NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P3.

C.P. (IB)/664(MB)2026

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **07.07.2026**

NAME OF THE PARTIES: **M/s. Crescendo**

Vs

Drushti Realtors Private Limited

Under Section 9 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//VM//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/664/MB/2026

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN MATTER OF:

M/S. CRESCENDO
[CIN No.: NA]
A/3, Sarveshwar CHS Ltd.,
Gholai Road, Behind Raj Park
Complex, Parsik, Kalwa (East)
Maharashtra – 400 605

…Operational Creditor/Applicant

V/s

DRUSHTI REALTORS PRIVATE LIMITED
Through Authorized Signatory Nitin Ambaji Sawant
[CIN No.: U45102MH2005PTC158129]
Unit No. 1, Ground Floor, Terminal 9,
Besides Vile Parle Police Station, Nehru Road,
Vile Parle (East) – 400 099

...Corporate Debtor

Pronounced: 07.07.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Mr. Dharam Jumani a/w Adv. Mr. Harshvardhan Melanta a/w Adv. Ms. Atiksha Jain i/b HN Legal.

For Respondent: None present.

ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This C.P. (IB) No. 664 of 2026 (Application) was filed on 18.05.2026 by M/s. Crescendo, the Operational Creditor (OC), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, through Mr. Nitin Ambaji Sawant – Authorised Representative of the OC *vide* Authority Letter dated 07.05.2026, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Drushti Realtors Private Limited, the Corporate Debtor (CD).

1.2 As per Part IV of the Application, the amount claimed to be in default is Rs. 1,07,34,892.6/- (One Crore Seven Lakh Thirty-Four Thousand Eight Hundred Ninety-Two Rupees and Six Paise Only).

1.3 The first date of default is mentioned as 13.03.2024 and the last date of default is 17.10.2024**.** Details of invoice-wise outstanding and defaults are as given below:

Invoice No.	Date of Invoice	Date of receipt	Date of Default
CR/TI/2023-24/082- RA-14 (TRISHUL)	27.02.2024	27.02.2024	13.03.2024 (15 days from 27.02.2024)
CR/TI/2023-24/083- RA-15 (TRISHUL)	27.02.2024	27.02.2024	13.03.2024 (15 days from 27.02.2024)
CR/TI/2023-24/085 (EMBASSY)	27.02.2024	27.02.2024	13.03.2024 (15 days from 27.02.2024)
CR/TI/2023-24/088 (EMBASSY)	02.03.2024	02.03.2024	17.03.2024 (15 days from 02.03.2024)
CR/TI/2023-24/087- RA-16 (TRISHUL)	04.03.2024	04.03.2024	19.03.2024 (15 days from 04.03.2024)
CR/TI/2023-24/028 (TRISHUL)	03.09.2024	09.09.2024	24.09.2024 (15 days from 09.09.2024)
CR/TI/2023-24/029 (TRISHUL)	03.09.2024	09.09.2024	24.09.2024 (15 days from 09.09.2024)
CR/TI/2024-25/036- RA-17 (TRISHUL)	02.10.2024	02.10.2024	17.10.2024 (15 days from 02.10.2024)
CR/TI/2024-25/037 (TRISHUL)	02.10.2024	02.10.2024	17.10.2024 (15 days from 02.10.2024)
CR/TI/2024-25/038 (TRISHUL)	02.10.2024	02.10.2024	17.10.2024 (15 days from 02.10.2024)
CR/TI/2024-25/039 (TRISHUL)	02.10.2024	02.10.2024	17.10.2024 (15 days from 02.10.2024)

2. CONTENTIONS OF APPLICANT (OC)

2.1 The Applicant submits that the total amount of the operational debt of Rs. 1,07,34,892.6/- is as follows:

a. Principal Amount: Rs. 80,54,977/- (Eighty Lakhs Fifty-Four Thousand Nine Hundred and Seventy-Seven Rupees) [i.e., (i) Rs. 72,01,52/- is toward invoice(s) raised for Trishul CHS Limited; (ii) Rs. 7,54,599.1/- is towards the retention amount deducted from the invoices raised for Trishul CHS Limited and (iii) Rs. 98,825/- towards invoices raised for Embassy].

b. Interest: Rs. 26,79,915.6/- (Twenty-Six Lakhs Seventy-Nine Thousand Nine Hundred and Fifteen Rupees and Six Paise) [i.e., Rs.

26,07,163.99/- towards interest on outstanding invoices and Rs. 72,751.61/- towards interest on retention amount for Trishul CHS Limited] @ 18% per annum on the sum of Rs. 80,54,977/- [i.e., Rs. 73,00,377.80/- towards outstanding invoices and Rs. 7,54,599/- towards retention amount for Trishul CHS Limited] calculated from the respective dates on which the default occurred until the filing of the present Petition.

c. Outstanding TDS: NIL.

d. Total No. of Invoices: 34

e. No. of Unpaid Invoices: 11

2.2 The Operational Creditor is a partnership firm registered under the provisions of the India Partnership Act, 1932. The Operational Creditor is engaged in the business of providing fire safety solutions and installation of a wide range of fire protection products and services including but not limited to products such as fire hydrant systems, fire alarm systems, fire sprinkler systems and other related safety equipment along with services such as fire safety consulting, emergency planning, installation, audits, training and maintenance.

2.3 The Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956 and validly existing under the provisions of the Companies Act, 2013. The Corporate Debtor claims to be a premium estate developer in Mumbai.

2.4 Somewhere in the month of March of 2023, the Corporate Debtor was undertaking the redevelopment of Trishul Co-operative Housing Society Limited consisting of four wings and situated on plot bearing CTS No. 192/1 (pt.), Pant Nagar, Ghatkopar, Mumbai – 400075 ("Building")

2.5 For the purpose of installing fire-fighting systems in the Building, the Operational Creditor had submitted its quotation. After discussions and negotiations, by and under a Work Order dated 10.03.2023, the Corporate Debtors had assigned the work of installation of fire-fighting systems in the Building to the Operational Creditor. A copy of the Work Order dated 10.03.2023 is annexed and marked as Annexure "C" to the Application.

2.6 The Work Order sets out the terms and conditions as agreed between the parties for the purpose of carrying out the works in the Building. As per the Work Order, the Operational Creditor was required to install the fire-fighting systems in all four wings, three basements and the ground floor of the Building and after completion of works, to obtain the Final NOC from the BMC Fire Department in respect of the Building. The rate agreed for installation of the aforesaid fire-fighting systems in the Building and for obtaining the Final NOC were provided in the Bill of Quantities ("BOQ") attached with the Work Order. The rates as quoted in the BOQ were exclusive of taxes and charges towards liasioning. Further, the Work Order read with the BOQ provided that the rates quoted therein are free from escalation, however, they are approximate. It further provided that the billing for the same shall be based on actual quantities executed and jointly measured and certified by the Corporate Debtor's site engineer. Furthermore, as per the Work Order, the Corporate Debtor was entitled to deduct 5% from each running account bill ("RA Bill") and the total amount retained was to be released in the following manner:-

- 2.5% of the retention amount was to be released within 6 months from the date of handover; and

- Remaining 2.5% of the retention amount was to be released within 30 days from the date of expiry of the Defects Liability Period.

2.7 Further, the Operational Creditor duly completed its scope of work (including procurement of the Final NOC from the BMC Fire Department) and raised invoices aggregating to Rs. 1,78,08,541.45/-. The invoices were based on actual quantities executed on site which were jointly measured and certified by the Corporate Debtor's site engineers. The completion of works in the Building by the Operation Creditor has been recorded in the Handover Letter dated 11.01.2025, addressed to the Corporate Debtor. The said letter was duly accepted and acknowledged by the Corporate Debtor without any demur. Copies of all the invoices pertaining to the Building are annexed as Annexure "D-Colly" and the copy of the Handover Letter dated 11.01.2025 is annexed as Annexure "E" to the Application.

2.8 In addition to the aforesaid scope of work, the Corporate Debtor has also awarded extra works to the Operational Creditor for the Building. The said extra works were also duly completed by the Operational Creditor and invoices aggregating to Rs. 10,71,489.56/- were raised upon the Corporate Debtor. Copies of all the invoices raised towards extra works executed in the Building are annexed as Annexure "F-Colly" to the Application.

2.9 At around the same time, the Corporate Debtor had also assigned the work of refiling the fire extinguishers of the existing fire-fighting systems at its another project known as Embassy CHS consisting of A, B and C wings, also situated at Pant Nagar, Ghatkopar, Mumbai – 400 075 ("Embassy"). Accordingly, by emails dated 07.07.2023, the Operational Creditor had submitted its quotation for the same which was duly accepted by the

Corporate Debtor. Copies of the emails dated 07.07.2023, are annexed as Annexure “G-Colly” to the Application.

2.10 The Operational Creditor duly completed the said assigned works and raised an Invoice bearing No. CR/11/2023-24/085 dated 27.02.2024, which is annexed as Annexure “H” to the Application.

2.11 For the same project i.e., Embassy, the Corporate Debtor also assigned certain works associated with the existing fire-fighting systems such as installing and/or provided with a sprinkler pump panel, butterfly valve, and pendent sprinklers. The Operational Creditor duly completed the said assigned works and raised an Invoice bearing No. CR/11/2023-24/088 dated 02.03.2024, for a sum of Rs. 55,873/-. Copy of the Invoice dated 02.03.2024, is annexed as Annexure “I” to the Application.

2.12 It is crucial to mention that the Corporate Debtor has awarded the works of installation of fire-fighting system works at Embassy in the year 2022 under two work orders which were duly completed by the Operational Creditor. However, during the execution of works at Trishul CHS Limited in the year 2023, the Corporate Debtor also assigned certain works in relation to the existing fire-fighting systems at Embassy. The Corporate Debtor had also assigned certain works in its yet another project being Raheja during the same period of which an invoice bearing no. CR/TI/2023-24/084 dated 22.12.2023, was raised by the Operational Creditor. However, since the parties had always shared a long-standing and continuous business relationship, the Corporate Debtor had been making payments on an ad-hoc basis to the Operational Creditor, without correlating such payments to specific invoices. Accordingly, the Operational Creditor has appropriated the payments received from the Corporate Debtor (during the years 2022-2024) on a first-in-first-out (FIFO) basis to determine the outstanding amounts.

2.13 Pursuant to such appropriations, (i) all invoices pertaining to Embassy which were raised by the Operational Creditor under the work orders of 2022; (ii) Raheja; (iii) RA Bills No. 1 to 13 and 3 (three) extra work invoices raised towards Trishul CHS Limited stand adjusted, and the outstanding amounts have been computed accordingly. The detailed statement of invoices and payment appropriations is set out in the statement of computation annexed.

2.14 During the years 2022-24, the Operational Creditor has raised invoices aggregating to Rs. 1,96,57,651/- (Rupees One Crore Ninety-Six Lakhs Fifty-Seven Thousand Six Hundred and Fifty-One Only) for all three projects of the Corporate Debtor. Out of the aforesaid amount, the Corporate Debtor has duly paid and the Operational Creditor has received a sum of Rs. 1,16,02,674/- (Rupees One Crore Sixteen Lakhs Two Thousand Six Hundred and Seventy-Four Only). However, a sum of Rs. 80,54,977/- (Rupees Eighty Lakhs Fifty-Four Thousand Nine Hundred and Seventy-Seven Only) [i.e., (i) Rs. 72,01,552/- is towards invoice(s) raised for Trishul CHS Limited; (ii) Rs. 7,54,599.21/- is towards the retention amount of invoices raised for Trishul CHS Limited and (iii) Rs. 98,825/- towards invoices raised for Embassy] remains outstanding till date.

2.15 Despite numerous reminders and follow-ups, the Corporate Debtor has neither responded to such reminders and follow-ups nor has paid the outstanding amount to the Operational Creditor. Copies of the reminder and follow-up emails are annexed as Annexure "J-Colly" to the Application.

2.16 Pertinently, clause 2 contained in all the aforesaid invoices explicitly provide that interest @ 18% p.a. shall be levied on delayed payments. Further, clause 3 of the invoices also provide that in the event of any discrepancy noted in the invoices, the same shall be notified within 10 days from the receipt of such invoice. However, the Corporate Debtor has not raised any dispute with respect to any of the invoices and/or its amounts or contents thereof till date. The Corporate Debtor has also not raised any dispute with respect to the quality, quantity and nature of products and services provided or even otherwise dispute of any nature in respect of the works undertaken by the Operational Creditor till date.

2.17 The Operational Creditor has duly complied with all its obligations, completed its scope of work assigned from time to time and has accordingly raised invoices for the same. However, no response has been received from the Corporate Debtor, let alone payment towards the outstanding amount.

2.18 Accordingly, on 10.04.2026, a Demand Notice under Form 3 was issued by the Operational Creditor upon the Corporate Debtor, setting out the above facts and enclosing all the documents forming the basis of the operational debt, including the Work Order dated 10.03.2023, the invoices, the Handover Letter, quotation emails, and reminder/follow-up emails. In the said Demand Notice, the Operational Creditor stated the principal debt amount as Rs. 80,54,977/- and interest of Rs. 25,60,746.08/- at 18% p.a. from the respective dates of default till the date of the notice, aggregating to a total outstanding debt of Rs. 1,06,15,723.08/-, along with further interest at the rate of 18% p.a. on the sum of Rs. 80,54,977/- from the date of the said notice till actual payment/realization. The Operational Creditor had attempted to serve the hard copy of the Demand Notice upon the registered office of the Corporate Debtor via DTDC courier. However, the delivery of the same was refused by the Corporate Debtor. Therefore, by email dated 17.04.2026, sent at 12:26 PM from the email address of the Operational Creditor to the email addresses of the Corporate Debtor, namely drushtijagdale@yahoo.co.in and legal.drushit@gmail.com, the scanned copy of the Demand Notice was served upon the Corporate Debtor. In the said email, the Operational Creditor specifically recorded that an attempt had been made to effect hard copy service of the Demand Notice upon the Corporate Debtor through DTDC courier, however, the same was refused by the Corporate Debtor. The Operational Creditor further stated that it was accordingly serving the scanned copy of the Demand Notice through email and was also effecting service through speed post. The Operational Creditor also stated that the said email and its attachment constituted valid service of the Demand Notice upon the Corporate Debtor. The said email along with its attachment i.e., the scanned copy of the Demand Notice was duly received by the Corporate Debtor upon the said email addresses. The service of the Demand Notice effected through India Post/speed post at the registered office address of the Corporate Debtor, was returned undelivered with the postal remark "unclaimed". Copy of the said Demand Notice dated 10.04.2026, is annexed as Annexure "K". Copy of the email dated 17.04.2026, is annexed as Annexure "L". Copy of the courier receipt issued by DTDC courier in respect of the attempted service dated 14.04.2026, is annexed as Annexure "M-Colly". Copy of the postal receipt and tracking report issued by India Post in respect of the attempted service dated

17.04.2026, is annexed as Annexure "N-Colly". Copy of the returned envelope sent through India Post/speed post bearing the remark as 'unclaimed' is annexed as Annexure "O" to the Application.

2.19 The Corporate Debtor has till date neither disputed nor replied to the said Demand Notice dated 10.04.2026, thereby admitting its outstanding liability towards the Operational Creditor.

2.20 The above unequivocally demonstrates the following:-

a. There is an operational debt exceeding the minimum threshold under Section 4 of the Insolvency and Bankruptcy Code, 2016, which is due and payable by the Corporate Debtor to the Operational Creditor and which has not been paid till date.

b. The amounts due and owed by the Corporate Debtor under the unpaid invoices and retention amount constitute 'operational debt' under Section 5(21) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), as the claim arises in relation to goods and services provided by the Operational Creditor.

c. Undisputedly, the Corporate Debtor has not paid the outstanding amounts sought under the various invoices as well as the retention amount mentioned hereinabove and has neither replied to nor disputed the Demand Notice dated 10.04.2026.

d. There are no genuine pre-existing disputes regarding the debt, which have been raised by the Corporate Debtor prior to the issuance of the Demand Notice dated 10.04.2026 under Section 8 of the IBC. On the contrary, despite reminders, follow-ups and correspondences addressed by the Operational Creditor to the Corporate Debtor, the

Corporate Debtor has never disputed its liability to pay the outstanding amount and has not even replied to the statutory Demand Notice addressed by the Operational Creditor. Thus, the Corporate Debtor has not once denied or disputed its liability to pay the balance outstanding.

2.21 Considering the above, the Operational Creditor submits that the present Application seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor be allowed.

2.22 The Applicant has relied upon the following documents:

i. Copy of the Master Data of the Corporate Data as available on the MCA website.

ii. Copy of the Authority Letter in favour of Nitin Ambaji Sawant

iii. Copy of the Work Order

iv. Copies of all the invoices pertaining to Trishul CHS Ltd.

v. Copy of the Handover Letter

vi. Copies of all the invoices raised towards extra works executed in the Trishul CHS Ltd.

vii. Copies of the emails addressed by the Operational Creditor in relation to the quotation of Embassy.

viii. Copy of Invoice bearing No. CR/11/2023-24/085

ix. Copy of Invoice bearing No. CR/11/2023/24/088

x. Copies of the reminders and follow-up emails addressed by the operational Creditor.

xi. Copy of the Demand Notice.

xii. Copy of the email under the cover of which the Operational Creditor served the scanned copy of the Demand Notice upon the Corporate Debtor.

xiii. Copies of the courier receipt issued by DTDC courier in respect of attempted service.

xiv. Copy of the postal receipt and tracking report issued by India Post in respect of attempted service.

xv. Copy of the returned envelope sent through India Post/ speed post bearing the remark unclaimed.

xvi. Computation of the outstanding amount including interest and working for default amount calculation.

xvii. Copy of the bank statement of the account of the Operational Creditor from 31.03.2026- 05.05.2026

3. WRITTEN SUBMISSIONS (OC)

3.1 The written submissions filed by the Applicant are confined solely to the preliminary issue of maintainability of the Petition under Section 9 of the Code demonstrating that the interest charged, as per the interest clause contained in the Invoices issued by the Operational Creditor, forms part of the operational debt and is required to be considered, while computing the amount in default. Consequently, upon inclusion of such contractually agreed interest, the aggregate amount of debt due and payable exceeds the threshold prescribed under Section 4 of the Code, rendering the present Petition maintainable.

3.2 It is submitted that the only issue concerning maintainability, therefore, is whether the aggregate amount of Rs. 1,07,34,892.60/- comprised of the principal amount of Rs.80,54,977/- and interest of Rs. 26,79,915.60/- calculated at the rate of 18% per annum as stipulated in the Invoices, is liable to be considered for the purposes of Section 4 of the Code.

3.3 It is submitted that the interest clause is specifically contained in the Invoices; (i) which were duly received and accepted by the Corporate Debtor, (ii) no dispute was raised in relation to the Invoices or the terms of the Invoices till filing of the Petition; (iii) full payments were made in relation to past Invoices which contained identical provision for interest; and (iv) part payment has been made against Invoice No. CR/T1/2023-24/082 - RA/14 (page 115 of the Petition), which is the Invoice forming subject matter of the present Application and which contains the provision for interest at 18% per annum. It is well settled that payment made against an invoice operates as acceptance not merely of the sum paid but of the invoices as a whole, with terms and conditions appearing on the face.

3.4 The Applicant has relied upon the following judgments:

i. Prashant Agarwal vs. Vikash Parasrampuria [Company Appeal (AT) (Ins) No. 690 of 2022, decided on 15th July 2022]

ii. Bhotika Trade & Services Pvt. Ltd. vs. Avinash EM Projects Pvt. Ltd. [2023 SCC OnLine NCLAT 1245]

iii. Chemical Suppliers India Private Limited vs. GLS Films Industries Private Limited [Company Appeal (AT) (Insolvency) No. 157 of 2023, decided on 11th February 2025]

3.5 This Tribunal, after hearing the Applicant on the preliminary issue of maintainability, reserved the matter for orders.

4. ANALYSIS AND FINDINGS

4.1 We have perused the documents as placed before us and heard the Ld. Counsel for the Applicant.

4.2 It is evident from the Applicant's own pleadings that the total amount claimed to be in default is **Rs.1,07,34,892.60/-,** comprising of principal amount of **Rs. 80,54,977/-** and interest component of **Rs. 26,79,915.60/-** calculated at 18% p.a. as stipulated in the invoices. Once the interest component is excluded, the principal amount admittedly falls below the statutory threshold of Rs. 1 crore prescribed under Section 4 of the IBC.

4.3 As such, the issue in this application is as to whether the Application filed under Section 9 is maintainable without including the interest in the total amount of claim, on the ground that interest is being charged on the basis of unilateral entry in the invoice without any other evidence on record of an agreement between the parties for payment of interest as claimed in the invoice on account of delay.

4.4 The Applicant, is relying on the unilateral averments in the invoices for claiming the interest and that the work order 10.03.2023 issued by the Corporate Debtor attached alongwith the Application do not have any agreed terms for payment of interest in case of delay in making payment by the CD.

4.5 The Applicant has relied on the judgment of Hon'ble NCLAT in ***Prashant Agarwal v. Vikash Parasrampuria [2022 SCC OnLine NCLAT 3781]*** stating that where invoices containing interest clauses are accepted by the CD without dispute, the interest liability crystallizes into a valid debt. However, this Tribunal has relied on the recent judgement of a 3-member bench of Hon'ble NCLAT, New Delhi, in the matter of ***Ajay Rana (Director of Erstwhile Sarika Industries Pvt. Ltd.) vs. Sanjay Kumar Goel and Ors.***, Company Appeal (AT) (Ins) 1045 of 2023, wherein it was held in para 15 that:-

> *"15. In this regard, there is no dispute that the principal amount of Rs. 79,82,857/- is less than the threshold of Rs. 1 Cr. and the interest component is of Rs. 45,12,857/- which is claimed by the OC on the basis of the entry in the invoice for charging interest at the rate of 18% p.a. on delayed payment. There is also no dispute that there is no other evidence on record which may suggest or indicate that the parties had agreed to pay 18% interest p.a. on the delayed payment of the invoice. Thus, the only evidence possessed by the OC is the invoice regarding which this Court, in the case of Rishabh Infra (Supra) and Shitanshu Bipin Vora (Supra), after taking into consideration the decision in the case of Prashant Agarwal (Supra), relied upon by the OC, has categorically held that mere unilateral entry of interest in the invoice, in the absence of an agreement for interest or any other document showing that the CD had accepted the obligation to pay the interest, is not sufficient to claim the same. Thus, in our considered opinion, the Tribunal has committed an error in relying solely upon the unilateral entry in the invoice regarding the interest."*

4.6 Applying the ratio of the judgment of Ajay Rana (supra), the interest claimed by the Applicant on the basis of unilateral entries in the invoices, not being grounded in any contractual clause, and not supported by any other evidence on record suggesting that the parties had agreed to pay interest, is legally unsustainable. Though the OC has referred to various email correspondences with the CD in its Application, there is nothing on record to demonstrate that the CD has ever agreed to pay the interest. Even the Applicant has demanded payment of interest dues from the CD for the first time vide its Demand Notice u/s 8 of the IBC, 2016 dated 10.04.2026.

4.7 The Applicant has also failed to demonstrate to us that in the past dealings with the CD, the Applicant was ever paid any interest for any delayed payment by the CD.

4.8 It is therefore safe to conclude that the present Section 9 Application has been filed by artificially inflating the alleged default through an interest claim which has no contractual or legal basis. Nor is the same based on past practice between the parties. Such an approach is contrary to the object and scheme of the IBC and amounts to a misuse of the insolvency process as a recovery mechanism, which has been consistently criticized by the Hon'ble Supreme Court and the Hon'ble NCLAT.

4.9 This Bench also relies upon the judgments of Hon'ble NCLAT in the matters of ***Rishabh Infra v. Sadbhav Engineering Ltd, [(2024) ibclaw.in 707]*** and ***Shitanshu Bipin Vora v. Shree Hari Yarns Pvt. Ltd. And Mr. Rajan Garg in Company Appeal (AT) (Insolvency) No. 2204 of 2024,*** wherein Hon'ble NCLAT has held that where the agreement between the parties or purchase order does not provide for payment of interest on delayed payments, a unilateral provision in the invoices cannot be the basis of overriding the terms as agreed by the parties in the agreement or the work order. The relevant portions of the said judgments are reproduced hereunder:

> *"i. **Rishabh Infra v. Sadbhav Engineering Ltd, [(2024) ibclaw.in 707]** wherein vide order dated 04.11.2024, it was held as below:*
>
> *"9. we are of the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest. 10. There is nothing to substantiate that the Corporate Debtor has accepted the obligation to pay the interest @24% per month, as claimed*

by the Operational Creditor. The entire Principal Amount having been paid, the Adjudicating Authority did not commit any error in rejecting the Section 9 Application filed by the Operational Creditor. There is no merit in the Appeal."

ii. ***Shitanshu Bipin Vora v. Shree Hari Yarns Pvt. Ltd. And Mr. Rajan Garg in Company Appeal (AT) (Insolvency) No. 2204 of 2024****, in which vide order dated 16.04.2025, it was held as below:*

"46. The Respondent has also relied upon the judgment of this Tribunal in Prashant Agarwal Vs. Vikash Parasrampuria & Anr. In Company Appeal (AT)(Insolvency) No. 690 of 2022 decided on15.07.2022, wherein this Tribunal has held that the total amount which includes both principal debt and interest on delayed payment as was stipulated in the invoices itself will become the total debt outstanding as per the requirements of Section 4 IBC in a Section 9 Application. The facts of each case are different. We note contrasting judgments relied upon by the Respondent. The Appellant has relied upon the Judgment of this Tribunal in Rishabh Infra Through Hari Mohan Gupta Vs. Sadbhav Engineering Ltd in Company Appeal (AT) (Insolvency) No. 1881 of 2024 decided on 04.11.2024, wherein this Tribunal has held that in the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest at para 9,. On this basis, this Tribunal has not accepted claim of the Operational Creditor for claiming interest in a Section 9 Application filed by the Operational Creditor.

47. Similarly, the Appellate Tribunal in the case of SS polymers vs Kanodia Technoplast Limited, had held that relying on the invoices to raise claims for payment of interest is against the principle of the Code. Relevant extracts from this judgment are reproduced hereinbelow:

"4 The Learned Counsel for the appellant relied on 'invoices' to suggest that in the 'invoices,' the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'.

5. Admittedly, before the admission of an application under Section 9 of the Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest for any purpose other than for the Resolution of Insolvency, or Liquidation of *the 'Corporate Debtor' and which is barred in view of Section 65 of the Code."*

48. The Appellant has relied upon the judgments of this Appellate Tribunal in Krishna Enterprises vs. Gammon India Ltd [supra] wherein vide order dated 27.07.2018 it was held that 'debt' in terms of the Code does not include interest, unless payable in terms of any agreement among parties. The relevant extract of the judgment passed by the Appellate Tribunal is reproduced below:

"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. <u>If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principle amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.</u>

(emphasis supplied) ………

51. In the above background, we find that the claim of the Operational Creditor with respect to the interest is not maintainable and, in that situation, the claim does not meet the threshold for admitting Section 9 Application ………………"

4.10 The Applicant has relied on the judgments of *Bhotika Trade & Services Pvt. Ltd. vs. Avinash EM Projects Pvt. Ltd. [2023 SCC OnLine NCLAT 1245] and Chemical Suppliers India Private Limited vs. GLS Films Industries Private Limited [Company Appeal (AT) (Insolvency) No. 157 of 2023, decided on 11th February 2025]* stating that the Prashant Agarwal judgment (supra) was followed in the above mentioned judgments wherein the invoices raised by the Operational Creditor therein clearly stipulates interest on delayed payment. We find that the above judgments will not come to the rescue of the Applicant as there are judgments as mentioned above i.e., ***Rishabh Infra v. Sadbhav Engineering Ltd, [(2024) ibclaw.in 707]*** and ***Shitanshu Bipin Vora v. Shree Hari Yarns Pvt. Ltd. And Mr. Rajan Garg in Company Appeal (AT) (Insolvency) No. 2204 of 2024,*** wherein the

Hon'ble NCLAT has held that where the agreement between the parties or purchase order does not provide for payment of interest on delayed payments, a unilateral provision in the invoices cannot be the basis of overriding the terms as agreed by the parties in the agreement or the work order.

4.11 Accordingly, the interest component claimed by the Applicant, which is not supported by any provision in the work order but is solely based on unilateral entry in the invoice cannot be included while computing the amount of default for the propose of meeting the threshold under Section 4 of the Code. Upon exclusion of the said interest, the principal amount falls below the statutory threshold under Section 4 of the IBC, and consequently, the present Application under Section 9 is liable to be dismissed as not maintainable.

4.12 Accordingly, we hold that the Application under Section 9 of the IBC is not maintainable as the principal operational debt, which is Rs. 80,54,977/- falls below the prescribed threshold limit. Further, the Applicant has failed to establish any legal or contractual entitlement to interest as required under law. The Application is thus liable to be dismissed on this ground alone. The principal amount being less than Rs. 1 Crore, the Application fails to satisfy the mandatory requirement under Section 4 and is therefore not maintainable.

4.13 We make it clear that the Applicant is free to approach any other forum, as permissible under the law, for the recovery of the outstanding dues.

4.14 Accordingly, CP (IB)/664(MB)2026 stands **rejected** being **not maintainable**.

4.15 A certified copy of this order may be issued by the Registry, if applied for, expeditiously.

Sd/-	**Sd/-**
NILESH SHARMA	**SAMEER KAKAR**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

//Nidhi/VM//