

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
TP (Co. Act.) No. 30(PB)/2024**

Order 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:

Allegis Services (India) Pvt. Ltd.

...Operational Creditor/Applicant

Versus

Olive Telecommunication Pvt. Ltd.

...Corporate Debtor/Respondent

Order Pronounced on: 11.06.2026

CORAM:

**SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Appearances:

For the Operational Creditor : Mr. Ajit Warriar, Mr. Himanshu Setia, Advs.

For the Corporate Debtor : Mr. Nitish Kant Sharma, Mr. Mehak Khurana,
Advs.

ORDER

1. The present application has been filed by **Allegis Services (India) Pvt. Ltd. (Applicant)**, the Operational Creditor/OC, under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC/Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency

Resolution Process (“CIRP”) against **Olive Telecommunication Pvt. Ltd.**, the Corporate Debtor/CD.

2. The prayers made in the application are extracted as below:

“A. admit the present Application;

B. pass an order initiating Corporate Insolvency Resolution Process against the Corporate Debtor under the provisions of the Insolvency and Bankruptcy Code, 2016;

C. pass an order/direction appointing a Resolution Professional to take charge over the Corporate Debtor’s assets, affairs, books of accounts and to conduct affairs of the Corporate Debtor as deemed fit and proper by this Hon’ble Tribunal;

D. pass an order that pending the hearing and final disposal of the present Application, an Interim Resolution Professional or any other person be appointed as Interim Resolution Professional to take over the possession of the assets, properties, affairs, books of accounts and to conduct the affairs of the Corporate Debtor;

E. pass an order awarding costs of the present Application; and

F. pass such other and further order(s) as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

BRIEF FACTS OF THE CASE

Before adverting to the controversy raised in the present application, it would be apposite to notice the relevant facts giving rise to the filing of the present application, as averred in the application and submitted by the parties:

3. The case of the Operational Creditor is that on 01.12.2010, a Master Services Agreement was entered into between Market Source, a division of the Operational Creditor, and the Corporate Debtor, whereby the Operational Creditor was to provide sales and marketing services to the Corporate Debtor.
4. It is stated that the Operational Creditor rendered services under the said Agreement and raised six invoices aggregating to Rs. 60,38,613/-. According to the Operational Creditor, the Corporate Debtor paid only the first invoice and failed to clear the remaining five invoices aggregating to Rs. 50,43,071/-.
5. It is further the case of the Operational Creditor that, despite repeated requests and correspondence, the Corporate Debtor failed to clear the aforesaid outstanding invoices. The Operational Creditor has also relied upon the balance sheets of the Corporate Debtor wherein, according to it, an amount of Rs. 24,73,438/- has been reflected as due and payable to the Operational Creditor.
6. The disputes between the parties were referred to arbitration. The Arbitral Tribunal, comprising Hon'ble Mr. Justice (Retd.) R. Gururajan, former Judge of the Hon'ble High Court of Karnataka, passed an Arbitral Award dated 30.04.2014 in favour of the Operational Creditor and against the Corporate Debtor. Under the said Award, the Corporate Debtor was directed to pay Rs. 50,43,071/- along with interest at the rate of 15% per annum from the respective dates of invoices till payment, along with costs.
7. The Corporate Debtor challenged the said Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996 before the Ld. Principal City Civil Judge, Bengaluru in A.S. No. 76 of 2014. The said petition came to be dismissed vide judgment dated 19.04.2021. No material has been placed before us to show that any further appeal under Section 37 of the Arbitration and Conciliation Act, 1996 has been filed against the said judgment and is pending.

8. The Operational Creditor, thereafter, issued a statutory notice dated 15.07.2015 under Section 434(1)(a) read with Sections 433(e) and 433(f) of the Companies Act, 1956, calling upon the Corporate Debtor to pay Rs. 89,48,368/- as on 30.06.2015. According to the Operational Creditor, the said notice was served upon the Corporate Debtor on 20.07.2015, however, the Corporate Debtor failed to comply with the same.
9. Thereafter, on 14.08.2015, the Operational Creditor filed Company Petition No. 594 of 2015 before the Hon'ble High Court of Delhi seeking winding up of the Corporate Debtor under Sections 433(e) and 433(f) read with Section 434(1)(a) of the Companies Act, 1956.
10. The said Company Petition was first listed before the Hon'ble High Court of Delhi on 19.08.2015, when notice was issued and the Corporate Debtor was restrained from disposing of, encumbering, or otherwise parting with possession of its assets to the tune of Rs. 90,00,000/-, except in the ordinary course of business and for payment of salaries and statutory dues.
11. Subsequently, in terms of the Companies (Transfer of Pending Proceedings) Rules, 2016, the Hon'ble High Court of Delhi vide order dated 07.05.2024 transferred the said Company Petition to this Adjudicating Authority to consider the matter and pass appropriate orders in accordance with law. It was also directed that the interim order dated 19.08.2015, as continued from time to time, shall continue.
12. The matter was listed before this Adjudicating Authority on 08.07.2024. On that date, learned counsel for the Operational Creditor undertook to file Form-5 as prescribed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, so that the matter may be considered under the Code. Pursuant thereto, the present application bearing TP (Co. Act.) No. 30(PB)/2024 under Section 9 of the Code came to be filed.

13. Notice was issued in the application. The Corporate Debtor has filed its reply opposing the admission of the present application. Both parties have also filed their respective brief notes/written submissions.

SUBMISSIONS ON BEHALF OF THE OPERATIONAL CREDITOR

14. Learned counsel for the Operational Creditor submits that the operational debt in the present case arises out of services admittedly rendered under the Master Services Agreement dated 01.12.2010. It is submitted that six invoices were raised for services rendered, out of which the Corporate Debtor admittedly cleared only the first invoice and failed to pay the remaining five invoices aggregating to Rs. 50,43,071/-

15. It is further submitted that the liability of the Corporate Debtor no longer remains an unadjudicated or disputed contractual claim. The liability has been crystallized by the Arbitral Award dated 30.04.2014. The Corporate Debtor's challenge to the Award under Section 34 of the Arbitration and Conciliation Act, 1996 has also been dismissed on 19.04.2021. Therefore, according to the Operational Creditor, the Corporate Debtor cannot now seek to reopen the very same disputes under the garb of opposing the Section 9 application.

16. Learned counsel for the Operational Creditor submits that, as on the date of filing of the present application, the total amount in default is Rs. 1,52,59,418/-. It is argued that the said amount is not a unilateral or inflated claim, but flows from the Award which granted interest at the rate of 15% per annum. Hence, the requirement of minimum threshold under Section 4 of the Code stands satisfied.

17. Learned counsel has further submitted that the Corporate Debtor has continuously reflected an amount of Rs. 24,73,438/- as payable to the Operational Creditor in its audited financial statements. According to

the Operational Creditor, the said balance-sheet entries amount to acknowledgment of liability.

18. Reliance has been placed on **G. Shivramkrishna v. Isgec Covema Limited**, 2020 SCC OnLine NCLAT 909, to contend that once an arbitral award has crystallized the debt and the corporate debtor has failed to honour the award, the operational creditor is entitled to invoke Section 9 of the Code, subject to satisfaction of the statutory requirements.
19. Learned counsel also relies on **Vidyasagar Prasad v. UCO Bank**, 2024 SCC OnLine SC 2993, to submit that entries in balance sheets, depending upon the facts of the case, may constitute acknowledgment of liability.
20. It is further submitted that the latest financial statements of the Corporate Debtor show weak financial health, absence of substantial fixed assets/inventory, long-standing unpaid trade payables, and uncertainty as to its ability to continue as a going concern. It is, therefore, prayed that the present application be admitted.

SUBMISSIONS ON BEHALF OF THE CORPORATE DEBTOR

21. Per contra, learned counsel for the Corporate Debtor has opposed the present application and submitted that the same is not maintainable. It is submitted that the Master Services Agreement dated 01.12.2010 was valid only for three months and expired by efflux of time on 28.02.2011. According to the Corporate Debtor, there was no valid extension of the Agreement in the manner contemplated under the Agreement, and therefore, invoices raised for the period thereafter are illegal and unenforceable.

22. It is further submitted that the invoices raised by the Operational Creditor were contrary to the terms of the Agreement, were not backed by prior approval of the designated personnel of the Corporate Debtor, included heads not forming part of the Agreement, and even covered a period prior to the execution of the Agreement.
23. Learned counsel for the Corporate Debtor submits that the Operational Creditor failed to meet the agreed sales targets. According to the Corporate Debtor, the entire commercial arrangement was performance driven and based on the Operational Creditor's assurance that it would achieve substantial sales targets. It is argued that the Operational Creditor failed to perform its obligations and, therefore, the Corporate Debtor had raised counterclaims in the arbitral proceedings.
24. It is also submitted that the Corporate Debtor has disputed the claim since inception. According to the Corporate Debtor, the disputes relating to expiry of the Agreement, invalidity of invoices, non-performance, overpayment of the first invoice, and counterclaims constitute pre-existing disputes, and therefore, the present application under Section 9 is liable to be rejected.
25. Learned counsel for the Corporate Debtor has further submitted that the principal amount awarded by the Arbitral Tribunal is only Rs. 50,43,071/-, which is below the threshold of Rs. 1 crore under Section 4 of the Code. It is submitted that the Operational Creditor is attempting to artificially inflate the claim by adding interest over several years. According to the Corporate Debtor, interest cannot be clubbed with the principal amount for meeting the statutory threshold, particularly when the Agreement does not contain any contractual stipulation for interest.
26. It is further submitted that the Arbitral Award cannot be relied upon as the same is unstamped. According to the Corporate Debtor, an

unstamped award cannot be admitted in evidence or relied upon for affirming the debt.

27. Learned counsel for the Corporate Debtor has also submitted that the Operational Creditor ought to have pursued execution proceedings after obtaining the Award. Instead, it first filed a winding-up petition and thereafter seeks to invoke Section 9 of the Code. According to the Corporate Debtor, this amounts to misuse of the insolvency process as a substitute for execution/recovery.

28. The Corporate Debtor has also denied that any balance-sheet entry constitutes an admission of liability. It is submitted that such entries, if any, are at best provisional accounting entries made as a matter of prudence and cannot be treated as an unqualified admission, particularly when the liability has been disputed throughout.

29. On the aforesaid grounds, it is prayed that the present application be dismissed with costs.

ANALYSIS AND FINDINGS

30. We have heard learned counsel for the parties and perused the material available on record. The issues which arise for consideration in the present application are:

- i. Whether there exists an operational debt due and payable by the Corporate Debtor to the Operational Creditor?***
- ii. Whether there is default on the part of the Corporate Debtor?***
- iii. Whether the disputes now raised by the Corporate Debtor constitute a subsisting pre-existing dispute so as to defeat the present application under Section 9 of the Code?***
- iv. Whether the amount in default satisfies the statutory threshold under Section 4 of the Code, and whether the***

interest component awarded under the Arbitral Award can be included for determining such threshold?

- v. Whether the present application is liable to be rejected on the ground that the Operational Creditor is seeking to use the Code as a substitute for execution proceedings?***
- vi. Whether the objection regarding stamping of the Arbitral Award affects the maintainability of the present application under Section 9 of the Code?***

31. Before advertng to the rival contentions, it would be apposite to notice the relevant statutory provisions.

Section 5(20) of the Code defines “operational creditor” as follows:

“operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

Section 5(21) of the Code defines “operational debt” as follows:

“operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

Section 3(6) of the Code defines “claim” as follows:

“claim” means—

(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;

Section 3(11) of the Code defines “debt” as follows:

“debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

Section 3(12) of the Code defines “default” as follows:

“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 paid by the debtor or the corporate debtor, as the case may be;

Section 4(1) of the Code provides as follows:

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.

32. In exercise of the power under the proviso to Section 4(1) of the Code, the Central Government, by notification dated 24.03.2020, specified Rs. 1,00,00,000/- (Rupees One Crore only) as the minimum amount of default for the purposes of Section 4 of the Code.

33. It is also relevant to notice Section 9(5)(i) of the Code, which provides that the Adjudicating Authority shall admit an application under Section 9 if the following conditions are satisfied:

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor, if,—

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

34. The debt in the present case arises out of services rendered by the Operational Creditor under the Master Services Agreement dated 01.12.2010. The claim of the Operational Creditor is founded on unpaid invoices raised in respect of the provision of such services. Such a claim clearly falls within the ambit of “operational debt” under Section 5(21) of the Code, being a claim in respect of provision of services.

35. The record shows that the Operational Creditor raised six invoices aggregating to Rs. 60,38,613/-. It is the case of the Operational Creditor that the Corporate Debtor cleared only the first invoice and failed to pay the remaining five invoices aggregating to Rs. 50,43,071/-. The Corporate Debtor, on the other hand, has sought to dispute the liability by contending that the Agreement expired on 28.02.2011, the invoices were not duly approved, the Operational Creditor failed to achieve sales targets, and certain amounts were wrongly claimed under heads not forming part of the Agreement.

36. The aforesaid disputes between the parties were referred to arbitration. The Arbitral Tribunal, comprising Hon’ble Mr. Justice (Retd.) R. Gururajan, former Judge of the Hon’ble High Court of Karnataka, passed an Arbitral Award dated 30.04.2014 in favour of the Operational Creditor and against the Corporate Debtor. Under the said Award, the Corporate Debtor was directed to pay Rs. 50,43,071/- along with interest at the rate of 15% per annum from the respective dates of invoices till payment, along with costs.

37. The Corporate Debtor challenged the said Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996 before the Ld. City Civil Court, Bengaluru in A.S. No. 76 of 2014. The said challenge came to be dismissed vide judgment dated 19.04.2021. No material has been placed before this Tribunal to show that any appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is pending, or that the Arbitral Award has been stayed or set aside.

38. At this stage, it becomes necessary to examine the effect of the dismissal of the Section 34 petition on the plea of pre-existing dispute. In **Mobilox Innovations Private Limited v. Kirusa Software Private Limited**, (2018) 1 SCC 353, the Hon'ble Supreme Court explained the scope of enquiry under Section 9 of the Code and held as follows:

“Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the ‘dispute’ is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.”

The Hon'ble Supreme Court further held that so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority must reject the application. Therefore, the enquiry of this Tribunal under Section 9 is not to adjudicate the dispute on merits but to see whether there exists a real and subsisting pre-existing dispute.

39. In **K. Kishan v. Vijay Nirman Company Private Limited**, (2018) 17 SCC 662, the Hon'ble Supreme Court dealt with the effect of an arbitral award and a pending Section 34 challenge in the context of Section 9 of the Code. The Hon'ble Supreme Court held as follows:

“We repeat with emphasis that under our Code, insofar as an operational debt is concerned, all that has to be seen is whether

the said debt can be said to be disputed, and we have no doubt in stating that the filing of a Section 34 petition against an arbitral award shows that a pre-existing dispute which culminates at the first stage of the proceedings in an award, continues even after the award, at least till the final adjudicatory process under Sections 34 and 37 has taken place.”

40. Thus, the principle emerging from K. Kishan (supra) is that where an arbitral award is under challenge under Section 34, the pre-existing dispute cannot be said to have come to an end, and such dispute continues at least till the final adjudicatory process under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 has taken place.

41. However, the said proposition, when applied to the facts of the present case, does not assist the Corporate Debtor. In the present case, the Section 34 petition filed by the Corporate Debtor has already been dismissed on 19.04.2021. No material has been placed before this Tribunal to show that any further proceeding under Section 37 is pending or that the Award is stayed or set aside. Therefore, the disputes which were raised by the Corporate Debtor in relation to the Agreement, invoices, performance, sales targets, alleged overpayment and counterclaims stood adjudicated in the arbitral proceedings, and the challenge thereto has also failed.

42. It is also material to note that the objections now raised before us, namely, expiry of the Agreement on 28.02.2011, absence of valid extension, invalidity of invoices, alleged failure to achieve sales targets, overpayment of the first invoice, and counterclaims, were all matters before the Arbitration proceedings and were substantially raised by the Corporate Debtor in its challenge to the Award. Once the Section 34 challenge has been dismissed and no subsisting challenge has been shown, the Corporate Debtor cannot seek to reagitate the same disputes in a proceeding under Section 9 of the Code.

43. The Operational Creditor has also relied upon the judgment of the Hon'ble NCLAT in **G. Shivramkrishna v. Isgec Covema Limited**, 2020 SCC OnLine NCLAT 909, wherein the Hon'ble NCLAT considered the maintainability of a Section 9 application founded upon an arbitral award. In the said judgment, the Hon'ble NCLAT held as follows:

“We are of the view that by passing Award by the learned Sole Arbitrator, the amount has been crystalized and by default in payment and by not honouring the Award, the amount became due and payable. The Respondent No. 1 had rightly invoked jurisdiction of the Adjudicating Authority under Section 9 of the IBC after issuance of Demand Notice as prescribed under Section 8 of IBC.”

The Hon'ble NCLAT further noticed the definition of “creditor” under Section 3(10) of the Code and held that a decree-holder is also included within the meaning of creditor. Section 3(10) of the Code reads as follows:

“creditor” means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;

44. Therefore, where the underlying claim arises from provision of goods or services, and the liability arising therefrom is crystallised by an arbitral award, the award does not change the basic nature of the claim. The award only crystallises the liability arising out of the underlying operational transaction. In the present case, the underlying transaction is the provision of sales and marketing services by the Operational Creditor to the Corporate Debtor. Thus, the debt continues to retain its operational character.

45. We now proceed to consider the objection regarding threshold under Section 4 of the Code. The Corporate Debtor has contended that the principal amount awarded by the Arbitral Tribunal is only Rs.

50,43,071/-, which is below the statutory threshold of Rs. 1,00,00,000/- prescribed under Section 4 of the Code. It is submitted that the Operational Creditor is attempting to artificially cross the threshold by adding interest over several years.

46. It is an undisputed fact that Arbitral Tribunal passed an award and the Corporate Debtor was directed to pay Rs. 50,43,071/- along with interest at the rate of 15% per annum and as per the submissions of the Operational Creditor the total amount in default is Rs. 1,52,59,418/-.

47. At the outset, we are of the considered view that the applicable threshold in the present case is Rs. 1,00,00,000/- and not Rs. 1,00,000/-. Though the original proceeding was instituted as a winding-up petition under Sections 433(e), 433(f) and 434 of the Companies Act, 1956 before the Hon'ble High Court of Delhi, the said proceeding has been transferred to this Tribunal and is now being considered as an application under Section 9 of the Code pursuant to filing of Form-5 by the Operational Creditor. The said Form-5 application has been filed after the notification dated 24.03.2020, whereby the threshold under Section 4 of the Code was enhanced to Rs. 1,00,00,000/-.

48. In this regard, reference may be made to the judgment of the Hon'ble NCLAT in Mr. **Navin Ashokkumar Aswani v. Falcon Industries**, Company Appeal (AT) (Insolvency) No. 109 of 2026, decided on 25.02.2026. In the said case also, the original proceeding was a winding-up petition under Sections 433 and 434 of the Companies Act, 1956, which was later transferred to NCLT and converted into a Section 9 application. The Hon'ble NCLAT framed, inter alia, the following questions:

“II. Whether the Operational Creditor who has converted Winding Up Petition in Section 9 application by filing Form-5 has to satisfy

*necessary conditions for admission of Section 9 application?
III. Whether threshold for TP No.02(Ahm)2022 transferred by the High Court to the NCLT shall be Rs.1 Lakh or the Operational Creditor had to fulfil the threshold of Rs.1 Crore as applicable w.e.f. 04.03.2020?”*

49. After considering Section 434 of the Companies Act, 2013, the Companies (Transfer of Pending Proceedings) Rules, 2016, and the judgments of the Hon’ble Supreme Court in Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd., (2021) 2 SCC 641 and A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd., (2021) 4 SCC 435, the Hon’ble NCLAT held as follows:

“After transfer of the Winding Up Petition by the High Court to the NCLT after admission of the Winding Up Petition, NCLT has not to mechanically admit the petition and has to examine the application in accordance with provisions of the I&B Code and to pass a judicial order after considering as to whether the application need to be admitted under Section 9 or not.”

The Hon’ble NCLAT further held:

“After transfer of the Winding Up Petition which has been converted into the Section 9 application, the Operational Creditor has to satisfy all parameters for admission of Section 9 application including threshold.”

On the issue of applicable threshold, the Hon’ble NCLAT held:

“The Company Petition was transferred vide order of the Gujarat High Court dated 25.04.2021 and thereafter was converted in Section 9 application on 04.03.2022. Thus, on the date when the application was converted Section 9, the threshold as provided in I&B Code has to be looked into. What should be amount of threshold for Section 9 or Section 7 application for eligibility under I&B Code was enacted under Section 4. Initially the requirement of

minimum amount of default was Rs.1 Lakh, which was subsequently enhanced to Rs.1 Crore w.e.f. 24.03.2020. Thus, the legislative policy after 24.03.2020 is to admit Corporate Debtor into insolvency only when default is more than Rs.1 Crore.”

The Hon’ble NCLAT finally answered the said issue in the following terms:

“Threshold for Section 9 application, which was converted in 2022, shall be Rs.1 Crore and the Operational Creditor has to fulfil the threshold of Rs.1 Crore for maintaining Section 9 application.”

50. In view of the aforesaid authoritative pronouncement, we hold that the Operational Creditor in the present case is required to satisfy the threshold of Rs. 1,00,00,000/- under Section 4 of the Code. The mere fact that the original winding-up petition was filed in the year 2015 does not obviate the requirement of satisfying the statutory threshold applicable to a Section 9 application being considered after the notification dated 24.03.2020.

51. The next question is whether the interest component awarded by the Arbitral Tribunal can be taken into account for determining whether the threshold under Section 4 stands satisfied. There can be no quarrel with the proposition that a purely unilateral claim of interest, unsupported by contract, invoice, statutory provision, adjudication, or accepted course of dealing, cannot be mechanically added to the principal amount merely to cross the threshold prescribed under Section 4 of the Code. This principle also emerges from the judgement in **Mr. Navin Ashokkumar Aswani v. Falcon Industries (Supra)**.

52. In the present case, the interest component is not a unilateral computation. The Arbitral Tribunal, by Award dated 30.04.2014, directed the Corporate Debtor to pay Rs. 50,43,071/- along with interest at the rate of 15% per annum from the respective dates of

invoices till the date of payment, along with costs. The Corporate Debtor challenged the said Award under Section 34 of the Arbitration and Conciliation Act, 1996 and the said challenge was dismissed on 19.04.2021. No material has been placed before us to show that the said Award has been stayed or set aside.

53. The interest in the present case flows from an Arbitral award. The interest component is part of the crystallised liability under the Arbitral Award and is not a unilateral or self-serving computation made for the first time in the Section 9 application.

54. In this context, reference may also be made to the judgment of the Hon'ble NCLAT in ***Prashant Agarwal v. Vikash Parasrampuria & Anr.***, Company Appeal (AT) (Insolvency) No. 690 of 2022, wherein it was held that where interest on delayed payment forms part of the right to payment, the total amount for maintainability of a claim under Section 4 of the Code may include both the principal debt and the interest component. The Hon'ble NCLAT held that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment where such interest forms part of the enforceable right to payment.

55. Section 3(6) of the Code specifically recognises a “right to payment” whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured. Section 3(11) defines “debt” as a liability or obligation in respect of a claim which is due from any person. Section 3(12) defines “default” as non-payment of debt when the whole or any part or instalment of the debt has become due and payable and is not paid.

56. Thus, for the purposes of Section 4 of the Code, what is relevant is the amount of default. If interest has become due and payable under an adjudicated award, and such award has not been stayed or set aside,

such interest cannot be treated as a mere unilateral or disputed invoice claim. It forms part of the liability in respect of the claim and, consequently, part of the amount in default.

57. In the present case, the Operational Creditor has claimed Rs. 1,52,59,418/- as on the date of filing of the application. The said amount is referable to the principal amount awarded under the Arbitral Award along with, interest awarded at the rate of 15% per annum, and costs. The statutory notice dated 15.07.2015 had also called upon the Corporate Debtor to pay the awarded principal amount, interest awarded under the Award, costs and further interest.

58. We are, therefore, unable to accept the contention of the Corporate Debtor that the Operational Creditor is artificially inflating the claim to cross the threshold under Section 4 of the Code. The present case is not one of unilateral invoice interest. It is a case where the interest has been adjudicated and awarded by the Arbitral Tribunal, and the challenge to the Award has failed. Accordingly, the amount in default exceeds Rs. 1,00,00,000/- and the statutory threshold under Section 4 of the Code stands satisfied.

59. The next objection of the Corporate Debtor is that the Arbitral Award is unstamped and, therefore, cannot be relied upon. In our considered view, the said objection does not advance the case of the Corporate Debtor for the purpose of the present proceedings under Section 9 of the Code. This Tribunal is not sitting in execution over the Arbitral Award. The Award has been relied upon to show that the disputes between the parties in relation to the unpaid invoices stood adjudicated and that the debt stood crystallised. Further, the factum of passing of the Award and dismissal of the Section 34 challenge is not in dispute.

60. The Corporate Debtor's objection regarding stamping, even if available in appropriate proceedings, does not erase the underlying operational

debt, nor does it revive the contractual disputes which have already been adjudicated upon. Once the Arbitral Award has been made and the challenge under Section 34 has been dismissed, this Tribunal, while exercising jurisdiction under Section 9 of the Code, cannot reopen the merits of the arbitral adjudication on the basis of an objection which does not go to the existence of the underlying operational debt or default.

61. The Corporate Debtor has also contended that the Operational Creditor ought to have pursued execution proceedings after obtaining the Arbitral Award and could not have invoked the insolvency process. There can be no quarrel with the proposition that the Code is not intended to be used as a mere recovery mechanism. However, it is equally well settled that if the statutory ingredients of operational debt and default are satisfied, and there is no subsisting pre-existing dispute, the mere availability of another remedy such as execution does not by itself bar initiation of proceedings under the Code.
62. In the present case, the application is not based on a bare decree divorced from the underlying transaction. The underlying transaction is the provision of services by the Operational Creditor to the Corporate Debtor. The claim arising therefrom is operational in nature. The Arbitral Award only crystallised the said operational debt. Therefore, the present application cannot be rejected merely on the ground that execution proceedings could also have been pursued by the Operational Creditor.
63. We also find support from the judgment of the Hon'ble NCLAT in **G. Shivramkrishna v. Isgec Covema Limited**, wherein it was held that once the amount has been crystallised by an arbitral award and the Corporate Debtor has defaulted in honouring the Award, the Operational Creditor may invoke Section 9 of the Code, subject to satisfaction of the statutory requirements.

64. We further find force in the submission of the Operational Creditor that the Corporate Debtor's financial statements have, from time to time, reflected amounts payable to the Operational Creditor. Though a balance sheet entry is not to be mechanically treated as an admission in every case and the accompanying notes/caveats must also be examined, in the present case such entries lend additional support to the existence of liability, particularly when the liability has also been crystallised in arbitral proceedings.

65. In **Vidyasagar Prasad v. UCO Bank**, 2024 SCC OnLine SC 2993, the Hon'ble Supreme Court observed as follows:

"...the Adjudicating Authority as well as the NCLAT have examined the case in detail and have come to the conclusion that the entry made in the balance sheet coupled with the note of the auditor of the appellant clearly amounts to acknowledgement of the liability. We see no reason whatsoever to take a different view of the matter."

66. In the present case, the Operational Creditor has relied upon entries in the balance sheets of the Corporate Debtor reflecting an amount of Rs. 24,73,438/- as payable to the Operational Creditor. The Corporate Debtor has contended that such entries are provisional and cannot be treated as admission. We do not rest our conclusion solely on such balance sheet entries. However, in the facts of the present case, such entries, read with the Arbitral Award and dismissal of the Section 34 petition, provide additional corroboration to the existence of liability.

67. Insofar as the Corporate Debtor's submission regarding commercial viability and absence of insolvency is concerned, the scheme of Section 9 requires this Tribunal to examine whether there is an operational debt, whether there is default, whether the application is complete, whether the threshold under Section 4 stands satisfied, and whether there exists a subsisting pre-existing dispute. Proof of general commercial insolvency is not a separate statutory requirement for

admission of an application under Section 9 of the Code. Therefore, the assertion that the Corporate Debtor is otherwise commercially viable does not defeat the present application once the ingredients under Section 9 stand satisfied.

68. We are also conscious that the present proceedings originated as a winding-up petition filed before the Hon'ble High Court of Delhi in the year 2015 and were thereafter transferred to this Tribunal. Section 434(1)(c) of the Companies Act, 2013, as amended, provides that proceedings transferred to the Tribunal shall be dealt with by the Tribunal as an application for initiation of CIRP under the Code. The relevant proviso reads as follows:

Provided further that any party or parties to any proceedings relating to the winding up of companies pending before any court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application for transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016.

69. In view of the statutory scheme under Section 434 of the Companies Act, 2013 read with the Companies (Transfer of Pending Proceedings) Rules, 2016, this Tribunal is required to independently examine the present matter as an application under Section 9 of the Code. We have accordingly examined the existence of operational debt, occurrence of default, absence of subsisting pre-existing dispute, satisfaction of threshold under Section 4, and completeness of the application.

70. Having considered the pleadings, documents and submissions of the parties, we are satisfied that:

- i. there exists an operational debt payable by the Corporate Debtor to the Operational Creditor;
- ii. the said operational debt arises from provision of services by the Operational Creditor to the Corporate Debtor;
- iii. the liability of the Corporate Debtor has been crystallised by the Arbitral Award dated 30.04.2014;
- iv. the challenge to the Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996 has been dismissed on 19.04.2021;
- v. no subsisting challenge to the Award has been shown to be pending and no stay of the Award has been placed on record;
- vi. the amount in default, being Rs. 1,52,59,418/- as claimed in the application, exceeds the statutory threshold of Rs. 1,00,00,000/- prescribed under Section 4 of the Code;
- vii. the interest component in the present case is not a unilateral claim, but flows from an adjudicated Arbitral Award and is therefore liable to be considered for determining the amount in default;
- viii. the disputes sought to be raised by the Corporate Debtor do not constitute a subsisting pre-existing dispute in view of the arbitral adjudication and dismissal of the Section 34 petition; and
- ix. the application is complete and deserves to be admitted.

71. Accordingly, the present application filed under Section 9 of the Code is admitted.

ORDER

72. In view of the foregoing discussion, TP (Co. Act.) No. 30(PB)/2024 filed by Allegis Services (India) Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency

Resolution Process against Olive Telecommunication Pvt. Ltd., is admitted.

73. In terms of Section 14 of the Code, moratorium is declared with effect from the date of this order prohibiting the following:

- i. 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;
- ii. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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 SARFAESI Act, 2002;
- iv. recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

74. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated, suspended or interrupted during the moratorium period except in accordance with law.

75. The provisions of Section 14(3) of the Code shall operate in accordance with law and the moratorium shall not apply to such transactions, agreements or arrangements as may be notified by the Central Government, or to a surety in a contract of guarantee to the Corporate Debtor.

76. The moratorium shall have effect from the date of this order till completion of CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for liquidation of the Corporate Debtor under Section 33 of the Code, as the case may be.

77. Since the Operational Creditor has not proposed the name of any Interim Resolution Professional, this Adjudicating Authority appoints Ms. Harmeet Kaur, having IBBI Registration No. IBBI/IPA-002/IP-N00948/2020-2021/13076 email ID ipharmmeetkaur@gmail.com, as the Interim Resolution Professional (“IRP”) in the present matter from the panel maintained by the Insolvency and Bankruptcy Board of India. The proposed IRP is directed to file a valid Authorisation for Assignment along with written consent, as required under the Code and the Regulations framed thereunder.

78. The Interim Resolution Professional shall make public announcement of initiation of CIRP in accordance with Sections 13 and 15 of the Code read with the applicable Regulations.

79. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP and shall perform all his functions as contemplated, inter-alia, under sections 17, 18, 20 and 25 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/RP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or cooperate with IRP/RP, do not assist or cooperate, the IRP/RP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order;

80. 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, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

81. 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 and the action taken in compliance of Section 17, 18, 20, 25 of the Code and Regulation 3A & 4 of the IBBI (CIRP) Regulations, 2016.

82. The Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- with the Interim Resolution Professional, upon appointment, to meet the initial expenses of CIRP. The said amount shall be subject to approval by the Committee of Creditors as part of CIRP costs, in accordance with law.
83. The Registry is hereby directed to communicate a copy of the order to the OC, the Corporate Debtor, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today, and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the status of the Corporate Debtor, and specific mention regarding admission of this petition must be notified. The registry is further directed to send a copy of the order to the IBBI for their record.
84. The IRP shall also serve a copy of this order to the various departments, such as Income Tax, GST (centre), State Trade Tax, Provident Fund, etc., who are likely to have their claim against the Corporate Debtor, as well as to the trade unions/employees associations, so that they are informed timely initiation of CIRP against the Corporate Debtor timely;
85. With the above observations and directions, **TP (Co. Act.) No. 30(PB)/2024 stands admitted.**

Sd/-
RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALRAM DAS)
MEMBER (JUDICIAL)