

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH-IV**

**IB-533/(ND)/2021**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**Mr. Daxesh D. Desai,**  
**(Karta of M/s. Daxesh D. Desai Huf)**  
**(Where HUF is the proprietor of Dharnendra Enterprise)**

...Operational Creditor/Applicant

**Versus**

**M/s Shopzo Brand Private Limited**

...Corporate Debtor/Respondent

**Coram:**

**MR. DHARMINDER SINGH, Hon'ble Member (Judicial)**

**MS. SUMITA PURKAYASTHA, Hon'ble Member (Technical)**

**Order Delivered on: 23.05.2022**

**ORDER**

**PER: SHRI DHARMINDER SINGH, MEMBER (JUDICIAL)**

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

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2. The applicant, Mr. Daxesh D. Desai (Karta of M/s. Daxesh D. Desai Huf) has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.
3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

- a. The Operational creditor used to supply Than/fabric to the Corporate Debtor.

- b. The Operational Creditor submitted that the Corporate Debtor had failed to make the payment for the invoices dated 01.01.2019 to 30.04.2019, amounting Rs. 60,65,818/- and also liable to pay interest i.e. Rs. 21,47,786/- on the outstanding amount due.

- c. The Operational Creditor also stated that the Corporate Debtor has accepted his liability via email dated 03.02.2021 and the same was before the issuance of the demand notice.

- d. The Operational Creditor sent a Demand Notice dated 19.07.2021 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.


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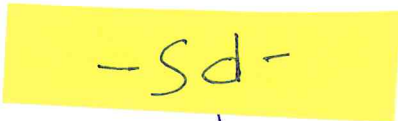
4. The Corporate Debtor has submitted comilation of judgemtns in the form of the Reply.
5. We have heard Ld. Counsel for both the parties and perused the averments made in the application and reply filed by the parties. In the instant Application before examining the said application on merits, it is necessary to examine whether the said petition is maintainable in terms of Section 4 of the IBC, 2016. As the Applicant is claiming Rs. 82,13,604/- from the Corporate Debtor and the same is been filed before this Tribunal on 09.09.2021. In this regard, the reference can be made to the Judgment of Hon'ble NCLAT in the matter of **Jumbo Paper Products V. Hansraj Agrofresh Pvt. Ltd. (Company Appeal (AT) (Ins) No. 813 of 2021)** wherein it was held that the 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 of MCA dated 24.3.2020 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 24.3.3020 even if the debt is of date earlier than 24.03.2020.
6. Since the application under section 9 of the code has been filed on 09.09.2021, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the given facts. In this regard the reference can also be made to citation **Prafulla Purushottamrao Gadge V. Narayan Mangal & Anr. (Comp. App. (AT) (Ins.) No. 498 of 2022)**. In the present application the Operational Creditor demanded Rs. 82,13,604/- and the said amount doesn't come within the threshold limit. In fact, the date of the filing has to

be seen and not the date of the default or the date of the demand notice, which is immaterial. The intent of legislation to fix the threshold limit was to save the Companies from being rotted to NCLT for initiation of CIRP proceedings, due to COVID-19 effect. The said notification was always prospective in nature but having retrospective repercussion also. Hence, even if the amount was due prior to 24.03.2020 and the demand notice was send prior to that the petition u/s 7 or 9 of the Code cannot be filed against the Corporate Debtor. Henceforth, for the above-mentioned reasons, the present Application cannot be admitted. Accordingly, the same being not maintainable stands dismissed with no order to costs.

Let copy of the order be served to the parties.

Consign the file to the record room.

  
**(SUMITA PURKAYASTHA)**  
**MEMBER (T)**

  
**(DHARMINDER SINGH)**  
**MEMBER (J)**