NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1

C.P. (IB)/709(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **12.08.2026**

NAME OF THE PARTIES: **Hella Infra Market Limited**

Vs

Enviiro Buildmate Private Limited

Under Section 9, IBC 2016.

ORDER

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

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//VM//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/709/MB/2025

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

IN MATTER OF:

HELLA INFRA MARKET LIMITED
[U46632MH2016PLC283737]
Registered Office at: 2nd Floor, Office No. 201
Olethia Business spaces, Plot No. A-184 and A-185
Road no. 16Z, Opposite Ashar IT Park,
Wagle Industrial Estate,
Thane (West) - 400604, Maharashtra.
Email: cs@infra.market

…Operational Creditor/Applicant

V/s

ENVIIRO BUILDMATE PRIVATE LIMITED
[U45100PN2006PTC128550]
Registered Office at: S. No.- 34A/6/23
P. No. 3,4 & 5, VTP House Third floor,
behind shakti sport, Wadgaonsheri,
Pune-411014, Maharashtra.
Email: info@vtpgroup.in

...Corporate Debtor

Pronounced: 12.08.2026

CORAM:

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

Appearances: Hybrid

For Applicant: Adv. Mr. Rahul Ray, Adv. Mr. Raghav Kapoor, Adv. Ms. Khushi Sharma & Adv. Ms. Aiswarya Sahu

For Respondent: Adv. Mr. Abhay Dhadiwal i/b Jayakar & Partners.

ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This C.P. (IB) No. 709 of 2025 (Application) was filed on 05.06.2025 by M/s. Hella Infra Market Limited, the Operational Creditor (OC), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Mr. Yogesh Narottam Patel – Authorised Representative of the OC *vide* Board Resolution dated 29.01.2025, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Enviiro Buildmate Private Limited, the Corporate Debtor (CD).

1.2 As per Part IV of the Application, the amount claimed to be in default is Rs. Rs. 1,29,14,326/- (One Crore Twenty-Nine Lakhs Fourteen Thousand Three Hundred Twenty-Six Rupees), calculated up to 31.01.2025. The principal amount is Rs. 70,50,276/- (Seventy Lakhs Fifty Thousand Two Hundred and Seventy-Six Rupees); and interest of Rs. 49,69,534/- (Forty-Nine Lakhs, Sixty-Nine Thousand Five Hundred and Thirty-Four Rupees) calculated up to 31.01.2025, and GST of Rs. 8,94,516/- (Eight Lakhs Ninety-Four Thousand Five Hundred Sixteen Rupees) calculated up to 31.01.2025.

1.3 The Applicant has not proposed any IRP in Part-III of the Application.

1.4 The date of default is mentioned as 18.06.2023.

1.5 The Applicant has relied upon the following documents:

i. Affidavit under Section 9 (3) (b) of the Code, 2016

ii. Certificate under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023

iii. Copy of the Operation Creditor's and CD's Master Data as available on the Ministry of Corporate Affairs' website

iv. Copy of GST Registration Certificate (Form GST REG-06) of the Corporate Debtor.

v. Table showing details of the outstanding invoices and interest calculation

vi. Copies of the Purchase Orders raised by the Corporate Debtor.

vii. Copies of the unpaid tax invoices.

viii. Copy of email correspondence between the Corporate Debtor and the Operational Creditor dated 21.07.2022 along with the ledger attached.

ix. Copy of the Demand Notice issued by the Operational Creditor against the Corporate Debtor dated 24.09.2024.

x. Copy of the Reply to the Demand Notice sent by the Corporate Debtor to the Operational Creditor dated 08.10.2024.

xi. Copies of the ledger accounts of NNP Buildcon Private Limited and Viraj Projects (India) Private Limited maintained by the Operational Creditor.

xii. Copy of the Final Demand Notice dated 11.02.2025 under section 8 of the Code.

xiii. Copy of Reply on behalf of the Corporate Debtor dated 04.03.2025 to the Final Demand Notice sent by the Operational Creditor

xiv. Copy of Ledger Account maintained by the Operational Creditor for the relevant period.

xv. Copy of the Board resolution authorizing Mr. Yogesh Narottam Patel to represent the Operational Creditor

2. <u>CONTENTIONS OF APPLICANT (OC)</u>

2.1 The relationship between the Operational Creditor, Hella Infra Market Limited ("HIML") and the Corporate Debtor, Enviiro Buildmate Private Limited commenced in or around January' 2022. The CD, being engaged in the business of infrastructure development, issued various Purchase Orders ('POs') to the Operational Creditor from time to time towards the supply of Ready-Mix Concrete ('RMC').

2.2 The CD is a private limited company duly incorporated under the Companies Act, 2013 and registered under the GST Act, 2017 bearing GST Registration Number 27AABCE6045R1Z5, as evidenced by the GST Registration Certificate (Form GST REG-06) annexed as Annexure P-3. The said certificate also corroborates the principal place of business of the CD and establishes that the CD was duly registered for the purpose of carrying out taxable business activities during the period when the transactions took place.

2.3 The Purchase Orders were issued periodically over the course of the Financial Years 2021-2022 & 2022-2023 and pursuant to such Purchase Orders, the Operational Creditor supplied materials in accordance with the specifications, timelines, and conditions mutually agreed upon. The Operational Creditor, after making such supplies, raised various tax invoices for the value of materials delivered. The last set of invoices were raised by the Operational Creditor on 20.03.2022. All invoices provided a standard credit period of thirty (30) days for payment from the date of issuance. The copies of the Purchase Orders raised by the CD are annexed as Annexure P-5 (Colly).

2.4 It is submitted that the Operational Creditor, in good faith, duly performed and fulfilled its obligations under the Purchase Orders by ensuring timely dispatch and delivery of the requested RMC to the CD. However, despite receiving the materials and being under a legal and contractual obligation to pay the invoice amounts within the stipulated time, the CD persistently failed and neglected to make payment towards the outstanding invoices.

2.5 That the CD was, from time to time, called upon to furnish its statement of ledger for the purpose of reconciliation of accounts. Accordingly, vide email dated 21.07.2022, the ledger for the period 01.04.2021 to 21.07.2022 was duly shared by the CD.

2.6 Upon a careful examination of the said ledger, it was clearly observed that the CD has unequivocally acknowledged its liability of Rs. 1,03,92,096/- towards the unpaid invoices by duly recording them in its books of accounts. However, as evident from the ledger statement maintained by the Operational Creditor, no payments whatsoever have been made by the CD against these acknowledged unpaid invoices till date. The liability, therefore, remains subsisting and unpaid. The email correspondence between the CD and the Operational Creditor dated 21.07.2022 along with the ledger attached is annexed as Annexure P-7 (Colly).

2.7 Subsequently during the course of business relationship, on 29.05.2023, the Operational Creditor purchased Cement from the CD, for which the invoices amounting to Rs. 33,09,309/- were raised by the CD.

2.8 In light of the continued failure of the CD to clear its outstanding dues, the Operational Creditor was constrained to initiate proceedings under the Code. Accordingly, a statutory demand notice in Form 4 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was issued by the Operational Creditor dated 24.09.2024 to the CD demanding payment of a total sum of Rs. 1,78,42,095.98/- [including the principal amount of Rs. 1,03,59,585/- interest accrued thereon amounting to Rs. 63,41,111/- and a GST payable thereon amounting to Rs. 11,41,399.98/- (calculated up to 23.09.2024)]. The Demand Notice issued by the Operational Creditor against the CD dated 24.09.2024 is annexed as Annexure P-8.

2.9 However, neither was any reply provided by the CD to the said Demand Notice nor was the outstanding debt repaid within the statutory period of ten days. Thereafter, as an afterthought, CD, through its counsel, issued a letter dated 08.10.2024 styled as 'Reply to Your Notice dated 24.09.2024' wherein the CD made certain false and frivolous assertions to wriggle out of making payment of its admitted outstanding dues. Notably, the reply was dispatched by the CD subsequent to the expiration of the statutory period of ten days from the date of receipt of the Demand Notice within which period the CD was obligated to inform the Operational

Creditor of any existing dispute or provide proof of payment of the outstanding dues. The Reply to the Demand Notice sent by the Corporate Debtor to the Operational Creditor dated 08.10.2024 is annexed as Annexure P-9.

2.10 It was alleged by the CD in its Reply that the Operational Creditor has received an amount of Rs. 56,55,795/-, from time to time, directly from a group company of CD, NNP Buildcon Private Limited. However, the Operational Creditor had only received a total amount of Rs. 54,82,855/- from NNP Buildcon Private Limited as against the alleged amount of Rs. 56,55,795/- by the CD.

2.11 Now, since NNP Buildcon Private Limited, Viraj Projects (India) Pvt. Ltd., and the Corporate Debtor are all part of the VTP Group, the Operational Creditor adjusted Rs. 8,38,395/- against the outstanding amount pending from NNP Buildcon Private Limited and the remaining amount of Rs. 46,44,460/- was adjusted against the oldest outstanding dues of Viraj Projects (India) Private Limited, using the First-In-First-Out (FIFO) method. It is also pertinent to note that prior to the CD's Reply to Demand Notice, there was no verbal or written communication from the CD directing the adjustment of the amount received from NNP Buildcon against the CD's own outstanding dues. The ledger accounts of NNP Buildcon Private Limited and Viraj Projects (India) Private Limited maintained by the Operational Creditor are annexed as Annexure P-10 (Colly).

2.12 It was also alleged by the CD that an amount of Rs. 25,00,000/- was deducted on behalf of the CD for the malpractice committed by the Operational Creditor's representative at the Pegasus Site. Further it is submitted that neither there is any kind of malpractice committed by the Operational Creditor nor there is any agreement or document between the parties which suggests that an amount of Rs. 25,00,000/- can be deducted by the CD in any means.

2.13 The CD pointed out that the Operational Creditor had failed to adjust the amount of Rs. 33,09,309/- pertaining to the Cement purchased by the Operational Creditor from the CD.

2.14 The Operational Creditor, after adjusting an amount of Rs. 33,09,309/- towards the purchase of cement from the CD's outstanding dues and withdrawing the earlier Demand Notice dated 24.09.2024, issued a fresh statutory Demand Notice (Form 4) dated 11.02.2025 (hereinafter referred to as the "Final Demand Notice").

2.15 The said Final Demand Notice dated 11.02.2025 was issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the CD to pay, within ten days of receipt, the total outstanding amount of Rs. 1,29,14,326/-. The claimed amount comprises: (A) principal amount of Rs. 70,50,276/-, (B) interest accrued thereon amounting to Rs. 49,69,534/-, and (C) GST @ 18% on interest amounting to Rs. 8,94,516/-, all calculated up to 31.01.2025. The copy of the Final Demand Notice dated 11.02.2025 is annexed as Annexure P-11.

2.16 However, neither was any reply provided by the CD to the said Demand Notice nor was the outstanding debt repaid within the statutory period of ten days. Thereafter, again the CD, through its counsel, issued a letter dated 04.03.2025 styled as 'Reply to Demand Notice (Form 4) dated

11.02.2025' which again reiterated the allegations put forth by the CD in its earlier Reply to Demand Notice dated 08.10.2024. The Reply to Final Demand Notice dated 04.03.2025 sent by the CD to the Operational Creditor is annexed as Annexure P-12.

2.17 It is clear that such Reply to the Final Demand Notice was also issued with malice and to escape the obligation of the CD towards the payment of unpaid invoices in the favour of the Operational Creditor.

2.18 It is respectfully submitted that the Operational Creditor has not initiated any other legal proceedings or arbitration against the CD in relation to the same claim forming the subject matter of the present Petition. The present Application under Section 9 of the Code is the first and only proceeding filed in relation to the said Operational Debt.

3. REPLY OF THE CORPORATE DEBTOR

3.1 The Reply-in-Affidavit dated 22.09.2025 filed by the CD and affirmed by Mr. Santosh Kumar Parasmal Jain, authorised representative of the CD vide Board Resolution dated 29.08.2025.

3.2 Threshold Limit Not Satisfied: The Application is not maintainable as the alleged principal amount claimed is only Rs.70,50,276/- which is below the threshold limit of Rs. 1 crore under Section 4 of the IBC. The Operational Creditor has charged interest @ 24% p.a. and GST @ 18% thereon, without any documentary evidence, reaching a figure of Rs.1,29,14,326/-, which is impermissible. It is settled law that the principal operational debt itself must exceed Rs. 1 crore for Section 9 to be invoked.

3.3 No Contractual Basis for Interest or GST on Interest: The Operational Creditor has claimed interest @ 24% p.a., but no written document, purchase order, agreement, or correspondence provides for such interest. The Operational Creditor has claimed interest but has not paid GST on such interest, and no documentary e-invoice has been provided in support of the claim. In absence of a contractual clause, levy of interest is unsustainable.

3.4 Contradictory and Inflated Demand Notices: The Operational Creditor first issued a demand notice dated 24.09.2024 claiming Rs. 1,78,42,095.98/- and later a revised notice dated 11.02.2025 claiming Rs. 1,29,14,326/-. This in itself shows that there was no agreement for such interest. Such inconsistency and shifting of claims demonstrate mala fide intention and absence of any fixed or undisputed operational debt.

3.5 Suppression of Material Payments and Set-off's:

a. The Operational Creditor has suppressed that it has already received, Rs. 56,55,795/- from NNP Buildcon Pvt. Ltd., a customer of the CD, specifically towards the same supply.
b. The Operational Creditor has also failed to disclose that it purchased cement worth Rs.33,09,309/- from the CD, which was mutually agreed to be adjusted against the alleged dues.
c. The Operational Creditor has suppressed their act of malpractices at the Corporate Debtor's Pegasus Site, for which the CD was constrained to deduct Rs. 25,00,000/-. Upon proper reconciliation, there is no amount due and payable by the CD to the Operational Creditor as alleged.

3.6 <u>Pre-Existing Bona Fide Disputes</u>: The CD, vide replies dated 08.10.2024 and 04.03.2025, raised genuine disputes regarding:

a. Improper accounting of payments made through group entities;

b. Deduction Rs.25,00,000/- on account of malpractice at Pegasus site;

c. Wrongful unilateral set-off by the Operational Creditor.

It is settled law that existence of a plausible dispute is sufficient ground to reject the Petition.

3.7 <u>Abuse of IBC Mechanism</u>:

The Petition is a misuse of IBC as a recovery tool in a purely commercial dispute. IBC cannot be invoked for recovery of disputed sums.

3.8 <u>Corporate Debtor is Solvent and Going Concern</u>

The Corporate Debtor is financially solvent, operationally sound, and profitmaking. There is no financial distress warranting CIRP.

3.9 <u>Bad Faith and Forum Shopping</u>

The conduct of the Operational Creditor in altering its claims, suppressing payments shows mala fide intention and amounts to forum shopping.

3.10 <u>Absence of Acknowledgment of Debt</u>

The Corporate Debtor has never signed or issued any balance confirmation or acknowledgment admitting the alleged liability. The reliance placed by the Operational Creditor on self-generated ledgers and unilateral record does not satisfy the requirement of proving "default" under Section 9 of the IBC.

3.11 Limitation

The last invoice is dated 20.03.2022. Even assuming (without admitting) that any amount was due, the claim is ex facie barred by limitation as it was filed on 05.06.2025, and not filed within the statutory period of 3 years. Further, the alleged reliance on email exchanges and internal ledgers does not amount to acknowledgment under Section 18 of the Limitation Act.

3.12 Wrongful claim of GST

The Operational Creditor has sought to levy GST on interest. Under the GST regime, interest is compensatory in nature and not supply of goods or services. The Operational Creditor has claimed interest but has not paid GST on such interest, and no documentary e-invoice has been provided in support of the claim. This clearly indicates that the claim of interest is malafide and not supported by any valid documentary evidence. Hence, GST on interest is impermissible, in absence of any documentary proof. Inclusion of such amounts is a deliberate inflation of claim.

3.13 No Continuous Supply Agreement

The Operational Creditor has alleged continuous supply of RMC. However, each purchase order was a separate and independent transaction. No running contract exists that could justify the claim of lump-sum interest. This fact further shows that the Application is based on extrapolation rather than actual liability.

3.14 Commercial Disputes Fall Outside IBC

The disputes raised by the CD, regarding quality of material, malpractice at Pegasus site, cross-purchase of cement, and adjustments of payments, are all contractual/commercial in nature. Such issues require trial, evidence, and reconciliation, which cannot be done in summary insolvency jurisdiction. The Hon'ble Supreme Court has in catena of judgments held that IBC is not a substitute for civil recovery proceedings.

3.15 Doctrine of Clean Hands

The said Petition suffers from suppression of facts and the Operational Creditor is guilty of Suppressio Veri and Suggestio Falsi. The Operational Creditor herein has approached this Tribunal with unclean hands. The Operational Creditor has failed to disclose/suppressed full and proper information/ facts with respect to the transaction between the parties and raised inconsistent claims in two demand notices. A party who seeks equitable relief under IBC must approach with clean hands. The Petition is thus liable to be dismissed on this ground alone.

4. REJOINDER

4.1 It is submitted that the CD has unequivocally acknowledged its liability towards the OC. This admission is reflected in the email dated 21.07.2022, sent by the CD to the OC during reconciliation of accounts at the time of the regular audit.

4.2 The said communication constitutes a clear and binding admission of debt for the purpose of Section 9 of the Code. It was made voluntarily, contemporaneously, and without any qualification, thereby leaving no scope for dispute.

4.3 The subsequent attempt of the CD to raise objections in its belated response dated 04.03.2024, is clearly an afterthought and beyond the statutory period prescribed under the Code.

4.4 Accordingly, the debt stands formally acknowledged, remains undisputed, and is enforceable under the IBC.

4.5 Section 9(5)(ii) (d) of the Code mandates rejection of a petition only where a "notice of dispute" or a "record of dispute in the information utility" exists prior to the issuance of a demand notice under Section 8. In the present case, no such notice or record existed when the statutory demand notice dated 11.02.2025 was issued.

4.6 Since the CD failed to discharge its admitted liability, a statutory Demand Notice in Form 4 dated 20.03.2024 was issued under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, demanding payment of Rs.1,29,14,326/-, comprising:

i. Principal amount: Rs. 70,50,276/-

ii. Interest (up to 31.01.2025): Rs. 49,69,534/-

iii. GST on interest (up to 31.01.2025): Rs. 8,94,516/-

4.7 However, the CD failed to provide any reply to the said Demand Notice within the statutory period of ten days, nor did it make any payment of the outstanding dues.

4.8 Subsequently, the CD, through its counsel, issued a letter dated 04.03.2025, styled as a "Reply to the Demand Notice (Form 4) dated 11.02.2025, raising false and frivolous allegations in an attempt to avoid its liability towards the admitted outstanding dues.

4.9 It is pertinent to note that the said letter dated 04.03.2025 was sent only after the expiry of the statutory period of ten days from the date of receipt of the Demand Notice. As such, the CD failed to comply with its obligation under Section 8(2) of the Code, which required it to either (a) bring to the notice of the Operational Creditor the existence of a dispute or (b) make the payment of the debt within ten days of receipt of the Demand Notice.

4.10 Moreover, a brief time line of relevant correspondences and events establishing continued acknowledgment and absence of dispute is set out below for the assistance of the Tribunal:

20.01.2022 - 20.03.2022: Multiple tax invoices raised by the Operational Creditor were accepted without protest or demur.

21.07.2022: Corporate Debtor's e-mail executed acknowledging liability of an amount Rs. 1,03,92,096/- payable to the Operational Creditor.

29.05.2023 - 17.06.2023: Operational Creditor purchased cement from the Corporate Debtor.

24.09.2024: Demand notice issued by the Operational Creditor.

08.10.2024: Belated reply by the Corporate Debtor, alleging non-adjustment cement purchase.

11.02.2024: Earlier Demand Notice was withheld and a new revised Statutory Demand Notice in Form 4 was issued on behalf of the Operational Creditor under Section 8 of the Code, read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 after adjusting the amount of Rs. 33,09,309/- towards the purchase of cement from Corporate Debtor.

04.03.2024: Similar Reply by the CD was sent only after the expiry of the mandatory statutory period of ten days from the date of receipt of the Demand Notice.

Therefore, the present petition satisfies the statutory requirements under Section 8 and 9 of the Code and is not hit by Section 9(5)(ii)(d). The so-called defence is a belated fabrication and does not constitutes a valid dispute.

5. **WRITTEN SUBMISSIONS OC and CD**

5.1. The written submissions filed by the Applicant and CD are similar to the facts already submitted above. Hence, the same is not reiterated for the sake of brevity.

6. **ANALYSIS AND FINDINGS**

6.1 We have heard the Ld. Counsel for the Applicant and CD and perused the documents as placed before us. It is to be noted that we are not going into the merits of the case and only passing an order on the maintainability of the Application.

6.2 It is evident from the Applicant's own pleadings that the total amount claimed to be in default is **Rs. 1,29,14,326/-,** comprising of principal amount of **Rs. 70,50,276/-,** interest component of **Rs. 49,69,534/-** and GST amount of **Rs. 8,94,516/-**. Once the interest component is excluded, the principal amount admittedly falls below the statutory threshold of Rs. 1 crore prescribed under Section 4 of the IBC.

6.3 In the primary instance, the issue in this application is as to whether the Application filed under Section 9 is maintainable without including the interest in the total amount of claim, on the ground that interest is being charged on the basis of unilateral entry in the invoice without any other evidence on record of an agreement between the parties for payment of interest as claimed in the invoice on account of delay and in absence of any evidence of any such past practice whereby the CD paid the interest to the Applicant.

6.4 The Applicant has relied on the judgment of Hon'ble NCLAT in ***Prashant Agarwal v. Vikash Parasrampuria [2022 SCC OnLine NCLAT 3781]*** stating that where invoices containing interest clauses are accepted by the CD without dispute, the interest liability crystallizes into a valid debt.

6.5 However, this Tribunal has relied on the recent judgement of a 3-member bench of Hon'ble NCLAT, New Delhi, in the matter of ***Ajay Rana (Director of Erstwhile Sarika Industries Pvt. Ltd.) vs. Sanjay Kumar Goel and Ors.***, Company Appeal (AT) (Ins) 1045 of 2023, wherein it was held in para 15 that:-

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

6.6 Applying the ratio of the judgment in Ajay Rana matter (supra), the interest claimed by the Applicant on the basis of unilateral entries in the invoices, not being grounded in any contractual clause, and not supported by any other evidence on record suggesting that the parties had agreed to pay interest, is legally unsustainable. Though the OC has referred to various email correspondences with the CD in its Application, there is nothing on record to demonstrate that the CD has ever agreed to pay the interest. Even the Applicant has demanded payment of interest dues from the CD for the first time *vide* its Demand Notices dated 24.09.2024 and 11.02.2025.

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

> *"i. **Rishabh Infra v. Sadbhav Engineering Ltd, [(2024) ibclaw.in 707]** wherein vide order dated 04.11.2024, it was held as below:*
>
> *"9. we are of the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation*

for interest. 10. There is nothing to substantiate that the Corporate Debtor has accepted the obligation to pay the interest @24% per month, as claimed by the Operational Creditor. The entire Principal Amount having been paid, the Adjudicating Authority did not commit any error in rejecting the Section 9 Application filed by the Operational Creditor. There is no merit in the Appeal."

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

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

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

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

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

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

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

(emphasis supplied) ………

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

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

6.9 It is therefore safe to conclude that the present Section 9 Application has been filed by artificially inflating the alleged default through an interest claim which has no contractual or legal basis. Nor has the Applicant been able to establish that in past dealings also interest was charged by the Applicant and same was paid by the CD. Such an approach is contrary to the object and scheme of the IBC and amounts to a misuse of the insolvency process as a recovery mechanism, which has been consistently criticized by the Hon'ble Supreme Court and the Hon'ble NCLAT.

6.10 Accordingly, the interest component claimed by the Applicant cannot be included while computing the amount of default for the propose of meeting the threshold under Section 4 of the Code. Upon exclusion of the said interest, the principal amount falls below the statutory threshold under Section 4 of the IBC, and consequently, the present Application under Section 9 is liable to be dismissed as not maintainable.

6.11 Accordingly, we hold that the Application under Section 9 of the IBC is not maintainable as the principal operational debt, which is **Rs. 70,50,276/-** falls below the prescribed threshold limit. Further, the Applicant has failed to establish any legal or contractual entitlement to interest as required under law. The Application is thus liable to be dismissed on this ground alone. The principal amount being less than Rs. 1 Crore, the Application fails to satisfy the mandatory requirement under Section 4 and is therefore not maintainable.

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

6.13 Accordingly, CP (IB)/709(MB)2025 stands **rejected** being not maintainable.

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

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

//SM/VM//