NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH

CP(IB) No.10/Chd/Hry/2023

(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

Meghalaya Cement Limited
Through its General Manager Mr. Birendra Singh
Registered Office at: Thangskai, Lumshnong, Khliehriat,
East Jantia Hills, Meghalaya - 793210.
CIN: U26942ML2003PLC007125

……Applicant/Operational Creditor

Versus

RCC Infraventures Limited
Registered Office at: 14, Ground Floor Vipul Agora,
MG Road Sector 28, Gurgaon, Haryana - 122001
CIN: U45400HR2011PLC048807

……Respondent/Corporate Debtor

Order delivered on: 20.08.2026

Coram: Hon'ble Mr. Kaushalendra Kumar Singh, Member (Technical)
Hon'ble Mr. Khetrabasi Biswal, Member (Judicial)

Present:

For the Applicant	:	Mr. Eeshan Pandey, Advocate
For the Respondent	:	Ms. Amrita Panda & Mr. Karan Kaushal, Advocates

ORDER

1. The present Application has been filed by an Authorised Representative on behalf of **Meghalaya Cement Limited** (hereinafter referred to as "***Operational Creditor***") under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") for seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against **RCC Infraventures Limited** (hereinafter referred to as "the ***Corporate Debtor***"), for the default amount of Rs. 1,13,95,900/- (Rupees One Crore Thirteen Lacs Ninety Five Thousand Nine Hundred Only). The date of default, as mentioned in the Application, is 01.03.2020.

BRIEF FACTS AND SUBMISSIONS OF THE APPLICANT:

2. Brief averments of the case as stated in the Application by Applicant/Operational Creditor and presented/argued by its Counsel are summarised hereunder:

(i) The Applicant/Operational Creditor is a limited company, incorporated under the erstwhile Companies Act, 1956, having its registered office at Thangskai, Lumshnong, Khliehriat, East Jantia Hills, Meghalaya - 793210. The Operational Creditor is engaged in the business of Manufacturing and trading of Cement since its inception in the year 2003.

(ii) The Corporate Debtor is a company limited by shares, incorporated on 16.05.2011 under the erstwhile Companies Act, 1956 having its registered office at 14, Ground Floor, Vipul Agora M.G. Road, Sector 28, DLF QE, Gurgaon, Haryana, India - 122002. The Corporate

Debtor is involved in the business of construction of buildings and roads.

(iii) In the year 2018 the Corporate Debtor approached the Operational Creditor to procure Cement for its construction business. It was mutually decided and agreed between the parties that the parties would work on the arrangements of Purchase Orders from Corporate Debtor as and when the Corporate Debtor wants to procure cement from the Operational Creditor.

(iv) The first Purchase Order was received from the Corporate Debtor on 19.05.2018 for supply of 30,000 bags of cement. The terms and conditions governing procurement and payment were duly incorporated in the Purchase Order, including the stipulation that payment against invoices was to be made within 45–60 days from the date of receipt of material by the Corporate Debtor. In terms of the agreed arrangement, the Corporate Debtor used to issue post-dated cheques (PDCs) against each Purchase Order, which became payable after 45 days from delivery of material.

(v) Thereafter, several Purchase Orders were placed by the Corporate Debtor till March 2020, against which corresponding invoices were duly raised by the Operational Creditor. Payments against certain invoices were received till August 2019 and the same stand duly reflected in the books of accounts of the Operational Creditor. The last payment towards the outstanding dues was received on 04.08.2020 against part of the residual liability. However, payments pertaining to invoices raised between September 2019 and March 2020 remain unpaid and outstanding.

(vi) The details of the said invoices are as follows:

Sr. No	Invoice No.	Date of Invoice	Debt Fell Due	Bill Value
1	943002672	30.09.2019	02.12.2019	69,300
2	943002671	30.09.2019	02.12.2019	3,31,200
3	943002816	12.10.2019	13.12.2019	3,23,200
4	943002817	12.10.2019	13.12.2019	3,23,200
5	943002945	22.10.2019	23.12.2019	1,61,600
6	943002947	22.10.2019	23.12.2019	1,61,600
7	943002948	22.10.2019	24.12.2019	1,61,600
8	943002949	22.10.2019	23.12.2019	1,61,600
9	943003001	25.10.2019	26.12.2019	3,23,200
10	943003002	26.10.2019	27.12.2019	3,23,200
11	943003070	31.10.2019	01.01.2020	3,23,200
12	943003265	12.11.2019	13.01.2020	1,61,600
13	943003266	12.11.2019	13.01.2020	1,61,600
14	943003267	12.11.2019	13.01.2020	1,61,600
15	943003268	12.11.2019	13.01.2020	1,61,600
16	943003356	18.11.2019	19.01.2020	1,61,600
17	943003357	18.11.2019	19.01.2020	1,61,600
18	943003364	19.11.2019	20.01.2020	1,61,600
19	943003377	19.11.2019	20.01.2020	1,61,600
20	943003515	29.11.2019	30.01.2020	3,23,200
21	943003769	18.12.2019	19.02.2020	3,23,200
22	932008501	20.12.2019	21.02.2020	3,23,200
23	932008617	23.12.2019	24.02.2020	3,23,200
24	943003913	24.12.2019	25.02.2020	3,23,200
25	932008784	26.12.2019	27.02.2020	3,23,200
26	943004062	03.01.2020	07.03.2020	3,23,200
27	943004127	09.01.2020	13.03.2020	3,23,200
28	943004143	10.01.2020	14.03.2020	1,61,600
29	943004144	10.01.2020	14.03.2020	1,61,600
30	943004163	11.01.2020	15.03.2020	3,23,200
31	943004404	25.01.2020	29.03.2020	3,23,200
32	943004429	25.01.2020	29.03.2020	3,23,200
33	943004447	26.01.2020	30.03.2020	3,23,200
34	943004456	27.01.2020	31.03.2020	3,23,200
35	943004457	27.01.2020	31.03.2020	3,23,200
36	943004512	30.01.2020	03.04.2020	3,23,200
37	943004513	30.01.2020	03.04.2020	3,23,200
38	943004920	18.02.2020	22.04.2020	2,89,800

39	943004927	18.02.2020	22.04.2020	3,31,200
40	943005015	22.02.2020	26.04.2020	3,31,200
41	943005016	22.02.2020	26.04.2020	3,31,200
42	943005187	01.03.2020	02.05.2020	1,65,600
43	943005188	01.03.2020	02.05.2020	1,65,600
44	943005189	01.03.2020	02.05.2020	3,31,200
TOTAL				**1,13,95,900**

(vii) As on 01.03.2020, a principal sum of Rs. 1,13,95,900/- (Rupees One Crore Thirteen Lakhs Ninety Five Thousand Nine Hundred Only) became due and payable by the Corporate Debtor towards goods supplied by the Operational Creditor. The PDCs issued against the said invoices were dishonoured upon presentation, and despite repeated demands, no payment has been made till date. Consequently, the Operational Creditor moved a petition under Section 138 of the Negotiable Instruments Act, 1881 before the competent authority bearing number Complaint Case 2616/2020, Complaint Case 1193/2021 and Complaint Case 1025/2021 for amounts of INR 50,00,000/-, INR 50,00,000/- and INR 25,00,000/-. It is a well-established law vide the Hon'ble National Company Law Appellate Tribunal in ***Sudhi Sachdev vs. APPL Industries Ltd*** that:

> *"The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a court of law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute."*

No reply or dispute regarding the operational debt has been raised by the Corporate Debtor till date.

(viii) In these circumstances, the Operational Creditor is entitled to invoke the provisions of Section 9 of the Insolvency and Bankruptcy

Code, 2016 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for default in payment of the aforesaid operational debt amounting to Rs. 1,13,95,900/- along with interest @ 18% per annum.

***SUBMISSIONS BY THE RESPONDENT/* CORPORATE DEBTOR**

3. The Application has been opposed by the Corporate Debtor by filing a Reply dated 06.10.2023, and as further argued by their learned counsel. The defense as taken in the reply and also argued by their learned counsel are briefly summarised as under;

(i) The Respondent, pursuant to the offers made by the Applicant, issued the following purchase orders for supply of OPC Grade-43 Cement (TOP CEM Brand), inclusive of taxes and duties:

(a) Purchase Order No. RCCIVL/OTM/MISSAMARI/RC/19-20/0477 dated 27.08.2019 for supply of 2,500 bags (1,25,000kg) at the rate of Rs. 394/- per bag;

(b) Purchase Order No. RCCIVL/OTM/MISSAMARI/RC/19-20/0513 dated 12.10.2019 for supply of 10,000 bags (5,00,000kg) at the rate of Rs. 404/- per bag; and

(c) Purchase Order No. RCC/MISSAMARI/PO/MON-2/19-20 dated 17.02.2020 for supply of 10,000 bags (5,00,000 kg) at the rate of Rs. 414/- per bag.

(ii) The relevant covenants of the said purchase order which form the basis of 'pre-existing dispute' are enunciated hereunder: -

Clause 5: Deliver Schedule: Immediate

Clause 7: Make: Top CEM Brand

Clause 9: Quality: Material rejected for any reasons to be shifted immediately under your management and cost.

Clause 10: Validity: The PO is valid till delivery of material at site

Clause 11: Test Certificate: Agency shall furnish test certificate on or before the supplies, half of the total quantity as per this purchase order at site and one test certificate for the balance quantity, failing which the invoices raised for the next cycle of supply will not be processed for the release of due.

Clause 13: Jurisdiction: Assam Court only.

Note: -

2. Please mention PO number on your bill.

(iii) At the outset, the Respondent challenges the maintainability and correctness of the present petition on the ground that the claim raised by the Applicant is inflated and beyond the scope of the aforesaid purchase orders. The aggregate quantity under the three purchase orders was 22,500 bags i.e., 11,25,000 kg (1125 MT), whereas the invoices relied upon by the Applicant reflect supply of 15,75,000 kg (1575 MT), thereby disclosing an excess claim of 4,50,000 kg (450 MT), equivalent to approximately 9,000 bags of cement supplied beyond the contracted quantity.

(iv) It is further submitted that while the purchase orders collectively account for a value of approximately Rs. 91,65,000/-, the Applicant has raised a claim of Rs. 1,13,95,900/- with a view to artificially crossing the threshold prescribed under the MCA Notification dated 24.03.2020. Accordingly, the present application, being for an amount below Rs. 1 crore, is not maintainable and deserves dismissal.

(v) Further, the Respondent submits that the Applicant has concealed material facts and is liable for consequences under Section 75 of the Insolvency and Bankruptcy Code, 2016, whereas the Respondent is entitled to the benefit of Section 9(5)(ii)(d) of the Code on account of existence of a pre-existing dispute. In support of the aforesaid contention, reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.***, wherein it was held that the existence of a genuine pre-existing dispute is sufficient to reject an application under Section 9 of the IBC.

(vi) The Applicant failed to comply with material conditions of the purchase orders. Despite a mandatory requirement to furnish test certificates before or during supply, no such certificates were ever supplied or placed on record. The omission casts serious doubt upon the quality and veracity of the supplies and demonstrates concealment of material facts by the Applicant.

(vii) The Respondent also submits that the Applicant consistently failed to adhere to the agreed delivery schedule. Although the purchase orders required immediate delivery, substantial delays occurred in execution of supplies. Under Purchase Order dated 27.08.2019, deliveries were delayed by approximately 34 to 46 days; under Purchase Order dated 12.10.2019, delays ranged from 10 to 69 days; and under Purchase Order dated 17.02.2020, delays ranged from 1 to 13 days. Such breaches constitute material non-compliance with the contractual terms and clearly evidence disputes existing prior to initiation of the present proceedings.

(viii) It is further submitted that the invoices relied upon by the Applicant do not mention the corresponding purchase order numbers despite a specific contractual requirement to do so. In absence thereof, the Respondent has been unable to reconcile and verify the invoices with the respective purchase orders and quantities allegedly supplied.

(ix) Three independent pre-existing disputes bar the application under Section 9(5)(ii)(d): (a) The OC failed to supply mandatory test certificates as required under Clause 11 of the Purchase Orders — an obligation the Corporate Debtor, as a Defence project contractor, could not waive; (b) The OC has invoiced for approximately 310 MT of material beyond the purchase order quantities, without any authorisation, proof of delivery, or test certificate; and (c) The OC has claimed interest of Rs. 53,94,643/- without any contractual or statutory basis.

(x) The Operational Creditor has, across its Petition, Rejoinder, and Written Submissions, relied upon three mutually contradictory dates of default, namely 01.03.2020, 02.05.2020, and 04.08.2020. In Part IV(1)(C) of the Application, the Operational Creditor unequivocally stated that the debt in respect of all 44 invoices fell due on 02.05.2020. Subsequently, it sought to rely upon 04.08.2020, being the date of the last payment received, as the date of default. Both dates admittedly fall within the Suspended Period from 25.03.2020 to 25.03.2021 and are consequently hit by the bar under Section 10A of the Code. The

Operational Creditor's subsequent attempt to introduce 01.03.2020 as the date of default through a handwritten insertion is a clear afterthought intended to circumvent the statutory bar under Section 10A. The existence of three inconsistent dates of default itself demonstrates uncertainty regarding the occurrence of default, which is a foundational requirement for maintaining an application under Section 9 of the Code. The settled principle of law is that a party cannot approbate and reprobate and cannot be permitted to keep shifting its foundational pleadings whenever a particular version is found inconvenient. The OC is permanently estopped from this conduct, and the application must be rejected on account of this material, incurable defect.

(xi) The judicial authorities cited herein below establish that an Operational Creditor cannot shift or manipulate its date of default to escape the Section 10A bar. In ***SLB Welfare Association v. PSA Impex Limited and Others***, the creditor argued that an acknowledgement letter dated 03.06.2021 shifted the date of default from 31.03.2020 (which was within the Suspended Period) to 03.06.2021 (which was outside the Suspended Period). The NCLAT emphatically rejected this contention and held that “the date of default and acknowledgement are two different events and date of default is not dependent on acknowledgement of debt.” The Tribunal further held that the mere receipt of an acknowledgement letter after the Suspended Period does not alter or shift the date of default. Similarly, in ***M/s Prateek Apparels Pvt. Ltd. v. Canara Bank***, the NCLT Bengaluru, while dealing with a case involving an attempt to shift the date of default to escape the Section 10A embargo, relied upon *SLB Welfare Association* and *DB Power Limited* and held that any attempt to shift the date of default out of the Section 10A period through any device or pretext must be rejected. These judgments unequivocally establish that the original date of default remains the operative date and cannot be altered to circumvent statutory bars.

(xii) Even assuming, without admitting, that any of the three dates of default pleaded by the Operational Creditor are accepted, none of them independently satisfies the minimum threshold requirement under Section 4 of the Code. In particular, if the alleged date of default of 01.03.2020 is adopted, only invoices up to Serial No. 25, aggregating to Rs. 58,94,900/-, could be said to have fallen due and payable, which is substantially below the statutory threshold of Rs. 1 Crore.

Summary Table — Date of Default vs. Threshold vs. Section 10A

Date of Default	Aggregate Debt Due on That Date	Meets Threshold?	Section 10A Bar?	Result
02.05.2020	1,13,95,900/-	Yes	YES — Falls in 10A Period	Barred
04.08.2020	1,13,95,900/-	Yes	YES — Falls in 10A Period	Barred
01.03.2020	58,94,900/-	NO — Below Rs. 1 Crore	No	Fails Threshold

(xiii) Lastly, the present application has been instituted in contravention of the jurisdiction clause contained in the purchase orders and invoices, which specifically provide that disputes shall be subject to the jurisdiction of courts at Assam.

(xiv) In view of the aforesaid facts and circumstances, it is submitted that the present petition is liable to be dismissed with exemplary costs on account of inflated claims, suppression of material facts, contractual breaches, and existence of a bona fide pre-existing dispute between the parties.

REJOINDER BY THE APPLICANT

4. The Applicant filed Rejoinder dated 04.03.2024 in response to the reply of Corporate Debtor which is briefly summarized as under:-

(i) It is a matter of record that on 16.06.2020 and 02.07.2020, the Operational Creditor had intimated the Corporate Debtor of outstanding dues amounting to INR 1,23,95,900/- and had categorically called upon the Corporate Debtor to clear its dues. Thereafter, on 04.08.2020, the Operational Creditor received a payment of INR 10,00,000/- towards the aforesaid outstanding amount. The same was the last payment received towards the outstanding dues, therefore making 04.08.2020 as the date when debt fell due. After the said payment, an actual amount of INR 1,13,95,900/- stood outstanding, which is the exact amount claimed in the present Section 9 Application. The said emails dated 16.06.2020 and 02.07.2020 were never disputed or protested against by the Corporate Debtor and still remain undisputed till date. A copy the email dated 16.06.2020 and 02.07.2020 are annexed as Annexure R1 and R2 respectively to the Rejoinder.

(ii) Out of the invoices raised against the 3 Purchase Orders, a total of 44 invoices remained unpaid. Out of the said 44 invoices, 2 corresponded to Purchase Order bearing No. RCCIVL/OTM/MISSAMARI/RC/19-20/0477, 35 corresponded to Purchase Order bearing No. RCCIVL/OTM/MISSAMARI/RC/19-20/0513 and 7 corresponded to Purchase Order bearing No. RCC/MISSAMARI/PO/MON-2/19-20. It is pertinent to mention that certain extra quantities of cement were demanded by the Corporate Debtor over and above the quantities mentioned in the Purchase Orders. The invoices also included such extra cement material delivered to and received by the Corporate Debtor without any protest or dispute whatsoever. As per the arrangement between the parties, the Corporate Debtor used to telephonically order different quantities of cement from time to time as per its requirements and the same were supplied within 2–3 days from the order date. The cement quantities were sent over a period of time rather than all at once together. Such arrangement is a standard industry practice and was always the agreed mode of delivery between the parties.

(iii) The Operational Creditor physically handed over Test Certificates along with every supply of cement to the Corporate Debtor. However, the Corporate Debtor was always satisfied with the material received and never questioned the quality of material supplied nor demanded any Test Certificate prior to filing of its Reply to the Section 9 Application. The allegations regarding quality issues and non-supply of

Test Certificates have been raised for the first time in the Reply and are clearly an afterthought intended to mislead this Tribunal.

(iv) Purchase Order bearing No. RCCIVL/OTM/MISSAMARI/RC/19-20/0477 was for 125 MT of cement against which 220 MT, i.e., an extra 95 MT, was supplied to the Corporate Debtor. Purchase Order bearing No. RCCIVL/OTM/MISSAMARI/RC/19-20/0513 was for 500 MT against which 1120 MT, i.e., an extra 620 MT, was supplied. Purchase Order bearing No. RCC/MISSAMARI/PO/MON-2/19-20 was for 500 MT against which 235 MT, i.e., a deficit of 265 MT, was supplied. Thus, a total of 1575 MT cement was supplied and duly acknowledged, accepted, delivered and received by the Corporate Debtor without any protest or dispute as against 1125 MT under the Purchase Orders.

(v) The Operational Creditor has already acknowledged and adjusted payment corresponding to 140 MT out of the total 1575 MT cement supplied. Accordingly, the present claim pertains only to unpaid invoices corresponding to 1435 MT of cement and not 1575 MT as wrongly alleged by the Corporate Debtor.

(vi) It is a matter of admitted fact that proper invoices were raised with every delivery and accepted by the Corporate Debtor without any protest and/or dispute whatsoever for all such extra quantities of cement amounting to a total of 450 MT (95 MT + 620 MT - 265 MT). No intimation regarding any dispute on the invoices raised was ever given to the Operational Creditor.

(vii) The last payment of INR 10,00,000/- received on 04.08.2020 was adjusted against four invoices as follows:

Invoice Date	Invoice No.	Bill Value	Amount Adjusted against Payment
27/08/2019	943002143	1,65,600	75,700
28/08/2019	943002160	3,31,200	3,31,200
25/09/2019	943002549	3,31,200	3,31,200
30/09/2019	943002672	3,31,200	2,61,900
Total			**10,00,000**

It can be clearly seen that an amount of INR 69,300/- still remained outstanding in Invoice No. 943002672 and only INR 2,61,900/- was adjusted out of the same. Therefore, against invoices bearing Nos. 943002672 and 943002671 under Purchase Order bearing No. RCCIVL/OTM/MISSAMARI/RC/19-20/0477 amounting to INR 6,62,400/-, only INR 2,61,900/- was paid and the effective outstanding amount under the said Purchase Order stood at INR 4,00,500/-. Additionally, no payments whatsoever were cleared against invoices pertaining to Purchase Order Nos. RCCIVL/OTM/MISSAMARI/RC/19-20/0513 and RCC/MISSAMARI/PO/MON-2/19-20.

(viii) In compliance with the mandate of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor issued a Demand Notice under Section 8 of the Code on 10.08.2022 through email as well as by speed post. The email was duly delivered on 10.08.2022 and the hard copy was duly served and received on 18.08.2022 (Annexure G of the Application). Despite service of the Demand Notice, the Corporate Debtor failed to send any reply thereto and consciously chose not to raise any dispute at the relevant stage.

(ix) It is submitted that out of the 44 unpaid invoices, the first 30 invoices pertain to the period between 30.09.2019 and 11.01.2020. As per Clause 8 of the Purchase Orders (Annexure D at page 35 of the

Section 9 Application), payment was to be made within 45–60 days from delivery of material at site. Consequently, the maximum credit period for the 30th invoice dated 11.01.2020 expired on 11.03.2020. Thus, the default in respect of all 30 invoices occurred prior to 25.03.2020 and is not covered by Section 10A of the Code.

It is further submitted that each invoice specifically provides that interest at the rate of 18% per annum shall be payable on delayed payments. Without prejudice, even if invoices at Serial Nos. 31–44 are excluded from consideration, the debt arising from the first 30 invoices alone exceeds the threshold prescribed under Section 4 of the Code.

A. Outstanding Principal Amount - The total outstanding principal amount in respect of the first 30 invoices is INR 71,87,700/- (Rupees Seventy-One Lakhs Eighty-Seven Thousand Seven Hundred Only) (refer Annexure-1 to these Written Submissions).

B. Contractual Interest - Each invoice contains the following declaration: "Interest @ 18% will be charged on bill not paid on presentation or date agreed upon." It is a settled proposition of law that where the parties have contractually agreed to payment of interest on delayed payments, such interest constitutes a "right to payment" within the meaning of Section 3(6) of the Code and forms an integral part of the "debt" as defined under Section 3(11) of the Code.

Accordingly, interest calculated at the agreed rate of 18% per annum from the respective dates of default until 31.10.2022 (i.e., prior to the filing of the Section 9 Application on 04.11.2022) amounts to INR 35,85,111/-.

(x) Accordingly, the total operational debt comes to INR 1,07,72,811/- (INR 71,87,700/- towards principal and INR 35,85,111/- towards interest), which is well above the statutory threshold of INR 1 Crore.

(xi) It is a settled position of law that contractual interest forms part of the "debt" under Sections 3(6) and 3(11) of the Code. Reliance is placed on *Prashant Agarwal v. Vikas Parasrampuria* (CA (AT) (Ins.) No. 690 of 2022) and *SNJ Synthetics Ltd. v. PepsiCo India Holdings Pvt. Ltd.* (CA (AT) (Ins.) No. 386 of 2025).

5. Vide order dated 14.07.2026, the Tribunal, while considering the present application under Section 9 of the IBC, 2016, sought clarification regarding the post-dated cheques issued by the Corporate Debtor in favour of the Respondent, which had subsequently been dishonoured. The Tribunal directed the Petitioner to place on record the dates of presentation of the said cheques, the dates on which communication regarding their dishonour was received, along with copies of the post-dated cheques and the communications received from the bank. The learned counsel for the Respondent was also permitted to make submissions in this regard.

6. The Operational Creditor, in compliance with the order dated 14.07.2026, filed an affidavit placing on record the requisite details and documents concerning the dishonoured post-dated cheques. It was stated that three cheques issued by the Corporate Debtor, namely HDFC Bank Cheque No. 01294 for ₹50,00,000 dated 03.11.2020, HDFC Bank Cheque No. 001293 for ₹50,00,000 dated 04.02.2021, and PNB Cheque No. 742896 for ₹25,00,000 dated 04.02.2021, were presented and subsequently

dishonoured. The corresponding return memos were dated 04.11.2020, 05.02.2021 and 05.02.2021, respectively. The first two cheques were returned with the remarks "Account Blocked", while the third cheque was dishonoured for "Funds Insufficient".

7. The Respondent, in reply to the Additional Affidavit, disputed the Operational Creditor's reliance on the dates of dishonour of the PDCs. It contended that the cheques were merely security instruments and did not represent any crystallised liability. Without prejudice, it was argued that even if the dates of dishonour, i.e. 04.11.2020, 04.02.2021 and 05.02.2021, were treated as the dates of default, all such dates fall within the period covered by the statutory bar under Section 10A of the IBC. The Respondent further pointed out that the Operational Creditor itself had pleaded 02.05.2020 as the date of default in the Section 9 application. Accordingly, the Respondent contended that the alleged default, whether reckoned from 02.05.2020 or from the dates of dishonour of the cheques, could not form the basis for initiation of CIRP.

ANALYSIS AND FINDINGS

8. We have considered the submissions made by the Learned Counsel for Applicant Operational Creditor as well as the Respondent Corporate Debtor and have gone through the material available on record carefully, along with the extant provisions of the Code and the settled position of law on the subject issue.

9. From the material placed on record, it is evident that the claim of the Operational Creditor arises from supply of goods (Cement) to the Corporate Debtor under a commercial arrangement. The contention of the Operational

Creditor that the first 30 invoices, together with contractual interest, would satisfy the threshold requirement under Section 4 of the Code cannot be accepted. The Tribunal notes that the date of default pleaded in the present Petition is 01.03.2020. If the said date is taken as the relevant date for determining the existence and quantum of default, only those invoices which had become due and payable up to that date can be considered. From the statement of invoices placed on record, it is evident that only the first 25 invoices had fallen due as on 01.03.2020, aggregating to a principal amount of ₹58,94,900/-, which is substantially below the minimum threshold of ₹1 crore prescribed under Section 4 of the Code.

10. It is also to be noted that Applicant has substantiated its dues based on 44 invoices. Admittedly the invoices at Serial No. 31-44 became due for payment during the period falling under Section 10A of the Code and as such cannot be the basis to compute debt in default for initiating the proceedings under the IBC, Furthermore, even if the Invoices up to serial no. 30 is considered, the total amount of debt in default would amount to ₹71,87,700 only which too is below the threshold limit.

11. The Tribunal further observes that the Operational Creditor sought to overcome the deficiency in the threshold amount by contending that interest at the rate of 18% per annum, as mentioned in the invoices, should be added to the principal debt. The Tribunal finds no merit in the Operational Creditor's contention that contractual interest at the rate of 18% per annum ought to be included while determining the threshold amount. Although certain invoices contain a printed stipulation regarding levy of interest on delayed payments, no such clause finds place in the terms and conditions of the Purchase Orders

governing the transactions between the parties. The Purchase Orders, which constitute the foundational contractual documents, are silent on payment of interest in the event of delay or default. Rather, as stated by them, the Respondent was to issue post-dated cheques as per agreed arrangement between the parties.

12. Further, the Operational Creditor has not placed on record any material to demonstrate that the Corporate Debtor had ever expressly accepted the said stipulation regarding interest. No evidence has been produced to show that interest was ever demanded and paid in the course of previous transactions between the parties or that the Corporate Debtor had otherwise acknowledged its liability to pay interest at the rate of 18% per annum. In the absence of any prior conduct evidencing acceptance of such a term, the unilateral printing of an interest clause on invoices cannot, by itself, establish a concluded agreement between the parties regarding payment of interest.

13. Moreover, a perusal of the Demand Notice issued under Section 8 of the Code as well as the Application filed under Section 9 reveals that the amount of default was originally claimed only as ₹1,13,95,900/- towards principal outstanding and no quantified amount of interest was included while computing the alleged default. The claim of interest was neither separately crystallized nor quantified at the stage of issuance of the Demand Notice or filing of the Petition. Having chosen to proceed on the basis of the principal debt alone, the Operational Creditor cannot, at a later stage of the proceedings, seek to artificially augment the debt amount by introducing a quantified interest component solely for the purpose of crossing the statutory threshold.

14. Further, the Operational Creditor has made submissions regarding the issuance of Post-Dated Cheques (PDCs) by the Corporate Debtor towards the invoices raised for the supply of cement. According to the Operational Creditor, the Corporate Debtor issued PDCs against the respective Purchase Orders and the said cheques were subsequently dishonoured, whereafter proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated before the competent court, being Complaint Case No. 2616/2020 for an amount of ₹50,00,000/-, Complaint Case No. 1193/2021 for an amount of ₹50,00,000/- and Complaint Case No. 1025/2021 for an amount of ₹25,00,000/-. It is pertinent to note that the aggregate value of the aforesaid PDCs is ₹1,25,00,000/-, substantially corresponding to the value of the Purchase Orders relied upon by the Operational Creditor. In the facts of the present case, where reliance has been placed on the issuance and subsequent dishonour of the PDCs, the dates on which such cheques were presented for encashment and were dishonoured assume significance, as they have a direct bearing on the determination of the date of default. Further, if the case of the Operational Creditor is that PDCs were issued against the Purchase Orders towards the liability arising therefrom, the determination of the date of default cannot be undertaken merely on an invoice-to-invoice basis without first examining the dates on which such PDCs were dishonoured.

15. In this context, pursuant to the directions issued by this Tribunal vide order dated 14.07.2026, the Operational Creditor, by way of an additional affidavit, has placed on record copies of the said PDCs and the corresponding bank return memos. As per the documents so placed on record, Cheque No. 001294 for ₹50,00,000/- was dated 03.11.2020 and was returned unpaid on

04.11.2020 with the remarks “Account Blocked”; Cheque No. 001293 for ₹50,00,000/- was dated 04.02.2021 and was returned unpaid on 05.02.2021 with the remarks “Account Blocked”; and Cheque No. 742896 for ₹25,00,000/- was dated 04.02.2021 and was returned unpaid on 05.02.2021 with the remarks “Funds Insufficient”.

16. The Respondent has, however, contended that the aforesaid cheques were not Post-Dated Cheques issued towards discharge of the underlying liability, but were merely security instruments, and therefore the dates of their presentation and dishonour cannot be treated as the dates of default. This Tribunal is not required, in the facts of the present case, to enter into the question as to whether the said cheques were issued as Post-Dated Cheques towards discharge of an existing liability or merely as security instruments. The material fact which assumes significance is that the cheques were admittedly presented for encashment on 03.11.2020 and 04.02.2021 respectively and were returned unpaid on 04.11.2020 and 05.02.2021 respectively. By presenting the said instruments for encashment on those specific dates, the Operational Creditor itself acted upon the agreed arrangement for payment through such instruments and, in effect, allowed the period for payment of the amounts covered thereunder to run up to the respective dates of presentation and dishonour. Thus, irrespective of the nomenclature or character attributed to the cheques, the fact remains that the Operational Creditor chose to present them for encashment only on 03.11.2020 and 05.02.2021, and the consequence of non-payment arose upon their dishonour. The dates of dishonour, therefore, assume material

significance for determining the date of default in respect of the amounts covered by the said cheques.

17. In view of the aforesaid documentary evidence, the date on which the cheques were dishonoured would constitute the relevant date of default for the purpose of the present proceedings. Accordingly, the dates of default in respect of the three PDCs would be 04.11.2020, 05.02.2021 and 05.02.2021 respectively. All the aforesaid dates fall within the period from 25.03.2020 to 24.03.2021 specified under Section 10A of the Code, during which initiation of CIRP in respect of a default arising on or after 25.03.2020 was statutorily barred. The Explanation to Section 10A provides that no application shall ever be filed for initiation of CIRP for a default occurring during the said period. Therefore, even if the dates of dishonour of the PDCs are taken as the dates of default, the defaults relied upon by the Operational Creditor squarely fall within the statutory embargo under Section 10A. Consequently, such defaults cannot constitute the basis for initiation of CIRP against the Corporate Debtor under Section 9 of the Code.

CONCLUSION

18. Accordingly, in view of the foregoing discussion, even after excluding the invoices pertaining to the period covered under Section 10A of the Code, the remaining amount of debt in default does not meet the statutory threshold prescribed under Section 4 of the Code. Even otherwise, the Operational Creditor admittedly accepted the PDCs against the underlying invoices and presented the same for encashment on their respective due dates, thereby extending the time for payment in respect of the amounts covered by such cheques. Once the PDCs were accepted and the Operational Creditor agreed

to receive payment through the said instruments on their respective dates, there is no justification for treating an earlier date, prior to the dishonour of the cheques, as the date of default in respect of the amounts covered by the PDCs. The dates of dishonour of the PDCs, therefore, can rightly be taken as the relevant dates of default. Since such dates fall within the period covered by the statutory embargo under Section 10A of the Code, the said defaults cannot form the basis for initiation of CIRP under Section 9 of the Code. Consequently, the present Petition is not maintainable on either count, namely, that the defaults evidenced by the dishonour of the PDCs fall within the statutory embargo under Section 10A of the Code and, in any event, the amount of default falls below the threshold prescribed under Section 4 of the Code. The Petition is, therefore, liable to be rejected.

19. Accordingly, the Company Petition bearing **CP(IB)No.10/Chd/Hry/2023** stands **rejected** and **disposed of.**

Sd/-
Khetrabasi Biswal
Member (Judicial)
Inderjeet

Sd/-
Kaushalendra Kumar Singh
Member (Technical)