IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301

C.P.(IB)/316(AHM)2025

Proceedings under Section 9 IBC

IN THE MATTER OF:

Empire Sony PTY Limited .....**Applicant**

V/s

Astron Paper & Board Mill Limited .....**Respondent**

Order delivered on: 11/05/2026

Coram:

Mrs. ChitraHankare, Hon'ble Member(J)
Dr.Velamur G VenkataChalapathy, 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)

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

COMPANY PETITION (IB) 316 (AHM) 2025

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

In the Matter of:

Empire Sony PTY Limited
1.21/90-96 Bourke Road,
Alexandria NSW 2015
Australia
Through its Authorised Representative
Anil Gulati
At: # 18, Sector-9-A,
Chandigardh-160009 ...Applicant/Operational Creditor

VERSUS

Astron Paper & Board Mill Limited
D-702 Seventh Floor, Ganesh Meriden,
Opp. High Court, S. G. Highway,
Ahmedabad-Gujarat -380060
...Respondent/Corporate Debtor

Order Pronounced On: 11/05/2026

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

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

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Present:
For the Applicant : Ms. Divya Sharma Adv with
Mr Yuvraj Thakore, Advocate
For the Respondent : Mr.Chaitanya Patel

JUDGEMENT

1. This application is filed under Sec 9 of IBC 2016 by the Operational Creditor M/s Empire Sons Pty Ltd being registered/incorporated under the provisions of Corporations Act, 2001 of New South Wales, Australia with certificate of registration dated 17.06.2011 (151549352) and engaged in the business of corrugated paper. The applicant has its registered office at Australia. He submits in this application that the applicant had supplied corrugated waste papers to the respondent Corporate Debtor, M/s.Astron Paper & Board Mill Limited, CIN No.L21090GJ2010PLC063428, with registered office at Ahmedabad. The applicant has submitted the board resolution for pursuing this application through its Authorised representative Mr Anil Gulati.

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2. The applicant submits that an amount of debt became due by the CD as on 20.07.2024 for an equivalent amount of Rs.1,77,99,024.64, i.e. USD 214,446.08 comprising of principal amount of Rs.1,61,23,388.27 (eq USD 194,257.69) and interest amount @15.742% p.a. amounting to Rs.16,75,636.37 i.e. USD 20,188.39. The debt arose out of a sales order dated 15.09.2023, 22.09.2023 & 28.03.2023 on mutually agreed price between both parties and its terms and conditions agreed upon. These sale order is stated to have been agreed upon and the Respondent CD issued a purchased order dated 15.09.2023, 22.09.2023 & 28.03.2023 which are annexed to the application. It is submitted that the applicant had raised various invoices dated 08.10.2023, 14.10.2023 & 20.10.2023 based on these purchase orders and the total value of consignment sent from Australia by sea, accompanied by Bill of Lading/s. On receipt of the consignment at Indian port, the banker of the CD issued collection payment advice against each consignments dated 13.11.2023, 14.11.2023, 24.11.2023 & 30.11.2023. A copy of the ledger account in the books of

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the applicant is also enclosed for the period from 1.04.2023 to 20.07.2024.

3. The applicant submits that despite receipt of consignment by the CD, it did not make the outstanding payments and various emails were raised for the payment which was assured to be paid by the respondent. On 29.05.2024 the applicant wrote an email to the CD demanding payment and pursuant upon the same on request of the respondent CD an amount of USD 22,000 was adjusted towards the principal and an amount of USD 194,257.69 was due for payment which is still due and recoverable from the respondent with interest. The applicant has reckoned the default as on 20.07.2024, while also submitted that the demand notice issued on 24.11.2023 becomes the first due date as per the collection payment advice dated 13.11.2023. The applicant has also filed the demand notice dated 12.11.2024 issued by NeSL after submission of the claim against the CD. The applicant has also filed the bank certificate dated 13.092024 in Form 5 A that no amount is received from the respondent. A copy of the demand notice issued dated 31.07.2024 in Form 3 under Sec 8 of the IBC,

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2016 is annexed along with proof of despatch demanding an outstanding payment of Rs.1,77,99,024.64. It is submitted the same is yet to be paid.

4. The respondent has filed its reply by affidavit dated 10.11.2025. The respondent denies the contents of the application to be untrue, false, misleading and suffers from suppression veri, suggestion falsi as there is suppression of material facts placed before this tribunal to obtain relief. Further the applicant has not furnished any authenticated record of default from information utility which is mandatory while filing a section 9 application and hence does not comply with provisions of Sec 9 read with rules 5 and 6 of IBBI rules 2016. It further submits that there was pre-existing dispute as the respondent CD had issued purchase order for purchase of material worth 1500 metric ton of material cumulatively in 3 different PO dated 15.09.2023, 22.09.2023 and 28.09.2023 being 500 metric tons each respectively, which were duly signed and accepted by the applicant OC which is stated to have been confirmed later by issue of sale order. Inspite of contractual obligation to deliver, the applicant had delivered only 1,050.53 metric

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tons in aggregate, thereby causing a shortfall of 449.47 metric tonnes and such failure to deliver is a violation of express terms and conditions contained in the stated purchase and sales orders. This short supply resulted in disruption of the production schedule and significant financial losses due to non-availability of material, thereby there is a fundamental breach of the contract. Further it is submitted that the invoices do not substantiate delivery of full contracted quantity and there was only partial delivery. Hence it is submitted that the respondent CD had raised the disputes and deficiencies vide email/s dated 29.11.2023 and 09.12.2023 highlighting the following points:

5. Moisture content exceeding the contractual cap of 12%;
6. Inadequate loading of DSOCC-P container (short-loading/insufficient packing density);
7. Outthrows surpassing the contractual limit of 1%; and
8. Deviation from the agreed DS OCC premium grade (inferior mix/grade variance).
9. The respondent submits that these disputes were raised after the internal quality inspection records, weighment notes and photographic evidence and the OC was put to

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notice of the contractual breaches under the Sale of Goods Act, 1930. Hence there was a pre- existing, genuine dispute on quality and quantity prior to any alleged default, hence it submits that this application is not maintainable. The respondent encloses the relevant emails sent on 01.11.2023, 27.06.204 along with its trail for reference. Hence this application filed for recovery on disputed bills cannot be maintainable under Sec 9 of IBC 2016 and seeks dismissal of the application. Further the applicant has filed a false affidavit that there are no dispute between the parties. It is also mentioned that the disputed bills are included to arrive at the threshold value. Further, inspite of the dispute, the respondent CD and the applicant maintained commercial relationship and continued and placed purchase orders which were made in full and without default, demonstrating the CD's Bonafide conduct and willingness to honor valid transactions. The application does not comply with Sec 4 of IBC 2016 if the dispute invoice is deducted from total bill amount, the same would be less than the threshold limit for filing this petition. Further the applicant has not complied with Rule 34(4) of the NCLT

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Rules 2016 as there is absence of mandatory affidavit of verification(Form 6). The respondent has quoted certain judgments including Mobilox Innovations P Ltd V Kirusa Software P Limited (CA No.9405 of 2017) of Honble Supreme Court of India, Ruchira Green Earth Pvt Ltd V KLB Komaki P Ltd – NCLAT (2025). Accordingly, the respondent seeks dismissal of this petition.

10. The applicant filed its rejoinder by affidavit dated 17 Nov 2025 submitting that all the conditions are satisfied by the applicant in filing the application for debt due under Sec 9. It further submits that there was no notice of dispute u/s 8(2) of the IBC was received by the applicant from the CD within 10 days of delivery of demand notice. It has enclosed the record of default dated 07.08.2025 issued by NeSL stating that it is deemed to be authenticated and multiple communications were made by NeSL to the CD. It is further submitted that the full quantity of the goods demanded by the CD was supplied, except for a short fall of 1.85% which is much below the internationally accepted norm i.e. 5%. It has enclosed the relevant shipping documents/Bill of Landing against each supply. While denying the averment

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made by respondent, the applicant submits that the invoices correctly mentions the delivery of contractual quantity to the CD and there was no pre existing dispute. The applicant further submits an email dated 30.10.2023 wherein the CD has stated that due to Diwali it has no money and thus requested credit and in email dated 25.09.2024 it has duly admitted that it has financial crunch and sought time to clear the payments of the applicant. It is also submitted that the respondent vide subsequent email dated 02.10.2024 agreed to settle the claim at USD 22,000 and requested to adjust the said amount from one of the invoices vide email dated 02.10.2024. Respondent also requested the applicant to send SWIFT details to its bank which was duly supplied by the applicant to the respondent's bank. Based on the said agreed settlement, the invoices bearing 2023132 was reduced from USD 36,288.96 to USSD 14,288.96. It is also submitted that the CD itself has mentioned in email dated 02.10.2024 that the balance outstanding amount as USD 194,661.28. The applicant has cited the order of Honble NCLAT in the matter of Mukesh Agarwal vs RQS Engineering P Ltd; 2019 SCC

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Online NCLAT 586 wherein it held that if there was a quality difference in the goods, then there was no question of issuing postdated cheques. In this case the respondent requested for settlement of dues and also requested for time to make balance payment as it was undergoing financial stress. In the matter of "Writers & Publishers Pvt Ltd – vs M/s Oriental Coal Corporation & Anr 2022 SCC Online NCLAT 4707 refused to interfere with the order of adjudicating authority in admitting the Sec 9 application on the ground that the CD had raised a moonshine defence and same was after thought. The applicant has further denied all the other averment in defence made by the respondent. The demand notice was issued with the authority of the Board resolution dated 29.06.2024 in favour of Mr Yuvraj Gulati. Also denying non compliance of Rule 34(4) of NCLT rules 2016, the applicant has submitted the relevant Form 6 enclosed from Page 16 to 23 of his application.

11. Both the OC and the respondent CD filed their written submissions vide affidavits dated Feb 5 2026 and Feb 4 2026 respectively along with relevant judgments.

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Observations & Conclusions:

12. The Applicant OC is an overseas entity has submitted all the relevant documents of proof of having delivered the consignments to the CD at Port of delivery, Mundra. The invoices mention that the delivery is against payment, but vide email dated 30 Oct 2023 the respondent seeks time to clear the consignment and seeks due to long business association to change the bills to Documents Against Acceptance (35-40 days) as it is difficult during Diwali period to clear the consignment. Similarly the swift message is also submitted as produced in Annex 28 of the rejoinder that the reduction of USD 22,000 is acceptable. From the Bill of Lading of Mediterranean Shipping Company mentioned in Page 28 of the rejoinder, we observe that the Gross Cargo weight is mentioned as 74,600 Kgs which is also mentioned in the invoices. Further, the purchase order issued by the respondent CD mentions that the loading should be 24 MT. It does not mention any short shipment not allowed and from the invoices and the shipment document, it appears the applicant has complied with the

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terms of the purchase order. Further the respondent has sought deferment by converting a document to be paid to document to be paid between 35-40 days after acceptance. The CD respondent has not denied that he has not accepted the goods.

13. It also appears from the documents that the claim settlement reduction is arrived at 22,000 USD as observed from email dated July 9, 2024 and certain exchange of correspondence has taken place between both the parties. Even though there is no mention of the interest to be calculated on the invoice on non-payment, the principal amount outstanding at USD 194,257.69 is well above the threshold limit at Rs 1,61,23,388.27. The two points noted here is that the respondent CD received the consignments and there is no provision in the contract for not allowing short shipment, even if any, and there is still stated to be commercial transactions between both the parties. As per the collection acceptance advice sent by the applicant's bank, the due date is mentioned as 24 November 2023. The sales order enclosed in page 33 of the applicant's application which was accepted by the CD mentions of

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quantity tolerance of 10%. If the respondent had any dispute the same should have been communicated with proper reasons as we observe that the purchase order issued by the respondent CD, appears to be fully complied with and the respondent CD. The CD did not give any reply to the demand notice dated 31.7.2024 to the OC and also did not authenticate dispute in the NeSL platform. Further, stating that it is difficult to meet required collection, the CD has asked for converting the Documents against Payments to Documents against acceptance and subsequently defaulted in making the entire payment of the invoices (even if short quantity as alleged), but the applicant has provided the necessary documents that the invoices and shipment were as per the purchase order.

14. We view the response of the CD as a belated and moonshine response and denial to make payment of debt due there is no dispute either on the quality and other factors as mentioned in the invoice. We also rely on the judgment "Writers & Publishers Pvt Ltd – vs M/s Oriental Coal Corporation & Anr 2022 SCC Online NCLAT 4707 and the evidences provided in the matter which includes that the

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consignment has been received by the CD and not returned/tangible dispute raised and an amount of discount has been arrived at USD 22,000, further even the principal amounts to more than the threshold limit on non payment. It also appears that in the email dated 29 May 2024, the applicant has mentioned that the amount is due to be paid on import and the bank of the CD (UnionBank of India) has contravened certain regulatory provisions on the time limit for making payments (Page 71). The NeSL has given the communication for defaults on various dates and mentioned as deemed to be authenticated, no dispute raised.

15. In view of the above, we pass the following order:

ORDER

i. The Application is allowed.

ii. Corporate Debtor- Astron paper & Board Mill Ltd., is admitted in Corporate Insolvency Resolution Process under Section 9(5) of the IB Code.

iii. The provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any suit before a Court

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of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under section 31 of the Code.

iv. That as prescribed under Section 13 of the Code on declaration of Moratorium the public announcement of the invitation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately as specified.

v. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this order within 30 days to this bench.

vi. The Operational Creditor has not suggested name of any IRP and left the discretion with the Tribunal. We hereby appoint Atul Jashwantrai Sheth Registration No. IBBI/IPA001/IP-P02463/20212022/13854,

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email id- atulshethip@gmail.com as Interim Resolution Professional to act as an IRP under section 13(1) (c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder.

vii. The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co- operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

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viii. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

ix. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

x. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Respondent/Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

xi. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate

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Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

xii. The Operational Creditor is directed to pay an advance of Rs.2,00,000/- (Rupees Two Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.

xiii. The Registry is directed to communicate a copy of this order to the Operational Creditor, the Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.

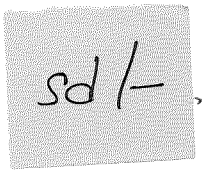
xiv. The petition is admitted. The commencement of the

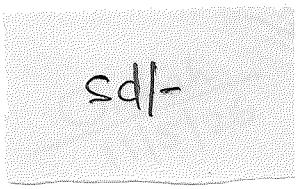
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Corporate Insolvency Resolution Process if pronounced and effective from the date of this order.





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

CHITRA HANKARE
MEMBER (JUDICIAL)

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