitted, the winding-up petition should trump any subsequent attempt at revival of the company through a Section 7 or Section 9 petition filed under the IBC. While it is true that Sections 391 to 393 of the Companies Act, 1956 may, in a given factual circumstance, be availed of to pull the company out of the red, Section 230(1) of the Companies Act, 2013 is instructive and provides as follows:

“230. Power to compromise or make arrangements with creditors and members.—(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.—For the purposes of this subsection, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.”

What is clear by this Section is that a compromise or arrangement can also be entered into in an IBC

proceeding if liquidation is ordered. However, what is of importance is that under the Companies Act, it is only winding up that can be ordered, whereas under the IBC, the primary emphasis is on revival of the corporate debtor through infusion of a new management.

29. *Dr Singhvi and Shri Ranjit Kumar have vehemently argued that SREI has suppressed the winding-up proceeding in its application under Section 7 IBC before NCLT and has resorted to Section 7 only as a subterfuge to avoid moving a transfer application before the High Court in the pending winding-up proceeding. These arguments do not avail the appellant for the simple reason that Section 7 is an independent proceeding, as has been held in a catena of judgments of this Court, which has to be tried on its own merits. Any “suppression” of the winding-up proceeding would, therefore, not be of any effect in deciding a Section 7 petition on the basis of the provisions contained in the IBC. Equally, it cannot be said that any subterfuge has been availed of for the same reason that Section 7 is an independent proceeding that stands by itself. As has been correctly pointed out by Shri Sinha, a discretionary jurisdiction under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 cannot prevail over the undoubted jurisdiction of NCLT under the IBC once the parameters of Section 7 and other provisions of the IBC have been met. For all these reasons, therefore, the appeal is dismissed and the interim*

order that has been passed by this Court on 18-12-2020 shall stand immediately vacated.”

23. Hon'ble Supreme Court in the above case has held that proceedings under Section 7 and 9 are independent proceedings which are unaffected by Winding Up Petition.

24. In view of the above discussion our answer to Question No. I and II is as follows:

- I. After transfer of the Winding Up Petition by the High Court to the NCLT after admission of the Winding Up Petition, NCLT has not to mechanically admit the petition and has to examine the application in accordance with provisions of the I&B Code and to pass a judicial order after considering as to whether the application need to be admitted under Section 9 or not.
- II. After transfer of the Winding Up Petition which has been converted into the Section 9 application, the Operational Creditor has to satisfy all parameters for admission of Section 9 application including threshold.

Question No. III and IV

25. Both the questions being related are being taken together. The submission which has been pressed by learned counsel for the Respondent is that threshold for T.P. No. 02 of 2022 after it is converted into Section 9 application shall be Rs.1 Lakh since at the time it was filed i.e. Winding Up

Petition, the threshold under Companies Act was fulfilled and the Adjudicating Authority while passing the order under Section 9 has to examine the threshold as of Rs.1 Lakh only. Alternatively, learned counsel for the Respondent has contended that the invoices contained 24% interest per annum, which was never objected by the Corporate Debtor, hence, that interest amount has to be added and by adding the interest amount the threshold of Rs.1 Crore is met.

26. The order of the Adjudicating Authority which was passed after transfer of the Winding Up Petition i.e. order dated 06.04.2022 required the Operational Creditor to satisfy that whether Section 9 application as per amended Section 4 fulfils the threshold. Thus, the said order clearly indicate that the Operational Creditor has to satisfy the threshold of Rs.1 Crore.

27. The Company Petition was transferred vide order of the Gujarat High Court dated 25.04.2021 and thereafter was converted in Section 9 application on 04.03.2022. Thus, on the date when the application was converted Section 9, the threshold as provided in I&B Code has to be looked into. What should be amount of threshold for Section 9 or Section 7 application for eligibility under I&B Code was enacted under Section 4. Initially the requirement of minimum amount of default was Rs.1 Lakh, which was subsequently enhanced to Rs.1 Crore w.e.f. 24.03.2020. Thus, the legislative policy after 24.03.2020 is to admit Corporate Debtor into insolvency only when default is more than Rs.1 Crore. The application

under Section 9 of the Operational Creditor came to be considered subsequent to 24.03.2020, hence, the threshold of Rs.1 Crore shall be applicable and the submission of the Respondent that Petition fulfils the threshold since on the date of initiation of Winding Up proceeding it fulfils threshold, cannot be accepted nor the fact that Winding Up Petition fulfils its threshold shall obviate it from fulfilling the threshold of Rs.1 Crore. We, thus are of the view that Section 9 application of the Operational Creditor required fulfilment of threshold of Rs.1 Crore.

28. Both the parties are at variance on the question of interest. Learned counsel for the Appellant submits that there was no liability to pay interest of 24% per annum nor there was any agreement between the parties for payment of interest of 24%. Learned counsel for the Respondent on the other hand submits that 24% interest was mentioned in the invoices and was also clearly claimed in the notice given by the Operational Creditor under Section 433 and 434 of the Companies Act. Another limb of the submission of the Appellant is that interest calculation by the Operation Creditor is 24% interest compounded quarterly, which is not even referred in invoices and even if 24% simple interest is added to Principal Amount, the threshold of Rs.1 Crore is not met. We need to notice the invoice which is relied by the Respondent. In the invoice Note 1 provides as follows:

“1. We charge interest at 24% if payment is not received within 30 days from the date of this bill.”

29. It is relevant to notice that the Corporate Debtor never admitted acceptance of 24% interest. In the reply which was filed to the Winding Up Petition by the Corporate Debtor before the Gujarat High Court, the claim of the interest was denied. On the issue as to whether in a debt Operational Creditor can claim interest came for consideration before this Tribunal in large number of cases. Invoices claimed by the Respondent are only unilateral statement by the Operational Creditor which is clear from Note 1 which says; “*We charge interest at 24%*”. There is no agreement between the parties or any act on part of the Corporate Debtor that at any point of time it has paid interest so as to even implied acceptance of interest. Learned counsel for the Appellant has relied on judgement of this Tribunal in **“Rishabh Infra vs. Sadbhav Engineering Ltd., 2024 SCC OnLine NCLAT 1262”**, in which case Section 9 application was rejected on the ground of not fulfilling threshold. In Part IV, the claim of interest @24% was made. This Tribunal held that invoices sent by the Operational Creditor cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest. In Para 9 and 10 of the judgment following has been observed:

“9. We are of the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest.

10. *There is nothing to substantiate that the Corporate Debtor has accepted the obligation to pay the interest @24% per month, as claimed by the Operational Creditor. The entire Principal Amount having been paid, the Adjudicating Authority did not commit any error in rejecting the Section 9 Application filed by the Operational Creditor. There is no merit in the Appeal. Appeal is dismissed.*”

30. Learned counsel for the Appellant has relied on judgment of this Tribunal in **“Comet Performance Chemicals Private Limited vs. Aarvee Denims and Exports Limited., 2025 SCC OnLine NCLAT 53”** where question of entitlement of interest was examined. In Para 18 and 19 of the judgment following was held:

“18. Accordingly, we agree with the submissions of the Respondent and also the findings of the Adjudicating Authority that no interest can be charged against the supply of goods and services for delayed payments until and unless there is an express agreement between the parties. We find justification in the claim of the Respondent that the interest claim was unilaterally imposed and lacked any contractual basis.

19. Next we look into the exclusion of Claims falling within the Section 10 A period. The invoices dated between 29.11.2019 and 07.02.2020, amounting to Rs. 36,46,200/- (rupees thirty-six lakhs, forty-six thousand and two hundred only) fall within the restricted period under Section 10 A of the IBC. As

such, defaults related to these invoices cannot form the basis of an Insolvency Application. Deducting this amount from the total alleged outstanding of Rs. 1,36,30,679/-(rupees one crore, thirty-six lakhs, thirty thousand, six hundred and seventy-nine only) reduces the admissible claim to Rs. 99,84,479/- (rupees ninety-nine lakhs, eighty-four thousand, four hundred and seventy-nine only) which remains below the statutory threshold of rupees one crore. It is to be noted that this gets further reduced on deduction of the claims of interest.”

31. Another judgment relied by learned counsel for the Appellant is in **“Shitanshu Bipin Vora vs. Shree Hari Yarns Private Limited, Company Appeal (AT) (Ins.) No.2204 of 2024”**, on question of adding interest in the claim. After considering all relevant judgments, in Para 47 following was held:

“47. Similarly, the Appellate Tribunal in the case of SS Polymers vs Kanodia Technoplast Limited, had held that relying on the invoices to raise claims for payment of interest is against the principle of the Code. Relevant extracts from this judgment are reproduced hereinbelow:

“4. The Learned Counsel for the Appellant relied on invoices to suggest that in the invoices, the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the Corporate Debtor-

5. Admittedly, before the admission of an application under Section 9 of the Code, the

Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest for any purpose other than for the Resolution of Insolvency, or Liquidation of the Corporate Debtor and which is barred in view of Section 65 of the Code."

[emphasis supplied]

Therefore, in the absence of any agreement between parties, regarding payment of interest on delayed payment, the claim with respect to interest on pending invoices is not sustainable, and on this ground the captioned Application is liable to be dismissed."

32. If the claim of interest is not included, the Principal Amount is only Rs.7,62,500/- which does not fulfil the threshold of Rs.1 Crore. The observation of the Adjudicating Authority in the impugned that for the application threshold of Rs.1 Lakh will apply in the present matter cannot be approved. On question of threshold in Para 7(b) following has been observed by the Adjudicating Authority:

"b) When the IBC 2016 was enacted, the threshold limit for a Sec 7 or 9, 10 application was Rs.1 Lakh (which limit applies to this matter also) which was increased to Rs 1 crore wef March 24, 2020 which makes this petition, irrespective of the interest claim (which is admissible as per this adjudication order) to be within the eligible limit for

filing (as on date matter was subject to the jurisdiction of Hon'ble High court, Gujarat).”

33. The Adjudicating Authority has not adverted to the objections raised by the Corporate Debtor that debt cannot include the interest there being no agreement between the parties.

34. We answer Question No. III and IV in following manner:

III. Threshold for Section 9 application, which was converted in 2022, shall be Rs.1 Crore and the Operational Creditor has to fulfil the threshold of Rs.1 Crore for maintaining Section 9 application.

IV. There being no agreement between the parties regarding payment of interest @ 24% per annum nor there being any other material to prove that Corporate Debtor paid the interest or accepted interest of 24%, the claim of interest cannot be included in the debt and debt being only Rs.7,62,500/- did not fulfil the threshold.

Question No. V

35. Learned counsel for the Corporate Debtor has submitted that there was pre-existing dispute which was flagged by the Corporate Debtor as early as 24.05.2004, hence, the Adjudicating Authority was required to reject the application on account of pre-existing dispute.

36. We have noticed that the invoices were issued by the Operational Creditor to the Corporate Debtor and account confirmation letter dated

03.03.2004 was issued by the Operational Creditor to the Corporate Debtor which account confirmation was filed along with the Winding Up petition and is part of the record which is filed as Annexure – A4 to this appeal. The above account confirmation letter which was duly signed by the Corporate Debtor mentioned outstanding debt of Rs.7,62,500/- as on 28.02.2004. We also need to notice letter dated 24.05.2004, which was sent by the Corporate Debtor, which is filed as Annexure – A5, which reads as follows:

“24/05/04

To,
Falcon Industries,
Gain No. 3, Plot No. 12(P),
Raminazar Indus. Estate, Village Amlī,
Silvassa, D & N. H.

Kind Attn.: Mr. S. K. Patel

Dear Sirs,

Sub: Reconciliation of accounts.

This has reference to your various invoices raised on us. The rates stated in the invoices are exaggerated and not commensurate with the items and their quality. We shall be able to consider your invoices for payment upon final verification of contents thereof. Kindly do the needful and oblige.

Further please note that construction activity of Suryaplaza is not exactly related to our business. Booking of property is independent of our business. Therefore, we shall not be able to entertain adjustment of payment for purchase of property.

Thanking you,

*Yours Faithfully,
For Geeta Prints Limited.*

Director”

37. When the Operational Creditor has issued account confirmation letter and Corporate Debtor acknowledged the debt of Rs.7,62,500/-, we are of the view that sending a letter on 24.05.2004 stating that rates stated in the invoices are exaggerated and not commensurate with the items and their quality cannot be read as raising a dispute.

38. We also notice that in the invoices which have been given by the by the Operational Creditor Note 2 mentions that *“No claims are entertained unless brought to our notice in writing within 48 hours on receipt of goods”*. It is not the case of the Appellant that any dispute was raised with respect to goods within 48 hours. Months after account confirmation writing of a letter by the Corporate Debtor cannot be said to be pre-existing dispute.

39. We also notice that the dispute was raised by the Corporate Debtor in the Winding Up Petition and the learned Company Judge while admitting the Company Petition has noticed the letter dated 24.05.2004 and has observed that *“the dispute raised by the respondent cannot be said to be bonafide.”* In Para 9 of the judgment of the Gujarat High Court admitting Winding Up Petition following has been observed:

“9. Now, so far as the alleged dispute with regard to debt is concerned, it is to be noted that on 3.3.2004 the debt and accounts have been confirmed by the

respondent Company in relation to Company Petition No. 240 of 2004. However, it is the contention on behalf of the respondent Company that by communication dated 24.5.2004 the dispute with regard to debts was raised however no particulars are given with regard to such dispute. Apart from that, in the communication a dated 24.5.2004 the confirmation of accounts dated 3.3.2004 has not been disputed. The respondent company was served with a statutory notice, however there is no reply to the same raising any dispute. So far as Company Petition No. 241 of 2004 is concerned, even there is no dispute raised like the one raised on 24.5.2004 in Company Petition No. 240 of 2004. There is no reply to the statutory notice nor any amount has been paid within 21 days of statutory notice. It, prima facie, appears that considering the provisions of Section 434(1)(a) of the Companies Act, non-payment of the dues within 21 days is deemed to be a neglect on the part of the company to make payment. It appears that the disputes raised by the respondent Company in the affidavit-in-reply are not bonafide and no particulars are given with regard to any dispute with regard to rates, as the same were mentioned in the invoices itself. Thus, it prima facie appears that the respondent company has failed and neglected to pay the amount.”

40. We, thus, are of the view that the dispute sought to be raised by the Corporate Debtor has rightly not been accepted as any pre-existing dispute by the Adjudicating Authority.

41. There is one more aspect of the matter which need to be considered. As noted above, on 04.04.2006, the Gujarat High Court directed the Corporate Debtor to deposit an amount of Rs.4.5 Lakhs, which amount was deposited by the Corporate Debtor, which was noticed in the order dated 04.04.2006, however, the said amount was never released to the Corporate Debtor and remained in deposit, as submitted by both the parties.

42. Although the High Court directed on 04.04.2006 to pay Rs.4.5 Lakh to the Operational Creditor but the Corporate Debtor immediately filed Appeal O.J. No.41 of 2006 where interim order was passed, as noted above. Subsequently, the said appeal came to be heard and dismissed by the Gujarat High Court on 19.09.2008. In Para 2 of the order dismissing the appeal following was said by the Division Bench:

“2. In light of the fact that the interim order was followed by order dated 11.12.2006 whereby the petition was ordered to be admitted and publication of advertisement was directed against which O.J. Appeal No.7 of 2007 was preferred, and the fact that the said Appeal has been dismissed today by a separate order this Appeal has been rendered infructuous as the interim order now stands merged. The modified interim order as made by this Court shall continue to operate till the Company Court takes up Company Petition No. 240 of 2004 for hearing and disposal. The Appeal is accordingly dismissed.”

43. The order of the Division Bench with regard to deposit of Rs.4.5 Lakhs thus contemplate passing of order after hearing and disposal of the Company Petition. The Company Petition has been transferred on 25.11.2021. An order need to be passed with regard to said deposit. It is relevant to be noted that the High Court directed that Rs.4.5 Lakh be paid to the Operational Creditor which was challenged by the Corporate Debtor, which challenge was dismissed by the Division Bench by order dated 19.09.2008. The Operational Creditor, thus, became entitle for receipt of said amount of Rs.4.5 Lakhs. Operational Creditor deprived of the said amount, we are of the view, the Corporate Debtor be directed to pay interest with the said amount to compensate the Operational Creditor. In view of the above, we are of the view that the Corporate Debtor is required to pay Rs.4.5 Lakhs with compound interest @ 12% w.e.f. 04.04.2006 till the date of making the payment. The Corporate Debtor is also permitted to withdraw the amount which was deposited in the High Court under the order dated 04.04.2006. The amount of Rs.4.5 Lakhs with interest, as directed above be paid to the Operational Creditor by the Appellant within a period of 30 days from this order.

44. In view of the foregoing discussion, we allow the appeal in following manner:

- I. The order of the Adjudicating Authority dated 13.11.2025 admitting Section 9 application is set aside. It is held that application does not fulfil the threshold of Rs.1 Crore.

- II. The Appellant is to make payment of Rs.4.5 Lakhs with 12% compound interest calculated from 04.04.2006 till it is paid. The said amount need to be paid by the Appellant within 30 days from today by a Bank Draft or bank transfer to the Respondent No.1.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

25th February, 2026

Archana