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NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH
(through web-based video conferencing platform)

Item No. 236
IA No. 494/JPR/2026
CP No. (IB)- 83/9/JPR/2025
Under Section 9 of IBC, 2016

In the matter of:

M/s Parmod Sharma Contractors **... Operational Creditor**

Versus

SBCC Infra Pvt. Ltd. **... Corporate Debtor**

Coram: HON'BLE MS. REETA KOHLI, JUDICIAL MEMBER
HON'BLE MS. KAVITA BHATNAGAR, TECHNICAL MEMBER

PRESENT:-

For the Applicant	:	Amol Vyas, Adv. Abhishek Purohit, Adv.
For the Respondent		Shivangshu Naval, Adv. Akansha Noval, Adv. Deepak Bishnoi, Adv. Shivang Singhal, Adv.
For the RP	:	Karan Pratap Singh, Adv. Nishant Sarraf, Adv. Rishika Pareek, Adv.

ORDER

IA No. 494/JPR/2026

1. The present application has been preferred by *Mr. Hanuman Ram*, ('the Applicant'), one of the suspended directors of *SBCC Infra Private Limited* ('the Corporate Debtor'/ 'CD'), seeking the following prayers:

   a) *"Recall and set aside the ex parte impugned order dated 14.10.2026, passed in the restore CP (IB) No. 83/9/JPR/2025, and restore CP (IB) No. 83/9/JPR/2025 for hearing on merits;*
   b) *Permit the Corporate Debtor to file its reply within such time as this Hon'ble Tribunal may fix;*

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c) *Pending disposal of this application, stay the operation of the order dated 14.10.2026, or in the alternative restrain Non-Applicant No. 2 from proceedings with the CIRP and/or constituting the CoC or taking any coercive actions against SBCC Infra Private Limited and/or its suspended management;*

d) *Upon recall of the order, direct Non-Applicant No. 2 to restore the management, records and bank accounts to the Board of the Corporate Debtor; and*

e) *Set aside the orders dated 11.05.2026, 26.05.2026 and 31.08.2026 passed by this Ld. Tribunal in the CP No. 83/9/JPR/2025 forfeiting the right to file reply to the C.P. and recording that the Corporate Debtor has refused service as no service has been made on the Corporate Debtor.*

f) *Pass any other order that this Hon'ble Adjudicating Authority deems fit in the interest of justice."*

2. The present application has been preferred under Rule 49 of NCLT Rules, 2016 seeking recall of the order dated 14.10.2026 on the ground of violation of the principles of natural justice as the Corporate Debtor has apparently been admitted without having been granted an opportunity to be heard on the following reasons:

a) The applicant states that the name of village "Khokharoya" has been misspelled as "Khakkroya". It is stated that there are three villages with same/similar names with deceptive spellings within the radius of 20 kms. Thus, it cannot be said that the notices/petition was ever served upon the Corporate Debtor-*SBCC Infra Private Limited.*

b) The Corporate Debtor or its KMP (Key Managerial Personnel) or the applicant were never electronically served with any demand notice under Section 8, the advance copy of

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petition filed under Section 9 or any notice by the Adjudicating Authority by email.

3. The Applicant submitted that this Adjudicating Authority *vide* order dated 14.10.2026 admitted the Corporate Debtor into CIRP on the basis of a Section 9 Petition filed by *M/s Pramod Sharma Contractors* ('non-Applicant No. 1'). Thereafter, on 15.10.2026, the Applicant was contacted by the IRP on his mobile-phone informing him about the initiation of CIRP against the Corporate Debtor. It is the case of the Applicant that this was the first time that the Applicant got to know about the admission of Corporate Debtor into CIRP.

4. The Applicant has stated that Section 9 application has been filed by the non-applicant No. 1 with an ulterior motive as the non-applicant No. 1 has misled the Adjudicating Authority in believing that the Corporate Debtor has allegedly refused to accept the service of Demand notice under Section 8 of the Code, advance notice of Section 9 petition, and also refused the service of summons, whereas the truth is that no notice was ever served upon the Corporate Debtor i.e. *SBCC Infra Private Limited*.

5. To further substantiate his contentions, the learned counsel for the Applicant has drawn our attention to Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

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with respect to the service of demand notice by the operational creditor. The rule states as under:

> ***"Demand notice by operational creditor—***
> *(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely.- .*
> *(a) a demand notice in Form 3; or*
> *(b) a copy of an invoice attached with a notice in Form 4.*
> *(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,*
> *(a) at the registered office by hand, registered post or speed post with acknowledgement due; or*
> *(b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.*
> *(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any"*

6. The learned counsel for the Applicant states that in terms of Rule 5, the demand notice is either to be served at the registered office by hand or by registered post or speed post with an acknowledgment due. The learned counsel for the Applicant submitted that in the present case, even if the notice has been stated to have been served through registered post, still there is no acknowledgment placed on record. The Clause (b) of Sub-rule (2) states that by electronic mail service, the delivery has to be done to a whole-time director or designated partner or key managerial personnel, if any, of the Corporate Debtor.





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7. The contention of the learned counsel for the Applicant is that the non-Applicant No. 1 has been in regular communication with the applicant through the email ID of the company, (i.e., *info@sbipl.co.in*), and still chose not to deliver the demand notice on the said email ID or even the petition/the summons on the said email ID. The copy of various emails sent by the non-Applicant-1 to the applicant during the normal course of business on the said email ID have been annexed with the application. The Applicant submitted that the said email ID (i.e., *info@sbipl.co.in*) is also: -

   a. mentioned on the letter of acceptance signed and executed between the Applicant and non-Applicant No. 1, and

   b. printed on the letter of award dated 10.06.2023 while awarding the contract to the non-applicant No. 1.

8. It is further contended by the Applicant that the email ID mentioned on the website of Ministry of Corporate Affairs (i.e., *hsd.sbcc@gmail.com*) has been inoperative since January 2025 and the said email ID was never provided by the Applicant to the non-Applicant no. 1. The Applicant submitted that any email, if sent to the aforementioned email ID was never delivered to the Corporate Debtor as it has been inaccessible since January 2025.

9. The contention of the counsel is that from the conduct of the non-applicant No. 1, it is evidently clear that there has been an ulterior

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motive or malicious intent on the part of non-Applicant No. 1 by deliberately not serving the Applicant on the known/regularly in use email ID of the Applicant. The Applicant further submitted that immediately on the admission of the Corporate Debtor into CIRP (*ex parte* order), the IRP connected with the Applicant on his mobile number, which itself further substantiates that non-Applicant no. 1 was even having the mobile number of the applicant.

10. It is the case of the Applicant that if the intent of the non-applicant No. 1 was to genuinely serve the applicant, the non-applicant No. 1 not only had the correct email ID but also the mobile number of the Applicant. The fact that none of these have been used by the non-applicant No. 1 to serve the Applicant itself speaks volumes about the conduct of the non-Applicant No. 1. It is this conduct of the non-Applicant No. 1 which misled the Adjudicating Authority into believing that the Applicant has been duly served and has refused service. Further, it is only in that background that the Court proceeded to hear the non-Applicant No. 1 with respect to the Section 9 Petition and admitted the Corporate Debtor into CIRP.

11. The learned counsel for the Applicant further stated that the *mala fide* on the part of the non-Applicant No. 1 is additionally substantiated from the circumstance that the non-Applicant No. 1 owes more than Rs. 2 crores to the Applicant. The learned counsel

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for the Applicant submitted that because of the incompetence on the part of the non-Applicant no. 1, the Applicant was compelled to terminate the contract awarded to the non-Applicant no. 1 midway on 13.06.2025. It has been contended that this fact was concealed by the non-applicant No. 1 while filing the petition under Section 9 of the Code before the Adjudicating Authority.

12. The learned counsel for the Applicant has further drawn our attention to the clause pertaining to bank guarantee and security deposit in the letter of award which stated as under:

"Bank Guarantee & Security Deposits: Contractor (M/s. Pramod Sharma Contractors) has to pay all bank guarantees and security deposits on behalf of SBCC Infra. Pvt. Ltd.

M/s Pramod Sharma Contractors has to furnish procedure to submission of bank Guarantee within 60 days. In case of failure in submission of Bank Guarantee or failure in works execution SBCIPL has rights to enchase cheques submitted by M/s. Pramod Sharma Contractors.

Details of Cheques (without Dates) submitted by M/s. Pramod Sharma Contractors are as Follows:

Cheque No. – 761634 452015002 000403 30 Amount – 36,00,000/-

Cheque No. –761635 452015002 000403 30 Amount – 36,00,000/-

Cheque No. –761636 452015002 000403 30 Amount – 36,00,000/-

Cheque No. –761637 452015002 000403 30 Amount – 36,00,000/-

Cheque No. –761638 452015002 000403 30 Amount – 36,00,000/-

Cheque No. –761639 452015002 000403 30 Amount – 36,00,000/-

On successful submission of Bank Guarantee and proper mobilization of machinery and man power SBCIPL will return cheques to M/s. Pramod Sharma Contractors."

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13. The contention of the Applicant is that since the work was not completed by the non-Applicant no. 1 in terms of the letter of award, the Applicant sought to encash the performance security. However, after the above-stated cheques were presented for clearance by the Applicant, the same were dishonoured. In these circumstances, the Applicant was compelled to initiate appropriate proceedings against the non-Applicant No. 1 under Section 138 of the NI Act, 1881 and it is only to circumvent those proceedings, non-Applicant No. 1 consciously chose to file the petition under Section 9 by concealing the material facts from the Adjudicating Authority. Hence, the instant application deserves to be allowed and the order dated 14.10.2026 be set aside.

14. To substantiate his contentions, the learned counsel for the Applicant has relied upon the judgment dated 19.09.2025 delivered by the Division Bench of the Hon'ble High Court of Rajasthan comprising of *Hon'ble Mr. Justice Dinesh Mehta and Hon'ble Mr. Justice Sandeep Taneja*, wherein the Court has been pleased to hold as under:

> *"17. A refusal for the purpose of service of notice should be taken to be a sufficient service, if such refusal is by the addressee or by the notice himself/herself. A denial by any other person other than the notice or his agent, including the mother to receive or accept the notice on someone else's behalf cannot be said to be a refusal in the eye of law."*

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15. While appreciating the provisions in sub-Rule (5) of Rule 9 of Order V of CPC, the Hon'ble High Court in the aforementioned case held that since the mother of the appellant has refused the postal article, the Court cannot draw an inference under Sub-rule (5) of Rule 9 of Order V of the Code that the notice has been duly served on the appellant. For ease of refence, sub-Rule (5) of Rule 9 of Order V of the CPC is reproduced hereunder:-

> *ORDER V-Issue and service of summons*
> ***9. Delivery of summons by Court***
> *"(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:*
> *Provided that where the summons was properly addressed, pre-paid and duly sent by speed post with registration and proof of delivery, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the proof of delivery having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons."*

16. The learned counsel for the Applicant also relied upon the judgment of the Hon'ble NCLAT in the case of *M/s Hacxad Infotech Private Limited vs. M/s Skootr Global Private Limited* ***(2022) ibclaw.in 215***

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NCLAT dated 10.03.2022, wherein the Hon'ble NCLAT has been pleased to take note that the Operational Creditor was well aware of the personal email IDs of the directors and still notices were not sent on the personal email IDs. This was held to be a sufficient ground to prove that the order was passed without serving any notice upon them.

17. The contention of the learned counsel for the Applicant is that it is in the similar facts and circumstances as that of the present case that the Hon'ble NCLAT has been pleased to hold that no notices were served and hence the Adjudicating Authority is competent to recall the *ex parte* order in exercise of its jurisdiction under Rule 49(2). The said judgment has been upheld by the Hon'ble Supreme Court as well.

18. To prove his *bona fide*, the learned counsel for the Applicant has further contended that he is ready and willing to deposit the amount claimed by the Operational Creditor before the Adjudicating Authority, as the Corporate Debtor is a cash-rich solvent company which has not committed any default.

19. On the other hand, the learned counsel for the non-applicant states that the arguments having been advanced by the counsel for the applicant are not sustainable in the eyes of law as the Corporate Debtor was duly served in terms of law on the registered address

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given on the website of MCA, and that the Operational Creditor is required to serve the Corporate Debtor on the email ID/registered address of the Corporate Debtor. It has been submitted that in the present case, the same has been duly done. It is the Corporate Debtor who has not only refused the service of notice under Section 8, but also the service of the notice of the petition under Section 9 by the Operational Creditor and also by the Registry of the Adjudicating Authority.

20. The counsel for the non-Applicant has drawn our attention to the tracking report saying it is recorded as 'refusal' and has also referred to the affidavit of service filed by the Operational Creditor during the course of arguments wherein the envelope of refusal of service of Section 9 petition has been placed on record.

21. To substantiate his contentions, counsel for the non-Applicant has relied upon the judgment of the Hon'ble NCLAT in the case of *Vinita Pramod Devkar vs. Kailash Shah (2025) ibclaw.in 348 NCLAT* wherein the Hon'ble NCLAT held that since the email ID has been depicted in the public documents, Corporate Debtor was therefore clearly bound by the representation made by them to the world at large about their registered email address, having placed the same on the public domain. Hence, the Hon'ble NCLAT has

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been pleased to hold that the demand notice delivered at the registered office cannot be said to be not served upon the Corporate Debtor.

22. After having heard both the learned counsels and after appreciating the documents placed on record, we are of the considered view that though both the counsels have relied upon one judgment each by the Hon'ble NCLAT, but it is not a case where the Court can be oblivious of the facts and circumstances in the present case.

23. The fact of the matter is that the Operational Creditor has been regularly in communication with the Corporate Debtor and has been well aware of the email ID on which regular communication was being done. Therefore, the intent is to be judged from the fact that despite being aware of the email ID on which regular communication was being done, the Operational Creditor still chose to serve the notice under Section 8 and the petition under Section 9 to the Corporate Debtor at a different email ID. Even though this fact itself discredits the *bona fides* of the Operational Creditor, but at the same time the Adjudicating Authority cannot lose sight of the fact that the notice of the Section 9 Petition sent by the Applicant and also by the Adjudicating Authority through postal mode have also been refused by the Corporate Debtor.

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24. Thus, at this stage, no advantage can be extended to the Corporate Debtor. In view of the peculiar facts and circumstances of the case, though the learned counsel for the Applicant has vehemently contended that the refusal on the envelope does not clearly stipulate as to who in person has in fact refused the delivery of service, but at this stage, being a summary jurisdiction, we do not consider it appropriate to get into the merits of the said issue.

25. It is evident from the perusal of the documents placed on record that the service of notice sent by the Applicant and also by the Adjudicating Authority have been refused by the Corporate Debtor. Though the applicant has drawn our attention to the relevant facts so as to show that the petition has been preferred with ulterior motive and there has been concealment of facts on the part of the Operational Creditor. At this stage we do not deem it appropriate to make any observation on the said contentions.

26. Keeping in view the peculiar facts and circumstances of the present case, at this stage, we deem it appropriate to recall the order dated 14.10.2026.

27. Consequently, the IRP is directed to restore the management, record and bank accounts to the board of the Corporate Debtor at the earliest.

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28. Further, the Applicant is granted one week's time to file its reply to the Petition under Section 9 of the Code. Post the Petition bearing *CP No. (IB)- 83/9/JPR/2025* for arguments on 18.11.2026.

29. With these observations, ***IA stands allowed and disposed of.***

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(Kavita Bhatnagar)
Technical Member

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(Reeta Kohli)
Judicial Member

October 29, 2026

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