

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH (COURT-I), CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 23/Chd/Hry/2024**

**Under Section 9 of the Insolvency  
& Bankruptcy Code, 2016 r/w Rule  
6 of The Insolvency and  
Bankruptcy (Application to  
Adjudicating Authority) Rules,  
2016.**

**IN THE MATTER OF:**

**Napin Impex Limited**

having registered office at:

328, Third Floor, Vardhman Premium Mall,  
Deepali, Outer Ring Road, Pitampura,  
Delhi-110034

Through its Authorized Representative/Director  
Mr. Gaurav Singhal

.... Applicant/ Operational Creditor

Versus

**Super Floorings Private Limited**

having registered office at:

5<sup>th</sup> KM-Stone, Delhi Road, Village Aurangabad,  
Yamuna Nagar, Haryana-135001

Also At-

Plot No. 9, HSIIDC Industrial Estate,  
Yamuna Nagar, Haryana-135001

.... Respondent/Corporate Debtor

**Judgment delivered on: 05.07.2024**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

**Present:**

For the Petitioner : Mr. Shikhar Sarin, Advocate

For the Respondent: Mr. Uttam Dutt, Mr. Amandeep Singh,  
Mr. Sourav Khosla, Advocates.

**PER: MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

**ORDER**

This Petition has been filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Napin Impex Limited (hereinafter referred to as the “**Operational Creditor/Petitioner**”), through its Authorized Representative/ Director, to initiate Corporate Insolvency Resolution Process (hereinafter referred to as the “**CIRP**”) in respect of Super Floorings Private Limited, (hereinafter referred to as the “**Corporate Debtor/Respondent**”).

2. The Corporate Debtor, namely, Super Floorings Private Limited, is a Company incorporated on 11.08.1988 under the provisions of the Companies Act, 1956 with CIN No. U74899HR1988PTC098398 with its registered office at 5<sup>th</sup> KM-Stone, Delhi Road, Village Aurangabad, Yamuna Nagar, Haryana-135001. Hence, the territorial jurisdiction lies with this Adjudicating Authority. A copy of the Master Data of the Corporate Debtor has been attached with the Application as Annexure E.

3. The facts of the case, briefly, as stated by the Operational Creditor in the Petition are as below:

- (i) Napin Impex Limited (Operational Creditor) is a trader of polymer raw material of various kinds. In the year 2018, Super Flooring Private Limited (Corporate Debtor) approached Operational Creditor for purchasing polymer raw materials and after consultation with each other and after discussion regarding price, quality & quantity of goods with payment terms and after being satisfied with the quality of goods, had purchased the polymer raw material. At the time Corporate Debtor also assured

Operational Creditor that it shall make timely payments to Operational Creditor of all invoices.

- (ii) Based on the Corporate Debtor's assurances, the Operational Creditor supplied polymers raw materials of EVA (3901) Resin & LDPE (3901) Resin, both in primary form, between the period 03.01.2018 to 16.08.2018 under various invoices and E Way Bills. The payment under these invoices was to be made to the Operational Creditor. Despite having accepted and utilized the goods supplied under the invoices, the Corporate Debtor only made part payments of the invoices to Operational Creditor and failed to pay a substantial part of the outstanding invoices. In the event, as on 26.08.2019 a total principal Sum of Rs.2,14,16,735/- was due and payable by the Corporate Debtor to the Operational Creditor. In addition to the principal sum, the Corporate Debtor is also liable to pay the Operational Creditor total interest at the rate of 18% p.a. from the due date till actual date of payment as per the terms and conditions mutually agreed between Operational Creditor and Corporate Debtor.
- (iii) In spite of various assurances and promises, the Corporate Debtor has failed to make the outstanding payment. Constrained by the Corporate Debtor's failure to pay the outstanding sums, ultimately the Operational Creditor issued a demand notice under the Insolvency and Bankruptcy Code dated 16.09.2022, through speed post on 17.09.2022 and vide email on 21.09.2022, to the Operational Creditor and its directors. The said demand notice was served on the Corporate Debtor and replies dated 28.09.2022 & 29.09.2022 through Counsel were given by the Corporate Debtor both on 29.09.2022 through Email & Whatsapp. (collectively

Replies). In the Replies, the Corporate Debtor attempted to raise spurious and unfounded issues in a transparent attempt to evade its liability. Pertinently, no such issue was raised by the Corporate Debtor prior to issuance of the reply. Accordingly, the issues raised in the replies are hypothetical, unfounded and do not reflect a pre-existing real dispute. Instead, the replies are mala fide, false and vexatious.

- (iv) As such, the Corporate Debtor is liable to pay, till the date of filing present Petition, a total sum of Rs.2,14,16,735/- along with interest at the rate of 18% p.a. from the due date till actual date of payment as per the terms and conditions mutually agreed between the Operational Creditor and Corporate Debtor.

4. During the course of hearing dated 01.02.2024, Learned Counsel for the Corporate Debtor had raised an objection on the point of limitation and both the parties were directed to file short notes on the point of limitation within one week.

5. In compliance of the abovementioned order, the Corporate Debtor filed the written submissions vide Diary No.03857/2 dated 08.02.2024 and the Operational Creditor filed the short notes vide Diary No.3857/3 dated 18.04.2024, which were taken on record vide Order dated 16.04.2024 and 09.05.2024 respectively.

6. After hearing the arguments on 09.05.2024 of both the parties, the Order was reserved to decide the limited issue of limitation with the direction to the parties to file compendium of the relevant judgements within three days, which were submitted by the Corporate Debtor and Operational Creditor vide Diary No. 03857/4 dated 14.05.2024 and vide Diary No. 03857/5 dated 22.05.2024 respectively.

7. The contentions of the Operational Creditor, as submitted in the short note and compendium of judgements have been summarised below:

- (i) The transactions had taken place between the parties in the years 2018-2019, wherein the invoices had been raised between the period of 03.01.2018 to 16.08.2018. The said account was a mutual running account, wherein the Respondent Corporate Debtor made its last part payment towards the dues of the Petitioner on 26.08.2019, thereby becoming the date of default. Thus, the three-year period under the Limitation Act, 1963 started running from 26.08.2019, meaning thereby that the limitation period would have expired on 26.08.2022.
- (ii) However, due to the outbreak of the Covid-19 pandemic, the Hon'ble Supreme Court, seeing that the pandemic would lead to issues in people approaching Courts for redressal of their grievances, chose to consciously exclude the period from 15.03.2020 to 28.02.2022 from being included in the limitation for all general and special laws, by passing a judicial order in MA No. 21 of 2022 in MA No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 titled as "***In Re: Cognizance For Extension Of Limitation***" wherein it held as follows

*"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*

- I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*

- III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
- IV. *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*

Thus, the intent of the Hon'ble Supreme Court is clear, so as wholly exclude the period between 15.03.2020 and 28.02.2022, for the purposes of calculating limitation.

- (iii) This aspect was again clarified and upheld by the Hon'ble Supreme Court in ***Babasaheb Raosaheb Kobarne v. Pyrotek India (P) Ltd., 2022 SCC OnLine SC 1315.***
- (iv) Even further the period of limitation for the present petition is 3 years or 1095 days starting from 26.08.2019, thereby meaning that the limitation period would have expired on 26.08.2022, however by the exclusion of 715 days from the said 1095 days would mean that the new date for the expiry of the limitation would be 07.02.2024, and therefore the present petition having been filed prior to the said date would make the present petition maintainable.
- (v) In ***Unigold System Vs Fortune Spirit Limited, Company Appeal (AT)(INS) 325/2021***, the Hon'ble NCLAT has held that indeed continuous/periodical transactions from time to time between parties establish a running account. The Petitioner and Respondent were maintaining a

running account having periodical and continuous transactions in terms of both supply of goods and receipt of payments. It is evident from the ledger account filed by the Petitioner that both debit and credit entries were recorded in continuous manner with last date of receipt of payment as 26.08.2019, which will be termed as date of default. It is further evident from the ledger that respondent had not made any invoice wise payment, which itself shows that the account between Petitioner and Respondent was a running account.

- (vi) In ***Abhinandan Jain vs Tanaya Enterprises Private Limited Company Appeal (AT)(INS), 1017/2020***, the Hon'ble NCLAT held that in a running account, considering the manner in which businesses are conducted and accounts are kept, it would be material to see, when the parties concerned treat the debt to be in default. Section 3(11) of the Code defines "debt" as a liability or Application in respect of a claim which is due from any person and includes Financial Debt and Operational Debt. Section 3(12) defines "default" as non-payment of debt when whole or any part or instalment of the amount of debt has become 'due and payable and is not paid by the Debtor or the Corporate Debtor as the case may be.

8. The contentions of the Corporate Debtor, as submitted in the written submissions and compendium of judgements have been summarised below:

- A. All invoices claimed under the Petition are time barred.
- i. That the Operational Creditor has claimed alleged dues pertaining to 17 invoices raised in the month of January 2018 and August 2018. As per the condition mentioned in each invoice, the same was due

and payable within 3 days from the date of invoice. In view thereof, the date of default for each invoice would be 3 days after the date of invoice. In terms of Section 3 (12) of IBC Code, 2016 "Default" means non-payment of debt, when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be; The Petition has been filed on 01.12.2023, which is well beyond the period of three years from the dates of default pertaining to each invoice.

- ii. The Hon'ble NCLAT in ***S.M Ghogbhai v. Schedulers Logistics India Pvt. Ltd., 2022 SCC OnLine NCLAT 216*** has held that limitation for the purposes of a petition under Section 9 of the IBC would be the date of default of payment of invoice.
- iii. The Hon'ble Supreme Court in ***M/s Next Education India Pvt. Ltd. V. M/s K12 Techno Services Pvt. Ltd., Civil Appeal 1775 of 2021*** has held that for considering the application under section 9 of the IBC, 2016, the date of default is to be determined with reference to each invoice and invoices, which are beyond the period of 3 years of the date of filing are to be excluded.

B. The claim is time barred even after excluding the Covid period between 15.03.2020 till 28.02.2022, excluded by the Hon'ble Supreme Court as per the Judgement dated 10.01.2022.

- i. In terms of the Suo Motu Order dated 10.01.2022 passed by the Hon'ble Supreme Court, if the limitation period is expiring between 15.03.2020 till 28.02.2022, then the aforesaid period will be excluded from the calculation of limitation period. The parties are provided a



uniform limitation period of 90 days after 01.03.2022 for filing. However, the unexpired period of limitation (from original cause of action) up to 15.03.2020 shall be further available to a party from 01.03.2022 and in case the unexpired period is greater than 90 days, the longer period is available for filing.

- ii. The following is the table explaining the calculation for limitation period after excluding the Covid period from 15.03.2020 till 28.02.2022-

S.No.	Date of Invoice And Date of Default	Time till 15 March 2020	Unexpired limitation from 01 March 2022	Expiry of balance limitation period	Filed in NCLT	Amount
		<i>(excluding Supreme Court Covid period from 15.03.2020 to 01.03.2022.)</i>				
1.	3 January 2018 7 January 2018	27 months	9 months	December 2022	December 2023	1125425
2.	5 January 2018 9 January 2018	27 months	9 months	December 2022	December 2023	1479130
3.	8 January 2018 11 January 2018	27 months	9 months	December 2022	December 2023	1170442
4.	10 January 2018 14 January 2018	27 months	9 months	December 2022	December 2023	1414820
5.	13 January 2018 17 January 2018	27 months	9 months	December 2022	December 2023	1234752
6.	18 January 2018 22 January 2018	27 months	9 months	December 2022	December 2023	1266907
7.	20 January 2018 24 January 2018	27 months	9 months	December 2022	December 2023	1295846
8.	23 January 2018 27 January 2018	27 months	9 months	December 2022	December 2023	1543440
9.	25 January 2018 29 January 2018	27 months	9 months	December 2022	December 2023	1270122
<b>(INR) 1,13,41,884</b>						

10.	10 August 2018 14 August 2018	19 month	17 months	July 2023	December 2023	2696300
11.	10 August 2018 14 August 2018	19 month	17 months	July 2023	December 2023	2065000
12.	11 August 2018 15 August 2018	19 month	17 months	July 2023	December 2023	2065000
13.	11 August 2018 15 August 2018	19 month	17 months	July 2023	December 2023	2696300
14.	13 August 2018 17 August 2018	19 month	17 months	July 2023	December 2023	2696300
15.	13 August 2018 17 August 2018	19 month	17 months	July 2023	December 2023	2065000
16.	14 August 2018 18 August 2018	19 month	17 months	July 2023	December 2023	2022225
17.	16 August 2018 20 August 2018	19 month	17 months	July 2023	December 2023	2022225
<b>(INR) 1,39,75,750</b>						

iii. Any proceedings instituted by the Petitioner, belatedly after the elapse of a period of more than three years from the date of balance limitation period, i.e. from December 2022 (Invoices-January 2018) and July 2023 (Invoices-August 2018) is barred under the law of limitation.

C. The petition is not maintainable under Article 1 of the Limitation Act, 1963, as the account maintained between the parties is not a running account and therefore the petition falls in the purview of Article 137 of the Limitation Act, 1963, wherein it is time barred.

In ***S.M Ghogbhai v. Schedulers Logistics India Pvt. Ltd. (supra)***, the Hon'ble NCLAT held that Article 1 of Schedule of the Limitation Act, 1963, which pertains to "For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties" would not apply to a claim based on invoices.

Article 1 of the Schedule to the Limitation Act, 1963 prescribes limitation of three years in relation to claims under a "mutual, open and current account, where there have been reciprocal demands between the parties" where the limitation period begins from the close of the year, in which the last item admitted or proved is entered in the account. What accounts qualify as mutual, open and current account with reciprocal demands is laid down in the following judgments-

- a) ***Amar Company Vs. M/s Radhey Lal Mal Ram 2009 SCC Online P&H 4497:*** It was held that merely a case where the goods were being supplied and delivered and the accounts between the parties not being mutual open and current will not fall under Article 1.
- b) ***Era Constructions (India) Limited Versus D.K. Sharma, Prop. Keshav Security Services (Regd.) 2007 SCC OnLine Del 1317:*** It was held that it was necessary to establish that the account was not only open and current, but also mutual where there have been reciprocal demands between the parties. To be mutual there must be transaction on each side creating independent obligations on the other and not merely transaction, which create obligation on one side those on the other side being merely complete or partial discharges of such obligation.
- c) ***Alliance Paints and Varnish Works Pvt. Ltd Vs Hari Kishan Gupta 2010 SCC OnLine Del 571:*** It was held that a simple case of debtor and creditor only and not a case of mutual obligations, which will in an ordinary way result enforceable liability on each side will not qualify as a mutual, open and current account with reciprocal obligations.

There was no mutual, open and current account with reciprocal demands between the parties. The transaction between the parties was for supply of goods by the Operation Creditor to the Corporate Debtor and there was no corresponding reciprocal transaction of

either goods or services by the Corporate Debtor to the Operation Creditor, therefore, Operation Creditor's reference to Article 1 of Schedule of the Limitation Act, 1963 is incorrect and misplaced and has been falsely invoked only to allege that the claim is not time barred.

### **Analysis and Directions**

9. We have carefully pursued the records. The moot issues involved in this case are:

- i. Whether it is Article 1 or Article 137 of the Limitation Act of 1963 which is applicable to the petition filed under Section 9 of the Code.

*Article 1 of the Limitation Act, 1963 states that, for the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties, the period of limitation begins to run from the close of the year in which the last item admitted or proved is entered in the account.*

*Whereas, Article 137 of the Limitation Act, 1963 states that, for any other application for which no period of limitation is provided elsewhere in this Division, the period of limitation of three years begins when the right to apply accrues.*

It may be noted that the present petition is filed for the default in payment of the outstanding dues for the material supplied by the Petitioner. The Hon'ble Supreme Court in ***B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta (2019) 11 SCC 633*** had clearly stated that :

*“42. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. **“The right to sue”, therefore, accrues when a default occurs.** If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.”*

Hence, it well settled that for applications filed under Section 7 and 9 of the Code, it is Article 137 of the Limitation Act, 1963 which is applicable in view of the aforementioned precedent laid down by the Hon'ble Apex Court.

- ii. The second issue is whether the petition filed is within the period of limitation of three years.

The Ld. Counsel for the Respondent has raised a preliminary objection that under Article 137 of the Limitation Act of 1963, the petition is time-barred as the invoices were raised between the time period 03.01.2018 to 16.08.2018 by the Operational Creditor and the petition was filed on 04.01.2024. Thus, the period of limitation for filing the petition based on the last invoice dated 16.08.2018 expired in July 2023.

The period of limitation would commence when the default occurred. The Hon'ble NCLAT in the matter of ***In Style Fashion vs. Aditya Birla Fashion and Retail Limited, Company Appeal (AT) (Insolvency) No. 1679 of 2023***, held that,

*“12. .... In view of the last payment having been made on 28.04.2017 as noted above, the fresh period of limitation would start from that date and the Operational Creditor*

*was entitled for taking benefit of 3 years' period of limitation from the date of the last payment....”*

Thus, the period of limitation would begin to run from the date of default, which would be 26.08.2019 when the last payment was made by the Corporate Debtor to the Operational Creditor.

In view of the Hon'ble Supreme Court's verdict in ***M.A. No. 21 of 2022 in MA No. 665 of 2021 in Suo Moto Writ petition (C) No. 3 of 2020 titled as “In Re: Cognizance for Extension of Limitation”*** wherein the Hon'ble Supreme Court settled the law of limitation for all types of proceedings explicitly excluded the period from 15.03.2020 to 28.02.2022 for the purposes of calculation of any limitation period, for all cases irrespective of the type of case. In respect of the present matter, the petition could have been filed within a period of 1095 days beginning from the date of default i.e. 26.08.2019; out of which a total no. of 202 days has expired from 26.08.2019 till 15.03.2020. From 01.03.2022, the petitioner would get the remaining balance of 893 days, and the new date of expiration of the limitation would be 10.08.2024, which is calculated as below:

Date of default	26.08.2019
Extent of limitation expired till 15.03.2020	202 days
Exclusion period	15.03.2020-28.02.2022
Balance limitation as available on 01.03.2022	893 days
893 days w.e.f. 01.03.2022	10.08.2024

10. The authority ***S.M. Ghogbhai V Schedulers Logistics India Private Limited 2022 SCC Online NCLAT 216***, relied upon by the Ld. Counsel for the Corporate Debtor is not applicable to the facts and circumstances of the present case as in that case, the last payment was made on 26.09.2016 and the petition was filed on

24.10.2019, which was prima facie barred by limitation. The relevant paragraph of the above mentioned judgment is reproduced hereunder:

*16. We have noticed the contents of the Application under Section 9 which have been brought on record. The Ledger of Operational Creditor has been brought on record including the Bank Statement which clearly mentions that last payment received by the Appellant was on 26th September, 2016. **From the last payment, the Application could have been filed within three years.** Application under Section 9 filed by the Appellant was on the basis of 174 invoices as has been noticed by the Adjudicating Authority in the Impugned Order. We are satisfied that for the limitation for filing Section 9 application it is Article 137 of the Limitation Act, 1963 which is attracted. Under Article 137, time from which period begins to run is "when the right to apply accrues" the right to apply accrues when invoices issued by the Appellant to the Corporate Debtor were not paid. Invoices on the basis of which payment is claimed are more than three years earlier from the date of filing of Section 9 Application which is the basis for rejection of the Application of the Appellant by the Adjudicating Authority.*

11. In the light of the abovementioned facts as well as Judicial Precedents, which we have referred in the aforementioned paras, we are of the considered view that the present petition is within the bounds of limitation, hence, we are not inclined to reject the petition on this preliminary objection, rather we are of the view that the present petition needs to be further considered on merits.

12. Let CP (IB) No. 23/Chd/Hry/2024 be posted on 29.08.2024.

Sd/-  
**(Umesh Kumar Shukla)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

July 05, 2024  
Vishesh