

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

Inv. P (IBC) No. 05/JPR/2023
& CP No. (IB)- 22/9/JPR/2022

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)

IN THE MATTER OF:

M/S NLMK INDIA SERVICE CENTRE PVT. LTD.

...Operational Creditor

VERSUS

FATEHPURIA TRANSFORMERS AND SWITCHGEARS PVT. LTD.

...Corporate Debtor

MEMO OF PARTIES

**M/S NLMK INDIA SERVICE
CENTRE PVT. LTD.**

Registered Office:

Plot No. 13, 3rd Floor, LSC,
Pocket 1, Sector B, Vasant
Kunj, South Sector B, Vasant
Kunj, South Delhi, Delhi-
110070.

Through its Authorised
Representative Sh. Raja Nath

...Operational Creditor

VERSUS

IVN. P (IBC) No. 05/JPR/2023

&

CP No. (IB)- 22/9/JPR/2022

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**FATEPURIA TRANSFORMERS
AND SWITCHGERAS PVT. LTD.**

R/o: P.O. Machwa, Kalwar Road,
Jaipur, Rajasthan-302001.

Also At:

13, Jaipuria Mansion,
Tholia Circle, M. I. Road, Jaipur,
Rajasthan-302001.

...Corporate Debtor

AND IN THE MATTER OF:

IVN. P (IBC) NO. 05/JPR/2023

STATE BANK OF INDIA

Corporate Office At:

State Bank Bhawan,
Madam Cama Road,
Mumbai (Maharashtra)-400021.

Branch Office At:

Matrix Mall, Sector-4,
Jawahar Nagar, Jaipur,
Rajasthan-302004.

Through it Authorised Signatory
Mr. Vishram Meena

.....Intervener

FOR THE APPLICANT:

Sugandha Sharma, Adv.
Rachit Devgun, Adv.

FOR THE RESPONDENT:

Sandeep Taneja, Adv.

Order Pronounced On: 12.03.2024

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IVN. P (IBC) No. 05/JPR/2023

&

CP No. (IB)- 22/9/JPR/2022

ORDER**Per: Shri Deep Chandra Joshi, Judicial Member**

1. The present Application has been preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') by *M/s NLMK India Service Centre Pvt. Ltd.* ('Operational Creditor'/ 'Applicant') seeking Corporate Insolvency Resolution Process of *M/s Fatehpuria Transformers and Switchgears Pvt. Ltd.* ('Corporate Debtor'/ 'Respondent') on account of default in payment of Rs.1,81,69,669.33/- (Rupees One Crore Eighty-One Lakh Sixty-Nine Thousand Six Hundred Sixty-Nine and Thirty-Three paisa Only).
2. The Applicant is a registered company incorporated under the provisions of the Companies Act, 1956 on 22.07.1992. It has its registered office at Plot No. 13, 3rd Floor, LSC, Pocket 1, Sector B, Vasant Kunj, New Delhi, 110070. The Applicant is a leading international steel company that produces and delivers a comprehensive range of flat and long steel products. The present petition is filed by its authorized representative namely *Mr. Raja Nath*. A copy of the Board Resolution is annexed as Annexure-A of the Petition.
3. The Corporate Debtor is a private limited company registered and incorporated under the provisions of the Companies Act, 1956 on 18.10.1995.

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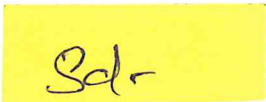
The registered office of the Corporate Debtor is situated at P.O. Machwa, Kalwar Road, Jaipur, Rajasthan, India, 302001.

4. The Application has been filed on the basis of the following set of facts:

4.1. The Corporate Debtor had approached the Applicant and requested to supply CRGO lamination and steel of various grades. The Corporate Debtor had placed various purchase orders for the purchase of CRGO Lamination and steel. Subsequently, the Applicant has supplied the material as per the purchase order at the registered office of the Corporate Debtor.

4.2. Thereafter the Applicant vide E-mails dated 15.07.2020, 22.07.2020, and 05.10.2020 requested to make the payments towards the supply made to the Corporate Debtor as per the purchase orders. Nevertheless, the Applicant has continued to supply the material to the Corporate Debtor in good faith and long business relation. Copy of the E-mails dated 15.07.2020 and 22.07.2020 and 05.10.2020 are annexed as Annexure-E (Colly).

4.3. The Respondent has not responded to the aforesaid mail communications; thus, the Applicant had served a Demand Notice dated 30.09.2021 under Section 8 of the Code as stipulated in Form-3 for demanding the payment of Rs. 1,81,69,669.33/- (Rupees One Crore



Eighty-One Lakh Sixty-Nine Thousand Six Hundred Sixty-Nine and Thirty-Three Paisa Only). Copy of the Demand Notice dated 30.09.2021 is annexed as Annexure-G of the Petition.

4.4. The aforementioned details, as reflected in Part IV of the Petition, are as follows:

Part IV

Particulars of Operational Debt

<i>Sr. No.</i>	<i>Particulars of Operational Debt</i>	
1.	Total amount of Debt,	INR 1,81,69,669.33/- (Rupees One Crore Eighty-One Lakh Sixty-Nine Thousand Six Hundred Sixty-Nine and Thirty-Three Paisa Only). This amount comprises of the invoice value of goods viz. INR 88,97,589/- (Rupees Eighty-Eight Lakh Ninety-Seven Thousand Five Hundred Eighty-Nine Only) and the interest of @8.5% for delayed payments amounting to INR 92,72,080.33/- (Rupees Ninety-Two Thousand Seventy-Two Thousand Eighty and Thirty-Three Paisa Only) on the account of non-payment of the said amount as on the date of Demand Notice in Form i.e. as on 30.09.2021.
	The Date from which such debt fell due	The Operational Debt fell due on various dates between 25.06.2020 to 25.03.2021 when the amount on various invoices became due and payable.

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2.	Amount claimed to be in default and the date on which the default occurred	INR 1,81,69,669.33/- (Rupees One Crore Eighty-One Lakh Sixty-Nine Thousand Six Hundred Sixty-Nine and Thirty-Three Paise Only). Date of Default: 25.06.2020 The workings for computation of default in tabular form is annexed along with Annexure-F
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5. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply *vide* Dairy No. 3490/2022 dated 29.11.2022, stating as follows:

5.1 The Corporate Debtor has submitted that the present Petition filed by the Applicant is not maintainable in the light of section 10A of the Code, 2016. The date of default in Part IV of the Petition is between 25.06.2020 to 25.03.2021. The Applicant has raised various invoices in the aforementioned period, details of the same are mentioned hereinbelow;

5.1.1 Invoice No. DMN-2021-00209, dated 25.06.2020, raised in lieu of Purchase order dated 11.06.2020;

5.1.2 Invoice No. DMN-2021-00332, dated 24.07.2020, raised in lieu of Purchase order dated 07.07.2020;

5.1.3 Invoice No. DMN-2021-00814, dated 20.10.2020, raised in lieu of purchase order dated 03.10.2020;

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5.1.4 Invoice No. DMN-2021-01850, dated 25.03.2021, raised in lieu of purchase order dated 23.02.2021

5.2 In the light of Section 10A of the IBC, 2016 the Applicant is not entitled to claim the amount of Rs. 1,81,69,699/- (Rupees One Crore Eighty-One Lakh Sixty-Nine Thousand Six Hundred Ninety-Nine Only). Section 10 A of the Code, 2016 provides for the suspension of the Corporate Insolvency Resolution Process ('CIRP') against any entity, for defaults committed between the period of 25.03.2020 to 24.03.2021. The said provision was enacted to provide respite and relief to the entities, that were adversely affected due to COVID-19. Section 10A of the IBC, 2016 is being reproduced hereunder for ready reference:

Section 10A: Suspension of initiation of corporate insolvency resolution process.

10A. "Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified² in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period."

5.3 In view of the aforesaid provision of law first three invoices dated 25.06.2020, 24.07.2020, and 20.10.2020 are excluded from the ambit of

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IBC, 2016 since the date of default mentioned in Part IV of the Petition is 25.06.2020.

5.4 Further the Applicant has claimed an amount of Rs. 1,81,69,669/- (Rupees One Crore Eighty-One Lakh Sixty-Nine Thousand Six Hundred Sixty-Nine Only) from the Respondent which includes Rs. 92,72,080/- (Rupees Ninety-Two Lakh Seventy-Two Thousand and Eighty Only) is claimed as interest. The Respondent submits that the Applicant being an Operational Creditor is not entitled to claim any interest as per the provisions of the Code, 2016.

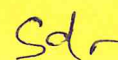
5.5 The Respondent stated that as per Section 4 of the IBC, 2016, any Application may be filed before this Adjudicating Authority after 24.03.2020 only if the amount of default is more than Rs. 1 Cr. In the present case herein, the Applicant deviously charged the interest @8.5% intending to bring the matter within the pecuniary threshold limit of Rs. 1 Crore, as per the mandate of Section 4 of the Code, 2016. For the sake of the argument, even if the interest is charged lawfully, then also it had been charged from the period of 10.10.2015 till 31.08.2021 which is much prior to the filing of the present Petition. Moreover, the present petition is filed based on four (4) invoices that were raised in the year

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2020-21 therefore by no stretch of the imagination the interest could be charged from the year 2015.

- 5.6 The Respondent further states that there is a pre-existing dispute between the parties, which has been recorded in the minutes of the meeting dated 24.02.2021 wherein it was mentioned that there was a delay in delivery of the goods supplied by Applicant and dispute regarding the quality of the goods supplied. Copy the E-mail dated 24.02.2021 is annexed as Annexure-R/1 of the Reply.
- 5.7 It is stated that the Respondent on several occasions raised objections pertaining to the delivery of the goods supplied and informed that due to the delay in delivery of the goods, there is a debit balance of Rs. 4,57,91,657/- (Rupees Four Crore Fifty-Seven Lakh Ninety-One Thousand Six Hundred Fifty-Seven Only) which is due and payable to the Respondent. The Respondent has also sent a copy of the ledger account to justify the amount claimed.
- 5.8 It is pertinent to note that the Respondent has already made the payments of Invoice No. DMN-2021-00814 dated 20.10.2020 raised in lieu of purchase order dated 03.10.2020 and Invoice No. DMN-2021-01850 dated 25.03.2021 raised in lieu of purchase order dated 23.02.2021. The Respondent has availed irrevocable Letter of Credit ('LOC') facilities



from the State Bank of India, ('Bank') Commercial Branch, Jaipur for an amount of Rs. 20,86,920/- (Rupees Twenty Lakh Eighty-Six Thousand Nine Hundred Twenty Only) dated 17.10.2020 and Rs. 22,63,700/- (Rupees Twenty-Two Lakh Sixty-Three Thousand Seven Hundred Only) dated 18.03.2021. Copy of the documents of the issuance of the LOC are annexed as Annexure-R/3 of the Reply.

5.9 The Respondent contends that the outstanding amount pertaining to the invoices dated 20.10.2020 and 25.03.2021 have already been drawn by the Applicant and has received the payment from the bank. Thus, the Applicant is not entitled to claim any amount from the Respondent.

5.10 Further it is mentioned that *Mr. Raja Nath* is not authorized to sign, verify, and file the present petition since he has signed and verified the affidavit of the present petition therefore is not maintainable.

6. The Applicant has preferred to file replication to the Reply vide Dairy No. 589/2023 dated 03.03.2023 pointing out the following:

6.1. It is submitted that the operational debt also includes interest on the delayed payments when the same has been agreed between the parties expressly or impliedly. In the present case the Applicant has been charging interest on delayed payments against the invoices raised as the same was always agreed upon and paid by the Corporate Debtor as

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evident from the interest raised on 06.06.2018, 02.08.2018 and 26.06.2020. Therefore, after adding the interest component to the principle component of the Operational Debt together, the petition is well within the parameters laid down under Section 4 of IBC, 2016.

6.2. The Corporate Debtor never raised quality issues regarding the outstanding invoices and no documents have been annexed in support to substantiate the plea of quality issues with the material supplied by the Applicant. It is submitted that the Corporate Debtor had never claimed any amount arising due to the delay in delivery of goods as all the goods were delivered on time to the Corporate Debtor.

6.3. The Corporate Debtor never made any payments towards the outstanding invoices dated 20.10.2020 and 25.03.2021 raised by the Applicant. The payments which are referred by the Corporate Debtor were made for the previous invoices.

7. The State Bank of India ('SBI'/ 'Bank') has filed an Intervention Petition (IBC) No. 05/JPR/2023 vide Dairy No. 1336/2023 dated 29.05.2023 wherein the following has been submitted:

7.1. The Intervention Petition is filed under Rule 11 of the NCLT Rules, 2016 by the Bank through its authorized representative *Mr. Vishram Meena* wherein it is stated that the Corporate Debtor ('Borrower') has

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availed credit facility from the Bank and mortgaged the movable and immovable properties to secure the financial facility. It is relevant to mention that the Corporate Debtor stood as borrower and mortgagor to the loan availed for an amount of Rs. 35.85 Crores on 30.04.2023.

7.2. The Bank being the secured creditor seeks to intervene in Company Petition No. (IB) 22/9/JPR/2022. The Corporate Debtor ('Borrower') approached the Bank to avail the loan facility. Pursuant to the request made by the Borrower the Bank has sanctioned a loan of Rs. 26,32,00,000/- (Rupees Twenty-Six Crore Thirty-Two Lakhs Only) vide letter of arrangement/ sanction letter dated 07.06.2008. The Sanction Letter dated 07.06.2008 is annexed as Annexure-3 Intervention Application.

7.3. The said loan facility was enhanced/renewed from time to time depending upon the requirement, financial position, and strength of the underlying security. The credit facilities were modified through various letters. Further, upon the request of the Borrowers, Bank vide letter dated 20.10.2021 granted additional WCTL facility under GECL of Rs. 1,39,00,000/- (Rupees One Crore Thirty-Nine Lakh Only). Copy of the letter of arrangement dated 22.03.2022 is annexed as Annexure-4 of the Intervention Petition.

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7.4. It is pertinent to mention that vide letter of arrangement dated 22.03.2022, the Borrower continued the mortgage of certain properties and deposited the original/certified copies of the title deeds of the certain immovable properties belonging to the Borrower and one of its personal guarantors, *Mr. Madhu Sudan Fatehpuria* to cover the quantum of credit exposure. The details of the movable and immovable properties, which are mortgaged by the Borrower as primary and collateral security are as follows:

A) Primary for Working Capital Limits: Exclusively 1st charge by way of hypothecation company's raw materials, stock-in-process, finished goods, semi-finished goods, stores, spares and book-debts.

B) Collateral Security: (For all Credit Facilities)

(i) Continuation of Extension of:

- *Equitable mortgage of Factory Land & building (Industrially converted from Agricultural Land) situated at Khasra No. 295/97n (new mtrs. And Khasra No. 294 admeasuring 400 sq. yards, situated at Industrial Land and building at Khasra No. 295/907 and 294 at Machera, Jaipur.*
- *Equitable mortgage residential Flat No. 301, Akshat Tower, Bhasker Marg, Jaipur, admeasuring 1256 sq. ft. standing in name of Sh. Madhu Sudan Fatehpuria.*
- *Equitable mortgage office no. 401-B, C, D situated at Fourth Floor, Mahima's Crystel Mall, Plot No. A3/C,*

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Banipark, Sawai Jai Singh Highway, Jaipur, admeasuring 1327.77 sq. ft.

- *All plants and machineries, F&F and all other fixed assets as per WDV based on ABS20.*
- *Negative lien of site of the WTG at village Majjur, Taluk Shirhatti, Distt, Gadag, Karnataka for Term Loan-I, Land leased by the Government of Karnataka to Enecron (India) Ltd. and proposed to be further sub leased to Fatehpuria Transformers and Switchgears Pvt. Ltd. (EM cannot be created since the land is a forest land).*
- *Negative lien of site of the WEC at village Chavaneshwar, District- Satara, Maharashtra for Term Loan-II. Proposed to be leased by the Government of Maharashtra to Enecron (India) Ltd. and proposed to be further sub leased to Fatehpuria Transformers and Switchgears Pvt. Ltd. (EM cannot be created since the land is a forest land).*
- *Fixed deposit of Rs. 0.40 crores in the name of the Borrower Company.*

7.5. Further for securing the due repayment of said revised/modified financial/credit facilities granted to Borrower, (1) *Sh. Madhu Sudhan Fatehpuria S/o Sh. Purshottam Lal Fatehpuria* and (2) *Smt. Amita Fatehpuria w/o Sh. Pramod Fatehpuria* stood as personal guarantor by executing a guarantee agreement and *Sh. Madhu Sudan Fatehpuria* created a mortgage over the aforesaid properties with the SBI by way of

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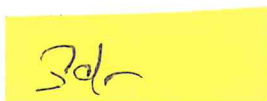
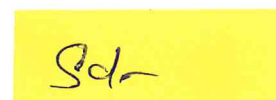
a deposit of an original/certified copy of the title deeds. Copy of the aforesaid guarantee agreement and agreement to mortgage the properties are respectively annexed as Annexure-6 (Colly) of the Intervention Petition.

7.6. Further the Borrower and *Mr. Madhu Sudan Fatehpuria* have executed a Letter of Confirmation of extension of Mortgage by deposit of title deeds. The Bank has submitted that there is an apprehension that the Company Petition No. (IB) 22/9/JPR/2022 is filed to defraud and prejudice the rights of the secured creditor i.e. SBI and not filed *bona fide* for initiation of CIRP.

7.7. It is submitted that SBI being a secured creditor in the Corporate Debtor Company, therefore without hearing the secured creditor would adversely affect and prejudice its rights and interest as a Secured Creditor.

8. The Applicant has filed written submissions vide Diary No. 518/2024 dated 29.02.2024 whereby reiterated the same as mentioned in the Application and additionally relied on the following cases:

8.1 *Beetal Teletech Ltd. Vs Arcelia IT Services Pvt. Ltd.-2003 SCC OnLine NCLAT 642*

8.2 Haji Mohammed Ishaq Wd. S.K. Mohammed and others Vs. Mohamad Iqbal And Mohamed Ali & Co-Civil Appeal No. 2468 of 1968

9. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, and the Documents enclosed with the Application.
10. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of the Laws of Limitation, as the first default was committed by the Corporate Debtor in 2021, and the Application was filed before this Adjudicating Authority in 2022. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
11. Before delving into the merits of the case the preliminary issue that arises for consideration under Section 9 of the Code is Whether 'interest' can be claimed as a right by the Operational Creditor when the invoices do not specifically mention the same and there is no understanding between the parties regarding the levy of interest on delayed payment.

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12. At this juncture, we consider it relevant to refer to the Judgment of Hon'ble NCLAT in the matter of *Steel India v. Theme Developers Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 1014 of 2019]* Hon'ble NCLAT observed that; *"It is settled that the charging of interest, ought to be an actionable claim, enforceable under law, provided it was properly agreed upon between the parties."*

Section 3(6) of the Code defines "claim" as – *"(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured; (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;"* 3(6)(b) is explicit that a claim is also a right to remedy for 'breach of contract' therefore unless the 'contract' is explicit about the liability to pay interest in default, no actionable claim can be said to exist.

13. Further, from the records it is seen that the Operational Creditor has failed to bring forth any agreement between the parties that a default in payment would attract interest. The interest of 8.5% is levied only in terms of a delayed payment, the Corporate Debtor never agreed or promised to pay any interest on a delayed payment if any. The interest levied by the Applicant was never

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agreed upon and the Applicant failed to prove that there is any contract or agreement on the part of the Corporate Debtor to pay interest on the alleged delayed payment. Moreover, the interest which is levied by the Applicant starts from the year 2015 whereas the invoices were raised between 2020 and 2021.

14. The Applicant in total has raised four invoices, details of the same are as follows:

<i>Invoice Date</i>	<i>Due Date</i>	<i>Invoice No.</i>	<i>Invoice Amount</i>	<i>Due Date</i>
25.06.2020	22.12.2020	DMN-2021-00209	Rs. 26,10,273	Rs. 5,42,444
24.07.2020	20.01.2021	DMN-2021-00332	Rs. 39,79,149	Rs. 39,79,149
20.10.2020	18.04.2021	DMN-2021-00814	Rs. 20,67,021	Rs. 20,67,021
25.03.2021	23.07.2021	DMN-2021-01850	Rs. 23,08,975	Rs. 23,08,975

15. The date of default of three (3) squarely falls under Section 10A of the IBC Code. Section 10A of the Code reads as follows:

Section 10A: Suspension of initiation of corporate insolvency resolution process.

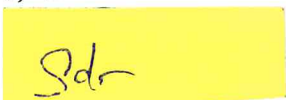
10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

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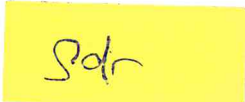
Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

16. The effect of Section 10A of the IBC is that no Application can be filed under sections 7, 9, and 10 of the IBC Code in respect of any default alleged to have taken place between 25.03.2020 and 25.03.2021. Therefore, it is the case of the Operational Creditor that as mentioned in the invoices, the due date shall be computed from the due date of invoice i.e. 180 days from the date of invoice, therefore the date of defaults which lies within the bracket of 25.03.2020 to 25.03.2021 cannot be computed to add to the debt which is being alleged by the Operational Creditor. Thus, the said invoices, where the date of default falls within the bracket of 25.03.2020 to 25.03.2021, are primarily barred by the provisions of Section 10A of the IBC. In the present case herein, two invoices fall within the aforementioned period and under the purview of Section 10A of the Code, 2016. Therefore, in light of the mandate of Section 10A of the Code, 2016, no application could ever be filed in respect of the default arising out of the said 2 invoices numbered as *DMN-2021-00209* and *DMN-2021-00332*.
17. The Ministry of Corporate Affairs vide Notification dated 24.03.2020 specified Rupees One (1) Crore as the minimum amount of default for the purposes of Section 4 of the Code. Hence, as per the Code, the minimum

amount of default against which applications under Part II of the Code can be moved, in lieu of the notification dated 24.03.2020, is revised to Rs. 1,00,00,000/- (Rupees One Crore Only).

18. Therefore, all the applications that are filed after the notification dated 24.03.2020 came into existence, have to fall within the amended threshold limit of Rs. 1,00,00,000/- (Rupees One Crores Only) even if the debt existed or default occurred before 24.03.2020. The Hon'ble NCLAT has further clarified in the judgment of *Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd., Company Appeal (AT) (Im.) No. 813 of 2021* that the threshold limit will be applicable for applications filed u/s 7 or 9 on or after 24.03.2020 even if the debt is of a date earlier than 24.03.2020.
19. In Part IV of the petition, it has been admittedly alleged that the principal amount in default is Rs. 88,97,589/- (Rupees Eighty-Eight Lakh Ninety-Seven Thousand Five Hundred Eighty-Nine Only). The balance amount entirely consists of interest i.e., Rs. 92,72,080.33/- (Rupees Ninety-Two Lakh Seventy-Two Thousand Eighty and Thirty-Three Paise Only). Admittedly, there is no contract or agreement between the parties, either for payment of interest or for payment of any amount. The parties never agreed upon payment of any interest whatsoever in the invoices. Not a single correspondence has been produced by the Operational Creditor to the effect




that the Corporate Debtor had ever agreed to pay interest on any purportedly outstanding amount.

20. Further, from a perusal of the Invoices annexed at Page No. 19-22 of the said petition it is evident that there is no interest component is mentioned in the said invoices. The Corporate Debtor never agreed or promised. Without clubbing such interest with the principal amount, the threshold as per Section 4 of the Code is not met.

21. Without clubbing such interest with the principal amount, the threshold as per Section 4 of the Code is not met. It is necessary to refer to Section 4 of the IBC which reads as follows:

“4. Application of this Part –

(1) This part shall apply to matters relating to the Insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees.

***Provided** that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.”*

22. The present case herein, is below the threshold limit as prescribed under the law. The principal amount claimed to have been in default is below Rs. 1 Crore, and therefore, the said petition deserves to be dismissed in *limine*.

23. Therefore, the Application is numbered as CP No. (IB)- 22/9/JPR/2022 is dismissed. The Order in the present matter is made in terms of Section 9 (5)

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(ii) of IBC, 2016, and based on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority. Let the copy of the Order be served to the parties.

24. In the view the order passed in *CP No. (IB)- 22/9/JPR/2022*, Intervention Petition (IBC) No. 05/JPR/2023 filed by the State Bank of India stands infructuous and disposed off.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**