NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 39 of 2025

[Arising out of the Impugned Order dated 29.11.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench-I in C.P.(IB)/211(AHM)/2024]

In the matter of:

Aquarius H2O Dynamics Private Limited
(CIN: U41000GJ2018PTC102816)
Having Registered Office at: 803-A/3,
Nr. Patel Air Temp Ind. Village: Ranakpur,
Taluka: Kalol, Gandhinagar, Gujarat- 382721
Email: acquarius@h2odynamics.in

...Appellant

Versus

M/s Riddhi Siddhi Metals
Through its Partner, Mr. Hardik Jain,
Having Registered Office at: 47/3,
Lala Bhore Lal ni chali, Nagarwel Hanuman
Mandir Road, Rakhial, Ahmedabad,
Gujarat- 380023

...Respondent

Present:

For Appellant	:	Ms. Nitu Mittal, Advocate.
For Respondent	:	Mr. Pradhuman Gohi and Mr. Sahithya Krishna A., Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 29.11.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-I) in C.P. (IB)/211(AHM)/2024. By the impugned order, the Adjudicating Authority has admitted the Section 9 application filed by the present Respondent-Operational Creditor admitting the present Appellant-Corporate Debtor into Corporate Insolvency Resolution Process (**"CIRP"** in short). Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-Suspended Director of the Corporate Debtor.

2. Coming to the brief facts of the case, a Section 9 petition was filed by M/s Riddhi Siddhi Metals-Operational Creditor seeking initiation of CIRP against M/s Aquarius H2O Dynamics Pvt. Ltd.-Corporate Debtor for an outstanding debt of Rs. 1,16,40,233/- including Rs. 15,19,753/- as interest as of 15.03.2024. As part of their business transactions, the Corporate Debtor accepted the goods of the Operational Creditor without dispute and had made partial payment but had failed to clear the entire outstanding dues. The Operational Creditor therefore sent a Section 8 IBC demand notice to the Corporate Debtor on 19.03.2024. When the matter came up for hearing before the Adjudicating Authority, even though notice was issued on 12.07.2024, the Corporate Debtor had failed to appear. Due to non-appearance of the Corporate Debtor even after issue of publication of notice in newspapers, the Adjudicating Authority closed the reply rights of the Corporate Debtor and subsequently admitted the Section 9 petition ex-parte.

3. Making her submissions, the Ld. Counsel for the Appellant submitted that the Respondent has deliberately suppressed material facts before the Adjudicating Authority with regard to payments of approximately Rs. 11 lakhs made by the Corporate Debtor to the Operational Creditor before the issuance of the Section 8 Demand Notice and filing of the Section 9 application. It was submitted that the accounting entries reflecting these payments are annexed as Annexure A-2 at page 53 in the Appeal Paper Book. It was also submitted that these payments amounting Rs 11 lakhs made to the Operational Creditor was duly recorded in the bank account statement of the Operational Creditor. The Operational Creditor however deliberately failed to disclose these receipts in the ledger of the Corporate Debtor maintained by them. The Appellant submitted that the Respondent has played fraud by suppressing material facts. It was vehemently contended that if these payments are taken into cognisance, the outstanding amount claimed by the Respondent in the Section 9 application will fail to meet the mandatory minimum threshold of Rs. 1 crore thereby making the Section 9 petition non-maintainable. Since the impugned order was obtained by misrepresenting facts and misleading the Adjudicating Authority, it deserves to be set aside. In support of their contention that the Section 9 application is not maintainable due to non-fulfillment of the mandatory minimum default threshold of Rs. 1 crore, reliance has been placed on the judgement of this Tribunal in ***M/s Netfinity Solutions vs. M/s Karvy DigiKonnect Ltd. in (CA)(AT)(Ins) No. 1067 of 2022*** and in ***Hyline Mediconz Pvt. Ltd. vs. Anandaloke Medical Centre Pvt. Ltd. (CA)(AT)(Ins) No. 1036 of 2022*** wherein it has been held that any application under Section 9 must comply with Section 4 of IBC which mandates a minimum default amount of Rs 1 crore, effective from 24.03.2020, and that no application can be maintained below this statutory threshold. Submission was also pressed that since notice in the matter was served at an incorrect address, the Appellant could not be present before the Adjudicating Authority. The Appellant was deprived of a fair opportunity to present its defence before the Adjudicating Authority. Since the impugned order was passed without giving the Appellant a fair chance to be heard, the principles of natural justice were violated thereby making the order liable to be set aside.

4. Refuting the contentions of the Appellant, the Ld. Counsel for the Respondent submitted that they had supplied goods and services to the Corporate Debtor and raised corresponding tax invoices. The Corporate Debtor had accepted the goods without any demur and made partial payments without disputing the quality or quantity of goods supplied. The default by the Corporate Debtor is clearly recorded with the NeSL. The ledger accounts and GST records also substantiate the outstanding dues. It is further contended by the Respondent that the payments which have been claimed to have been made by the Corporate Debtor were not payments made by the Corporate Debtor. The purported payment of Rs 9.50 lakhs claimed to have been made by the Corporate Debtor was made by a different entity other than the Appellant and this payment related to a transaction separate from transactions entered into with the Corporate Debtor. It was also pointed out that their bank statement clearly reveals that some of the payments which were claimed to have been made by Mr. Chirag Patel-suspended Director of the Corporate Debtor was actually made by a person named Mr. Simon Patel who was not an erstwhile Director of the Corporate Debtor. Thus, the Appellant had produced incorrect information in the ledger account of the Operational Creditor maintained by them to mislead this Tribunal and derail the insolvency proceedings. The Appellant's attempt to contest the default is baseless and intended only to delay the resolution process. The Respondent further submitted that the Appellant had falsely claimed that it was unaware of the proceedings initiated before the Adjudicating Authority. The statutory demand notice under Section 8 was correctly served upon the

Corporate Debtor. Despite sufficient opportunities given by the Adjudicating Authority, the Corporate Debtor had deliberately chosen not to appear compelling the Adjudicating Authority to proceed ex-parte.

5. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

6. The short point for consideration is whether the threshold limit of operational debt claimed by the Operational Creditor qua the Corporate Debtor in the present facts of the case has been met or otherwise.

7. At the outset, we would like to take note that in terms of the guiding principles laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited (2018) 1 SCC 353,*** the Adjudicating Authority while examining an application under Section 9 is required to inter-alia determine whether there is an operational debt exceeding the amount prescribed under Section 4 of the IBC which is Rs 1 Crore effective from 24.03.2020.

8. It is the case of the Appellant that payment of Rs 11 lakhs was made by the Corporate Debtor to the Operational Creditor before the issue of Section 8 Demand Notice. This material fact has been suppressed by the Operational Creditor. If the payment of Rs 11 lakhs is taken into account, then the threshold limit of the outstanding liability claimed by the Operational Creditor comes below the threshold limit prescribed under Section 4 of the IBC for entertaining of a Section 9 application. To substantiate the fact that Corporate Debtor had paid Rs 11 lakhs to the Operational Creditor, the Ld. Counsel for the Appellant adverted attention to the Bank Account Statement of the Operational Creditor which has been placed on record by the Respondent in their Rejoinder Reply at Annexure-R-1 from pages 7-9 of their Rejoinder Reply.

9. When we peruse the above-mentioned Bank Account Statement of the Operational Creditor, we find that a payment of Rs 9.50 lakhs has been made to the Operational Creditor by Shreeji Equipments on 11.10.2023 as placed at page 7 of the Reply Rejoinder by the Respondent. At page 8 of the said statement, we also notice that five payments of Rs 50,000/- each, aggregating Rs 2.50 lakhs, has been made on 10.11.2023 by one Mr. Simon Kumar Patel. Further, another payment of Rs 1 lakh by Shri Rameshbhai Patel dated 31.01.2024 is reflected at page 9 of the Reply Rejoinder.

10. The Ld. Counsel for the Respondent however denied that the amount of Rs 9.50 lakhs received by the Operational Creditor from Shreeji Equipment was payment on behalf of the Corporate Debtor. It was stated that Shreeji Equipment was a sister concern of the Corporate Debtor. Hence, this amount cannot be treated as payment by the Corporate Debtor. Moreover, this payment was made for certain purchase orders which were given by Shreeji Equipment which were independent of the business transactions between the Corporate Debtor and Operational Creditor and therefore has no relevance to the facts of the present case. Submission was also pressed that the Appellant had fabricated the Ledger Account of the Operational Creditor at page 53 of the Appeal Paper Book and tried to mislead this Tribunal by changing the name of Mr. Simon Kumar to Mr. Chirag Patel to falsely claim that payment was made on behalf of the Corporate Debtor.

11. Rebutting the contention of the Respondent, it has been explained by the Appellant that the payment of Rs 9.50 lakhs dated 11.10.2023 is to be treated as payment made by the Corporate Debtor to the Operational Creditor since Shreeji Equipment was a proprietary firm of Mr. Chimanbhai Patel, one of the erstwhile Directors of the Corporate Debtor. The payment of Rs 2.50 lakhs on 10.11.2023 was also payment on behalf of the Corporate Debtor as it was made by Mr. Simon Kumar Patel, who was an employee of the Corporate Debtor. The payment of Rs 1 lakh on 31.01.2024 by Mr. Rameshbhai Patel was also on behalf of the Corporate Debtor since Mr. Rameshbhai Patel was also the erstwhile director of the Corporate Debtor.

12. It was further pressed by the Ld. Counsel for the Appellant that the Operational Creditor has failed to place complete purchase orders received from Shreeji Equipment for the full amount of Rs 9.50 lakhs. It was pointed out that the Respondent in their Reply Rejoinder had only placed a purchase order at Annexure-R-3 at pages 11-12 for only Rs 80,000/-. Furthermore, while the purchase orders were for supply of "Fitting Materials", the invoice claimed related to supply of "Pipe" and not "For Fitting Materials" as may be at Annex-R-4 at page 14 of Reply Rejoinder. It was further pointed out that the delivery challan shows supply of "Pipe" only and that too for an amount of Rs 2,000/- only.

13. Having heard the rival contentions of both the parties and after perusal of material on record, what we find most intriguing is that the payments made by the Simon Kumar Patel and Rameshbhai Patel has been shown by the Respondent in the Ledger Account of Shreeji Equipment as placed at Annexure-

R-2 at page 10 of the Reply Rejoinder of the Respondent. The said copy of the Ledger Account of Shreeji Equipment is as extracted below:

10

ANNEXURE R-2

RIDDHI SIDDHI METALS
47/3, LALABHORELAL NI CHALI,
NAGARWEL HANUMAN MANDIR ROAD,
RAKHIAL AHMEDABAD
Udyam Reg Num: UDYAM-GJ-01-0114494
E-Mail : riddhi.siddhi678@gmail.com
WWW.RIDDHISIDDHIMETAL.IN

Shreeji equipments and systems
Ledger Account
THIRD FLOOR, 306, SURYASH GATEWAY, Science City Road,
Sal Institute of Technology and Engineering Research, Sola,
AHMEDABAD

1-Jan-22 to 1-Mar-25

Page 1

Date		Particulars	Vch Type	Vch No.	Debit	Credit
26-Sep-23	Cr	SALES GOODS	GST SALES	87	2,80,082.00	
11-Oct-23	Dr	HDFC BANK	Receipt	93		9,50,000.00
10-Nov-23	Dr	PATEL SIMON KUMAR	Journal	9		50,000.00
	Dr	PATEL SIMON KUMAR	Journal	10		50,000.00
	Dr	PATEL SIMON KUMAR	Journal	11		50,000.00
	Dr	PATEL SIMON KUMAR	Journal	12		50,000.00
	Dr	PATEL SIMON KUMAR	Journal	13		50,000.00
16-Dec-23	Dr	PATEL DHARAM KUMAR	Journal	14		30,000.00
31-Jan-24	Dr	RAMESH BHAI PATEL	Journal	15		1,00,000.00
					2,80,082.00	13,30,000.00
	Cr	Closing Balance			10,49,918.00	
					13,30,000.00	**13,30,000.00**

When asked to explain as to why the payments made by Simon Kumar Patel and Rameshbhai Patel have been reflected in the Ledger Account of Shreeji Equipment, the Ld. Counsel for the Respondent failed to give any credible explanation. Since the Respondent failed to offer any cogent explanation as to why these entries made by the erstwhile director and an employee of the Corporate Debtor figured in the Ledger Account of Shreeji Equipment and not in the Ledger Account of Corporate Debtor, this puts serious question marks on the Ledger Account being maintained by the Operational Creditor in respect of the Corporate Debtor.

14. When we further look at the Ledger Account of the Corporate Debtor as placed by the Respondent at page 19 of their Reply affidavit at Annexure-R-4, we find that only the payments received by them from the Corporate Debtor till 12.05.2023 have only been reflected. This statement does not reflect the payments claimed to have been made by the Corporate Debtor after 12.05.2023 viz. Rs 9.50 lakhs on 11.10.2023; Rs 2.50 lakhs on 10.11.2023 and Rs 1 lakh on 31.01.2024 at a time when their Bank Account Statements showed that these amounts have been received by them. The Ledger Account of the Corporate Debtor in the record of the Respondent is as shown below:

19

ANNEXURE R-4

RIDDHI SIDDHI METALS
47/3, LALABHORELAL NI CHALI,
NAGARWEL HANUMAN MANDIR ROAD,
RAKHIAL AHMEDABAD
Udyam Reg Num: UDYAM-GJ-01-0114494
WWW.RIDDHISIDDHIMETAL.IN

AQUARIUS H2O DYNAMICS PRIVATE LIMITED
Ledger Account
803-A/3,Nr Patel Airtemp India Ltd
Rakanpur -Kothari Road Rakanpur
Dist : Gandhinagar ,Gujarat ,India
382721

1-Apr-22 to 2-Mar-24

Page 1

Date		Particulars	Vch Type	Vch No.	Debit	Credit
8-Aug-22	Dr	HDFC BANK	Receipt	141		10,00,000.00
26-Aug-22	Dr	HDFC BANK	Receipt	155		35,00,000.00
8-Sep-22	Dr	HDFC BANK	Receipt	169		10,00,000.00
12-Nov-22	Dr	HDFC BANK	Receipt	225		10,00,000.00
30-Nov-22	Dr	HDFC BANK	Receipt	234		12,00,000.00
16-Dec-22	Cr	SALES GOODS	GST SALES	250	18,47,526.00	
22-Dec-22	Cr	SALES GOODS	GST SALES	256	19,39,590.00	
28-Dec-22	Cr	SALES GOODS	GST SALES	265	23,21,933.00	
4-Jan-23	Cr	SALES GOODS	GST SALES	271	18,37,953.00	
6-Jan-23	Cr	SALES GOODS	GST SALES	273	14,43,170.00	
9-Jan-23	Cr	SALES GOODS	GST SALES	275	3,55,263.00	
17-Jan-23	Cr	SALES GOODS	GST SALES	280	17,79,647.00	
18-Jan-23	Cr	SALES GOODS	GST SALES	282	10,27,361.00	
25-Jan-23	Dr	HDFC BANK	Receipt	266		10,00,000.00
					1,25,52,443.00	87,00,000.00
	Dr	Closing Balance				38,52,443.00
					1,25,52,443.00	**1,25,52,443.00**
1-Apr-23	Cr	Opening Balance			**38,52,443.00**	
26-Apr-23	Cr	SALES GOODS	GST SALES	20	18,06,521.00	
27-Apr-23	Dr	HDFC BANK	Receipt	11		6,00,000.00
29-Apr-23	Cr	SALES GOODS	GST SALES	21	18,57,851.00	
9-May-23	Cr	SALES GOODS	GST SALES	24	14,18,714.00	
12-May-23	Cr	SALES GOODS	GST SALES	29	17,84,951.00	
					1,07,20,480.00	6,00,000.00
	Dr	Closing Balance				1,01,20,480.00
					1,07,20,480.00	**1,07,20,480.00**

RIDDHI SIDDHI METALS AHMEDABAD

There is a clear mis-match between the Ledger Account of the Corporate Debtor as submitted by the Respondent in their Reply Affidavit at Annexure-R-4 and their own Bank Statement Account submitted in their Reply Rejoinder at Annexure-R-1.

15. From the material placed before us, we are inclined to agree with the Appellant that the entire payments made by them to the Operational Creditor has been suppressed by the Operational Creditor. Prima-facie, we are persuaded to infer that the Ledger Account of the Corporate Debtor as maintained by the Operational Creditor is not an updated Ledger Account and did not depict the true and correct status of payments received by them from the Corporate Debtor. If the payment of Rs 11 lakhs claimed to have been made by the Corporate Debtor after 12.05.2023 is taken into account, the outstanding liability falls below Rs 1 Cr. and thus fails to meet the minimum threshold limit prescribed under Section 4 of the IBC. The Adjudicating Authority was therefore misled into admitting the Corporate Debtor into CIRP. We are also mindful of the fact that the impugned order of the Adjudicating Authority was passed exparte and the Appellant did not get an opportunity to defend themselves.

16. A pointed query was made by this Bench to the Appellant with respect to the fact that the Operational Creditor had claimed an outstanding amount of Rs 1.17 Cr. and even if the purported payment of Rs 11 lakhs by the Corporate Debtor is squared off, even then the outstanding amount would still be exceeding Rs 1 Cr. In their defence, the Ld. Counsel for the Appellant submitted that the principal amount claimed has always been Rs 1.01 Cr. However, the Operational

Creditor has added Rs 15 lakhs unilaterally towards interest liability. This amount has been added by the Operational Creditor on their own and therefore needs to be disregarded. It was further asserted that the interest amount was not payable since there was no contract between the two parties which contemplated interest liability. Nor has the Corporate Debtor ever paid interest to the Operational Creditor in the past in relation to these transactions.

17. In the absence of provision of interest in the contract and no practice of interest payment having been demonstrated by the Operational Creditor, we are inclined to agree with the Appellant that the Operational Creditor has tried to cleverly add interest liability to cross the Section 4 threshold criteria. If the payments made by the Corporate Debtor after 12.05.2023 are factorised, the debt due to the Operational Creditor was clearly below the prescribed minimum threshold limit of Rs 1 Cr. and hence the Section 9 application of the Operational Creditor was not maintainable. Triggering of CIRP in the present facts of the case where, prima-facie, the outstanding liability is below the threshold limit is unwarranted.

18. With the aforesaid discussion, we are of the considered view that the Adjudicating Authority has erroneously admitted the application under Section 9 of the IBC. The Appeal is admitted. We therefore set aside the impugned order. The order passed by the Adjudicating Authority initiating CIRP against the Corporate Debtor and all other orders pursuant to impugned order are set aside. The Corporate Debtor Company is freed from the rigours of CIRP and is allowed to function independently with immediate effect. The Respondent is however allowed the liberty to resort to other remedies available under any law for effecting recovery of their dues in accordance with law. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi
Date: 26.03.2025

Abdul/ Harleen