IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.101/ALD/2022

(Application filed under 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy Rules, 2016)

IN THE MATTER OF:

M/S SUNDER ENGINEERING WORKS
Through Its Proprietor Mr. Siddhant Jain
27, Mohkampur Industrial Complex,
Delhi Road, Meerut (U.P.)-250002

………Operational Creditor

Versus

ASSOCIATED MACHINARY CORPORATION LTD,
F-64 SITE-1, Bulandshahar Road Industrial Area,
GHAZIABAD-201001(UP)

……..Corporate Debtor

Order pronounced on: 22.07.2026

Coram:

Sh. Praveen Gupta	:	Member (Judicial)
Sh. Ashish Verma	:	Member (Technical)

Appearances:

Ms. Prachi Johri with Sh. Sachin Jain, Advs.	:	For the Operational Creditor
Sh. Mohit Nandwani with Ms. Aditi Yadav, Sh. Aabhaas Sukhramani & Sh. Anant Prakash, Advs.	:	For the Corporate Debtor

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ORDER

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy code, 2016 (hereinafter referred to as 'the Code/IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Sunder Engineering Works through its proprietor Mr. Siddhant Jain, (hereinafter referred to as 'Operational Creditor/Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against M/s Associated Machinery Corporation Limited (hereinafter referred to as the 'Corporate Debtor').

2. Part-I of the Petition sets out the details of the Operational Creditor. It is averred that the Operational Creditor is registered under the Goods and Services Tax (GST) Act and is a sole proprietorship firm, of which Siddhant Jain is the proprietor with its office situated at 27, Mohkampur Industrial Complex, Delhi Road, Meerut (U.P.)- 250002.

3. Part-II of the Petition sets out the details of the Corporate Debtor, Associated Machinery Corporation Limited, having its registered office at F-64 Site-1, Bulandshahar Road Industrial Area, Ghaziabad-201001 (U.P.).

4. In Part-III of the Petition the Operational Creditor has not proposed any Insolvency Professional to act as a Resolution Professional.

5. Part-IV of the Petition states that the total outstanding Debt Rs. 6,03,95,205.13/- (Principal Amount Rs. 4,12,69,079.88/- along with interest of Rs.1,91,26,125.25/- up to 30.06.2022) and the Date of Default is shown as 22.04.2022.

6. Part-V of the Petition describes the particulars of the Operational Debt, documents, records and evidence of the default as below:

A. Copy of Tax Invoices attached as Annexure-3

b. Certified Copies of E-Way Bills attached as Annexure-4

c. Copy of Ledger Account attached as Annexure-9

d. Copy of Statement of Account maintained by Operational Creditor with Bank of India attached as Annexure-10

e. Certificate of Bank of India in Form-5A attached as Annexure-11

f. Copies of Confirmatory emails sent by Operational Creditor to Corporate Debtor attached as Annexure-12

g. Certified Copies of GSTR-1, GSTR-3B and GSTR-2A attached as Annexure-5,6 and 7.

7. It is submitted that the Operational Creditor had been supplying goods such as HR Plates, shapes, sections, etc. to the Corporate Debtor from time to time, with the first supply was made on 27.11.2019 under Invoice No. M436 for Rs. 6,27,100.98 and the last supply was made on 30.09.2020 under Invoice No. 199 for Rs. 15,10,947.52. Thereafter, as per the Petitioner, no further supplies were made as the Corporate Debtor was irregular in making

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payments, resulting in substantial outstanding dues accumulating in its account.

8. It is averred that Mr. Pawan Tyagi is the main Director looking after the business of the Corporate Debtor and had been well known to the proprietor of the Operational Creditor for several years. Hence, supplies were made to the Corporate Debtor on orders received from Mr. Pawan Tyagi over phone from time to time.

9. It is further submitted that, as a regular business practice, the Corporate Debtor itself engaged trucks for transportation of ordered goods and dispatches were made through such trucks, which fact is reflected in the Tax Invoices by mentioning the word "Self" under the heading "Transport". For each supply, Tax Invoices were raised and sent by the Operational Creditor to the Corporate Debtor specifying details of goods supplied, value thereof, and other governing terms and conditions of supply, including levy of interest at the rate of 18% per annum for delayed payment of invoice amounts. As required under the GST Act, e-Way Bills were also generated on the GST Common Portal for each dispatch, mentioning dispatch particulars, mode of dispatch, and truck numbers engaged by the Corporate Debtor.

10. As per the Petitioner, none of the e-way bills were cancelled or rejected by the Corporate Debtor, and therefore, the goods specified in the e-way bills

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and Tax Invoices were duly delivered, accepted, and utilized by the Corporate Debtor. It is submitted that the Operational Creditor duly deposited the full GST amount, including CGST and SGST, as charged under the Tax Invoices with the GST Department.

11. It is the case of the Petitioner that the Corporate Debtor never rejected or returned any part of the goods supplied and never raised any complaint whatsoever regarding quality of goods or on any other account. It is also submitted that the Corporate Debtor, being purchaser of the goods, availed Input Tax Credit under Section 16(2) of the CGST Act, 2017 for the CGST/SGST charged by the Operational Creditor, as established from GSTR-2A Returns of the Corporate Debtor. The Operational Creditor has also annexed a certificate dated 29.07.2022 issued by the Deputy Commissioner, Meerut, as Annexure-8, which, as per the Petitioner, certifies that the goods were supplied and under various Tax Invoices the supplies were uploaded in GSTR-1 returns filed by the Operational Creditor and were correspondingly reflected in the GSTR-2A Returns of the Corporate Debtor.

12. It is submitted that the various documents and evidence referred to above indisputably confirm that the goods supplied under various Tax Invoices were duly delivered, accepted, and used by the Corporate Debtor without reservation, thereby rendering the Corporate Debtor liable to pay for the supplies so made.

13. As per the Petitioner, the ledger account maintained by the Operational Creditor shows an outstanding principal amount of Rs. 4,27,80,027.40, inclusive of Invoice dated 30.09.2020 for Rs. 15,10,947.52, though the said invoice is covered under Section 10A of the Code. It is submitted that interest for delayed payment has not been debited in this ledger and has been accounted for separately. All payments reflected in the ledger were made by the Corporate Debtor through direct fund transfer from its bank account maintained with Bank of India, Ghaziabad, to the Operational Creditor's corresponding bank account maintained in the same branch.

14. It is the case of the Petitioner that the ledger entries demonstrate that the Corporate Debtor had not been making timely payments of invoices, and despite regular follow-up, payments were made belatedly, on an ad hoc basis, and not invoice-wise. Consequently, appropriation of payments was made by the Operational Creditor on a first-in-first-out basis.

15. To keep the Corporate Debtor updated regarding outstanding balances, the Operational Creditor began acknowledging payments received after 26.04.2021 through confirmatory emails, specifying balances before and after accounting for payments received, which balances were never

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disputed by the Corporate Debtor. It is submitted that the last payment of Rs. 5,00,000/- was received on 22.04.2022, after which no further payments were made despite substantial principal dues remaining outstanding.

16. A statement showing details of unpaid invoices, excluding Invoice dated 30.09.2020 covered under Section 10A, has been filed by the Petitioner, reflecting invoices that remain unpaid after appropriation of payments on first-in-first-out basis. As per the Petitioner, the first partly paid outstanding invoice pertains to supply made on 28.11.2019 and the last outstanding invoice pertains to supply made on 29.02.2020. Thus, all outstanding invoices are stated to be within the period of limitation, and in view of Section 18 of the Limitation Act, limitation is to be reckoned from the date of last payment, i.e., 22.04.2022.

17. It is submitted that since the Corporate Debtor defaulted in making timely payments, it is liable to pay delayed payment interest amounting to Rs. 1,91,26,125.25 up to 30.06.2022, with further interest continuing from 01.07.2022 till the date of payment. The date of default is stated to be 22.04.2022, being the date on which the last ad hoc payment of Rs. 5,00,000/- was made against pending invoices.

18. It is the case of the Petitioner that since the Corporate Debtor was neglecting repayment of outstanding operational debt, the Operational Creditor issued

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Demand Notice dated 25.07.2022 under Section 8 of the Code, by Speed Post on 01.08.2022 and by email on 29.07.2022.

19. It is further submitted that although earlier Demand Notices dated 18.02.2021 and 26.04.2021 had also been served upon the Corporate Debtor, however, CIRP proceedings were not initiated at that stage due to continued payments and assurances by the Corporate Debtor to clear dues shortly.

20. It is only upon failure to honour such assurances, the last Demand Notice dated 25.07.2022 was issued on the basis of which the present Application came to be filed. As per the Petitioner, despite receipt of the above Demand Notice on 29.07.2022, the Corporate Debtor neither repaid the unpaid operational debt nor gave any notice of dispute as envisaged u/s 8(2)(a) informing about any pre-existing dispute or pendency of suit or arbitration proceedings within the mandatory statutory period of 10 days.

21. In response to the demand notice the Corporate Debtor sent a reply dated 09.08.2022. The relevant excerpts from the reply dated 09.08.2022 is reproduced as under:

> "….
> *At the outset it is submitted that the aforementioned Demand Notice dated 25th July, 2022 received on 4th August, 2022 is absolutely illegal and has been sent for usurping the money from the good-office of 'M/s Associated Machinery Corporation Private Limited' without actually providing*

any goods as per the invoices which have been enclosed along-with the aforementioned Demand Notice dated 25th July, 2022 received on 4th August, 2022.

It would be necessary to mention herein that no material was ever provided by the good-offices of 'M/s Sunder Engineering Works' as has been stated in the aforementioned Demand Notice dated 25th July, 2022….

….

It is well within your knowledge that your good-self works hand in gloves with 'SRI MADNESH GARG'. In-fact 'SRI MADNESH GARG' who is a partner in one of the firm namely 'MEERUT STEEL' which is the sister concern of Sunder Engineering Works had earlier filed an application CP No. 41/ALD/2021; Meerut Steel vs M/S Associated Machinery Corporation Private Limited under Section 09 of the Code, 2016 before the NCLT, Allahabad. In the aforesaid application after the objections were filed by the good-offices of the undersigned before the Hon'ble NCLT, Allahabad the aforesaid Application was dismissed as withdrawn vide the order dated 18th May, 2022. (The copy of the aforesaid order dated 18th May, 2022 is being enclosed herewith along-with the present communication as A- 01).

It would be necessary to mention that against your good-self a complaint was lodged by the undersigned for the illegal activities which has been carried out by your good-self and your partner 'SRI MADNESH GARG' in the name of three firms 'M/s Sunder Engineering Works', 'JSJ ENTERPRISES' and 'MEERUT STEEL'. The learned Lower court after looking into the complaint lodged by the director of the undersigned was please to issue summons against 'Sri Sidhhant Jain' and 'SRI MADNESH GARG' vide the order dated

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16.07.2022 the copy of the aforesaid order dated 16.07.2022 is being enclosed herewith and marked as Enclosure no. 03 along-with the present communication.

.....

That this act of your good-self whereby the invoices, as has been annexed along-with the aforesaid Demand notice under reply, were issued with the promise that Goods would be supplied at a later stage without any intention of doing the same amounts to an offence being committed by the good-offices of your goodoffices under the 'CGST' and 'SGST' for raising the fake Invoices as well as not making the payment in respect of these Invoices to the Government also amounts to Criminal Act by your good-offices, particularly when the payments in tranche were made by the good-offices of the undersigned to your good-self basically with the intention of making the payment towards the 'CGST' and 'SGST'.

That the Goods could not have been supplied by / through the Vehicle Registration Number, which were mentioned in the 'E-WAY BILLS' enclosed along-with the aforesaid Demand Notice, since those Vehicles were not involved in Transport Business. That it is relevant to mention here that though the good offices of the undersigned has done some preliminary enquiry through its own resources with respect to the status of the concerned Vehicle mentioned in the Invoice / E-way Bills and it has came to the knowledge of the good-offices of undersigned that certain Vehicles (Registration Number of which has been given in the concerned Invoice / E-way Bills) are Two Wheelers, furthermore, few of the vehicles are to the best of undersigned knowledge are booked as stolen vehicle or illegal

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vehicle and all of the aforesaid ipso facto affirms that such goods could not have been supplied through these vehicle."

22. It is submitted that the Reply dated 09.08.2022 was received by the Operational Creditor only on 12.08.2022, beyond the prescribed statutory period of 10 days, and therefore, according to the Petitioner, the Corporate Debtor forfeited its right to raise dispute and the Reply deserves to be ignored. It is the case of the Petitioner that in the aforesaid Reply, the Corporate Debtor neither produced evidence of rejection or return of goods nor referred to any contemporaneous correspondence disputing supply or quality of goods before issuance of notice u/s 8 of the Code and to show that prior to filing Criminal Complaint No. 6693/2021 dated 16.03.2021, the Corporate Debtor took up the matter with the Operational Creditor as regards allegations made in the said Criminal Complaint dated.

23. It is further submitted that even after filing such complaint, the Corporate Debtor continued making payments and no correspondence was made with the Applicant Operational Creditor disputing the supply of material, thereby negating existence of any bona fide dispute. It is stated that despite earlier Demand Notices, no criminal complaint was filed at prior stages, and therefore, according to the Petitioner, the subsequent criminal complaint is patently malicious, concocted, and intended solely to create a sham dispute. It is also submitted that supplies commenced on 27.11.2019 and payments continued till 22.04.2022 without contemporaneous protest, and thus, the

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criminal complaint does not constitute a legitimate lis regarding operational debt.

24. As regards references made by the Corporate Debtor to Meerut Steel, the Petitioner submits that Meerut Steel is a separate and distinct legal entity, being a partnership firm in which Mr. Madnesh Garg and Siddhant Jain are partners, whereas the present Applicant is a sole proprietorship concern of Siddhant Jain. Both entities are separately registered under GST laws, maintain separate business establishments and accounts, and are separately assessed under Income Tax laws.

25. It is stated that Company Petition No. 41/2021 referred to by the Corporate Debtor was filed by Meerut Steel and not by the present Applicant, and the same was withdrawn with liberty to file afresh, without dismissal on merits. Accordingly, as per the Petitioner, the contentions raised by the Corporate Debtor are false and unsupported by evidence, and there exists no bona fide or pre-existing dispute.

Reply on behalf of the Respondent

26. The Respondent filed reply dated 03.12.2023 and submitted as follows:

a. It is submitted that the Petition filed by the alleged Operational Creditor, M/s Sunder Engineering Works, through its partner Sri Siddhant Jain, is wholly misconceived, malicious, and filed with mala fide intention under Section 9 of the Code, despite the existence of prior disputes and absence of any operational debt.

b. The Respondent contends that Sri Siddhant Jain, partner of M/s Sunder Engineering Works, along with Sri Madnesh Garg, has been operating multiple interconnected firms, including M/s Sunder Engineering Works, Meerut Steel, and JSJ Enterprises, and that these entities have been used in similar transactions involving alleged issuance of invoices and e-way bills without actual supply of goods.

c. It is the case of the Respondent that Sri Siddhant Jain and Sri Madnesh Garg first approached the Respondent through Meerut Steel and thereafter through JSJ Enterprises and M/s Sunder Engineering Works for supply of boiler steel plates and related goods, representing that due to market difficulties, invoices would initially be raised and partial payments would be required, while actual goods would be supplied subsequently.

d. The Respondent submits that relying on such assurances and bona fide representations, it accepted the invoices and made certain advance or part-payments in tranches to these firms, including Meerut Steel, JSJ Enterprises, and M/s Sunder Engineering Works, under the understanding that actual delivery would follow.

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e. It is contended that despite repeated assurances by Sri Siddhant Jain and Sri Madnesh Garg, no goods were ever supplied by these firms, while invoices, GST entries, and e-way bills continued to be generated in the Respondent’s name.

f. The Respondent submits that these invoices and e-way bills were allegedly manufactured for creating false GST records, wrongful availment of Input Tax Credit, and depriving the Government of CGST and SGST, while simultaneously creating a false appearance of debt against the Respondent.

g. It is submitted that when the Applicant, even after reasonable time, did not provide the goods to the Respondent and kept on asking for the payment of the invoices, the Respondent requested that the Petitioner shall first provide the goods for which invoices were raised earlier, and then only, the remaining payment would be made to any of the firm.

h. The Respondent contends that before the present Petition was filed, similar proceedings had been initiated by related entities run by Sri Siddhant Jain and Sri Madnesh Garg, i.e., Company Petition No. 41/ALD/2021 through Meerut Steel, Section 8 Notice dated 03.02.2021 was served through JSJ Enterprises and the present Section 9 Petition through M/s Sunder Engineering Works.

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i. It is submitted that Company Petition No. 41/ALD/2021 filed through Meerut Steel was dismissed as withdrawn on 18.05.2022 after objections were filed by the Respondent, thereby demonstrating prior unsuccessful attempts to recover disputed sums through insolvency proceedings.

j. The Respondent further submits that JSJ Enterprises, allegedly operated by Sri Siddhant Jain and Sri Madnesh Garg, also issued Demand Notice under Section 8 dated 03.02.2021 claiming payment on invoices, despite no actual supply of goods.

k. It is the case of the Respondent that Sri Madnesh Garg thereafter lodged FIR dated 25.07.2021 against the Directors of the Respondent company in relation to JSJ Enterprises invoices, which was registered as Case Crime No. 0432 of 2021.

l. As per the Respondent, upon police investigation in the said FIR, Final Report was submitted concluding that no goods were supplied by JSJ Enterprises, the vehicles mentioned in e-way bills were not capable of transporting such goods since those vehicles were not involved in transport business and no criminal offence was made out against the Respondent's Directors.

m. The Respondent submits that the aforementioned facts further demonstrate that Sri Siddhant Jain along with Sri Madnesh Garg has

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been doing the same in other matters also by raising frivolous dispute just to avoid initiation of proceedings under Section 132 of the GST Act. Further, it is contended that the present case has also been filed to cover-up frivolous bills manufactured by the Petitioner, i.e., raising of invoice whereas no material was supplied.

n. It is the case of the Respondent that the invoices were prepared in anticipation of the supply of goods in future and the prices of those goods were quoted in the said invoices keeping in view the amount of CGST and SGST being already paid by the Applicant whereas no such payment was made by the Applicant.

o. It is submitted that GST investigations are pending against Sri Siddhant Jain and related firms, including Meerut Steel and associated entities, for alleged issuance of fake invoices without supply of goods for wrongful availment of ITC.

p. It is submitted that after no action was taken on the Criminal Complaint dated 16.03.2021, a complaint was registered before the concerned Court wherein the Ld. Metropolitan Magistrate, Ghaziabad vide summon order dated 18.08.2022 summoned Madnesh Garg and Siddhant Jain for trial.

q. The Respondent relies upon rejection of Interim Bail Application No. 573 of 2021 in CGST case no. 251 of 2020, anticipatory Bail

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proceedings before the Hon'ble High Court, orders under Section 73 of GST Act, to contend that serious GST proceedings are pending against Sri Siddhant Jain and associated firms.

r. The Respondent contends that the present application has been filed to cover up the frivolous bills manufactured by the Applicant and to raise a presumption that goods were supplied effecting the proceedings under Section 132(b) of the CGST Act, 2017.

s. The Respondent submits that despite reply dated 09.08.2022 submitted within 10 days to the Section 8 Demand Notice, clearly raising disputes regarding non-supply of goods, fake invoices, GST fraud, pending investigations, the Applicant in the aforesaid present application has not made any specific narration in respect of the said reply and that the very fact that there is a non-receipt of goods prior to the issuance of the demand notice dated 25.08.2022 was raised in the reply dated 09.08.2022, thereby raising dispute and refuting the claims of the Operational Creditor.

t. It is submitted that it is a clear case where the Applicant has not come before this Tribunal with clean hands and non-disclosure of material facts and that uploading invoice over a GST portal as well as the same reflecting in 'GSTR-2A' of the Respondent would not under any

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circumstance go on to prove that the goods have been supplied by the Applicant to the Respondent.

u. The Respondent further contends that admission of the present Petition would prejudice and potentially frustrate pending GST proceedings under Section 132(b) of the CGST Act, which concern issuance of invoices without supply of goods.

v. It is submitted that no goods were ever supplied by M/s Sunder Engineering Works, JSJ Enterprises, or Meerut Steel against the disputed invoices, and therefore no operational debt exists.

w. The Respondent submits that the entire chain of proceedings involving related entities clearly establishes continuous prior disputes, fraud allegations, pending GST investigations, earlier withdrawn insolvency petitions and failed criminal complaints, which together demonstrate that the present Petition is a continuation of prior disputed recovery attempts.

x. In view of the above, the Respondent contends that the Petition is barred by pre-existing dispute, suppression of material facts, fraudulent initiation under Section 65 of the Code, and absence of operational debt, and is therefore liable to be dismissed with costs.

Rejoinder on behalf of the Applicant

27. The Applicant filed rejoinder dated 13.12.2023 and submitted as follows:

a. It is submitted that the debt is payable alongwith interest as mentioned in the invoices and the Operational Creditor reserves its right to claim interest which was calculated upto 30.06.2022 when the petition was filed and it is trite law that if there is no contract then invoice itself is contract and in this case the invoices have been admitted by the Respondent. Therefore, as per the Petitioner, firstly, the debt to a large extent stands admitted and secondly, the interest clause is duly admitted by the Respondent and interest is hence payable.

b. As regards the contention of the Respondent that the Operational Creditor is a partnership the Petitioner submits that the petition clearly states in para 1 of the synopsis that the operational creditor is a sole proprietorship of Shri Siddhant Jain hence, the Corporate Debtor wrongly refers to it as a partnership throughout the reply.

c. As regards the GST proceedings against Meerut Steel, the Petitioner submits that the entity Meerut Steel is a registered partnership and it is settled law that a registered partnership can sue and be sued in its own name. As such, the alleged investigation by GST Department qua Meerut Steel has no relevance or significance to the present petition where invoices raised by "Sunder Engineering" stand duly admitted in para 28 of the Reply.

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d. It is further submitted that even in the investigation qua Meerut Steel, the issue is whether Meerut Steel was to receive goods and was the purchaser. This is evident from the first line of the order at page 80 of the reply as filed by the Respondent itself. Therefore, the issue of supply of goods is by suppliers and not by Meerut Steel. Secondly, the GST department has made a categorical finding that goods were in fact supplied and received by Meerut steel in the same order as seen at page 82 of the reply by the Corporate Debtor.

e. It is stated that the Corporate Debtor has admitted that it has claimed Input Tax Credit (ITC) in para 28 of the reply and under Section 16 of the CGST Act, Input Tax Credit can only be claimed when conditions under the said section are fulfilled. One such condition for claiming ITC is holding of invoices as specified in Section 16(2)(a), CGST Act and another such condition receipt of goods by the claimant of ITC as specified in Section 16(2)(b), CGST Act. Therefore, by claiming the Input Tax Credit, the Corporate Debtor has admitted receipt of goods and has admitted the invoices hence, the argument now sought to be raised regarding goods having never been supplied is not a plausible legal contention.

f. It is also submitted that if no goods were supplied by Operational Creditor and no goods were received by Corporate Debtor, then it is

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incomprehensible that the Corporate Debtor would go and claim tax refund from the government over such goods. On the other hand, the Operational Creditor has in fact paid GST on the invoices raised as required by law and the same is evident from its GST returns filed in form GSTR 3B filed with the petition as Annexure 6. As per the Petitioner, it is illogical to say that the Operational Creditor raised invoices and paid GST and the Corporate Debtor kept making part payments right from 2019 upto April 2022 without receiving any goods

g. As regards the criminal complaints filed by the Corporate Debtor the Petitioner submits that no action has been taken on the said criminal complaint, the summoning order does not mean conviction and the complaint does not constitute pre-existing dispute. Even after filing of the alleged complaint sometime in 2021, the Corporate Debtor has been making part payments.

h. It is stated that the two entities being separate, the petition filed by Meerut steel has no relevance to the present debt or petition and that the petition was allowed to be withdrawn by the said Meerut Steel "with liberty to file afresh". Similarly, as per the Petitioner, JSJ Enterprises is also a different entity and a sole proprietorship of Mr. Madnesh Garg and not a partnership hence, any claim for goods supplied by a different person has nothing to do with the present debt or petition

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i. It is submitted that E-way bills cannot be forged by any party and an E-way bill is an electronic document generated on the GST portal evidencing movement of goods. As per the Petitioner, the E-way bills annexed as Annexure 4 to the petition carry due generation date and carrier details and there is no document filed to dispute these vehicles as carriers. The invoices and the movement of goods was duly informed to the GST authorities by the Operational Creditor and prior to commencement of the movement of goods the appropriate E-way bills stand generated on the relevant government portal and no dispute was ever raised by the Respondent any time after the date of generation of the E-Way bills.

j. As submitted, when the Corporate Debtor made part payments in 2021, the Operational Creditor wrote emails to the Corporate Debtor about the payment and the debt, and the Corporate Debtor never objected to adjustment of such payment and never disputed any debt and accepted debt, not just by part payments, but also by way of accepting the emails.

k. It is submitted that as on date, there is no investigation by GST authorities against the Operational Creditor in respect of the transactions and invoices on which the present petition is based and no notice in respect of the transactions in question in the present petition has ever been received from any authority.

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l. It is the case of the Petitioner that the Corporate Debtor has claimed Income Tax Credit (ITC) as admitted which can only be done after receipt of goods and therefore, the goods have been admittedly received by it and the Corporate Debtor claims that it started demanding goods but no substantiation for the said argument has been made and no documents have been filed showing any dispute.

Written submissions on behalf of the Respondent

28. The Respondent filed written submissions dated 21.02.2024 and 12.03.2026 and submitted that GST Investigation is pending against the Proprietor of the Petitioner as well as the Father of the Petitioner, Sri Madnesh Garg and the present Petition is only a way to bypass and get around the GST Investigation pending against the Proprietor of the Petitioner.

29. It is also submitted that the Petition is not maintainable as the due date of the payment of few of the Invoices are of after March 25th 2020, for which no Petition under Section 9 of the Code, 2016 can be filed as per Section 10A of the Code, 2016.

30. Further as per the Respondent the Operational Creditor in the present Petition, has not produced/annexed the record of Information Utility (NeSL certificate) and therefore, the aforesaid petition under reply is liable to be dismissed.

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Written submissions on behalf of the Petitioner

31. The Petitioner filed written submissions dated 22.02.2024 and submitted that the Criminal Complaint by the Corporate Debtor is against a third party namely JSJ Enterprises in which Operational Creditor is not a proprietor. The Criminal Complaint claimed to have been filed by the Corporate Debtor is also ill-conceived. The same has been stayed by passing directions of 'no coercive action' by the Hon'ble Allahabad High Court for quashing of that complaint.

32. As submitted, the Criminal Complaint was only filed after earlier demand notice was served on 18.02.2021 and 26.04.2021 as mentioned in Part IV of petition and even after filing the alleged complaint, the Corporate Debtor kept making payments.

33. It is submitted that the police had filed a report that the issue is civil in nature and then Corporate Debtor had to approach the Hon'ble Court under Section 156, CrPC and as per applicable law, no reliance can be placed on the contents of alleged complaint under Section 156 for denying debt in IBC proceedings in terms of the judgment in *Subhash Chand Gupta v. Bhavesh Texo Fab Pvt. Ltd. & Anr., order dated 11.05.2023 passed by Hon'ble NCLAT, Principal Bench* in *Co. App. (AT)(Insol) No. 816/2022.*

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FINDINGS OF THE TRIBUNAL

34. We have heard the arguments of Learned Counsels appearing for both Applicant Operational Creditor and Respondent Corporate Debtor and perused the pleadings, records, written submissions and exhibits/annexures marked thereto in respect of the present petition.

35. Before delving into the specific issues concerning the admission or rejection of the present application, it is noticed that the present application under Section 9 of the Code was filed on 20.09.2022, wherein the date of default has been shown as 22.04.2022, being the date on which the Corporate Debtor made the last part payment of Rs. 5,00,000/- towards the outstanding operational debt. It is the case of the Operational Creditor that the said part payment constitutes an acknowledgment of liability.

36. The Operational Creditor has further placed on record an Interest Calculation Chart annexed as Annexure-14, wherein interest has been computed on the outstanding invoice amounts from the respective dates of the invoices upto the dates of successive part payments, and thereafter on the reduced outstanding balance till 30.06.2022. Accordingly, since the present application has been instituted within three years from the aforesaid date of default, we are satisfied that the same is well within the period of limitation prescribed under the Code.

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37. Further, on perusal of the records, exhibits/annexures, and after considering the argument advanced by respective Learned Counsel, we find that the following issue is for consideration to be decided for admissibility or otherwise of this Petition u/s 9 of the Code.

a. Whether there is a Debt and Default

b. Whether there is any Pre-Existing Dispute

a. Whether there is a Debt and Default

38. As regards the first issue of debt and default, we have carefully examined the pleadings, documents placed on record by both the parties and considered the objections raised by the Corporate Debtor disputing the very existence of operational debt.

39. The Operational Creditor has placed on record tax invoices evidencing supply of HR Plates, Shapes, Sections and allied goods during the period commencing from 27.11.2019 till 30.09.2020. The Operational Creditor has further produced certified e-Way Bills generated through the GST portal corresponding to the said invoices, ledger account reflecting the running account maintained between the parties, statement of account maintained with Bank of India, Form-5A Bank Certificate evidencing receipt of payments from the Corporate Debtor, GSTR-1 and GSTR-3B returns filed by the Operational Creditor, GSTR-2A of the Corporate Debtor reflecting the invoices in question and the certificate dated 29.07.2022 issued by the

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Deputy Commissioner, Commercial Tax, Meerut certifying that the supplies stood uploaded by the Operational Creditor in its statutory returns and were correspondingly reflected in the GSTR-2A of the Corporate Debtor. Collectively, these documents constitute contemporaneous commercial and statutory records supporting the transactions relied upon by the Operational Creditor.

40. From the ledger account and the statement of account produced by the Operational Creditor, it is evident that the parties were maintaining a running account and the Corporate Debtor had been making payments from time to time through banking channels. It is also borne out from the bank statement and Form-5A Certificate that the last payment of Rs.5,00,000/- was admittedly made by the Corporate Debtor and received by the Operational Creditor on 22.04.2022. The Operational Creditor has further explained that such payments were appropriated on a first-in-first-out basis and, after excluding Invoice dated 30.09.2020, which falls within the period covered by Section 10A of the Code, the outstanding principal operational debt remains at Rs. 4,12,69,079.88 details of which are as under as against which the Respondent has not produced any contrary statement of account or any letter/email demonstrating that the amounts reflected in the ledger stand fully discharged or disputed:

S.No.	Date	Invoice No.	Amount	Payment made by Corporate Debtor	Balance
1	27-11-2019	M436	6,27,100.98		6,27,100.98
2	27-11-2019	M438	11,29,239.94		17,56,340.92
3	28-11-2019	M439	11,30,489.56		28,86,830.48
4	28-11-2019	M442	11,26,456.32		40,13,286.80
5	28-11-2019	M443	11,34,800.10		51,48,086.90
6	28-11-2019	M444	11,41,083.6		62,89,170.50
7	28-11-2019	M445	11,44,015.90		74,33,186.40
8	28-11-2019	M447	13,09,667.84		87,42,854.24
9	28-11-2019	M448	13,07,533.82		1,00,50,388.06
10	28-11-2019	M449	13,09,273.1		1,13,59,661.20
11	28-11-2019	M450	13,14,491.10		1,26,74,152.30
12	29-11-2019	M460	12,36,295.44		1,39,10,447.74
13	29-11-2019	M464	12,56,256.32		1,51,66,704.06
14	29-11-2019	M467	11,75,803.92		1,63,42,507.98
15	21-12-2019	M495	11,20,923.30		1,74,63,431.28
16	21-12-2019	M497	11,05,569.14		1,85,69,000.42
17	24-12-2019	M506	11,03,643.38		1,96,72,643.80
18	24-12-2019	M513	6,55,356.66		2,03,28,000.46
19	26-12-2019	M526	12,72,626.46		2,16,00,626.92
20	31-12-2019	M540	13,10,275.54		2,29,10,902.46
21	21-01-2020	Receipt		10,00,000.00	2,19,10,902.46
22	28-01-2020	M630	12,25,616.44		2,31,36,518.90
23	28-01-2020	M632	12,27,613.58		2,43,64,132.48
24	29-01-2020	M639	15,27,222.08		2,58,91,354.56
25	29-01-2020	M641	15,36,341.12		2,74,27,695.68
26	30-01-2020	M647	13,62,131.82		2,87,89,827.50
27	30-01-2020	M653	13,72,976.02		3,01,62,803.52
28	30-01-2020	M659	13,15,909.46		3,14,78,712.98
27	31-01-2020	M662	13,23,154.66		3,28,01,867.64
28	31-01-2020	M675	13,04,419.20		3,41,06,286.84
29	31-01-2020	M678	13,13,470.98		3,54,19,757.82
30	14-02-2020	Receipt		5,00,000.00	3,49,19,757.82
31	21-02-2020	M690	13,72,440.30		3,62,92,198.12
32	24-02-2020	M693	13,94,155.84		3,76,86,353.96
33	25-02-2020	M697	15,01,932.32		3,91,88,286.28
34	28-02-2020	M724	14,15,216.48		4,06,03,502.76
35	28-02-2020	M725	14,41,716.92		4,20,45,219.68
36	29-02-2020	M744	11,34,841.40		4,31,80,061.08
37	29-02-2020	M748	11,43,018.8		4,43,23,079.88
38	20-04-2020	Receipt		8,00,000.00	4,35,23,079.88
39	20-04-2020	Receipt		14,000.00	4,35,09,079.88
40	05-07-2020	Debit	6,00,000.00		4,41,09,079.88
41	14-07-2020	Receipt		6,10,000.00	4,34,99,079.88
42	29-07-2020	Debit	6,00,000.00		4,40,99,079.8
43	30-09-2020	199	15,10,947.52		4,56,10,027.40

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44	22-12-2020	Receipt		6,20,000.00	4,49,90,027.40
45	04-06-2021	Receipt		10,00,000.00	4,39,90,027.40
46	08-06-2021	Receipt		70,000.00	4,39,20,027.40
47	10-08-2021	Receipt		4,00,000.00	4,35,20,027.40
48	12-08-2021	Receipt		2,40,000.00	4,32,80,027.40
49	22-04-2022	Receipt of last part payment		5,00,000.00	4,27,80,027.40
Less invoice no. 199 at s.no. 43 dated 30.09.2020 covered under Section 10A period				15,10,947.52	4,12,69,079.88
Total outstanding principal amount					Rs. 4,12,69,079.88/-

41. The Corporate Debtor has sought to contend that no goods were ever supplied and that the invoices were fabricated merely to create a false operational debt. However, the said defence cannot be examined in isolation from the admitted conduct of the parties over the course of their commercial dealings. The material placed on record demonstrates that payments were continuously made by the Corporate Debtor between the years 2019 and 2022 against the running account maintained by the Operational Creditor as reflected in ledger account reproduced above. Significantly, even after institution of various proceedings relied upon by the Corporate Debtor, payments admittedly continued to be made till 22.04.2022. Such continued payments, viewed in conjunction with the running ledger and banking transactions, prima facie establish the subsistence of commercial dealings between the parties.

42. Another circumstance which lends support to the Operational Creditor's case is the GST record produced before this Tribunal. The Operational Creditor has produced certified copies of GSTR-1 and GSTR-3B returns

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along with GSTR-2A pertaining to the Corporate Debtor and the certificate issued by the Deputy Commissioner, Commercial Tax, Meerut showing that goods were delivered as also duly certified in the Certificate issued which is reproduced as under for a ready reference:

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-:प्रमाण पत्र:-

सर्वश्री सुंदर इंजीनियरिंग वर्क्स (GSTN- 09AHHPJ3027A1ZU) फर्म के फर्म स्वामी श्री सिद्धांत जैन ने डिप्टी कमिश्नर, SGST, सेक्टर 8 मेरठ के कार्यालय में प्रार्थना पत्र प्रस्तुत कर विभाग के सर्वर पर उपलब्ध आंकड़ों के अनुसार यह जानने का प्रयास किया है तथा यह प्रमाण पत्र जारी करने का अनुरोध किया है कि सर्वश्री सुंदर इंजीनियरिंग वर्क्स ने वित्तीय वर्ष 2019-20 व 2020-21 में M/S ASSOCIATED MACHINERY CORPORATION LTD जिसका जीएसटीएन निम्न है 09AACCA7476M1Z3 को सर्वश्री सुंदर इंजीनियरिंग वर्क्स ने टैक्स इनवॉइस M436(27/11/2019), M438(27/11/2019), M439(28/11/2019), M442(28/11/2019), M443(28/11/2019), M444(28/11/2019), M445(28/11/2019), M447(28/11/2019), M448(28/11/2019), M449(28/11/2019), M450(28/11/2019), M460(29/11/2019), M464(29/11/2019), M447(29/11/2019), M495(21/12/2019), M497(21/12/2019), M506(24/12/2019), M513(24/12/2019), M526(26/12/2019), M540(31/12/2019), M630(28/01/2020), M632(28/01/2020), M639(29/01/2020), M641(29/01/2020), M647(30/01/2020), M653(30/01/2020), M659(30/01/2020), M662(31/01/2020), M675(31/01/2020), M678(31/01/2020), M690(21/02/2020), M693(24/02/2020), M697(25/02/2020), M724(28/02/2020), M725(28/02/2020), M744(29/02/2020), M748(29/02/2020), एवं 199(30/09/2020) के माध्यम से जो बिक्री की है वो M/S ASSOCIATED MACHINERY CORPORATION LTD की किस माह की GSTR-2A में परिलक्षित है एवं M/S ASSOCIATED MACHINERY CORPORATION LTD ने माल की प्राप्ति स्वीकार की है अथवा नहीं। इसी प्रश्न में यह प्रश्न भी समाहित है कि M/S ASSOCIATED MACHINERY CORPORATION LTD ने प्रश्नगत इनवॉइस से खरीद पर आई0टी0सी0 का लाभ प्राप्त कर उसका उपयोग किया है अथवा नहीं।

सर्वर पर उपलब्ध आंकड़ों से यह प्रमाणित होता है कि सर्वश्री सुंदर इंजीनियरिंग वर्क्स ने वित्तीय वर्ष 2019-20, 2020-21 में M/S ASSOCIATED MACHINERY CORPORATION LTD को उपरोक्त सभी **टैक्स इनवॉइस से बिक्री** की है जो कि सर्वश्री सुंदर इंजीनियरिंग वर्क्स द्वारा अपनी संबंधित माह की GSTR-1 में दर्शाया है जो कि M/S ASSOCIATED MACHINERY CORPORATION LTD की संबंधित माह की GSTR-2A में परिलक्षित है तथा M/S ASSOCIATED MACHINERY CORPORATION LTD ने सभी प्रश्नगत टैक्स इनवॉइस पर इनपुट टैक्स क्रेडिट (ITC) का लाभ प्राप्त किया है अर्थात माल की प्राप्ति को M/S ASSOCIATED MACHINERY CORPORATION LTD ने स्वीकार किया है।

सभी इनवॉइस विभागीय पोर्टल पर eway bill से समर्थित है जो कि M/S ASSOCIATED MACHINERY CORPORATION LTD द्वारा रिजेक्ट नहीं किए गए है जिससे यह प्रमाणित है कि माल की प्राप्ति को M/S ASSOCIATED MACHINERY CORPORATION LTD द्वारा स्वीकार किया गया है।

यह प्रमाण पत्र सर्वश्री सुंदर इंजीनियरिंग वर्क्स के प्रार्थना पत्र पर निर्गत किया जा रहा है।

दिनांक-29/07/2022

कार्यालय डिप्टी कमिश्नर वाणिज्य कर खण्ड-8 मेरठ

29/07/22
(अरुण कुमार सिंह)
डिप्टी कमिश्नर, राज्य कर
खण्ड-8, मेरठ।

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43. The specific case of the Operational Creditor is that the invoices forming the subject matter of the present petition stood reflected in the GSTR-2A returns of the Corporate Debtor and that Input Tax Credit was availed in respect thereof. In this regard, except making a bald denial, the Corporate Debtor has not produced any material to establish that the said invoices were never reflected in its statutory returns or that the corresponding Input Tax Credit was either rejected or reversed in accordance with law. These statutory documents therefore constitute significant corroborative evidence supporting the Operational Creditor's claim.

44. The Operational Creditor has also placed on record copies of confirmatory emails sent after receipt of various payments specifying the outstanding balances before and after adjustment of payments. The relevant excerpts from one such email dated 23.04.2022 are reproduced below:

"*This is to inform/update you that we have received a payment of Rs. 05,00,000/- on 22/04/2022 in our Bank of India account against our outstanding of Rs. 4,39,07,128.38(Dr) as on 13/08/2021. Our balance as on 22/04/2022 is Rs 4,34,07,128.38(Dr). Kindly make the balance payment of Rs. 4,34,07,128.38 on the earliest. (copy of the ledger attached)*"

45. It is the case of the Operational Creditor that the Corporate Debtor never disputed the balances reflected in the said emails. Apart from a general objection in reply to demand notice, no reply to the said emails or contemporaneous correspondence disputing the running balance has been produced by the Corporate Debtor. Also, in response to receiving the balance confirmation emails from the Operational Creditor, the Corporate

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Debtor did not produce any evidence showing that the Corporate Debtor raised any objection on supply of goods or on the balance confirmation amount claimed by the Operational Creditor for payment to be made by the Corporate Debtor. Even the complaint claimed to have been filed on 16.03.2021 was filed after receiving the first section 8 demand notice dated 18.02.2021. Hence, the absence of any immediate objection to the running account assumes significance while determining the existence of operational debt.

46. The Corporate Debtor has further argued that certain invoices fall within the period covered under Section 10A of the Code and, therefore, the petition itself is not maintainable. We are unable to accept the said contention as the Operational Creditor has specifically excluded Invoice dated 30.09.2020 from the computation of the operational debt sought to be enforced and has placed on record a statement of unpaid invoices restricting its claim to invoices raised prior to the commencement of the period covered under Section 10A. The computation of the amount of debt in default as considered for the purpose of the present application amounting to Rs. 4,12,69,079.88/- has already been discussed in para no. 40, wherein the invoice covered by Section 10A has already been excluded. Therefore, merely because one of the invoices falls within the Section 10A period would not render the entire petition non-maintainable when the operational

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debt sought to be enforced substantially arises from invoices outside the embargo created by Section 10A.

47. Equally devoid of merit is the objection of the Corporate Debtor that the petition deserves to be rejected for non-filing of a record of default from an Information Utility. Proceedings under Section 9 of the Code do not mandate production of a record of default issued by an Information Utility as mandatory requirement. The Operational Creditor has otherwise substantiated the occurrence of default by placing on record invoices, ledger account, bank statements, statutory GST records and other contemporaneous documentary evidence. Therefore, the absence of a NeSL record of default cannot by itself defeat an otherwise maintainable petition.

48. The Corporate Debtor has also attempted to rely upon pending GST investigations, criminal proceedings and allegations concerning Meerut Steel and JSJ Enterprises to dispute the operational debt. However, these proceedings do not, by themselves, dislodge the contemporaneous documentary evidence placed on record by the Operational Creditor establishing commercial transactions between the parties which have no connection with any transaction carried out by other two entities i.e., Meerut Steel and JSJ Enterprises.

49. In view of the foregoing discussion and upon an overall consideration of the material available on record, we are satisfied that the Operational

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Creditor has established the existence of an operational debt arising out of supply of goods and that the Corporate Debtor committed default in payment thereof. The failure to make payment of the remaining outstanding amount towards the invoices raised by the Operational Creditor confirms the occurrence of default. The unpaid principal operational debt, after excluding the invoice covered under Section 10A, is stated to be Rs.4,12,69,079.88, which is far in excess of the threshold prescribed under Section 4 of the Code.

50. As regards the preliminary objection raised by the Respondent/Corporate Debtor with respect to the maintainability of the present application on the ground that the petition under Section 9 of the Code has been instituted in the name of the proprietorship concern and not in the name of its proprietor, the said issue has been considered and dealt with in detail in our separate order passed in IA No. 625 of 2025 and the same has been dismissed.

51. Accordingly, we hold that the Operational Creditor has successfully established the existence of an operational debt and the occurrence of default within the meaning of Sections 3(11), 3(12), 5(20) and 5(21) of the Insolvency and Bankruptcy Code, 2016.

52. As per section 4 of the Code, the minimum threshold for initiating a CIRP petition is Rs. 1 Crore. In the present case, the Applicant has placed sufficient documents to show that a debt of Rs. 6,03,95,205.13/- (Principal

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amount of Rs. 4,12,69,079.88 + Interest of Rs. 1,91,26,125.25), as also mentioned in Part IV of the Petition, is due and payable and that there has been a default in payment of this due amount on the part of the Corporate Debtor. Therefore, we are satisfied that there is a debt of more than Rs. 1 Crore and also a default has occurred on the part of the Respondent to pay this debt.

b. Whether there is any Pre-Existing Dispute

53. With regard to pre-existing dispute, the principal defence of the Corporate Debtor is that no goods were ever supplied by the Operational Creditor and that the invoices, e-Way Bills and GST documents relied upon by the Operational Creditor were fabricated merely to create a false operational debt. It has further been contended that disputes had arisen much prior to the issuance of the Demand Notice dated 25.07.2022, inasmuch as, complaints had been lodged before various authorities and criminal proceedings had been initiated in respect of other related entities i.e., Meerut Steel and JSJ Enterprises demonstrate a continuing dispute between the parties. The question, therefore, is whether such material discloses a genuine pre-existing dispute so as to disentitle the Operational Creditor from invoking Section 9 of the Code.

54. At the outset, the allegation of non-supply of goods was first time raised while replying to the first demand notice issued on 18.02.2021 and thereafter, a complaint dated 16.03.2021 was also filed before the concerned authorities and thereafter before the Court of Judicial Magistrate, Ghaziabad. However, subsequently, the Corporate Debtor continued making payments and the last payment of Rs. 5,00,000 was made on 22.04.2022 without raising any objections to the Operational Creditor for non-supply of goods. Thereafter, when the last demand notice dated 25.07.2022 was issued, in response to which reply dated 09.08.2022 was filed, similar allegations of non-supply of goods were again made.

55. However, the existence of a pre-existing dispute in the present proceedings is required to be examined with reference to the operational debt forming the subject matter of the present petition and the material placed on record in relation thereto and the mere existence of a reply or a denial is not conclusive. This Tribunal is required to examine whether the dispute so raised is genuine, substantial and supported by material, or whether it is merely a moonshine defence intended to evade payment.

56. In this regard, we find that apart from making broad allegations that no goods were supplied and that the invoices were fabricated, the Corporate Debtor has not produced any contemporaneous commercial correspondence exchanged during the course of the business transactions evidencing rejection of goods, cancellation of purchase orders, refusal to accept deliveries, objection regarding quantity or quality of goods or any

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communication requiring the Operational Creditor to lift back the alleged undelivered material. Significantly, despite alleging that no goods were ever supplied, no documentary evidence has been placed on record showing reversal of Input Tax Credit, rejection of the invoices on the GST portal or any communication addressed to the GST authorities disputing the invoices immediately upon their generation.

57. On the contrary, the material placed on record demonstrates that the parties maintained continuous commercial dealings and a running account. The Corporate Debtor admittedly continued making payments through banking channels even after the disputes allegedly arose. The record further reveals that payments were made on 04.06.2021, 08.06.2021, 10.08.2021, 12.08.2021 and finally on 22.04.2022 totaling to Rs. 22,10,000/-. Such continued payments throughout a considerable period of time after raising of invoices by the Operational Creditor without raising any dispute over the content of those invoices, are inconsistent with the defence that no goods whatsoever had been supplied from the very inception. Had the transactions been entirely fictitious, it is difficult to accept that the Corporate Debtor would continue to remit substantial amounts against the running account maintained by the Operational Creditor.

58. We further notice that the Operational Creditor has produced statutory GST records including GSTR-1, GSTR-3B, GSTR-2A and the certificate issued

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by the Deputy Commissioner, Commercial Tax, Meerut certifying that the disputed invoices stood uploaded by the Operational Creditor and reflected in the GSTR-2A of the Corporate Debtor. The specific contention of the Operational Creditor that the Corporate Debtor availed Input Tax Credit in respect of these invoices has not been effectively rebutted by placing any statutory record to the contrary. The Corporate Debtor has merely asserted that the invoices were fake without producing any material demonstrating that the Input Tax Credit was ever reversed or that proceedings concerning the transactions forming the subject matter of the present petition culminated in any finding that the invoices were fictitious.

59. Much emphasis has been laid by the Corporate Debtor upon the criminal complaint instituted before the Court at Ghaziabad, FIR No. 0432 of 2021, the proceedings initiated by the GST Authorities against Meerut Steel and JSJ Enterprises. However, on a careful consideration of the record, we find that these proceedings are not connected with the business transactions of the Operational Creditor herein and have no bearing on the liability arising out of the invoices forming the subject matter of the present application. The FIR and complaint relied upon by the Corporate Debtor pertains to transactions involving JSJ Enterprises or Meerut Steel in respect of whose transactions investigations was carried out though no conclusive order has been passed by the concerned authorities, so far in respect of these entities

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whereas the present petition has been instituted by M/s Sunder Engineering Works, a separate proprietorship concern not having any business transactions with these two entities. As the proceedings concerning Meerut Steel and JSJ Enterprises relate to an independent legal entity and cannot, merely because Mr. Siddhant Jain who is proprietor in present Operational Creditor is also proprietor/partner in such entities, automatically establish that the invoices forming the present operational debt are fabricated.

60. We also find merit in the submission of the Operational Creditor that the petition filed by Meerut Steel having been withdrawn with liberty to file afresh cannot operate as an adjudication on merits of the present claim. Equally, the pendency of GST investigations or criminal proceedings against separate entities i.e. Meerut Steel and JSJ Enterprises, cannot by itself constitute a pre-existing dispute within the meaning of Section 8 of the Code unless such proceedings directly establish a bona fide dispute raised before issuance of notice under Section 8 of the Code, concerning the operational debt sought to be enforced. No such finding has been brought on record by the Corporate Debtor.

61. Another important circumstance which cannot be overlooked is that after issuing the first and second Demand Notices, the Operational Creditor did not immediately initiate insolvency proceedings but continued business relations with the Corporate Debtor in view of the payments and assurances extended by it. The Demand Notice dated 25.07.2022 itself records that the earlier notices stood eclipsed and a fresh notice was being issued after giving credit to the subsequent payments made by the Corporate Debtor. The conduct of the parties during this intervening period, particularly the continued payments by the Corporate Debtor, substantially weakens the contention that a genuine dispute regarding non-supply of goods had been subsisting throughout.

62. Learned Counsel for the Corporate Debtor has relied upon the judgment of the Hon'ble NCLAT in ***Innovators Cleantech Pvt. Ltd. v. Pasari Multi Projects Pvt. Ltd.*** Company Appeal (AT)(Ins) No. 115 of 2024 to contend that only the last Demand Notice dated 25.07.2022 is relevant for determining the existence of a pre-existing dispute. The said judgment, however, is clearly distinguishable on facts. In Innovators Cleantech (supra), the earlier demand notice was withdrawn on account of material errors in the computation of the operational debt and was replaced by a fresh demand notice containing substantially altered particulars regarding the amount claimed, the date of default and other material particulars. Further, in the aforesaid case, disputes relating to the quality of work, delay in execution, introduction of new financial terms, losses on account of delay etc. had also been brought to the knowledge of the Appellant-Operational Creditor vide a string of emails sent from time to time prior to the Section 8 demand notice. It was in those circumstances that the Hon'ble NCLAT

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held that the earlier demand notice stood abandoned and that the subsequent notice constituted a fresh demand notice.

63. In the present case, although the earlier demand notices dated 18.02.2021 and 26.04.2021 consumed upon issuance of the final demand notice dated 25.07.2022, this was not occasioned by any defect or material error in the earlier notices. The Operational Creditor has specifically pleaded that CIRP proceedings were not initiated earlier because the Corporate Debtor continued making part-payments and repeatedly assured that the outstanding dues would be cleared. The final demand notice merely reflected the reduced outstanding amount after giving due credit to such subsequent payments for the continuing default. The invoices forming the basis of the operational debt, the underlying commercial transactions and the nature of the default remained unchanged throughout. Thus, unlike Innovators Cleantech (supra), the subsequent notice in the present case did not introduce a new or altered cause of action but merely updated the outstanding liability consequent upon payments made by the Corporate Debtor.

64. Even otherwise, the criminal complaint relied upon by the Corporate Debtor was instituted on 16.03.2021, i.e., after the first demand notice dated 18.02.2021 had already been issued. More importantly, notwithstanding such complaint, the Corporate Debtor admittedly continued making

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payments till 2022. These admitted payments, extending over more than one year after the institution of the complaint without placing any material on record raising any dispute substantially dilute the contention that a genuine dispute regarding non-supply of goods had existed throughout, therefore, the defence raised is not supported by contemporaneous commercial conduct.

65. The above conclusion also finds support from the judgment of the Hon'ble NCLAT in ***Naresh Sevantilal Shah v. Malharshanti Enterprises*** Company Appeal (AT) (Insolvency) No. 415 of 2020, wherein the Operational Creditor had initially issued a demand notice under Section 8 of the Code and thereafter withdrew the first Section 9 application to rectify defects before issuing a fresh demand notice. During the interregnum, the Corporate Debtor sought to create disputes by issuing legal notices and invoking arbitration, and contended that such disputes, having arisen prior to the second demand notice, constituted pre-existing disputes. Rejecting the said contention, the Hon'ble NCLAT held that the relevant consideration is whether any dispute existed prior to the first demand notice, and that disputes raised only after issuance of the first demand notice cannot subsequently acquire the character of a pre-existing dispute merely because a fresh demand notice is later issued. The relevant excerpts of the aforesaid judgment are reproduced as under:

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"34. It is apparent from the records placed before this tribunal that Corporate Debtor have sent a legal notice on 13th March, 2018 setting out several pre-existing disputes as to quality of work and delay in completion of work and also raised a counter claim against the Operational Creditor. The Corporate Debtor also sent a notice invoking arbitration on 10th April, 2018. These issues were raised after the issuance of the first demand notice. Thus there were no disputes existing prior to the issuance of first demand notice.

35. The arbitration notice was sent after the issuance of the first demand notice but prior to the issuance of second demand notice when the Operational Creditor was busy in removing the defects in its first petition. This exhibits that the intention of the Appellant behind this was to misuse the provisions under the Code and to intentionally delaying the process of law. There were no objections raised in relation to quality of work prior to the issuance of first demand notice and the work done by the Operational Creditor was in fact certified by the architect appointed by the Corporate Debtor. Moreover, the Municipal Corporation in September, 2016 issued Occupation Certificate to the Appellant. If there were any discrepancies, the appellant could not have obtained Occupation Certificate from municipality. This also shows that all the defects pointed out by the architect have been timely rectified within the appropriate time, so that the Municipal Corporation found it appropriate to issue the Occupation Certificate.
36. In the light of the above observations and the records placed before us. We are of the view that there was no dispute existing prior to the first demand notice and only disputes raised prior to the first demand notice are relevant to determine its pre-existence and disputes raised thereafter are totally irrelevant for the same. Also the arbitration was invoked after the first demand notice. Thus the Adjudicating Authority have rightly concluded that there was no dispute existing prior to the demand notice issued under section 8 of I&B Code."

66. The ratio of the aforesaid judgment squarely applies to the facts of the present case. Although the earlier demand notices dated 18.02.2021 and 26.04.2021 stood eclipsed upon issuance of the final demand notice dated 25.07.2022, the record demonstrates that the alleged criminal complaint dated 16.03.2021 itself came to be instituted only after receipt of the first demand notice dated 18.02.2021. Thereafter, notwithstanding the pendency

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of the said complaint and other allegations now sought to be relied upon, the Corporate Debtor continued to make part-payments without placing on record any contemporaneous commercial correspondence complaining about non receipt of goods or disputing the supplies, rejecting the invoices, seeking return of goods or denying liability under the running account.

67. Thus, the disputes now sought to be projected by the Corporate Debtor were admittedly not in existence prior to the first demand notice but were raised only thereafter. Applying the principle laid down in *Naresh Sevantilal Shah* (supra), such dispute if any, created by filing a complaint after issuance of first demand notice, cannot be permitted to defeat an otherwise maintainable application under Section 9 of the Code merely because the Operational Creditor, instead of immediately commencing CIRP, accommodated the Corporate Debtor by accepting part-payments and ultimately issued a fresh demand notice under Section 8 of the Code after giving due credit to those payments after finding that no further payments were being made by the Corporate Debtor.

68. The law is well settled that the Adjudicating Authority is not expected to enter into a detailed adjudication of disputed questions of fact. However, it is equally settled that the defence raised by the Corporate Debtor must be plausible, supported by evidence and not a mere bluster or moonshine. Upon an overall appreciation of the material placed on record, we find that

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although objections were raised by the Corporate Debtor prior to the filing of the petition, but such objection in form of FIR and complaint was filed after issuance of the first demand notice and on investigation by the concerned authority though it was found in respect of other two entities i.e. Meerut Steel and JSJ Enterprises, the evidence collected showed doubtful supply of goods but in case of the Operational Creditor no evidence was found creating any doubt in supply of goods by the Operational Creditor.

69. Accordingly, we are of the considered view that the Corporate Debtor has failed to establish the existence of a genuine and substantial pre-existing dispute within the meaning of Sections 8 and 9 of the Code. The disputes sought to be raised are not of such nature as would require rejection of the present petition at the threshold.

70. Taking into consideration the facts and circumstances of the case, as well as the position of Law, we are of the view that the petition filed by the Operational Creditor, is required to be Admitted under Section 9(5) of the IBC, 2016.

71. The Respondent Corporate Debtor has defaulted in the payment of operational debt amounting to Rs. 6,03,95,205.13/- which had clearly become due and payable above the threshold limit, and further in the absence of any credible or plausible pre-existing dispute, we find all requisite conditions necessary to trigger CIRP under Section 9 stands

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fulfilled with operational debt having been acknowledged and default committed thereto and there being no real pre-existing disputes discernible from the given facts and circumstances of the case. In view of the foregoing, we are of the view that the petition of the Operational Creditor filed under Section 9 of the Code deserves to be admitted.

72. Thus, in view of our aforesaid findings and analysis, the Petitioner/ Operational Creditor has proved that there is a 'debt' and 'default' on the part of the Corporate Debtor and outstanding debt is more than the threshold limit of Rs. 1 crore. The petition is also filed within the limitation period and complete in all respect. The registered office of the Corporate Debtor is located in Ghaziabad, Uttar Pradesh, and hence this Tribunal has jurisdiction to decide the matter. Accordingly, the present petition under Section 9, has been found fit fulfilling all the conditions for admissions of the petition and initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor i.e. M/s Associated Machinery Corporation Limited, and hence this Tribunal allow this petition and order to initiate the CIRP against the Corporate Debtor.

73. We note that the Operational Creditor has not proposed the name of an Insolvency Professional to be appointed as Insolvency Resolution Professional ('hereinafter referred as 'IRP') in Part-III of the Petition. Therefore, we appoint Mr. Sandeep Kumar as IRP having IBBI Registration

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Number: IBBI/IPAIBBI/IPA-001/IP-P-03000/2025-2026/14631, Email ID: advsandeep.ip@gmail.com, R/o- 2118, Phase-1, Gautampuri, Badarpur, South, National Capital Territory of Delhi, 110044. The Law Research Associate of this Tribunal, Ms. Akshita Singh, has checked the credentials of Mr. Sandeep Kumar, and found that there are no disciplinary proceedings pending against the proposed Insolvency Professional and there is nothing adverse against him. Upon verification from the website of IBBI, it is found that Insolvency Professional holds valid authorization till 30.06.2027. After considering these details, we appoint Mr. Sandeep Kumar having registration No. IBBI/IPA-001/IP-P-03000/2025-2026/14631, as Interim Resolution Professional (IRP).

74. Accordingly, this petition is admitted u/s 9 of the Code, 2016, under the following terms and conditions.

i. The Petition filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e., M/s Associated Machinery Corporation Limited is hereby admitted.

ii. We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the Code.

iii. This Adjudicating Authority hereby appoints Mr. Sandeep Kumar to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 72 above.

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iv. The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

v. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 has commenced from the date of this order prohibiting the following:

a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

vi. Apart from above prohibitions in respect of the corporate debtor, it is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

vii. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

viii. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

ix. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.

x. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor and to constitute a Committee of Creditors (hereinafter referred as "COC") and shall file a report certifying the constitution of the COC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the COC within seven days of filing the report of the constitution of the COC.

xi. As the IRP appointed herein is proposed by this Tribunal, he will ensure that his written consent in Form-2 shall be duly submitted before this Tribunal.

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xii. The COC in its first meeting shall appoint a Resolution Professional (hereinafter referred as "RP") as per the provision of section 22(2) and file an application before this Tribunal for confirmation of the appointment of the RP.

xiii. The Suspended Board of Directors of the corporate debtor is directed to give to IRP/RP complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the IRP/RP all the information regarding maintaining the Backup and regarding service provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the service provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case, accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs.

xiv. The Statutory Auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI.

xv. The IRP/RP is directed to take custody and control of all the records of information relating to assets of the Corporate Debtor, its Books of Account in physical form or the computer systems storing the electronic records at the earliest in accordance with the provision of Regulation 3A of IBBI (Insolvency Resolution Process for Corporate Persons)

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Regulations, 2016 (hereinafter referred to as "CIRP Regulations, 2016").

xvi. The Operational Creditor and its personnel shall also provide necessary assistance to IRP/RP in obtaining the necessary information about the Corporate Debtor as envisaged in Regulation 3A and 4(3) of the CIRP Regulations, 2016.

xvii. In case of any non-cooperation by the Suspended Board of Directors or the Statutory Auditors, IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for the retrieval of relevant information from the systems of the corporate debtor.

xviii. The IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench/IBBI/MCA for this purpose.

xix. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances.

xx. The IRP/RP is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

xxi. The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings.

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xxii. The IRP/RP is directed to approach all the concerned Government Departments and authorities as discernible from the books of account of the Corporate Debtor requesting them to file claims if any amount is outstanding against the Corporate Debtor.

xxiii. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIR Proceedings as per law.

xxiv. The IRP/RP shall collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the Corporate Debtor.

xxv. The IRP/RP is further directed to send regular progress reports to this Tribunal every month.

75. We direct the Operational Creditor to deposit a sum of Rs. 1,00,000/-with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

76. A certified copy of the order shall be communicated to both the Applicant Operational Creditor and the Respondent Corporate Debtor. The learned counsel for the Applicant Operational Creditor shall deliver a certified copy of this order to the IRP forthwith. The Registry is also directed to send a certified copy of this order to the IRP at his e-mail address forthwith.

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77. List CP (IB) 101/ALD/2022 on 24.08.2026 for filing of the progress report/further proceeding.

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(Ashish Verma)	**(Praveen Gupta)**
Member (Technical)	**Member (Judicial)**

Date: 22.07.2026