IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.302
C.P. (IB)/34(AHM)2024

Proceedings under Section 9 IBC

IN THE MATTER OF:

M/S. N.S. COMPANY ....**Applicant**
Vs
M/S. SADBHAV ENGINEERING LIMITED ....**Respondent**

Order delivered on: 29/07/2026

Coram:
Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet.

Sd/-
DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-
CHITRA HANKARE
MEMBER (JUDICIAL)

SJ/AD/AP

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)

COMPANY PETITION (IB) 34 (AHM) 2024

(Application under Section 9 Read with rule 6 of the Insolvency and Bankruptcy Rules, 2016)

In the matter of:

M/s. N. S. COMPANY
Through its Partner
Shri Amarjeet Singh son of Shri Hari Singh
Having its office at
Shop No. 158, Sector 2-3, Part,
Near Jaat Bhawan, Rohtak,
Haryana 124001
Email: aggarwal_parveenkumar@yahoo.co.in **.....Petitioner/ Operational Creditor**

Versus

M/S. Sadbhav Engineering Limited
Registered Office: Sadbhav House
Opposite Law Garden Police Chowki
Ellis Bridge, Ahmedabad 380 006, Gujarat
Investor@Sadbhav.Co.In

..... Respondent/ Corporate Debtor

Order pronounced on 29.07.2026

Coram:
MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

-SD-

Sd/-

Present:

For the Petitioner : Mr. Praveen Kumar Aggarwal, Adv.
For the Respondent : Mr. Navin Pahwa, Sr. Adv and
Mr. Ravi Pahwa, Adv.

JUDGEMENT

1. This application is filed by the Operational Creditor viz, M/s. N.S. Company, through its Partner Mr. Amarjeet Singh under Section 9 of Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor viz. M/s. Sadbhav Engineering Limited for having default of an amount of Rs. 4,05,81,861.52/- along with upto date interest from 01.09.2023.
2. The Applicant submits that it is engaged in the business of trading and supply of road and building construction materials and had supplied materials to the Corporate Debtor between 30.04.2017 to 02.12.2019, raising 4,907 invoices aggregating to Rs. 18,16,56,125/-. It is submitted that while the Corporate Debtor made part-payments amounting to Rs. 16,46,81,092/-, it failed to discharge its liability of Rs. 1,69,75,033/- in respect of 537 invoices raised between 21.05.2019 and 05.12.2019. It is submitted that being aggrieved by the default, the Applicant approached the Haryana Micro and Small Enterprises

-SD-

sd/-

Facilitation Council (HMSEFC) vide application dated 23.01.2021 on MSME Samadhan Portal, being a registered Micro Enterprise. The HMSEFC, vide Award dated 18.11.2022, awarded a sum of Rs. 1,69,75,033/- along with interest, costs and expenses in favour of the Applicant. It is submitted that no appeal was preferred against the said Award within the prescribed period and, therefore, the Award has attained finality. The Applicant further submits that though the invoices stipulated interest at 18% per annum, the HMSEFC awarded interest at 22.25% per annum, which has accordingly been claimed in the present petition.

3. The Applicant further submits that after the Award, the Corporate Debtor acknowledged its liability and expressed its inability to make payment of the awarded amount in one lump sum, requesting that the dues be paid in eight monthly installments. It is submitted that pursuant to which a Memorandum of Settlement dated 31.03.2023 was executed whereby the Corporate Debtor agreed to make staggered payments up to 29.02.2024. It is submitted that the Corporate Debtor failed to adhere to the agreed payment schedule and made only a single payment of Rs. 10,00,000/- on 30.06.2023, which was appropriated towards accrued interest. It is submitted

Sd/-

Sd/-

that upon default in payment of the installments, the Applicant issued a legal notice dated 17.08.2023 calling upon the Corporate Debtor to regularize the payment schedule within 15 days. It is submitted that Memorandum of Settlement dated 31.03.2023 was terminated by the Applicant vide legal notice dated 15.09.2023. It is submitted that a demand notice dated 13.10.2023 under Section 8 of the Insolvency and Bankruptcy Code, 2016 was duly served upon the Corporate Debtor, which was received on 19.10.2023. It is submitted that the Corporate Debtor replied to the demand notice on 25.10.2023.

4. Applicant has relied upon following documents:

   a) Copies of unpaid invoices (537 in number) raised between 21.05.2019 to 05.12.2019.

   b) Ledger Account of the Corporate Debtor maintained by the Applicant for the period of 01.04.2017 to 31.03.2023.

   c) Award dated 18.11.2022 passed by the Haryana Micro and Small Enterprises Facilitation Council (HMSEFC) in Case No. 2542 of 2021.

   d) Bank Statement dated 03.11.2023.

   e) Legal Notice dated 17.08.2023.

   f) Legal Notice dated 15.09.2023 terminating the Memorandum of Settlement.

-SD-

Sd/-

g) Demand Notice dated 13.10.2023, along with postal receipts and tracking report.

h) Reply dated 25.10.2023 submitted by the Corporate Debtor.

i) Working for computation of default.

j) NESL Certificate.

5. The Respondent/Corporate Debtor in its reply submits that the on perusal of Part IV of the application, claim of the Applicant is based upon the Memorandum of Settlement dated 31.03.2023 executed between the parties and it is contended that petition under section 9 of the code cannot be based upon purported non-compliance of the terms of settlement. It is further contended that the non-compliance of the terms of Settlement does not fall within the ambit of "operational debt" as defined under Section 5(21) of the Insolvency and Bankruptcy Code, 2016. It is further contended that the amount sought to be recovered is the settlement amount and not a debt owed for the supply of goods or rendering of services, and therefore the alleged outstanding has lost its substratum as an "operational debt" under Section 5(21) of the Code and can, at best, be treated as a debt under Section 3(11) of the Code.

Sd/-

Sd/-

6. The Respondent submits that the present petition has been filed only for recovery of the purported debt, which is impermissible in law. It is contended that the Insolvency and Bankruptcy Code, 2016 is not a recovery proceeding. The Respondent further submits that prior to the issuance of the demand notice, the Operational Creditor had already filed a claim before the Haryana Micro and Small Enterprises Facilitation Council (HMSEFC), which culminated in the Award dated 18.11.2022. It is contended that the proceedings before the HMSEFC constitute a pre-existing dispute between the parties. It is contended that that any suit or arbitration proceedings pending prior to the issuance of the demand notice would constitute a dispute under the provisions of the Code, and therefore the proceedings before the HMSEFC amount to a pre-existing dispute. It is further submitted that, in view of the existence of such pre-existing dispute, the present application under Section 9 of the Code is not maintainable and is liable to be rejected.

7. It is further submitted that that the demand notice claims Rs. 1,69,75,033/- towards principal and Rs. 2,34,90,828.52 towards interest at the rate of 20.25%. It is contended that the purchase orders executed between the parties do not contain any stipulation regarding payment of interest and, therefore, the

Sd/-

-SD-

claim for interest is not maintainable. It is also contended that the petition does not disclose a specific date of default and merely states that the default occurred between 21.05.2019 and 05.12.2019. It is also submitted that the Applicant has not properly established the operational debt in the manner contemplated under the Code. The Respondent has further raised a preliminary objection with regard to the maintainability of the present application by contending that the petition has been filed by one of the partners of the Applicant firm without any authorization and that the partnership deed has not been placed on record to establish whether the Applicant is a registered partnership firm.

8. The Applicant by way of rejoinder, submitted that as each partner acts on behalf of the firm and is an agent of the firm as provided under chapter IV of Indian Partnership Act, 1932 and further contended that no particular authorization or resolution in favor of any partner is required when there is general authorization by statute itself. It is submitted whether the partnership firm is registered or unregistered is immaterial for adjudication of present proceedings as it proceedings under section 9 of the code are not suit and the bar under section 69(2) the Indian Partnership Act, 1932 does not apply to the present

Sd/-

Sd/-

proceedings. The Applicant has further denied the contention that the Award constitutes a pre-existing dispute, contending that the Award has attained finality as no appeal was preferred by the Corporate Debtor within the prescribed period.

9. The Respondent Corporate Debtor, by way of an additional affidavit dated 29.12.2025, submits that during the pendency of the present petition it has paid the entire principal amount of Rs. 1,69,75,073/- payable to the petitioner due under the Award dated 18.11.2022 and the Memorandum of Settlement dated 31.03.2023, comprising payments of Rs. 10,00,000/- on 30.06.2023, Rs. 50,00,000/- on 30.10.2025, Rs. 1,09,75,033/- and Rs. 40/- on 26.12.2025. The Corporate Debtor further submits that the Petitioner's claim is founded upon the said Award and the Memorandum of Settlement, under which only the aforesaid principal amount was payable, which now stands fully discharged. It is contended that, in view of the payment of the entire principal amount, the present petition survives only for recovery of interest and that proceedings under the Insolvency and Bankruptcy Code, 2016 cannot be maintained solely for recovery of interest.

10. The Applicant, by way of an additional affidavit dated 16.01.2026, submits that the additional affidavit filed by the

Sd/-

-SD-

Corporate Debtor dated 29.12.2025 contains incorrect averments and conceals material facts. It is submitted that although the Corporate Debtor made part-payments of Rs. 50,00,000/- on 30.10.2025 and Rs. 1,09,75,033/- on 26.12.2025, aggregating to Rs. 1,59,75,033/-, during the pendency of the present petition, the entire outstanding dues have not been discharged. It is further submitted that subsequent part-payments do not extinguish the occurrence of default and merely reduce the outstanding amount.

11. Respondent has relied upon the following judgements;

a) *Delhi Control Devices Put Ltd. v. Fedders Electric and Engineering Ltd. (CP (IB) No. 343/ALD/ 2018)*
b) *Nitin Gupta v. International LanD Developers Pvt. Ltd. (IB No. S07/ND/2020)*
c) *Ahluwalia Contracts (India) Pvt. Ltd. v Logix Infratech Pvt. Ltd. 2022 SCC OnLine NCLT 169*
d) *Trafigura India Private Limited Vs. Tdt Copper Ltd - CA (AT) (Ins) No.742 of 2020.*
e) *Permali Wallace Put. Ltd. vs. Narhada Forest Industries Pvt. Ltd. [CA (AT) (Insolvency) No. 36 of 2023]*
f) *Amrit Kumar Aggarwal versus M/s. Tembo Appliances Private Limited Company Appeal (AT) (Insolvency) No. 1005/2020 (NCLAT dated 25.11.2020)*
g) *Mobilox Innovations Private Ltd. V. Kirusa Software Private Ltd. (2017) SCO Online SC 1154 (Civil Appeal No. 9405/2017)*

-SD-

-SD-

h) *Wind Water System Vs. Narendra Emporis Limited (2020) 115 Taxmann.com 275 (NCLT)*

i) *Trafigura Pte. Ltd. v. SLR Metaliks Ltd. (2020) 119 Taxmann.com 225 (NCLT, New Delhi)*

j) *Winntus Scaffolding Pvt Ltd. v. Aishwarya Business Corporation Pvt Ltd. CP(IBC)/44/ KOB/2022*

k) *Swiss Ribbons Pvt. Ltd. v. Union of India. (2019) 4 SCC 17)*

l) *M/s. Invent Asset Securitisation and Reconstruction Pvt Ltd v. M/s. Gimar Fibres Ltd. (2022) SCC Online SC 808*

m) *Rohit Motawat vs. Madhu Sharma Proprietor of Hind Chem Corporation Company Appeal (AT) (Ins) No. 1152 Of 2022*

n) *Amsons Communication Pvt. Ltd. V. ATS Estates Pvt. Ltd. Company Appeal (AT) (Ins) 540 of 2020*

o) *S.S. Polymers v Kanodia Technoplast Ltd Company Appeal (AT) (Ins) 1227 of 2019*

p) *Saraf Chits Pvt. Ltd. v. KAD Housing Pvt. Ltd. CP (IB) 225 of 2021 (NCLT, New Delhi)*

12. Both the parties have filed written submissions. Heard the counsels for the petitioner as well as the respondent and perused all the documents and judgements available on record.

13. Observations & Conclusions:

a) The basic issue is whether the application filed is to be for admission under limitation to treat the date of invoice, its default that arises from the unpaid invoices or the Award dated 18.11.2022 passed by the Haryana Micro and Small Enterprises

Sd/-

Sd/-

Facilitation Council, by the or based on the memorandum of settlement between the parties.

b) The first issue is the filing an application before the Learned Haryana MSME authority by the applicant of the debt due amounting to Rs.1.69,75,033. The matter was heard and the authority passed an order on 18.11.2022 for an amount of Rs.1,69,75,033. We observe from the order that the application was filed through a special power of attorney dated 1.1.2021 given to one Mr Vedpal by all partners claiming the amount of due for the period from 3.04.2017 to 5.12.2019. The award which is result of an arbitration process is passed invoking the provisions of MSMED Act 2006 for an amount of Rs.1,69,75,033 and the execution process is on para 9 of the order which states that "....incase the respondent do not file any appeal under Sec 19 of the Act to set aside this award passed by the council may be executed by the District Collector of the district concerned where the property of the respondent is located and the amount due shall be recovered as an arrear of land revenue in terms of Rule 10 of HMSEFC Rules 2021.

c) Both the parties entered in to an MOU dated 31 March 2023 wherein the applicant accepted has agreed to withdraw on signing this agreement to withdraw the petition/application

-SD-

Sd/-

before the concerned authority within 10 days including all pending/decided litigation, arbitration, trial, dispute, complaint, execution position etc of any kind against the respondent within 10 days of sining the MOS. This act cancels the entire procedure of recovering debt through legal process and cancels on account of the debt the expecting the respondent to make full and final settlement of Rs.1,69,75,073. It also appears from submissions that the MOU dated 31.03.2023 was cancelled by applicant, but the applicant issued a fresh notice vide legal notice dated 15.09.2023 for recovery. Through this notice, the applicant has again opened up the unpaid invoices, which are barred by limitation now if claimed as due, not maintainable if the applicant is filing this application to execute the Arbitral Award dated 18.11.2022 which restricts the execution procedure, converting the recovery process to land revenue arrear in terms of Rule 10 of HMSEFC Rules 2021. The applicant itself stated that this application is filed based on invoices.

d) Meanwhile, we also observe from submissions of the respondent that a reply dated 25.10.2023 in response to the demand notice dated 13.10.2023 that a remedy to the MSME award was exhausted by applicant through a MOU dated 31.3.2023. The demand notice now issued opens up a pre-existing dispute on

Sd/-

Sd/-

which the MSME has already passed an award and Sec 5(6) of the IB Code defines disputes as *"Disputes includes a suit or arbitration proceedings related to:*

a) Existence of amount of debt;

b) the quality of goods or service;

c) *The breach of a representation or warranty."*

By further affidavit, the applicant submits that the amount of Rs.1,69,75,073 has been paid between the period 30.6.2023 to 26.12.2025.

e) The unpaid part of interest arises out of the order of the MSME cannot be a cause of due for filing a Sec 9 of IBC 2016 as the applicant did not proceed as per order for execution and recovery is specified, while they went for a MOU. It appears that the respondent has to pay if there is default the principal or remaining outstanding balance of Rs.1,69,75,073 with interest at 10% p.a.

f) Again unilaterally cancelling the same without withdrawing all legal process, a notice is issued for execution of the order on invoices which are time barred cannot be a permissible debt and default to be adjudicated under Sec 9 of IBC 2016. The applicant has not filed this due to breach of MOU, but cancelled the MOU and filed for execution of the MSME order with further interest.

Sd/-

-SD-

The MOU also restricts disputes under the agreement to arbitration within 30 days of dispute and apparently there is no provision for cancellation of MOU. Claims arising purely out of a settlement agreement, MoU, or breach of contract generally do not qualify as an "operational debt" under Section 5(21) of IBC 2016. What is before us subsequent to MSME award is the MOU and the repayment made in full by the respondent which has been admitted by the respondent. Recovery mechanism under MOU is not permissible under Sec 9 of IBC 2016, the applicant seems to have gone back to execution of the MSME order which also is not permissible as it has not be challenged or the procedure of recovery has not been followed and MOU method followed by both parties for settlement of the same invoices.

14. In view of the above we pass the following

ORDER

CP(IB) 34 of 2024 is rejected and disposed of.

Sd/- -SD-

DR. V.G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)

AS