IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.301
C.P. (IB)/72(AHM)2024

Proceedings under Section 9 IBC

IN THE MATTER OF:

M/s. A.R.Company ....**Applicant**
V/s
M/s.Sadbhav Engineering Limited ....**Respondent**

Order delivered on: 19/08/2026

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

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

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

AD/SJ/ AP

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

COMPANY PETITION (IB) 72 (AHM) 2024

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

In the matter of:

M/S. A. R. COMPANY
Through its Partner
Shri Ved Pal son of Shri Rishal Singh
Having its office at
Shop No. 158, 2-3, Part,
Near Jaat Bhawan, Rohtak,
Haryana 124001

.....Petitioner/
Operational Creditor

Versus

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

..... Respondent/
Corporate Debtor

Order pronounced on 19.08.2026

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

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

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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. A.R. Company, through its Partner Mr. Ved Pal 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. 5,08,63,621.59/- along with up to date interest from 01.12.2023.

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 31.12.2016 to 09.03.2019, raising 5735 invoices aggregating to Rs. 21,26,67,501/- . It is submitted that while the Corporate Debtor made part-payments amounting to Rs. 19,31,80,942/- it failed to discharge its liability of Rs. 1,94,86,559/- in respect of 753 invoices raised between 22.05.2018 and 09.03.2019. It is submitted that being aggrieved by the default, the Applicant approached the Haryana Micro and Small Enterprises

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Facilitation Council (HMSEFC) vide application dated 07.01.2021 on MSME Samadhan Portal, being a registered Micro Enterprise. The HMSEFC, vide Award dated 18.11.2022, awarded a sum of Rs. 1,94,86,559/ 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

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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. 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 28.12.2023 under Section 8 of the Insolvency and Bankruptcy Code, 2016 was duly served upon the Corporate Debtor, which was received on 01.01.2024. It is submitted that the Corporate Debtor replied to the demand notice on 05.01.2024.

4. Applicant has relied upon following documents:

a) Copies of unpaid invoices (753 in number) raised between 22.05.2018 to 09.03.2019.
b) Ledger Account of the Corporate Debtor maintained by the Applicant.
c) Award dated 18.11.2022 passed by the Haryana Micro and Small Enterprises Facilitation Council (HMSEFC) in Case No. 2514 of 2021.
d) Bank Statement.
e) Legal Notice dated 17.08.2023.
f) Legal Notice dated 15.09.2023 terminating the Memorandum of Settlement.
g) Demand Notice dated 28.12.2023 issued under Section 8 of the Insolvency and Bankruptcy Code, 2016, along with postal receipts and tracking report.
h) Reply dated 05.01.2024 submitted by the Corporate Debtor.

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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.

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

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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.1,94,86,559/- towards principal and Rs. Rs.3,13,11,063/- towards interest at the rate of 22.25%. It is contended that the purchase orders executed between the parties do not contain any stipulation regarding payment of interest and, therefore, the claim for interest is not maintainable. It is contended that the petition does not disclose a specific date of default. 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

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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 the objection regarding lack of authorization is misconceived, 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 proceedings. It is submitted that Special Power of Attorney dated 04.12.2023 authorizing the partner to institute the present proceedings has been placed on record with the rejoinder. 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. The Applicant has also denied that the petition does not disclose the date of default, submitting that Part IV of

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the application specifically records that the default occurred in respect of invoices raised between 22.05.2018 to 09.03.2019.

9. The Respondent Corporate Debtor, by way of an additional affidavit, submits that during the pendency of the present petition it has paid an amount of Rs 50,00,000/- on 14.07.2025 and Rs 1,34,86,560/ on 13.04.2026, aggregating to Rs. 1,84,86,560/-, as per the Award dated 18.11.2022 passed by Haryana Micro & Small Enterprises Facilitation Council r/w Memorandum of Settlement dated 31.03.2023. 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 written submission affidavit submits that although the Corporate Debtor made part-payments of Rs 50,00,000/- on 14.07.2025 and Rs 1,34,86,560/ on 13.04.2026, aggregating to Rs. 1,84,86,560/-, during the pendency of the present petition, the entire outstanding dues

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have not been discharged. The Applicant further submits that the Memorandum of Settlement dated 31.03.2023 had already been terminated vide legal notice dated 15.09.2023, and the Corporate Debtor, in its reply dated 05.01.2024 to the demand notice issued under Section 8 of the Code, did not dispute such termination. It is further submitted that subsequent part-payments do not extinguish the occurrence of default and merely reduce the outstanding amount. The Applicant also contends that, in accordance with settled principles of law, payments made are first appropriated towards accrued interest before adjustment against the principal amount and further submitted that the contention of the Corporate Debtor that only interest remains payable is misconceived.

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.

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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)

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

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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 available on record.

13. Observations & Conclusions:

a) According to the Applicant, it has supplied material to the CD amounting to Rs. 21,26,67,501/- between 31.12.2016 and 09.03.2019. The CD has made part payment of Rs. 19,31,80,942/-. The remaining balance has not been paid. The invoices raised for the period from 22.05.2018 to 09.03.2019 remain unpaid for the supply of material. The Applicant is an MSME and has approached the Haryana Micro & Small Enterprises Facilitation Council, which passed an award for a sum of Rs. 1,94,86,559/- with interest @ 22.25%, along with costs and expenses, on 18.11.2022. The CD has not filed any appeal against the said order.

b) This application has been filed claiming the above amount. The Applicant also entered into a Settlement Agreement with the CD on 31.03.2023 at the request of the CD. However, the CD has paid only Rs. 10 lakh. Therefore, the Applicant terminated the

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said Memorandum of Settlement and issued a demand notice to the CD.

c) The Applicant submits that the CD has not denied the receipt of material and the balance amount. It has also not denied the award passed by the MSME Council as well as the execution of the Memorandum of Settlement. The CD mainly contends that it is not an operational debt and that there is a pre-existing dispute.

d) According to the CD, the claim is based on the Memorandum of Settlement and, therefore, it is not an operational debt. It has relied upon following citations, which are quoted herein:

   i. Delhi Control Devices Put. Ltd. v. Fedders Electric and Engineering Ltd. (CP (IB) No. 343/ALD/2018)
   ii. Nitin Gupta v. International Land Developers Pvt. Ltd, (IB No. S07/ND/2020)
   iii. Ahluwalia Contracts (India) Pvt. Ltd. v Logix Infratech Pvt. Ltd. - 2022 SCC OnLine NCLT 169
   iv. Trafigura India Private Limited Vs. Tdt Copper Ltd - CA (AT) (Ins) No.742 of 2020.
   v. Permali Wallace Put. Ltd. vs. Narbada Forest Industries Pvt. Ltd. [CA (AT) (Insolvency) No. 36 of 2023]

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vi. Amrit Kumar Aggarwal versus M/s. Tembo Appliances Private Limited. Company Appeal (AT) (Insolvency) No. 1005/2020 (NCLAT dated 25.11.2020)

e) The Applicant submits that due to the default in making payment as per the Settlement Agreement, it terminated the Settlement Agreement and demanded payment as per the award dated 18.11.2022 and further submits that the present petition was filed on 14.02.2024 and, therefore, is perfectly within limitation.

f) The CD has also taken the defence of a pre-existing dispute by submitting that the proceedings before the MSME Council were filed earlier, which constitutes a pre-existing dispute. It has relied upon the following judgments:-

i. Mobilox Innovations Private Ltd. V. Kirusa Software Private Ltd. (Civil Appeal No. 9405/2017)

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

iii. Trafigura Pte. Ltd. V. SLR Metaliks Ltd. (2020) 119 Taxmann.com 225 (NCLT, New Delhi)

iv. K. Kishan v. Messrs. Vijay Nirman Company Private Limited

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g) It is observed that, subsequent to the Award dated 18.11.2022, the parties voluntarily entered into the MOU dated 31.03.2023, whereby the Corporate Debtor agreed to pay Rs.1,94,86,559/- towards full and final settlement of the outstanding dues, with the agreed installment schedule. The MOU further specifically provides for the consequences of default under Clause 11 and contains a dispute-resolution mechanism under Clause 14.6. Thus, upon execution of the MOU, the parties agreed to a distinct contractual mechanism governing payment and consequences of default. The Applicant, having entered into such settlement and thereafter alleging its breach and termination, cannot seek to invoke Section 9 of the IBC merely by reverting to the original invoices for recovery of the settled amount. The claim arising from the alleged breach of the MOU has to be pursued in accordance with the remedies contemplated under the MOU and cannot, in the circumstances of the present case, be treated as an operational debt arising from the original invoices for initiation of CIRP under Section 9 of the Code. The applicant also submitted that MOU is terminated.

h) By way of written submissions dated 18.05.2026, the Applicant stated that the CD has made part payments of Rs.

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5,00,000/- on 14.07.2025 and Rs. 1,34,86,560/- on 13.04.2026. It is further submitted that, as per the settled position of law, the amount paid towards interest has to be adjusted first before the principal. Even if these payments are taken into consideration, the debt due is more than the threshold limit. The respondent contested the appropriation of payment towards interest first. According to him, it should be adjusted towards principle.

i) The applicant relied upon award passed before HMSEFC. Applicant wanted to recover amount awarded and said award is not challenged. However different procedure is provided for the execution of award. Rule 10 of HMSEFC Rules, 2021 provides as follow:

> *"If a buyer does not file any appeal under section 19 of the Act to set aside any award or other order either made by the Council itself or by any institution or if such appeal filed by the buyer is dismissed, in that case such decree/ award or other order passed by the Council or institution shall be executed by Collector of the District Concerned where the property of the buyer is located and the amount due shall be recovered as an arrear of land revenue"*

Therefore, the Applicant cannot seek recovery of the amount awarded by the Council by invoking the jurisdiction of this Tribunal under Section 9 of the IBC. The Applicant's remedy,

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if any, lies elsewhere and not with IBC as the invoices are time barred. Hence, the present application deserves to be dismissed. In view of the above we pass the following:

ORDER

CP(IB) 72 of 2024 is rejected and disposed of.

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

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CHITRA HANKARE
MEMBER (JUDICIAL)

AS