

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301 - C.P.(IB)/69(AHM)2022

Order under Section 9 of the IBC, 2016

IN THE MATTER OF:

Automark Industries (India) Pvt Ltd

.....Applicant

V/s

Sadbhav Engineering Ltd.

....Respondent

Order delivered on 12/07/2024

Coram:

Mr. Shammi Khan, Hon'ble Member (J)

Mr. Sameer Kakar, Hon'ble Member (T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

SEN

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH -I, AHMEDABAD**

C.P. (IB)/69(AHM)2022

(Application for initiation of Corporate Insolvency Resolution Process U/s 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

AUTOMARK INDUSTRIES (INDIA) PVT. LTD.

Having address at:
Gurukripa, Datta Square
Yavatmal-445001 (M.H.)

... Applicant/Operational Creditor

VERSUS

SADBHAV ENGINEERING LIMITED

Having registered address at:
Sadbhav House, Opp. Law Garden,
Police Chowki, Ellisbridge,
Ahmedabad-380006.

... Respondent/Corporate Debtor

Order Pronounced on 12.07.2024

CORAM :

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For Operational Creditor : Mr. Saurabh Soparkar, Sr. Advocate
a/w. Mr. Dhawal Shah, Advocate
For Corporate Debtor : Mr. Navin Pahwa, Sr. Advocate a/w.
: Mr. Ravi Pahwa, Advocate &
: Ms. Pragati Bansal, Advocate

O R D E R
(PER: BENCH)

1. The present application is filed on 09.12.2021 under inward no. E1545 by the Applicant M/s. Automark Industries (India) Private Limited (hereinafter referred to as '**Operational Creditor**') against the Respondent Sadbhav Engineering Limited (hereinafter referred to as '**Corporate Debtor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "**IB (AAA) Rules, 2016**") for initiation of Corporate Insolvency Resolution Process (**CIRP**), to appoint Interim Resolution Professional (hereinafter referred to as "**IRP**") and declare the moratorium for having defaulted in payment of the operational debt.

2. This Tribunal vide its order dated 14.03.2022 had directed the Operational Creditor to cure the defect in Form 5 as Date of Default was not clearly mentioned. Accordingly, Form 5 was filed on 21.03.2022 under diary no. D1304 wherein the Date of Default is mentioned as 30.04.2021.

Opportunity was given to the Corporate Debtor to file reply.

3. An affidavit verifying the petition has been filed by Mr. Amit Khara in his capacity as Director who was duly authorised vide Board Resolution dated 11.11.2021. A copy of the same is annexed at page no. 153 to 156 of this application.
4. Perusal of Part-I reveals that the Operational Creditor is one M/s. Automark Industries (India) Private Limited, having CIN: U29290MH1988PTC046196 and having address at Gurukripa, Datta Square, Yavatmal-445001.
5. Perusal of Part-II reveals that the Corporate Debtor is one M/s. Sadbhav Engineering Limited which was incorporated on 03.10.1988 with CIN: L45400GJ1988PLC011322, having its registered address at: Sadbhav House, Opp. Law Garden, Police Chowki, Ellisbridge, Ahmedabad-380006.
6. The Operational Creditor has not named any IP in this matter under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**).

7. Perusal of Part IV reveals that total outstanding amount is Rs.2,56,49,849/- (Rs.2,37,00,419/- against invoices and Rs.19,49,430/- as Security Deposit). The date of default is mentioned as 30.04.2021.
8. The Operational Creditor has relied upon the following documents:-
- I. *Copy of the Demand Notice sent u/s 8 of the Insolvency and Bankruptcy Code, 2016 along with ledger, invoices and detailed worksheet of Sadbhav Engineering Ltd. (ANNEXURE I)*
 - II. *Master Data copy of the Corporate Debtor from MCA website and (ANNEXURE II)*
 - III. *Bank Statement
Computation of Default (ANNEXURE III)*
 - IV. *Affidavit – No notice given by the Corporate Debtor relating to dispute of the unpaid operational debt (ANNEXURE IV)*
 - V. *Affidavit verifying Petition*
 - VI. *Memorandum of Appearance*
9. It is stated that the Operational Creditor has supplied and applied Thermoplastic Road Marking Material and Drop-on Glass Beads on work orders issued between the years 2015 to 2020 for the various road projects to Corporate Debtor. The Corporate Debtor has at no point of time whatsoever raised any issue with respect to the quality and/or quantity of the aforesaid supplies.

10. It is stated that pursuant to the supplies made as per purchase/work orders, the Operational Creditor has supplied goods to the Corporate Debtor and raised invoices which were received, acknowledged and accepted by the latter without any demur whatsoever. Under each of the invoices, the Operational Creditor made payments at first and Operational Creditor keep supplying the materials to the Corporate Debtor and latter Corporate Debtor refused to make payment and, hence, the debt has arisen. The payment due has not been made despite multiple reminders.
11. It is stated that on 14.10.2021, the Operational Creditor has sent Demand Notice to the Corporate Debtor.
12. Affidavit of “No Dispute” is attached at page 151 of the application. It is stated that the Demand Notice was not replied by the Corporate Debtor.
13. Perusal of the invoices indicates that payment terms were 30 days from the date of invoice.
14. It is stated that the Corporate Debtor is indebted a principal amount of operational debt of Rs.2,56,49,849/-.

15. Reply to the application was filed by one Mr. Jatin Thakkar, Authorized Signatory of the Corporate Debtor under inward diary no.D469 dated 06.02.2023. In the reply, it is stated that:-

- I. The present petition is neither maintainable nor tenable in the eyes of laws as it is structured on misconceived facts and legal proposition.
- II. The claim of the Operational Creditor is based on false, baseless and vague averments and not substantiated by documentary evidence.
- III. The petition is liable to be dismissed as the petition has not been filed through any authorized signatory. As per Form V, the Operational Creditor has authorized one Shri Mayur Khara, however, no board resolution or authority letter is produced on record.
- IV. As per Form V, the Operational Creditor claims to have authorized Shri Mayur Khara, however, the petition is affirmed by Shri Amit Khara, the Director. No board resolution or authority letter is produced on

record authorising Shri Amit Khara, Director to file the petition.

- V. The Demand Notice dated 14.10.2021 is sent by the Operational Creditor through Shri Arunkumar D. Khara, Chairman without there being any authorisation by the Operational Creditor authorising Shri Arunkumar D Shara to issue such Demand Notice. Hence, the Demand Notice is null and void. The Demand Notice should be issued by the person who is authorised by the Operational Creditor. This view is taken by Hon'ble NCLAT in the case of Ramco Systems vs. Spice Jet.
- VI. The Demand Notice and petition are signed by different persons without any authorisation.
- VII. The claim of the Operational Creditor is based on 8 work orders. These 8 work orders are in relation to different projects at different places. Therefore, all the 8 work orders constitute different contracts. It is settled law that one composite petition for different work orders is not maintainable. This view is

expressed by the Hon'ble NCLAT in the case of International Road Dynamic South Asia Private Limited vs. Reliance Infrastructure Limited, in Company Appeal (AT) (Ins) No. 72 of 2017 (para 10) rendered on 01.08.2017. A copy of the said order is annexed as Annexure-R1.

VIII. The Operational Creditor has filed composite petition in relation to 8 different work orders with an intention to meet the minimal debt of Rs.1 Crore.

IX. Even assuming without admitting that the composite petition in relation to all 8 work orders is maintainable, then also, the total amount claimed in the petition does not meet with the debt criteria of Rs.1 Crore in view of Section 10A of IBC, 2016. There would be no initiation of any CIRP under IBC, 2016 against the Corporate Debtor for any default that occurred from 25.03.2020 to 24.03.2021. The Operational Creditor has raised following invoices during the period between 25.03.2020 to 24.03.2021 which needs to be excluded as per Section 10A of the IBC, 2016:-

<i>Sr. No.</i>	<i>Project Anme</i>	<i>Invoice Date</i>	<i>Invoice Amount</i>
1	<i>Bagpat U Project</i>	<i>31.12.2020</i>	<i>42,76,537.44</i>
2	<i>Ambala Haryana Project</i>	<i>31.12.2020</i>	<i>2,58,727.76</i>
3	<i>Bhavnagar GJ Project</i>	<i>31.3.2020</i>	<i>25,45,271.10</i>
		<i>8.8.2020</i>	<i>4,81,851.22</i>
		<i>8.9.2020</i>	<i>10,01,970.82</i>
		<i>6.9.2020</i>	<i>4,04,483.21</i>
		<i>7.11.2020</i>	<i>12,28,920.00</i>
		<i>27.11.2020</i>	<i>15,03,414.52</i>
4	<i>Rampur UP Project</i>	<i>30.1.2021</i>	<i>24,66,662.00</i>
5	<i>Udaipur RJ Project</i>	<i>18.2.2021</i>	<i>20,11,988.69</i>
		<i>Total</i>	<i>161,79,826.76</i>

X. The total amount claimed by the Operational Creditor is Rs.2,56,49,849.15. After excluding an amount of Rs.1,61,79,826.76 as per Section 10A of the IBC, 2016 from the total amount claimed, the amount arrived at Rs.94,70,022.39 which is below the threshold of Rs.1 Crore.

16. Rejoinder was filed by one Mr. Amit Khara, the MD and CFO of the Operational Creditor Company under diary no. D838 dated 07.03.2023. In the rejoinder, it is stated that:-

- i. The petition is maintainable as the Corporate Debtor in its email dated 20.09.2022 has admitted the default and amount due. Further the Corporate Debtor had authorized Saxena and Kumar Law Chambers LLP to initiate

payment terms and file the same before Tribunal. A copy of said email is annexed as Annexure-A.

- ii. The Petition is filed by Mr. Amit Khara, Joint Managing Director and CFO. The Board has severally authorized Mr. Arunkumar Khara, Mr. Amit Khara and Mr. Mayur Khara vide Board Resolution dated 07.07.2021. The affidavit verifying the petition in Form NCLT-6 has been signed by Mr. Amit Khara. A copy of said resolution is annexed as Annexure-B.
- iii. The Operational Creditor agrees that the claims are from invoices issued for 8 different work orders for 8 different locations for which the work orders were issued from the registered office of the Company. The Corporate Debtor issued work orders for delivering thermoplastic painting for road making and in some cases delivering and applying the thermoplastic road markings. The invoices for the same have been raised on the Corporate Debtor and not in the

name of project site or any SPV. Further, the Corporate Debtor has always claimed GST credit for GST charged by the Operational Creditor. All the work done at the site has been certified by the supervisor and no issues were raised regarding quality of the work done. This proves that the Corporate Debtor is indeed indebted to the Operational Creditor and the debt due is eligible under Section 9 of the IBC, 2016.

- iv. In the judgment relied upon by the Corporate Debtor, the Hon'ble Appellate Tribunal ruled that a composite petition for different work orders is not maintainable. The said case of Hon'ble Appellate Tribunal is 'obiter dictum' and is not a binding precedent. An appeal was filed in the above case in the Hon'ble Supreme Court of India which remanded back the case to Hon'ble Appellate Tribunal and further Hon'ble Appellate Tribunal remanded the case to

Adjudicating Authority. The decision of Hon'ble Supreme Court is annexed as Annexure-D.

- v. The Operational Creditor relies upon the decision of NCLT New Delhi in the case of A2 Interior Products Private Limited vs. Ahluwalia Contracts India Ltd (para 18) wherein Tribunal has ruled in favour of the Operational Creditor where debt was in default from different work contracts and different invoices. The said order is annexed as Annexure-E.
- vi. In view of the above decision, the quantum of debt is more than Rs.1 Crore. The Corporate Debtor is using Section 10A of the IBC, 2016 as a shield. In the present petition the date of default is 30.04.2021 i.e., 30 days from the last invoice issued to the Corporate Debtor.
- vii. The Corporate Debtor owes the Operational Creditor an amount of Rs.2,56,49,849/-. There is no dispute relating to quality or warranty of

work done or the amount dues. Hence, the petition may be admitted.

17. The Operational Creditor has filed another affidavit in rejoinder under diary no. D775 dated 30.01.2024. We have considered the same.
18. In compliance of the interim order dated 17.07.2023 and 13.09.2023, the Operational Creditor filed a Calculation of Default under inward diary no.D4509 dated 10.11.2023 stating that *“the rationale behind appointing 30th April, 2021 as the date of default is that we have been corresponding with the Corporate Debtor for payment of dues vide telephonic and other electronics means. The last email that the petitioner sent the corporate debtor was on 7th of April, 2021. Following that another invoice was raised on the 14th of April, 2021. The copy of the ledger and the email is annexed as Annexure A and Annexure B. Considering the above facts the date of default has been chosen as 30th April, 2021”*.
19. In compliance of the order dated 20.02.2024, the Operational Creditor filed an additional affidavit along with

calculation chart on 05.03.2024 under inward diary no. D1949. In response to the said affidavit dated 05.03.2024, the Corporate Debtor filed additional affidavit a.w. written submission under inward diary no. D2751 dated 01.04.2024. We have considered the same. The Corporate Debtor has relied upon the following judgments:-

- a) *(2021) 3 SCC 224 – Ramesh Kymal vs. Siemens Gamesa Renewable Power Private Limited.*
- b) *(2020) SCC Online NCLAT 667 – Kodevoina Srinivas Krishna vs. PVM Innvensys Pvt. Ltd.*
- c) *Company Appeal (AT) (Ins) No. 1285 of 2022 – Ramesh Dutta v IDBI Bank Ltd.*
- d) *Company Appeal (AT) (Ins) No. 836 of 2023 – Vikram Kumar, Proprietor, Surya Containers Leasing Company vs. Aranca (Mumbai) Private Limited*
- e) *CP(IB) 125/BB/2022 – M/s. Asset Reconstruction Company (India) Ltd. Vs. M/s. Manyata Developers Pvt. Ltd.*

20. In compliance of the order dated, the Operational Creditor filed an additional affidavit under inward diary no. D3520 dated 25.04.2024. In response to which, the Corporate Debtor has also filed an affidavit on 14.05.2024.

21. The Corporate Debtor has also filed a Convenience Chart dated 14.05.2024.

22. This Tribunal vide its order dated 24.06.2024 had directed the both sides to file their written submissions. In compliance of the said order, the Operational Creditor as well as Corporate Debtor filed their written submissions on 03.07.2024.
23. We have heard the both side counsels and perused the records. It is noted that the Operational Creditor supplied the goods to the Corporate Debtor and raised various invoices. The Demand Notice was issued on 14.10.2021. The delivery of Demand Notice was not disputed by the Corporate Debtor. The Operational Creditor has filed an affidavit dated 19.11.2021 (at page no. 151) stating that **“there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt”**. Hence, it is clear that there is no dispute regarding quality of goods.
24. A perusal of Convenience Chart filed by the Corporate Debtor in the instant CP, reveals that the Operational Creditor supplied the goods over 9 different projects. The main contention of the Corporate Debtor is that after excluding the amount which falls under Section 10A

period, the application does not meet the threshold limit and application is liable to be rejected.

25. We rely upon the decision of **Hon'ble Supreme Court** in the matter of **Suo Motu Writ Petition (C) No. 3 of 2020 in re Cognizance for Extension of Limitation** decided on 10.01.2022 wherein the Hon'ble Supreme Court held that *“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 actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply”*.

26. We have analysed the pleadings of both the parties. For the sake of convenience and for better understanding of the matter, the table below is position of various invoices under various contracts:-

Sr. No.	Project Name	Total Outstanding Amount in Rs.	Invoices Limitation/Barred Limitation within by	Invoices under Section 10A period	Eligible amount under present application
1	Rupkheda, RJ Project	1,22,678.00	As per para 23 above, the last invoice dated 30.03.2017 is within the limitation. Hence,	No	1,22,678.00

			outstanding amount survives.		
2	Tumkur, KA Project	15,17,169.00	As per para 23 above, the last invoice dated 13.01.2020 is within the limitation period.	No	15,17,169.00
3	Bagpat, UP Project	22,76,537.44	The outstanding amount does not survive as the amount paid is more than the outstanding amount.	The last invoice dated 31.03.2020 is under 10A period.	-
4	Chhindwara, MP Project	1,01,05,417.00	As per para 23, all invoices from 19.05.2018 to 20.06.2019 are within limitation.	No	1,01,05,417.00
5	Ambala Haryana Project	42,28,264.95	As per para 23, Invoice dated 22.10.2018 to invoice dated 18.01.2020 are within the limitation.	Invoice dated 31.03.2020, amounting to Rs. 2,58,727.76 fall within 10A period.	39,69,537.19
6	Bhavnagar, GJ Project	43,34,349.87	Invoice No. 3/GJ/WC/19-20 dated 22.06.2019 amounting to Rs.15,77,933.28 stands paid.	Other invoices from 31.03.2020 to 27.11.2020 fall within 10A period.	-
7	Rampur, UP Project	2,91,106	As the invoice from 24.06.2019 to 07.03.2020 amounting to Rs.40,54,128 which is less than the received amount against the invoices. Hence, does not survive	Invoice dated 30.01.2021 amounting to Rs.24,66,662 fall within 10A period.	-
8.	Somnath, GJ Project	22,79,486.20		Invoice dated 19.03.2020 amounting to Rs.28,59,133.20	-
9	Udaipur, RJ Project	31,25,604.69	Invoice dated 14.04.2021 is within the limitation	Invoice dated 18.02.2021 is under 10A Period.	11,13,616
				Total	1,62,48,770.19

27. From the above table, it is seen that invoices aggregating to Rs.1,62,48,770.19 are outstanding. We have also

checked the application and we find that these invoices were shared by the Operational Creditor with the Corporate Debtor. These are of tax invoices issued by the Operational Creditor herein.

28. The Corporate Debtor has fervently and vehemently raised objection regarding non-supplies of RA Bills. It is seen that the majority of various work orders/purchase orders were issued prior to coming in force the GST Act on 01.07.2017. Post the implementation of GST regime, issuance of tax invoices is sufficient compliance and RA bills need not be issued.
29. It is seen that the Corporate Debtor has paid an amount of Rs.10,43,17,810.71 on various dates and the last such payment was on 19.11.2021. During the hearing, learned counsel for the Corporate Debtor argued that the said payments should be appropriated by the Operational Creditor towards invoices raised for the period other than 10A period. On the other hand, learned counsel for the Operational Creditor argued that since the Operational Creditor has not placed any instruction on record so as to appropriation of the amounts in question, the Operational

Creditor has appropriated these amounts towards invoiced raised by the Operational Creditor which otherwise are falling other than 10A period. In this regard, we quote Section 60 of the Contract Act as under:-

60. Application of payment where debt to be discharged is not indicated.—

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.

30. We are of the view that relying upon the provisions of the Section 60 of the Indian Contract Act as reproduced above, in absence of clear instruction from the payee, the recipients of the payment is entitled to appropriate the amounts as per his will.
31. It is seen that Demand Notice was issued on 14.10.2021 demanding payment of Rs.2,82,80,613/-. However, this petition is filed by the Operational Creditor claiming of Rs.2,56,49,849/-.

32. The Demand Notice has been issued in Form 3 on 14.10.2021. It is also seen that Demand Notice was not accompanied of any of the invoices.
33. In the rejoinder at para 3 and 4, the Operational Creditor has stated as under:-
3. *I deny all allegations contentions and submissions made in the Affidavit in reply, I further state that any allegations, contentions or submissions in the said affidavit in reply which has not been specifically dealt with or denied by me, may not be deemed to be admitted.*
4. *I oppose all the reliefs prayed by the Respondent in its affidavit in reply.*
34. One of the contentions of the Corporate Debtor is that the Demand Notice was not accompanied with the invoices. In this regard, learned counsel for the Corporate Debtor relied upon the decision of Hon'ble NCLAT in the case of ***Neeraj Jain, Director of M/s. Flipkart India Private Limited versus Cloudwalker Streaming Technologies Private Limited and another*** in Company Appeal (AT) (Insolvency) No. 1354 of 2019 decided on 24.02.2020 reported in 2020 SCC OnLine NCLAT 445.
35. The Hon'ble NCLAT in the case of Neeraj Jain (supra) has held that:-

“81. The above contention cannot be accepted because we have found that demand notice delivered under Section 8(1) of the Code was not proper and was also incomplete. The Operational Creditor failed to submit any documents to prove in existence of the Operational debt and the amount in default. The Operational Creditor also failed to submit the copy of invoices and copies of all the documents referred in the application to be submitted in Form 5, under Section 9 of the Code. The Operational Creditor has failed to submit the relevant documents under which the debt has become due. The Operational Creditor has only filed the copy of the Supply Agreement, and the projections email, which by themselves can by no stretch of the imagination constitute proof of debt. The Operational Creditor had not filed a copy of the bank statement. Instead of filing the relevant document, the Operational Creditor had solely placed reliance on a few emails to allege that he had suffered losses on account of projections for the demand provided by Flipkart. The figures provided by Flipkart were only projections that do not constitute the binding purchase order under the Supply Agreement. It is also clear that before issuance of demand notice, Operational Creditor had itself issued a notice against the Corporate Debtor with a request of making the payment within 30 days, failing which the dispute was said to be referred to the Arbitrator. This notice was withdrawn before issuance of demand notice under Section 8(1) of the Code. But by withdrawing the said notice, the dispute does not cease to exist. The entire claim of the Corporate Debtor is an uncrystallised claim which cannot be adjudicated by the Adjudicating Authority under summary jurisdiction. In the circumstances, it appears that the Appeal deserves to be allowed and impugned order passed by the Adjudicating Authority admitting the petition, deserved to be set aside”.

36. No doubt, the Demand Notice was issued under Form 3. However, the Operational Creditor herein has provided the entire tax invoices upon insistence by this Tribunal vide additional affidavit under diary no.D1949 dated 05.04.2024 and the Corporate Debtor had the opportunity to rebut the same. However, no rebut so as to any defects in the invoices was pointed out. The Operational Creditor further states that the Operational Creditor has paid GST and Corporate Debtor has availed GST credit with respect to the invoices raised by the Operational Creditor.
37. As regards to the decision of Hon'ble NCLAT in the case of **Neeraj Jain (supra)** given by the Corporate Debtor pertaining to non-supply of invoices with demand notice, the same is not applicable in the facts and circumstances of the present case since the Operational Creditor was able to demonstrate that they have provided the goods and services to the Corporate Debtor.
38. It is also seen that despite receipt of Demand Notice, no reply was given by the Corporate Debtor. Through the reply in the present application, the Corporate Debtor has raised for the first time for non-receipt of invoices which in

our view is a moonshine defence. As already seen, the Operational Creditor has provided the copies of invoices to the Corporate Debtor through additional affidavit under diary no.D1949 dated 05.04.2024.

39. The Operational Creditor vide affidavit under diary no.D4509 dated 10.11.2023 has placed on record the copies of emails sent to the Corporate Debtor demanding payment at page 9-14 of the said affidavit.
40. The Operational Creditor filed an additional affidavit under diary no. D3520 dated 25.04.2024 placing on record the statement showing the details of the invoices for which the TDS was deducted at page 15 – 19 of the said affidavit.
41. Hence, view of the above, the present application is complete and is defect free in terms of Section 9 of the Code. The outstanding Operational Debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution

process against the Corporate Debtor deserves to be admitted.

42. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Corporate Debtor **M/s. Sadbhav Engineering Limited** is **admitted** in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:-
 - a. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
 - c. *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and*

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022;

- d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) Since, the Operational Creditor has not proposed any IP, therefore, we appoint **Mr. Chandra Prakash**

Jain, having Registration No. IBBI/IPA-001/IP-P00147/2017-2018/10311, (e-mail: jain_cp@yahoo.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.5,00,000/- (Rupees Five Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc., till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned

Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

43. Accordingly, this Application **CP(IB)/69(AHM)2022** is admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

SEN