IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.301
C.P.(IB)/148(AHM)2025

Proceedings under Section 9 IBC

IN THE MATTER OF:

CANACHA Mau Lam Comm Bidg 16-18 Mau Lam St Jordan Through,Power of Attorney Holder Mr.Bhavik Pathusinh Jhaveri ....**Applicant**

V/s

Nexa Papers LLP ....**Respondent**

Order delivered on: 03/07/2026

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

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT NO.2

CP (IB)148(AHM)2025

[An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016]

In the matter of:

CANACHA
Mau Lam Comm Bldg,
16-18 Mau Lam St Jordan
Through, Power of Attorney holder,
Mr. Bhavik Prathusinh Jhaveri
Residing at:
C-704, Rajyash Reeventa
Opp AMC Pumping Station,
Vasna- Ahmedabad ....Operational Creditor

Versus

M/s. Nexa Papers LLP
Registered office at:
Survey No.-11(P1) near RTO office
Kandala Bypass Road,
Gorkhijadiya Village,
Morbi-363641 ....Corporate Debtor

Order pronounced on 03/07/2026

Coram:

MRS. CHITRA HANKARE,
HON'BLE MEMBER (JUDICIAL)

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

Sd/-

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Appearance:

For the Applicant : Mr. Rushabh Shah,PCS
For the Respondent: Mr. Yuvraj Thakore, Adv.

JUDGMENT

1. This application is filed on 27.03.2025 under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Bhavik Prathusinh Jhaveri, PoA holder of CANACHA (for brevity 'Petitioner') (UIN No. NCTCC2414P) authorized vide Board Resolution dated 20.06.2024, with a prayer to initiate the Corporate Insolvency Process (CIRP) against **M/s. Nexa Papers LLP** (for brevity 'Corporate Debtor'). The total amount in default is Rs. 1,91,07,260/-(Rupees One Crore Ninety One lakh Seven hundred and sixty only) comprising of Rs. 1,26,53,890/- as principal and Rs. 64,53,370/- as interest calculated till March, 2025. The date of default is mentioned to be 05.04.2022.

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2. The Operational Creditor is incorporated on 19.07.2019(UIN (PAN) NCTCC2414P) having registered office at Unit R-2F Mau Lam Com Bld 16-18 Mau Lam Street Jorden and is engaged in the business of trading of papers and recyclable materials. The Corporate Debtor is a Limited Liability Partnership (LLP) incorporated on 19.07.2017 registered under Companies Act, 2013 and is manufacturer of high BF Craft papers. That upon oral agreement and mutual consent operational creditor supplied waste paper occ to Corporate Debtor on immediate payment terms.

3. The Operational Creditor issued demand notice dated 25.09.2023 in form 3/form 4 for payment of dues and Corporate Debtor replied to demand notice dated 31.10.2023. The Application under Section 9 was filed before this Tribunal vide CP(IB) 320 of 2024, which was withdrawn with a liberty to file fresh application. That the Applicant has filed Rejoinder to reply on demand notice on 05.01.2025. However, it is observed that there was a discrepancies in demand notice dated 25.09.2023 as applicant has clubbed the invoices of CANACHA and Excan and subsequently fresh demand notice with two

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invoices of CANACHA was issued in Form 3/Form 4 on 07.03.2025. It is submitted that Record of information filed by Operational Creditor with national E-Governance Services Limited in Form –C, Record of default in Form-D, as stated in Form D no reply is received from Corporate Debtor and Form-1 A is filed with IBBI.

4. In support of its claim, the Petitioner has produced on record copies of the documents tabled below:

Sr. No.	Particulars
01	Copy of Invoices
02	Copy of Bill of entry
03	Copy of Bank statement of HSBC from Sep. to March-2024
04	Copy of demand notice dated 25.09.2023
05	Copy of reply dated 31.10.2023 on demand notice from CD
06	Copy of rejoinder dated 05.01.2025 for reply to demand notice
07	Copy of fresh demand notice dated 07.03.2025

Further, the applicant has enclosed the relevant Commercial Invoices raised on the respondent and the Bill of Entry on clearance of the consignment shipped from Barcelona, Spain to the CD through the Kandla Port. The invoice/s dated 05.04.2022 for USD 1,45,230 with interest at 74,066 (18% p,a) amounting to USD 2,19,296 stipulates payment 100% advance. The

-SD- -SD-interest is calculated as per application upto 6.0-3.2025 which is one day prior to issue of demand notice. The Notice in Form 4 under Rule 5 of IBBI (AAA) Rules 2016 is issued to the respondent on 25.09.2023 for an amount of Rs.1,60,04,494.

5. The respondent Corporate Debtor M/s. Nexa Papers LLP (ID No. AAK-0536) is incorporated on 19.07.2017 as LLP and is manufacturer of high BF craft papers with total obligation of Contribution is Rs. 6,00,00,000/-. It has its registered office at Survey No. 11P1, Kandla Road, Village-Gorkhijadiya, Rajkot, Morbi, Gujarat- 363641. Vide order dated 22.04.2025 this tribunal directed the applicant to issue Notice upon the Respondent. In reply the Respondent has filed its objection/s cum Affidavit-in-Reply stating that the present Company Petition is not maintainable as there exists a pre-existing dispute between the parties regarding the alleged operational debt. The Petitioner has suppressed material facts, including the earlier withdrawn petition, the Respondent's reply to the Section 8 demand notice, and other relevant communications. The Respondent further contends that there is no privity of contract, no valid purchase order,

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and no strict proof of debt and default. It is also asserted that the alleged operational debt does not meet the statutory threshold under Section 4 of the IBC and that the interest claimed is not contractually agreed. The Respondent also relied upon the judgment of Hon'ble Supreme Court in the case of *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Private Limited (Civil Appeal No. 9405 of 2017)* interpreted the expression 'and' appearing in Section 8(2)(a) as 'or', meaning thereby even in a case where there is no suit or arbitration pending however there is valid dispute existing qua the debt in question, the application under Section 8 is not maintainable and the same merits rejection by the Tribunal. The Hon'ble Supreme Court in the said judgment has further held as follows:

> *"..Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to suchch dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing - i.e. it must exist before the receipt of the demand notice or invoice, as the case may be"*

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The Petition is further challenged on the grounds of defective authorization and procedural defects which includes noncompliance of Rule 24 of NCLT rules, wrong declaration before this tribunal (withdrawal of earlier petition CP IB 320 of 2024), concealment of documents which includes its reply to Sec 8 notice to the respondent and threshold limit as mandated u/s 4 of IBC not being met. It also questions the existence of document placed of letter dated 05.01.2025 at page No.143 to 146 of the applicant's application, there are no purchase order or indent for supply of goods. It is further submitted that the OC had originally shipped the goods in name of some other buyer, who had refused to take delivery of goods and thereafter randomly the Bill of Lading was changed in the name of the respondent CD. It also submits certain late shipment advice from the broker of the applicant in India and there was no intimation and hence late BOE filing and other shipping line cost occurred and an entity best fibers requested them to take delivery. The respondent has also disputed the debt in form D. Further, there is difference between invoices noted in Form D and argued in the earlier matters and now only 2 invoices are claimed and there was

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a meeting with certain officials at their premises on 18 June 2022 and the price was negotiated as the without any order the material was received by the CD. Also a counter claim was pending from the year 2022 to 2022 which was still not adjusted by the agent. Certain emails and proforma of adjusted invoices are attached. Hence this application suffers from "Suppressio Veri, Suggestio Falsi" and therefore is to be dismissed. The agreed amount as per communicated dated 29.08.2023 by the petitioner was for USD 115,230 converted into USD at 82.6 against Indian rupees only amounts to Rs.95,17,998. Further the petition is defective as the Power of Attorney is invalid as it shows the detail of applicant as "Ricova International Asia Limited however it is filed by CANACHA and there are no details of their Directors/Authorized person placed on record. There is also no authorization to Mr Bhavik Jhaveri who is unconnected to the matter who has deposed the affidavit. Accordingly, the Respondent prays that the present Company Petition be dismissed with exemplary costs.

6. The Applicant submits this Rejoinder in response to the Reply filed by the Respondent. The preliminary objections raised in the Reply are denied as being incorrect,

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misconceived, and contrary to the facts on record. The Applicant had earlier filed CP (IB) No. 320 of 2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the same Corporate Debtor. However, the said petition was voluntarily withdrawn and no order initiating CIRP was ever passed against the Corporate Debtor. Therefore, there is neither suppression nor concealment of any material fact by the Applicant. The Hon'ble NCLAT in *Deepak Modi v. Shalfeyo Industries Pvt. Ltd.* held that a moonshine defense or a dispute raised subsequently cannot be a ground for rejection of a Section 9 application. Therefore, mere withdrawal of an earlier petition/proceeding cannot be construed as a pre-existing dispute and the present petition deserves to be admitted. The Invoices constitute primary documentary evidence of the commercial and contractual relationship between the parties and establish the existence of an operational debt. The principal operational debt due and payable exceeds Rs. 1 Crore as prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016.

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Invoice No.	Date	Amount (USD)
301952	05.04.2022	72,678
301959	05.04.2022	72,552
Total		**145,230**

The debt exceeds Rs. 1 Crore irrespective of the applicable exchange rate.

Date	Event	US $ in INR	Amount in Rs
05/04/2022	Invoice date	76.41	1,10,97,024.30/-
07/03/2025	Issue of Notice in Form 3/Form4	87.14	1,26,55342.20/-
27/03/2025	Date of filing Petition u/s 9	85.71	1,24,47,663/-

Accordingly, the statutory threshold under Section 4 of the Code stands fully satisfied. The Corporate Debtor never raised any objection regarding quality, quantity, pricing, adjustment, discount, or alleged old dues at the time of customs clearance. Any alleged dispute raised thereafter is clearly an afterthought and deserves to be rejected. The Petition is complete in all respects and fully compliant with the provisions of the Insolvency and Bankruptcy Code, 2016 and the applicable Rules.

7. We have heard Ld. Counsels for both the parties and perused the material available on record.

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Sd/-

8. Observations & Conclusions:

a) The applicant has filed this application through POA on supply of goods from Overseas origin enclosing invoices which are deemed to have 100% payment which is upfront and there is no provision for interest as claimed.

b) The Respondent has from the documents observed to have received the consignment, basis of the document being the Bill of Entry. The business transactions between parties seems to be ongoing and this bill appears to have been disputed. However there are recorded disputes between the parties and purported settlement and negotiations before this application was filed. The Form D filed is also disputed. Further if the settlement talks resulted in an another amicable invoice raised, the same is submitted by respondent to be below the threshold level, while admitting that the consignment is due and payable subject to adjustments in the bill value including the earlier debit notes/payments to be received from applicant.

c) This debt arises out of informal talks and without a formal contract, setting a series of disputes between the parties, even though the consignment received as import

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is to be paid by the respondent. Since this also opens up the threshold limit under provisions of U/s 4 IBC 2026 as submitted by respondent, a disputed debt cannot be considered on its merits when the amount falls below the threshold limit. Compliance to applicable laws and settling the matter on such unsigned sale/purchase agreements which raises to dispute including the threshold limit is between the parties and cannot be the source of any recourse before IBC 2016. In view of the above we pass the following:

ORDER

CP(IB) No. 148(AHM)2025 is rejected and stands disposed of.

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

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

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