# NATIONAL COMPANY LAW TRIBUNAL,
# MUMBAI BENCH COURT III

**Item No. 202**

C.P. (IB)/671(MB)/2024

CORAM:

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|---|---|
| SH. HARIHARAN NEELAKANTA IYER | MS. LAKSHMI GURUNG |
| Member (Technical) | Member (Judicial) |

ORDER SHEET OF THE HEARING ON **04.11.2026**
(HEARING THROUGH: HYBRID MODE)

NAME OF THE PARTIES: Oceanic Trade Minerals Private Limited

VS

Arisinfra Solutions Private Limited

***Appearance***

For Petitioner : Adv. Ashwin Shanker a/w Adv. Diksha (VC)

**SECTION 9 OF THE IBC, 2016**

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**ORDER**

This petition is listed for pronouncement of order. The same is pronounced in open court, vide a separate order.

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| Sd/- | Sd/- |
| HARIHARAN NEELAKANTA IYER | LAKSHMI GURUNG |
| Member (Technical) | Member (Judicial) |

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**IN THE NATIONA L COMPANY LAW TRIBUNAL**
**MUMBAI BENCH, COURT – III**

**C.P.(IB)-671(MB)/C-III/2024**

*Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*

*In the matter of*

**Oceanic Trade Minerals Private Limited**

Kay Kay Trading Co., 1207 Remi Commercio Shah Industrial Estate, Off Veera Desai Road, Andheri (West), Mumbai – 400058

***... Operational Creditor***

**Vs.**

**Arisinfra Solutions Private Limited**

Unit No. G-A- 04 to 07, Ground Floor – A Wing, Art Guild House, Phoenix Marketcity, LBS Marg, Kurla W, Mumbai – 400070

***... Corporate Debtor***

**Order pronounced on: 04.11.2026**

**Coram:**

Sh. Hariharan Neelakanta Iyer
Member *(Technical)*

Ms. Lakshmi Gurung
Member *(Judicial)*

**Appearances:**

*For the Operational Creditor* : Adv. Ashwin Shanker a/w. Diksha Brahma

*For the Corporate Debtor* : Adv. Nausher Kohli a/w. Adv. Ankit Pitti i/b S&T Legal

**Per: Sh. Hariharan Neelakanta Iyer, Member (*Technical*)**

1. This Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**Code**) by Oceanic Trade Minerals Private Limited (**Operational Creditor/Petitioner**) for initiating Corporate Insolvency Resolution Process (**CIRP**) against M/s. Arisinfra Solutions Private Limited (**Corporate Debtor/Respondent**) for alleged default in repayment of **USD 131,948.78** (equivalent to Indian Rupees 1,08,85,774/-) as on 02.02.2024.

2. **Facts and submissions emerging from the Petition**

2.1 The Petitioner and Respondent entered into a Sale/Purchase Contract dated 16.01.2023. As per the terms of the said contract, the Petitioner agreed to purchase bauxite order in bulk (hereinafter referred to as the '**Cargo**') and the Respondent agreed to sell 50,000 EMT (+/- 10%) at Buyer's option of the Cargo at a price of Rs. 1250 (+GST extra) WMT on FOB Basis.

2.2 As per the terms of the Sale/Purchase Contract, the three shipments were to be released between the following dates:

i) 19.01.2023 – 25.01.2023
ii) 01.03.2023 – 07.03.2023
iii) 22.03.2023 – 31.03.2023

2.3 On 19.01.2023, the Vessel arrived at the Load Port at 1000 Hrs and tendered the Notice of Readiness (**NOR**) in accordance with the Fixture Note and the loading was completed on 02.02.2023. According to the laytime and demurrage calculation stipulated in the Fixture Note, the total amount of time used by the Respondent to load the Cargo is 10.15.28 days as opposed to the allowed laytime of 6.21 days (in excess of 3.76997 days). Thus, it is the case of the Petitioner that there is an outstanding demurrage for an amount of USD 131,948.78 due and payable by the Petitioner.

2.4 It is submitted that the Respondent failed to pay the outstanding demurrage to the Petitioner within a period of 15 days from the date of completion of loading the Vessel.

2.5 It is submitted that the Respondent is liable for payment of demurrage at the Load Port to the Petitioner for any time used beyond the permissible laytime calculated at USD 35000 PDPR/HD.

2.6 The Petitioner also raised a Debit note bearing No. SDN MUMD00001 dated 26.02.2024 for an amount of Rs. 1,08,85,774 upon the Respondent with respect to the subject Contract and the payment term under the debit note was "immediate". However, no payment was made by the Respondent.

2.7 Subsequently, the Petitioner issued Demand Notice dated 27.02.2024 under section 8 of the Code. Since no payment from the Respondent came forth, the present Petition has been filed on 12.03.2024.

3. **Reply dated 17.10.2024 of the Respondent**

The Respondent filed its reply and has, *inter alia,* made the following submissions:

*Petition is filed as counterblast to CP/1147/2023*

3.1 It is submitted that as per the contract, the first consignment consisting of 55,000 WMT of Bauxite Ore was loaded onto the vessel M. V. Vishva Diksha on 02.02.2023 at Umroli (Bankot) Port, Maharashtra. This shipment was arranged by Infrastructure Logistics Private Limited and the consignment was received by the Petitioner at Ennore Port, Tamilnadu, India. Pursuant thereto, a sale invoice dated 02.02.2023 was issued by the Respondent to the Petitioner for an amount of Rs. 8,11,25,000 which the Petitioner was obligated to pay within one month of successful shipment and submission of invoice for each shipment. The Petitioner failed to pay the outstanding amount to the Respondent and consequently, the Respondent had filed CP/1147/2023 under section 9

of the Code seeking admission of the Petitioner to CIRP. This fact has been suppressed by the Petitioner.

3.2 It is submitted that the demand notice for filing the present Petition was sent by the Petitioner to the Respondent after 3 (three) months from the date of filing of the CP/1147/2023 by the Respondent against the Petitioner. Thus, the present CP is a counterblast to CP/1147/2023 and is not filed to seek a genuine resolution.

*Petition filed with fraudulent intent*

3.3 The Petition is filed with an intent to evade the payment to be made as per the invoice dated 02.02.2023 raised by the Respondent.

*Demurrage Charges is not Operational Debt*

3.4 It is submitted that the charges claimed by the Petitioner are in the nature of liquidated damages or penalties for delay and are not linked to the operational functioning of the business or provision of goods and services. Therefore, the demurrage charges, if any, does not fall within the definition of operational debt under the Code.

*Debt and Default not proved*

3.5 It is submitted that the demand notice dated 27.02.2024 sent under section 8 of the Code is defective lacking specific date of default and also fails to include an invoice which is a mandatory requirement under the Code. Further, debit note does not meet the stringent requirements under the Code for proving a debt as it is generally issued for adjustments or disputes and lacks the authority of an invoice for raising a demand for operational debt. Section 8 of the Code mandates that an operational creditor must deliver a demand notice or a copy of invoice demanding the payment. In the present case, the Petitioner has merely filed a debit note by in the demand notice dated 27.02.2024 without any valid invoice in support of the same. This does not constitute sufficient proof of debt and default under the Code. Thus, the present Petition is not maintainable due to absence of strict proof of debt and default, as

held by Hon'ble NCLAT in ***SFO Technologies (P) Ltd. v. Vanu India (P) Ltd., 2023 SCC Online NCLAT]***.

3.6 Without prejudice to the above, it is further submitted that the debit note sent by the Petitioner is a fabricated note with a repayment date of the very same day. This alleged debit note was never received by the Respondent nor was it mentioned in the demand notice. The Petitioner has annexed the debit note as an alleged proof of debt as an afterthought.

*On merits*

3.7 It is submitted that as per clause 14 of the Sale/Purchase contract, the responsibility for chartering the vessel and paying demurrage charges was unequivocally placed on Petitioner and it was the Petitioner's duty to ensure that the vessel was nominated, positioned at the load port and that all necessary discharging arrangements were in place. Thus, the Petitioner bears full responsibility for any delays in the vessel's arrival, loading or discharging.

3.8 It is further submitted that without prejudice, there is no documentary evidence provided by the Petitioner to substantiate any claim of demurrage charges nor has any calculation or evidence been furnished to prove that the Respondent is liable for such charges. As per the maritime and commercial practice, any demurrage charges are typically addressed and resolved between the chartering party (i.e. the Petitioner) and the vessel owner. The Respondent, not being a party to the Charter Party agreement, cannot be held liable for demurrage arising from delays attributable to the Operational Creditor.

3.9 It is submitted that the Respondent was only bound to ensure that the cargo was ready at the load port for shipment and accordingly, the Respondent had ensured that the cargo was made available for loading at Umroli (Bankot) Port on 02.02.2023 for shipment.

3.10 It is further submitted that the Petitioner has failed to demonstrate that the Respondent was aware of and has agreed to the alleged liability.

Further, the Respondent never received any communication or email regarding the alleged claim before the demand notice.

**Analysis & Findings**

4. We have heard the Ld. Counsel for parties and carefully perused the records.

5. The Petitioner and Respondent entered into Sales/Purchase Contract for Bauxite dated 16.01.2023 (**Bauxite Contract**). As per the contract, the Respondent agreed to sell Bauxite ore to the Petitioner on the terms and conditions specified therein.

6. The Respondent exported the first consignment consisting of 55,000 Wet Metric Tons of Bauxite Ore through the vessel M. V. Vishva Diksha. The loading commenced on 24.01.2023 and completed on 02.02.2023 at Umroli (Bankot) Port, Maharashtra. Consequently, a sale invoice dated 02.02.2023 of Rs. 8,11,25,000/- was issued by the Respondent to the Petitioner.

7. Since the Petitioner had allegedly made no payment towards the outstanding amount, the Respondent had sent a demand notice dated 03.11.2023 under section 8 of the I&B Code, 2016 demanding payment of Rs. 8,12,76,265 inclusive of interest calculated at 18% per annum and thereafter, filed CP/1147/2023.

8. During the pendency of CP/1147/2023, the Petitioner sent debit note dated 26.02.2024 calling upon the Respondent to pay USD 131,948.78 towards demurrage charges accrued allegedly due to delay in loading the cargo beyond the permissible laytime. The due was immediate i.e. the Respondent was to pay the charges on the same date i.e. 26.02.2024.

9. Since the Respondent did not make the payment, the Petitioner sent demand notice dated 27.02.2024 under section 8 of the Code and subsequently, filed the present Petition.

10. The Respondent had not responded either to the debit note dated 26.02.2024 or the demand notice dated 27.02.2024 but has filed reply to the Petition and objected it on following grounds:

i. The Petition is filed as a counterblast to the CP/1147/2023 filed by the Respondent against the Petitioner.

ii. Demand Notice sent by Petitioner is defective. The Debit note issued by the Petitioner is fabricated but even otherwise, it cannot substitute an invoice and cannot be shown to satisfy debt and default. Reliance is placed on ***SFO Technologies (P) Ltd. v. Vanu India (P) Ltd., 2023 SCC Online NCLAT.***

iii. Demurrage is the compensation of delay for the prolonged detention of a vessel beyond the agreed-upon "free time" for loading or unloading of goods. Demurrage is not a charge for supply of goods or provision of services. Therefore, demurrage charges is not 'operational debt'. Reference is made to ***LCL Logistix (India) Pvt. Ltd. vs. Waaree Energies Ltd. [CA (AT) (Ins) No. 698 of 2020].***

iv. The demurrage is in the form of liquidated damages awarded to the vessel owner for the usage of vessel usage beyond the lay time at a particular port. The Respondent is not liable to pay demurrage charges.

11. The counter submissions on behalf of the Petitioner are as follows:

i. The CP/1147/2023 has been dismissed by this Tribunal vide order dated 25.10.2024. Moreover, mere filing or pendency of a suit by the Respondent against the Petitioner cannot have a bearing or impact on the dues payable by the Respondent and cannot be construed as a pre-existing dispute. Reliance is placed on ***Alliance Spaces Private Limited vs Maharashtra Bio Fertilisers (India) Pvt. Ltd.*** and ***Aroon Kumar Aggarwal v Mis ABC Consultants Pvt. Ltd***.

ii. The demand notice should mention the debt, date of default and relevant supporting material and it is not mandatory to annex the invoice to the demand notice. Reliance is placed on ***Tejinder Pal Setia v. Kone Elevator India Pvt. Ltd. and Ors.***, ***Arham Enterprise v. Classic Corrugations Private Limited*** and ***Rajendra Bhai Panchal v. Jay Manak Steels and Ors***. Moreover, the Respondent had not replied to the demand notice and the contention regarding a defective demand notice and absence of invoice has been raised for the first time in the reply.

iii. Operational debt under section 5(21) of the Code means a claim in respect of the provision of goods and services. The NCLT, New Delhi Bench in ***Platina Bulkers Pte Limited vs. Star Mineral Resources*** and the NCLT Mumbai Bench in ***ABC India Ltd. vs. Prabhakar Engineers Pvt. Ltd.*** have held that the demurrage charges are operational debt.

iv. The loading of the Cargo took 10.15.28 days as opposed to the required 6.21 days because the Respondent failed to maintain the stipulated loading rate of Cargo at the load port. Consequently, the vessel was detained at the load port beyond the permissible laytime leading to accrual of demurrage charges. Thus, the Respondent is liable to pay the same.

12. The claim raised by the Petitioner is towards the demurrage charges. In general terms, demurrage charges are payable to a vessel owner for detention of a vessel beyond the contractually agreed-upon free time/laytime.

13. In the present case, it is not disputed that the Cargo vessel was detained at the load port beyond the free time/ lay time due to which there was a delay in the completion of loading of the Cargo by approximately 3 days.

14. It is the case of the Petitioner that the detainment was due to the Corporate Debtor's conduct of not maintaining the stipulated load rate

of the Cargo at the load port and therefore, the Respondent is liable to pay the demurrage charges. On the other hand, the Respondent denies its liability towards the demurrage charges.

15. The Petitioner has referred to Clause 14(E) of the Sales/Purchase Contract dated 16.01.2023, the Statement of Facts signed by the Master of Vessel M. V. Vishva Diksha along with the letters dated 27.01.2013, 29.01.2023, 02.02.2023 issued by M/V Vishva Diksha addressed to M/s Infrastructure Logistics Private Limited.

16. The Petitioner has further referred to an extract of CIF and FOB Contracts, Sweet & Maxwell, 5th Edition (2012) to show that it is the seller's liability to pay the demurrage charges.

17. We have examined the Sale/Purchase Contract dated 16.01.2023 entered into between the Petitioner and Respondent. Clause 14(E) of the said contract which deals with demurrage states as follows:

> *"E. Demurrage to be as per the Charter Party for all time used more than lay time allowed and dispatch rate would be half of demurrage rate for all time saved of laytime. Demurrage/dispatch are to be settled within 15 days after the completion of loading."*

18. While the aforesaid clause establishes a timeline for settlement, it does not explicitly state the liability of the Buyer (Petitioner) and/or the Seller (Respondent).

19. Similarly, neither the Statement of facts nor the letters makes any express mention about the accrual of demurrage charges or the liability of the seller (Respondent) towards demurrage charges. The documents placed on record by the Petitioner do not stipulate as to who would be responsible for delays caused by detention at the load port.

20. Furthermore, it is also relevant to note that the calculation of demurrage at USD 35000 PDPR/HD is provided in the Fixture Note dated 15.01.2023. This Fixture Note is a separate contract executed between

the Buyer (Petitioner) and the owner of the Vessel i.e. M/s Shakti Shipping and Trading Pte. Ltd. The Seller (Respondent) is neither a signatory nor a party to this Fixture Note and there is no document to show that the Respondent has, at any point of time, agreed that the demurrage charges shall be borne by the Respondent.

21. Thus, clearly, there is no prior acknowledgment by the Respondent towards its obligation or liability to pay the demurrage.

22. We also note that the due date for settling the demurrage as per clause 14(E) of the Sale/Purchase Contract dated 16.01.2023 expired on 17.02.2023. However, no invoice has been raised by the Petitioner. Only a debit note dated 26.02.2024 is placed on record which mentions the due date also as 26.02.2024. Immediately, on the very next date i.e. 27.02.2024, the Petitioner sent the demand notice under section 8 of the Code and the Present petition has been filed on 12.03.2024.

23. The Corporate Debtor while disputing the liability has contended that this petition has been filed as a counterblast to the CP/1147/2023 filed by the Respondent against the Petitioner. The Corporate Debtor has further contended that the debit note dated 26.02.2024 is fabricated and the Demand Notice dated 27.02.2024 sent by Petitioner is defective since there is no invoice. Reliance is placed on ***SFO Technologies (P) Ltd. v. Vanu India (P) Ltd., 2023 SCC Online NCLAT.***

24. During the course of hearing, it was noticed that the debit note dated 26.02.2024 was not even communicated to the Respondent which fact has been admitted by the Petitioner, as recorded in the order dated 01.04.2026:

> *"2. Upon a pointed query whether the debit note was communicated to the corporate debtor, Ld. Counsel for the petitioner submits that the debit note was not communicated to the corporate debtor and seeks to rely on judgement of Hon'ble NCLAT in the matter of Tejinder Pal Setia v. Kone Elevator India Pvt. Ltd. and Ors. in Company Appeal (AT) (Insolvency) No. 262 of 2023 & I.A. No. 1122, 1124 & 1167 of 2023.*

*3. He further relies of judgment of Hon'ble Supreme Court in the case of Arham Enterprise vs. Classic Corrugations Private Limited, 2025 SCC OnLine NCLT 2."*

25. It is the contention of the Petitioner that it is not mandatory to annex any invoice to the demand notice. Reliance is placed on ***Tejinder Pal Setia v. Kone Elevator India Pvt. Ltd. & Ors. [Company Appeal (AT) (Ins) No. 262 of 2023]*** and ***Arham Enterprise vs. Classic Corrugations Private Limited [CP(IB)/142(AHM)2024].***

26. In ***Tejinder Pal Setia vs. Kone Elevator India Pvt. Ltd.*** *(supra),* the Hon'ble NCLAT while rejecting the contention of defective demand notice, the Hon'ble NCLAT held that the basis of the Demand Notice was Supply Agreement and the acknowledgement letter issued by the Corporate Debtor and therefore, failure to attach invoices to the demand notice would not render such Demand Notice defective.

27. Similarly, in ***Arham Enterprises*** *(supra),* the NCLT, Ahmedabad Bench admitted the section 9 petition by observing that the Corporate Debtor has acknowledged its liability.

28. It is clear that in the aforesaid cases, the invoices were already sent to the Corporate Debtor prior to the issuance of demand notice and the debt was also acknowledged by the Corporate Debtor. Accordingly, the courts proceeded to admit the section 9 petition irrespective of whether or not the invoices were annexed to the demand notice. The facts are distinguishable.

29. The Petitioner also sought to contend that since the Respondent did not reply to the demand notice dated 27.02.2024, the same would amount to acknowledgment of liability. The Petitioner has also placed on record the 'Record of Default' issued by NeSL which shows that status of default "deemed to be authenticated".

30. In this regard, we refer to the observations of Hon'ble NCLAT in ***Greymatter Entertainment Private Limited vs. Pro Sportify Private Limited [Company Appeal (AT) (Ins) No. 1043 of 2021]***, *decided on 09.02.2023:*

> *"13. It is observed from the aforenoted Sections that neither Section 8 nor Section 9 of the Code indicate that in event Reply to Notice was not filed within 10 days, the 'Corporate Debtor' is precluded from raising the question of dispute or pleading that there or no amount 'due and payable', the 'Corporate Debtor' is not prevented from establishing by way of a Reply and relevant documents, any 'Pre-Existing Dispute' or paid 'Operational Debt'."*

31. In absence of any material to establish the Respondent's liability towards demurrage and when the debit note dated 26.02.2024 itself was not communicated to the Respondent, there is no question of any liability of the Respondent to pay the demurrage claim raised by the Petitioner. Thus, we are of the view that the dispute raised by the Respondent in its reply to the Petition does not seem to be a moonshine defence and merely because the Respondent did not reply to the demand notice, it cannot be concluded that the demurrage claim is undisputed.

32. At this juncture, we refer to the observations in ***Navin Madhavji Mehta vs. Jaldhi Overseas Pte Ltd. [Company Appeal (AT) (Ins) No. 792 of 2024***, *decided on 27.02.2025,* wherein the Hon'ble NCLAT had dismissed a section 9 petition claiming for demurrage charges on the ground that the liability to pay demurrage was not admitted by the Corporate Debtor. The relevant observations are as follows:

> *"27. When we carefully look at the communication dated 09.03.2020 sent by the Corporate Debtor to the Operational Creditor, we find that the Corporate Debtor did not confirm the claim of Demurrage charges of USD 242,772.19. This is amply borne out from a plain reading of the communication of 09.03.2020 wherein it has been submitted as follows:*
>
> > *"We and Broker have not confirmed the demurrage. In this regard, please arrange meeting & settle the issue...."*

*28. From the above statement it is clear that the Corporate Debtor had not admitted the liability to pay demurrages. It is therefore, clear that payment on account of demurrage was disputed by the Corporate Debtor. Under such circumstances, we are not inclined to agree that there was any admission of liability on the part of the Corporate Debtor on payment of demurrage and hence this defence taken by the Corporate Debtor cannot be disregarded as vexatious or feeble in nature. In the present factual matrix, the defence raised by the Corporate Debtor therefore cannot be held to be moonshine, spurious, hypothetical or illusory.*

*xxx*

*31. We are, therefore, not satisfied in agreeing with the findings returned by the Adjudicating Authority at para 20 that the Corporate Debtor had admitted their liability and that the demand raised by the Operational Creditor was undisputed. In the facts of this case, the Corporate Debtor had only tentatively agreed to look into the matter of outstanding claim but did not categorically admit the claim either on account of freight or demurrage. The Corporate Debtor had not agreed to the debt but wanted to discuss the matter to settle the issue.*

*32. In a Section 9 petition, the Corporate Debtor enjoys the right to dispute the debt including the quantum of payment. From the correspondence placed on record, it is clear that dispute was continuing between the parties regarding outstanding claim both in respect of freight and demurrage. Once the debt has been disputed, the question of default does not arise. For such disputed operational debt, Section 9 proceeding under IBC cannot be initiated at the instance of the Operational Creditor. In terms of the objectives of the IBC and settled proposition of law as expressed and explained time and again by the Hon'ble Supreme Court, the provisions of IBC cannot be turned into a debt recovery proceeding as it is a beneficial legislation which envisions the revival of the Corporate Debtor and bringing it back on its feet from the perils of extinction. When Operational Creditor seeks to initiate insolvency process against a Corporate Debtor, it can only be done in clear cases where no real dispute exists between the two which is not so borne out given the facts of the present case. The conditions laid down in Section 9 having not been fulfilled, the application deserved to be rejected."*

33. In the present case, we find that there was no agreement between the parties obligating the Respondent to pay demurrage charges and even the purported debit note admittedly has not been delivered to the

Respondent prior to the demand notice. Further, there is no acknowledgment of any nature by the Respondent regarding any liability towards payment of demurrage charges. Therefore, we are of the considered view that the Petitioner has not been able to establish debt and default in the present case.

34. For the reasons stated above, the present petition is liable to be rejected and is accordingly **dismissed**.

Sd/-
**Hariharan Neelakanta Iyer**
**Member (Technical)**

Sd/-
**Lakshmi Gurung**
**Member (Judicial)**

Uma