IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.301
CP(IB)/14(AHM)2023

Proceedings under Section 9 IBC

IN THE MATTER OF:

Jindal (India) Limited ....**Applicant**
V/s
Kunal Structure (India) Private Limited ....**Respondent**

Order delivered on: 17/07/2026

Coram:
Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

PRESENT:

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet.

Sd/-

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

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

AD/AP

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD BENCH, COURT - II

CP (IB) No. 14 of 2023

(Filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

M/s Jindal (India) Limited
National Highway No. 6, Village-Jangalpur, P.O.
Andul Howrah, West Bengal 711302

...Applicant/
Operational Creditor

V/s.

M/s Kunal Structure (India) Private Limited
Registered office at: 1205 to 1207,
12th Floor, Shilp Epitome B/s. Infostrech,
Behind Rajpath Club Road, Bodakdev
Ahmedabad, Gujarat 380054

Also at
B-wing, 15th Floor, Mondeal Heights,
Opp.Karnavati Club, Near Novotel Hotel,
S.G. Highway, Ramdevnagar, Ahmedabad,
Gujarat -380015

...Respondent/
Corporate Debtor

Order pronounced on 17.07.2026

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

DR. V. G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Sd/-　　　　Sd/-

Present:

For the Applicant : Mr. Shyam Kumar, Adv. and Ms. Iqra Khan, Adv.

For the Respondent : Mr. Dhaval Vyas, Sr. Adv.; Mr. Vishwas K. Shah, Adv. and Masoom K. Shah, Adv.

JUDGEMENT

1. The Application is filed under section 9 of the Insolvency and Bankruptcy Code, 2016, by the M/s Jindal (India) Limited, the Operational Creditor herein, against the Corporate Debtor being M/s Kunal Structure (India) Private Limited, herein having defaulted in making payment of total amount is Rs. 1,02,18,981/- (Rupees One Crore Two Lakh Eighteen Thousand Nine Hundred and Eighty-One Rupees Only) against the delivery of products in terms of purchase order no. 4000029331 dated 19.03.2021

2. The factual backdrop averred by the applicant is as under:

a. The Operational Creditor, is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing and selling of ERW galvanized and black pipes, Galvanized Steel Sheet - Plain I Corrugation & Coils, Metal Beam Crash Barriers - W Beam and Threi Beam, SWAGED TUBULAR POLES

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(STPs), Aluminium Foils, API etc. at its plants located in Howrah (West Bengal). The Corporate Debtor, was desirous to purchase the product manufactured by the Operational Creditor and thereby contacted the Operational Creditor.

b. Pursuant to Purchase Order No. 4000029331 dated 19.03.2021, the Operational Creditor was engaged to supply 10,000 meters of Metal Beam Crash Barrier at the agreed rate of Rs. 1,960/- per meter, for a total contract value of Rs. 23,145,346/-. The Operational Creditor duly supplied the materials in accordance with the prescribed specifications and quality, to the satisfaction of the Corporate Debtor, and raised timely invoices. While the Corporate Debtor initially made payments against the invoices, it defaulted in making payments for the outstanding invoices from August 2021 onwards.

c. Despite having received the goods, the Corporate Debtor failed to make payment against Tax Invoice Nos. 90204795 and 90204796 dated 16.06.2021, 90205049 dated 19.06.2021, and 90205434 dated 24.06.2021, aggregating to Rs. 99,64,246/-. Further, the Operational

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Creditor raised Debit Note No. 2400000985 dated 09.07.2021 for Rs. 2,78,322/- towards interest charges on the Letter of Credit, calculated in terms of Purchase Order No. 4000029331, which the Corporate Debtor had agreed to pay. The total outstanding of Rs. 1,02,18,981/- became due on the Corporate Debtor.

d. The Corporate Debtor acknowledged its liability through the Bill of Exchange dated 10.07.2021 and further admitted the outstanding debt in its email dated 09.04.2022, assuring part payment from the end of April 2022. Despite such acknowledgment and repeated follow-ups, no payment was made, compelling the Operational Creditor to issue a demand notice under Section 8 of the IBC, 2016 on 20.07.2022. As neither any reply nor payment was received, and no pre-existing dispute, recovery proceedings, or arbitration existed in respect of the outstanding operational debt of Rs.1,02,18,981/-, the present application has been filed.

e. The applicant/operational creditor has relied on the following documents

i. Copy of Invoices:

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ii. Copy of Bill of Exchange No. JIL/Kunal/HDFC/040 dated 10.07.2021

iii. Copy of the email dated 09.04.2022.

iv. A copy of the IBC demand notices dated 20.07.2022

v. Copy of Certificate issued by the bank maintaining the accounts of operational creditor.

3. The Corporate Debtor/respondent filed affidavit in reply and opposed the application primarily on the grounds of suppression of material facts, existence of pre-existing disputes, and non-maintainability of the petition. It is contended that the Operational Creditor selectively relied upon certain communications while suppressing material correspondence evidencing disputes regarding the quality, thickness variation, and short supply/short weight of the materials supplied. The Corporate Debtor contended that, by email dated 16.08.2021, it raised the issue of short weight in the materials supplied, claimed a deduction of Rs. 5,24,885.11 (plus GST and TCS), and sought supply of additional material to compensate for the short weight. It is further submitted that, by email dated 16.10.2021, the Operational Creditor agreed to deduct the value of the said

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material from the outstanding dues. Accordingly, the Corporate Debtor asserts that after such deduction, the outstanding amount stood reduced to Rs. 93,55,327/-. It is further contended that even if the interest amount of Rs. 2,78,322/- is added, the total outstanding would be only Rs. 96,63,349/-, which is below the statutory threshold of Rs. 1 crore. Further it is submitted that the Operational Creditor has already included the interest component in the principal claim and has wrongly added the same again only to cross the pecuniary threshold under the Code.

4. The Corporate Debtor further submitted that the dispute regarding the quality of the supplied materials is in accordance with Clause 26 of the Purchase Order dated 19.03.2021, which entitled it to reject and return defective goods, required the Operational Creditor to take back such goods within 10 days of notice, and, upon failure to do so, permitted the Corporate Debtor to dispose of the rejected goods.

5. The Corporate Debtor stated that the reliance placed on the email dated 09.04.2022 and the Bill of Exchange, contending that the same do not constitute an

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unconditional acknowledgment of debt by the operational creditor. According to the Corporate Debtor, the communications must be read in conjunction with prior correspondence reflecting disputes regarding the supplied material. It is further submitted that the purchase order contains an arbitration clause and that the issues raised involve disputed questions of fact requiring adjudication by an appropriate forum. Additionally, objections have been raised regarding the maintainability of the petition on the grounds of defective filing, lack of proper authorization, non-compliance with statutory requirements under Section 9 of the Code, limitation, and absence of a legally recoverable operational debt and default.

6. The applicant filed rejoinder and contended that no pre-existing dispute existed between the parties, as the Corporate Debtor neither replied to the demand notice dated 20.07.2022 nor raised any dispute prior thereto. The alleged disputes regarding quality, short weight and debit notes have been raised only after initiation of proceedings and are, therefore, not genuine.

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7. It is further submitted that the Operational Creditor had already supplied additional material pursuant to the Corporate Debtor's request in relation to the alleged short-weight issue, and consequently the debit note stood settled. The Operational Creditor never agreed to any deduction from the outstanding dues, and the email dated 16.10.2021 relied upon by the Corporate Debtor has been misconstrued. It is further contended that the ledger relied upon by the Corporate Debtor itself reflects substantial outstanding dues, thereby negating its plea that the claim falls below the statutory threshold.

8. It is submitted that the goods supplied by the Operational Creditor were duly received, installed and utilised by the Corporate Debtor without any contemporaneous objection, and that the subsequent allegations regarding defective quality are false and unsupported.

9. The respondent, by way of an additional affidavit, the Corporate Debtor submitted that it is a going concern engaged in infrastructure projects, employing 728 employees and executing 15 ongoing projects. It is further submitted that arbitral awards aggregating to

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approximately Rs. 74.08 crores have been passed in its favour against Government authorities and are presently under execution. Relying upon the judgment in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd. (2022) 8 SCC 352* the Corporate Debtor contended that the recoverable awarded amount far exceeds the claim made in the present application and, therefore, the application ought not to be admitted and deserves to be dismissed. The Respondent submitted that the Operational Creditor has simultaneously filed the present application under Section 9 of the IBC and on the other hand issued a notice invoking arbitration, thereby acknowledging the existence of disputes between the parties. It is contended that the invocation of arbitration itself establishes a pre-existing dispute, rendering the present application not maintainable.

10. The applicant in compliance with the order dated 18.11.2025 filed affidavit, stated that it relies on the invoices, transport documents, e-way bills, packing lists, Letter of Credit documents and debit note to establish due supply and delivery of goods under Purchase Order No.

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4000029331. It is submitted that despite receipt of the goods, the Corporate Debtor failed to make payment. The Operational Creditor further contends that, in terms of the Purchase Order and the Letter of Credit, interest at 9.60% per annum became payable after the expiry of the 90-day credit period, pursuant to which Debit Note No. 2400000985 dated 09.07.2021 for Rs. 2,78,322/- was raised, forming part of the operational debt.

11. Both parties have filed written submissions. Perused the documents on record alongwith written submissions of the parties.

12. Observations & Conclusions:

a. The applicant has submitted 4 invoices which are due for payment along with a debit note total amounting to Rs. 1,02.18,981. This is supported by invoices, delivery challans. The Payment terms are stated to be 90 days against LC and the interest charges are to be borne by the respondent @9.60% p.a. The applicant has filed this application including the debit note on interest charges against LC amounting to Rs.2,54,735.000 which adds up to the total debt of Rs. 1,02,18,981

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which is in conformity with purchase order.

b. As per the purchase order dated 19.03.2021, clause 20, (Examination, testing and Inspection), the respondent may reject any or all of the goods which does not confirm to the applicable requirements within 10 business days of Vendors delivery of goods to KSIPL site. The invoices are dated 16.06.21 (2), 19.06.2021 and 24.06.2021 and the delivery is to site at Talcher, Odisha. There are no delivery challans in the application, however, the applicant enclosed relevant e way bills. But as per one email sent by the applicant dated 21 August 2021 states that the goods are being despatched by truck today, so do not reject the LC.

c. The purchase order mentions that the payment is 90 days against LC, but however, neither party has confirmed whether the order was backed by LC, whether it devolved on the respondent for non payment. During submissions, the Ld Counsel for applicant on query stated that the LC has not been invoked, payment was not sought on LC terms. However, it appears from an email dated 21 August

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2021 (same date of despatch of goods in the email sent by the applicant) the respondent informs that the bill amount of Rs.99,64,246 under LC No.2101541LCU00050 which was The present in IDBI bank has been rejected by us. respondent has vide email dated 18 August 2021 (Respondent reply (12-13) stated that next day is the last date of payment under LC (LC Terms 90 days against LC). We also observe from the reply objections that vide email dated 16 August 2021 by the respondent in continuation of certain emails on the total weight required as per 23.8 KG per mtr, an amount of Rs.3.82 lakhs is sought which was requested to supply 278 mtr FOC additional MBCB to compensate the short weight issue (for total 8 invoices). It appears there is dispute on the weight expressed in the preceding emails where the applicant has also (email dated 12 August 2021) sought reduction in the quantity identified as short in view of business relationship. Even though there is a dispute regarding the weight/thickness which is mutually accommodated, the respondent has not raised a debit

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note, but raised as dispute to be recouped through fresh supply.

d. The Bill of Exchange dated 10.07.2021 stated to have been drawn under LC 210154ILCU00050 dated 19.06.2021 and amendment 1 dated 09.07.21 issued by IDBI Bank Ltd for an amount of Rs. 1,02,18,981 including the discounting charges for an amount of Rs. 278,322/- claimed under the application was observed to have been both signed by the applicant. It does not bear the signature or endorsement of the respondent CD wherein and this anomaly pointed out is not satisfactorily explained. It seems this BOE may not have been discounted and claimed by the applicant and if so the claim does not arise. However, LC discounting charges have been included in the claim amount which enables the applicant to reach the threshold.

e. This application was filed by the applicant vide his Whether the matter is application dated 8.12.2022. proceeding for hearing, it appears that a notice was issued invoking the arbitration provisions under

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Clause 32 of Purchase Order No.4000029331 dated 19.3.2021 vide letter dated 08.04.2025 issued to the respondent CD. The claue in the purchase order 32 provides for an arbitration and belatedly when this matter is pending before this tribunal the applicant has chosen to issue a notice under Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator if the CD Hence the dispute is now does not reply within 7 days. sought to be proceeded through arbitration.

f. The matter of dispute being marginal, it falls below the threshold limit, and crosses Rs 1 crore only by the stated LC charges, which apparently seems to have not been claimed. There are marginal weight disputes of around Rs.3.82 lakhs and the LC debit note for Rs. 2,54,735/- is for the usance period after invoice is issued for which LC seems to have not been paid and the claim made before us.

g. Since there are marginal disputes on quantity supplied, while the respondent had paid the other bills in time, bills raised under LC issued is not paid due to dispute, threshold limit not satisfactory and the

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applicant has proceeded before arbitration after filing this application before adjudication.

13. In view of the above we pass the following order.

ORDER

CP(IB)14 of 2023 is rejected and disposed of.

Sd/-

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

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Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

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