

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

CP IB NO. 157/ND/2022

A/W

I.A. 1456/ND/2023 IN CP IB NO. 157/ND/2022

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

**M/s ACCESS EDUTECH PRIVATE LIMITED
THROUGH ITS DIRECTOR,
MR. REJI CHACKO**

H.NO.-96, VRINDAWAN NAGAR, BY-PASS ROAD,
BHOPAL, MADHYA PRADESH-462023

...Operational Creditor

VERSUS

**M/s INNOVISION LIMITED
THROUGH ITS DIRECTOR,
MR. RANDEEP HUNDAL**

1425-A, SEC-B, PKT 1, VASANT KUNJ,
NEW DELHI, DL-110070

...Corporate Debtor

Order Delivered on: 09.07.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Adv. Vinay Kumar Jain, Adv. Mohana Sharda

For the Respondent: Adv. Shagun Shahi Chugh, Adv. Varun Chugh, Adv.
Sidrah Jami

O R D E R

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**‘the Code’**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s Access Edutech Private Limited (‘Operational Creditor’)** through its Director, Mr. Reji Chacko, duly authorized for initiation of Corporate Insolvency Resolution Process (**‘CIRP’**) against **M/s Innovision Limited (‘Corporate Debtor’)**.
2. **M/s Access Edutech Private Limited** (Operational Creditor) is a company registered under the Companies Act, 1956 [CIN- U80904MP2014PTC033088], having its registered address at H. No. 96, Vrindawan Nagar, By-Pass Road, Bhopal, Madhya Pradesh-462023. **M/s Innovision Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- U74910DL2007PLC157700], having its registered office at 1425-A, Sec-B, PKT-1, Vasant Kunj, New Delhi-110070. The Corporate Debtor has Authorized Share Capital of Rs. 2,50,00,000 (Two Crores and Fifty Lacs) and Paid-Up Share Capital of Rs 1,35,00,000 (One Crore and Thirty-Five Lacs).
3. The present Petition was filed on 14.12.2021 before this Adjudicating Authority by M/s Access Edutech Private Limited (Operational Creditor), duly authorized to initiate Corporate Insolvency Resolution Process (**‘CIRP’**) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**). The total amount claimed to be in default is Rs. 3,39,97,120 (Rupees Three Crores Thirty-Nine Lacs Ninety-Seven Thousand One Hundred and Twenty) which is inclusive of the interest amount out of which the Principal Outstanding Amount is Rs. 1,39,49,000 (One Crore Thirty-Nine Lacs Forty-Nine Thousand). The **date of default** is stated to be 16.04.2016.

4. **Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.**

- a) The Operational Creditor is engaged in the business of providing technical and vocational secondary education and has been executing contractual work with various organizations.
- b) The Operational Creditor and the Corporate Debtor had entered into an Agreement dated 01.06.2015 whereby, the second party (i.e., Operational Creditor) will provide infrastructure and services to the first party (i.e., Corporate Debtor) so as to assist the first party in imparting training to the candidates.
- c) The Corporate Debtor had partnered with the Operational Creditor under Pradhan Mantri Kaushal Vikas Yojana (PMKVY) in the state of Madhya Pradesh and Uttar Pradesh under which the Corporate Debtor enrolled 8410 candidates on behalf of the Operational Creditor, out of which 6391 were certified as eligible.
- d) The Operational Creditor had provided training to 6391 students at a unit price of Rs. 3,500 and had also provided placement/self-employment opportunity to more than 5718 candidates, which was duly acknowledged with satisfaction by the Corporate Debtor.
- e) The Applicant submits that after receiving the enrollment list for 8410 candidates and as per request of the Corporate Debtor, the Operational Creditor had raised invoice dated 31.03.2016, bearing number BPL/INV/2016-17/Mar/001 for 8410 candidates at the rate of Rs. 3,500 per candidate amounting to Rs. 2,94,35,000.
- f) The Applicant submits that out of 8410 enrolled candidates, 6391 were certified by the Government, hence, out of total invoice amount, the Operational Creditor has claimed Rs. 2,23,68,500 for assessment and training and Rs. 31,95,500 as candidate reward which is payable to each eligible candidate under PMKVY total amounting to Rs. 2,55,64,000 and the same was not disputed by the Corporate Debtor.

- g) The Applicant submits that the Government of India had paid to the Corporate Debtor Rs. 4,79,32,500 for the training & assessment of 6391 candidates at the rate of Rs. 7500 per candidate out of which Rs. 3500 per candidate was payable to the Operational Creditor amounting to Rs. 2,23,68,500. Further, the candidate reward of Rs. 1000 per candidate was paid to the Corporate Debtor by the Government of India, out of which 500 per candidate was payable to the Operational Creditor by the Corporate Debtor on behalf of all the 6391 candidates amounting to Rs. 31,95,500 and then the said reward was to be forwarded to each candidate by the Operational Creditor.
- h) The Corporate Debtor had made a part payment of Rs. 1,24,61,000 in total to the Operational Creditor, out of the total amount of Rs. 2,55,64,000 and the same has been duly acknowledged by the Operational Creditor.
- i) The Corporate Debtor claims that the Principal Party i.e., NSDC had not paid the full amount to the Corporate Debtor due to which the Corporate Debtor is not able to make the payments. Therefore, to ascertain the true position of the amount disbursed by the NSDC, the Operational Creditor had filed an RTI, however, the Corporate Debtor had failed to furnish the information required in the RTI due to which no substantial information could be obtained from the NSDC.
- j) The Applicant submits that despite several reminders, the Corporate Debtor failed to pay the outstanding amount due to which the Operational Creditor is facing financial difficulties.
- k) The Applicant submits that in consequence of the above stated averments, the Operational Creditor had sent a Demand Notice dated 21.09.2021 to the Corporate Debtor, however, no reply to such demand notice was filed on behalf of the Corporate Debtor. Hence, the present petition is filed.

5. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor

- a) The Agreement dated 01.06.2015 is a bi-partite agreement signed by both the parties and hence, it is a binding agreement. Therefore, each party has to strictly adhere to the terms and conditions of the said agreement.
- b) The claim of the Operational Creditor includes the reward money and NSDC was supposed to disburse reward money to the candidates in their respective bank accounts only after complying with the guidelines mentioned in the PMKVY and as per Clause 'd' of the Annexure VI of the Agreement dated 01.06.2015, the reward money is to be paid to the candidates who are selected and placed in furtherance of the guidelines issued by the NSDC i.e., the candidates should have been placed and be working for minimum tenure of 3 months. However, the Operational Creditor failed to furnish any proof of candidates actually placed.
- c) As per clause 'e' of the Annexure VI of the Agreement dated 01.06.2015, "*(e) Any amount spent on the admin and logistics of assessment will be borne by the Second Party*". Accordingly, the Corporate Debtor opened the bank account of 7038 candidates at the rate of Rs. 205 per bank account, amounting to Rs. 14,42,790, which was ought to be paid by the second party i.e., the Operational Creditor, however, the same was paid by the first party i.e. the Corporate Debtor. Therefore, the Corporate Debtor shall be reimbursed for the same by the Operational Creditor.
- d) The Respondent submits that despite non-fulfilment and breach of various terms of Agreement dated 01.06.2015, the Corporate Debtor approached the Operational Creditor on several occasions to arrive at an amicable solution between the parties.
- e) The Respondent submits that the 'Operational Debt' claimed by the Operational Creditor falls short of the pecuniary threshold of Rs. 1 crore. In view of the same, this Adjudicating Authority vide its order dated 09.02.2023

directed the Corporate Debtor to clarify the operational debt that is actually pending between the Operational Creditor and the Corporate Debtor. Therefore, in compliance of the said order passed by this Adjudicating Authority, the Corporate Debtor had filed an Interlocutory Application bearing IA No. 1456 of 2023 and submitted that the principal amount that is actually pending is Rs. 12,96,800 (Rupees Twelve Lacs Ninety-Six Thousand Eight Hundred).

- f) As per Clause 'a' of the Annexure VI of the said Agreement dated 01.06.2015, the Corporate Debtor stands liable only to the extent of that amount which is being paid to the Corporate Debtor by the Principal party i.e., National Skills Development Committee (NSDC). It is submitted that the Corporate Debtor had received a total sum of Rs. 1,99,39,500 from the Principal Party for 5697 candidates at the rate of Rs. 3500 per candidate, as the remaining 2713 candidates failed to clear the assessment test.
- g) The Respondent submits that the principal amount is calculated at Rs. 1,99,39,500 and the Operational Creditor has wrongfully added Rs. 31,95,500 in their principal amount as an amount pertaining to reward money. It is further submitted that as per Clause 'd' of Annexure VI of the Agreement dated 01.06.2015, "*(d) Reward money to the students will be paid by the First Party*", which is to be paid to the candidates directly by the First Party on the successful selection and placement of the candidates as per the guidelines issued by the NSDC. The Operational Creditor has no relevance of claiming reward money in its account.
- h) The Respondent submits that there are certain deductions to be made in the final payment of amount to the Operational Creditor by the Corporate Debtor, however, the Operational Creditor had failed to make such deductions.
- i) Firstly, as per clause 'c' and 'f' of Annexure VI of the Agreement dated 01.06.2015, "*(c) Assessment fees of candidates will be paid by the First Party*" and "*(f) The amount of assessment fees paid in respect of the*

candidates who do not clear the assessment will be deducted from the final payment". It is submitted that the Corporate Debtor had already paid the assessment fee on behalf of all the 8410 candidates at the rate of Rs. 800 per candidate. That as per above stated clause 'f', an amount worth Rs. 21,70,400 for the assessment fee of failed 2713 candidates at the rate of Rs. 800 per candidate shall be deducted from the final payment.

- j) Secondly, an amount to the tune of Rs. 1,24,61,000 has already been paid by the Corporate Debtor to the Operational Creditor and the same has been acknowledged by the Operational Creditor. Therefore, such amount shall be deducted from the final payment.
- k) Thirdly, the Corporate Debtor had an obligation to deposit TDS in advance irrespective of the payment received from the Principal Party and in lieu of the same, the Corporate Debtor had paid Rs. 25,68,510 on the invoice received from the Operational Creditor. The TDS Certificate is also placed on record. Hence, a sum amounting to Rs. 25,68,510 shall also be deducted from the final payment.
- l) Fourthly, a sum worth Rs. 14,42,790 that is paid by the Corporate Debtor for opening the bank accounts of the 7038 candidates as stated above, shall also be deducted from the final payment of amount.
- m) Therefore, after making all the deductions that are in accordance with the Agreement dated 01.06.2015, the outstanding amount that is liable to be paid to the Operational Creditor by the Corporate Debtor is Rs. 12,96,800.

Analysis & Findings

6. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition, reply filed by the Corporate Debtor and rejoinder filed by the Operational Creditor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP)

under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.

7. In the instant case, it is pertinent to adjudicate upon the issue of limitation since the debt is claimed in respect of the invoice dated 31.03.2016. The date of default as stated in the demand notice is 16.04.2016 and the instant petition was filed on 14.12.2021. It is observed that the Corporate Debtor had made several part-payments to the Operational Creditor in respect of the services rendered by the Operational Creditor. Last payment to the Operational Creditor was made on 17.10.2018 by the Corporate Debtor. Such part-payments tend to show that the services were actually rendered by the Operational Creditor and that there is an 'acknowledgement of debt' within the meaning of Section 19 of The Limitation Act, 1963. Had 17.10.2018 been taken as the fresh date of default, then the limitation would be extended for a further period of 3 years from 17.10.2018. Therefore, the limitation in the present case would expire on 16.10.2021 and the instant petition was filed on 14.12.2021. The strict rule of 3 years limitation period would render the instant petition being not maintainable for being filed beyond the limitation period. However, in this regard, it is pertinent to refer to the decision of the Hon'ble Supreme Court in the case of **IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION** in **SUO MOTU WRIT PETITION (C) NO. 3 OF 2020**, wherein, the Hon'ble Supreme Court has held that if the period of limitation is supposed to expire during the period falling between 15.03.2020 to 28.02.2022, then a grace period of 90 days from 01.03.2022, shall be provided to file the petition. The relevant extract of the said judgment is reproduced hereunder:

"1. In March, 2020, this Court took Suo Moto cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic."

“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.

II.

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.”

Therefore, in the present case, the limitation period would expire on 16.10.2021, which is falling between 15.03.2020 and 28.02.2022 and therefore, in view of the above judgment, the instant being filed on 14.12.2021, is very well said to be filed within the period of limitation.

8. It is to be noted that the ‘Operational Creditor’ had sent a demand notice dated 21.09.2021 to the ‘Corporate Debtor’ under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 3,39,97,120 (Rupees Three Crores Thirty-Nine Lacs Ninety-Seven Thousand One Hundred and Twenty) which is inclusive of the interest amount out of which the Principal Outstanding Amount is Rs. 1,39,49,000 (One Crore Thirty-Nine Lacs Forty-Nine Thousand). However, as per the Corporate Debtor the principal outstanding amount that is required to be paid by the Corporate Debtor to the Operational Creditor is Rs. 12,96,800 (Twelve Lacs Ninety-Six Thousand Eight Hundred). Therefore, an issue arises whether the threshold of Rs. 1 Crore as laid down under Section 4 of the Code is met with.
9. It is observed that this Adjudicating Authority vide its order dated 09.02.2023, directed the Corporate Debtor to clarify as to the actual principal amount which is pending on behalf of the Corporate Debtor towards the Operational Creditor. The Corporate Debtor, in compliance of the said order dated 09.02.2023, filed

an I.A. No. 1456 of 2023 mentioning about the actual principal amount that is outstanding towards the Operational Creditor is Rs. 13,91,753 (Thirteen Lacs Ninety-One Thousand Seven Hundred and Fifty-Three) which was subsequently revised to Rs. 12,96,800 (Twelve Lacs Ninety-Six Thousand Eight Hundred) which is calculated after making certain deductions and mentioning of some substantial entries which are omitted by the Operational Creditor. The Corporate Debtor contends that the total outstanding debt to be paid by the Corporate Debtor to the Operational Creditor is as below:

SNO.	PARTICULARS	CANDIDATE COUNT	AMOUNT
1	Total Payment that the Corporate Debtor received from the Principal Party.	5697	1,99,39,500/-
2	Amount already paid by the Corporate Debtor to the Operational Creditor.		1,24,61,000/-
3	Deduction of the assessment fee paid by the corporate debtor for failed candidates @Rs.800 per candidate	2713	21,70,400/-
4	Bank Account opening charges incurred by the Corporate Debtor.		14,42,790/-
5	TDS paid by the Corporate Debtor for the Operational Creditor on the Invoiced amount.		25,68,510
	TOTAL AMOUNT DUE TO BE PAID BY THE CORPORATE DEBTOR		12,96,800/-

10. It is observed that as on date, the Corporate Debtor had made the payment of Rs. 1,24,61,000 in total to the Operational Creditor and the same has been duly acknowledged by the Operational Creditor as well. Therefore, we are of the view that such payment of Rs. 1,24,61,000 shall be deducted from the total outstanding amount to be paid by the Corporate Debtor to the Operational Creditor.
11. It is further observed that as per Clause 'c' of the Annexure VI of the Agreement dated 01.06.2015, the Assessment Fee of the candidates shall be paid by the first party i.e., Corporate Debtor. Such Clause 'c' reads as: "*(c) Assessment fees of candidates will be paid by the First Party*". The Corporate Debtor contends that in view of the clause 'c' of Annexure VI of the Agreement dated 01.06.2015, the Corporate Debtor had pre-paid the assessment fee in respect of all the 8410 enrolled candidates at the rate of Rs. 800 per candidate. Further, it is observed that as per Clause 'f' of the said Annexure VI of the Agreement dated 01.06.2015, the amount of assessment fees paid by the Corporate Debtor in respect of the candidates who failed the assessment test shall be deducted from the final payment. Such Clause 'f' reads as: "*(f) The amount of assessment fees paid in respect of the candidates who do not clear the assessment will be deducted from the final payment*". Therefore, in light of the clear terms of the clause 'f' of Annexure VI of the Agreement dated 01.06.2015, the submissions of the Corporate Debtor that an amount to the tune of Rs. 21,70,400 paid by the Corporate Debtor for the 2713 failed candidates at the rate of Rs. 800 per candidate is to be deducted from the final payment, appears to be correct.
12. It is further observed that the Corporate Debtor paid the TDS amount on the invoice amount raised for 8410 candidates for which, the Corporate Debtor has placed on record TDS certificate as well which evidently indicates that an amount worth Rs. 25,68,510 had been deposited by the Corporate Debtor with the Income Tax Department. Therefore, we are of the view that such TDS amount deposited by the Corporate Debtor shall also be required to be deducted from the final payment.

13. It is further observed that the Corporate Debtor paid an amount worth Rs. 14,42,790 for opening the bank accounts of 7038 candidates at the rate of Rs. 205 per candidate. However, the Corporate Debtor contends that as per clause 'e' of Annexure VI of the Agreement dated 01.06.2015 "*(e) Any amount spent on the admin and logistics of assessment will be borne by the Second party*". The Corporate Debtor further contends that the term 'admin' includes 'opening of bank accounts' charges as well. However, the Operational Creditor, on the contrary contends that the term 'admin' cannot be taken to include opening of bank accounts as well. Thus, there is a dispute about the entitlement of the Corporate Debtor to deduct that amount and since it is a disputed amount, it cannot be considered for threshold an application under Section 9 of the Code.
14. It is further observed that after making all the deductions from the principal amount claimed by the Operational Creditor, the outstanding amount to be paid by the Corporate Debtor falls short of the pecuniary threshold of Rs. 1 crore. At this juncture, it is pertinent to refer to the decision of the Hon'ble NCLAT in **Prafulla Purushottamrao Gadge Vs. Narayan Mangal & Anr. [Comp. App. (AT)(Ins.) No. 498 of 2022]**, whereby, the Hon'ble NCLAT has observed as under:

"7. The submission raised by the Counsel for the Appellant that the Application which has been filed on 25.06.2021 under Section 7 has to fulfill the requirements of threshold as introduced by Notification dated 24.03.2020 has substance. The Adjudicating Authority has not adverted to the said issue and has admitted the Application. The submission of the Counsel for the Respondent that Application dated 25.06.2021 is in continuation of the earlier Application cannot be accepted. After 13.12.2019, I.A 1128/2020 for restoration was filed which was dismissed on 02.02.2021 by the Adjudicating Authority. Thus, the Adjudicating Authority has refused to restore the earlier Section 7 Application which order has become final. Further, Learned Counsel for the Appellant has rightly referred to Clause 12 of the Settlement Agreement which was earlier filed in the earlier

*proceeding where it was mentioned that in event, any default is committed in the Settlement Agreement, there shall be liberty to initiate fresh legal proceedings under Section 7. **We, thus, are of the view that the Application filed under Section 7 by the Respondent No.1 not having fulfilling the threshold of Rupees One Crore ought not to have been entertained** and the Adjudicating Authority committed error in admitting the Application. We, thus, allow the Appeal, set aside the order dated 04.04.2022 impugning this Appeal.”*

15. Also, reliance is placed upon the decision of the Hon’ble NCLAT in **Jumbo Paper Products Versus Hansraj Agrofresh Pvt. Ltd [Company Appeal (AT) (Ins) No. 813 of 2021]**, whereby, the Hon’ble NCLAT has observed as under:

*“10. The other judgments cited by learned Counsel for Appellant broadly lay down that any statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. **It is seen that notification dated 24.3.2020 (supra) makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.2020 even if debt is of a date earlier than 24.3.2020.** Since the application under section 9 which is the subject matter of this appeal was filed on 13.9.2020, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case.”*

16. It is further observed that the minimum threshold limit of Rs. 1 Crore as laid down under Section 4 of the Code is the statutory requirement which has to be mandatorily complied with and no person shall be entitled to have the privilege of not complying with the statutory requirements. The threshold limit was increased from Rs. 1 lakh to 1 crore vide notification dated 24.03.2020 and the present application was filed on 14.12.2021. Therefore, the present petition failed to meet the minimum threshold amount of Rs. 1 crore. Hence, the present petition is not maintainable and is liable to be dismissed on this ground alone.

17. In view of the observations made herein, and the judicial pronouncements, it is, accordingly, hereby ordered that the application bearing **CP (IB) No. 157/ND/2022** filed by **M/s Access Edutech Private Limited** ('Operational Creditor') under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Innovision Limited** ('Corporate Debtor') is not maintainable and is liable to be dismissed and accordingly, the same stands **dismissed**. The petitioner may prosecute his claims before the courts/other legal forums, as per law.
18. In light of the aforesaid observations and discussions, since the main petition i.e., CP IB No. 157/ND/2022 stands dismissed, therefore, I.A. 1456/ND/2023 becomes infructuous and hence, disposed off accordingly.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)