



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

CP No.: IB 74(ND)/2024

(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:

**Invoice Discounters of Adaptio Facility Management Pvt Ltd
Through Mr. Arunava Ghosh.**

...Operational Creditor / Applicant

VERSUS

M/s CBRE South Asia Pvt. Ltd.

...Corporate Debtor / Respondent

Pronounced on: 05.08.2025

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE
MEMBER (JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

Present:

For Applicants : Mr. Siddhant Jaiswal, Mr. Abhishek Verma,
Advs.

For Respondent : Mr. Priyam Kamra, Mr. Pratik Malik, Advs.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present Company Petition has been instituted by Invoice Discounters of Adaptio Facility Management Pvt ("Applicant / Operational Creditor") under Section 9 of the Insolvency and



Bankruptcy Code, 2016 (“**IBC**”), seeking initiation of the Corporate Insolvency Resolution Process (“**CIRP**”) against CBRE South Asia Pvt. Ltd (“**Respondent / Corporate Debtor**”).

2. The Corporate Debtor having CIN: U74140DL1999PTC100244 was incorporated on 15.06.1999 under the provisions of the Companies Act, 1956 having its registered office situated at Ground Floor, PTI Building, 4, Parliament Street, New Delhi 110001. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Adjudicating Authority having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor.
3. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a total sum of Rs. 1,08,82,770.32/- (Rupees One Crore Eight Lakhs Eighty-Two Thousand Seven Hundred Seventy and Thirty-Two Paise Only). The Demand Notice sent by the Operational Creditor to the Corporate Debtor is annexed to the Application as Annexure – 8 Colly.
4. Ld. Counsel for the Applicant has raised the following contentions:
 - a. The present application has been filed by the Operational Creditor (hereinafter referred to as “OC”) under Section 9 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (hereinafter referred to as “CD”). It is submitted that Adaptio Facility Management Pvt. Ltd. (hereinafter referred to as the “Seller”) had rendered certain services to the CD, pursuant to



which various invoices were raised, which were duly received by the CD. As per Clause F(3) of Annexure-3 of the reply filed by the CD (Vol-I at page 143), payment against the said invoices was required to be made by the CD within 60 days from the date of each invoice. Owing to urgent cash flow requirements, the Seller opted for invoice discounting through a digital bill discounting platform “KredX,” operated by Minions Ventures Pvt. Ltd., whereby multiple invoices were bundled and discounted by the OC through the platform.

- b. It is submitted that the KredX platform facilitates businesses to raise short-term working capital by discounting unpaid invoices, and the OC, on the basis of representations made by both the Seller and the CD that the underlying sale transactions and invoices were genuine, agreed to finance the invoices and pay the discounted amount to the Seller. Accordingly, a series of tripartite agreements titled “Transfer of Rights Agreement” (“TOR”) were executed between the OC, the Seller, and Minions Ventures Pvt. Ltd. [Annexure-5, Vol-I, page 81], through which the Seller unconditionally and absolutely transferred all rights and interests in the invoices to the OC. In addition, a Bank Confirmation Agreement dated 11.01.2019 [Annexure-6, Vol-II, page 236] was executed between the CD, the Seller, and Minions Ventures Pvt. Ltd., under which the CD acknowledged the invoice discounting arrangement and undertook to make timely payments into the Settlement/Escrow Account maintained by KredX. A Seller Services Agreement dated 19.04.2021 [Annexure-7, Vol-II, page



239] was also executed between the Seller and KredX as part of the transaction.

- c. It is further submitted that despite the contractual obligation under the Bank Confirmation Agreement, the CD failed to make the requisite payments when they became due. Consequently, the OC issued a demand notice dated 20.10.2023 [Annexure-8, Vol-II, page 263], which was duly received by the CD on 25.10.2023. The CD, however, responded with a reply dated 03.11.2023 [Annexure-9, Vol-II, page 285], containing untenable and baseless allegations. The OC contends that the present application deserves admission on various legal and factual grounds.
- d. The Ld. Counsel placed reliance on specific clauses of the Bank Confirmation Agreement and TOR to establish the independent and unconditional liability of the CD. In particular, reference was made to Clauses 2 and 3 of the Bank Confirmation Agreement, which record the CD's acknowledgment of the invoice discounting arrangement and its responsibility to make timely payments in the designated account. Clause 1(f) of the TOR defines "customer" to mean the person liable to pay under the invoice, i.e., the CD in this case. Clauses 2.1 and 2.2 of the TOR record the unconditional and absolute transfer of receivables to the OC, while Clause 2.5 confirms that the OC became the full owner of the said receivables. Clause 3.2(i) further states that the CD's obligation to make payment is absolute and not contingent on any performance by the Seller. Additionally, Clause 1.1(g) of the Seller Services Agreement, read with Clause 6 of the TOR, prescribes the timeline



of 90 + 10 days for payment, and the date of default is computed as the 101st day from the invoice date. The OC has placed reliance on the invoices annexed at Annexure-4 (Vol-I, page 52) and specifically page 80 for determining the date of default.

- e. With respect to the existence of a dispute, it is submitted that there is no pre-existing dispute between the parties. A total of 29 invoices amounting to ₹2,77,47,162.16 were raised upon the CD, of which invoices amounting to ₹1,49,54,108.72 were issued prior to the suspension of the Seller's GST registration on 31.01.2023. From the said amount, the CD has admittedly made payments of ₹39,60,104.75, thus leaving an outstanding due of ₹1,09,94,004/- . However, the OC has restricted its claim in the present Petition to ₹1,08,82,770.32. In support thereof, a table has been placed on record showing the quantification of the amount in default.
- f. The OC contends that the CD has attempted to mislead this Tribunal in paragraph 10 of its Reply (Vol-I, pages 3–4), wherein it falsely claims that the invoices were never raised upon it. However, Annexure A-1 to the Rejoinder (pages 15–20) clearly establishes that the invoices were in fact raised upon and acknowledged by the CD. Furthermore, the CD's reliance on Annexure-3 of its Reply (Vol-I, page 131), being an agreement between the Seller and CD, is of no consequence in the present proceedings which are based on the Bank Confirmation Agreement. The contention that the suspension of the Seller's GST registration constitutes a pre-existing dispute is also without merit. The OC relies on the decision in *Gulshan Kumar Ahuja v. Monika Garg and Anr.*, 2024



SCC OnLine NCLAT 1075, wherein it was held that GST-related proceedings do not constitute a genuine pre-existing dispute under the IBC.

- g. The Ld. Counsel further submits that the outstanding amount is an admitted operational debt. The CD has not disputed the nature of the debt, and only seeks to question its quantification. The OC, having stepped into the shoes of the Seller pursuant to the TOR, is fully entitled to initiate proceedings under Section 9 of the Code. The CD's reliance on Annexure A-2 of additional documents (pages 15–37), pertaining to proceedings before the NCLT Chennai Bench against the Seller, is wholly misconceived as the present proceedings are directed against the CD in its capacity as the customer. In this context, reliance has been placed on *Minions Ventures Pvt. Ltd. v. TDT Copper Ltd.*, 2023 SCC OnLine NCLAT 171 and *Varun Gupta v. Isinox Pvt. Ltd.*, 2024 SCC OnLine NCLAT 2047.
 - h. In conclusion, it is submitted that the Applicant qualifies as an Operational Creditor, the amount claimed is an operational debt within the meaning of Section 5(21) of the Code, and there is a clear default on the part of the CD. Hence, the present application deserves to be admitted and the CIRP initiated against the CD.
- 5. In reply to the contentions raised by the Applicant, Ld. Counsel for the Respondent has stated the following:
 - a. In reply to the contentions raised by the Applicant, Ld. Counsel for the Respondent has submitted that the present case is a classic instance of forum shopping. It is contended that the Operational



Creditor (OC) has deliberately misled this Hon'ble Tribunal by suppressing crucial facts, particularly the existence of a pending proceeding titled *Ms. Apurva Jain & Ors. v. Adaptio Facility Management Private Limited*, bearing CP/IB/207/CHE/2023 before the Hon'ble National Company Law Tribunal, Division I, Chennai, wherein Corporate Insolvency Resolution Process (CIRP) has already been initiated vide order dated 12.09.2024. In the Chennai proceeding, eleven Financial Creditors have jointly filed a Section 7 petition against Adaptio Facility Management Pvt. Ltd. for a claim amounting to INR 1,08,83,596.95, based on an alleged Tri-Party Agreement/Bank Confirmation Agreement dated 11.01.2019, which is also the basis of the present application. It is further submitted that this very Agreement is unstamped, rendering it legally untenable.

- b. The Respondent asserts that the same eleven individuals who are applicants in the Chennai matter have now filed the present application before this Hon'ble Tribunal under the name "Invoice Discounters of Adaptio Facility Management Pvt. Ltd. through Mr. Arunava Ghosh," claiming a nearly identical amount of INR 1,08,82,770.32, and again relying upon the same unstamped Agreement dated 11.01.2019. This, according to the Respondent, reveals a deliberate act of misrepresentation and concealment by the Applicants, undertaken with the objective of forcing a financially viable company into insolvency proceedings. The Respondent also points out that these same individuals have submitted their claims before the Resolution Professional appointed in the Chennai matter and that their names are



reflected in the list of creditors dated 09.10.2024, as available on the IBBI website. Further, the Interim Resolution Professional (IRP) in the Chennai proceeding has issued a demand notice dated 09.11.2024, which has been duly replied to by the Respondent.

- c. It is contended that the Applicants are attempting to recover the same claim from two different entities before two different fora, which is a mala fide abuse of legal process and ought to be deprecated in the harshest terms. The Applicants, it is submitted, have not approached the Tribunal with clean hands, and their failure to disclose the above material facts alone warrants the rejection of the petition. The application is also stated to be malicious, misconceived, and legally untenable, based on misrepresentations and suppression of material documents, thereby vitiating the claim in its entirety.
- d. The Ld. Counsel further submitted that a prior dispute exists due to the breach of the Service Agreement dated 01.11.2017 by Adaptio, the service provider whose invoices were discounted by the OC. Specifically, Adaptio has failed to comply with Clause N of the said Agreement, entitling the Respondent to withhold payments in the event of non-payment of taxes. Additionally, it is argued that the Respondent has faced significant issues concerning GST compliance by Adaptio. The Respondent has received notices, including a demand notice, from the GST Department of the State of Karnataka due to Adaptio's non-compliance. These issues were repeatedly communicated to Adaptio, and eventually, the Respondent issued an email on



16.03.2020 to stop all payments. Despite oral assurances from Adaptio and the release of some payments in good faith, the Respondent maintains that these issues persisted. Furthermore, the GST registration of Adaptio was cancelled suo motu with effect from 31.01.2023. Therefore, any invoices raised by Adaptio post that date are null and void. Notably, Adaptio continued to issue illegal GST invoices even after cancellation of its GST registration, thereby engaging in an act intended to defraud both the Respondent and the tax authorities. The Respondent listed such invoices, totalling INR 8,16,266, which have already been paid, notwithstanding their illegality.

- e. Moreover, the Respondent argues that certain invoices relied upon by the OC to sustain its claim were neither issued nor served during the subsistence of the commercial relationship with Adaptio. These invoices, listed in Table No. 1 of the Reply, are said to have been raised surreptitiously and are not supported by any evidence of service. The reference numbers of invoices in Form 5 Part IV do not match with those provided elsewhere in the application, which is indicative of fabrication. It is argued that no debt is payable where the invoice was never issued or delivered. The Respondent is, therefore, not liable to pay such fabricated invoices. Additionally, the Respondent claims that several of the invoices now cited as unpaid have already been paid, details of which are provided in Table No. 3 of the Reply. These invoices amount to INR 31,43,839, and if excluded, the claim fails to meet the statutory threshold.



- f. It is further contended that the Section 9 application does not meet the threshold limit prescribed under Section 4 of the Code. While the application claims a debt of INR 1,08,82,770.32, the actual principal amount shown is INR 1,03,77,935.53, with discrepancies between the figures stated in Part IV and those in the annexures. The inclusion of 28 invoices in Annexure-4, as opposed to the 16 mentioned in Part IV, is seen as an attempt to inflate the claim fraudulently. Moreover, the Applicant is alleged to have included a GST amount of INR 42,32,618 in the operational debt, despite having neither paid such an amount nor produced proof of GST registration. The Respondent places reliance on the judgment of the Hon'ble NCLT, Kolkata in *Apar Industries Ltd. v. City Oil (P) Ltd.* (C.P. IB No. 158/2022), to argue that GST amounts, in absence of actual payment, cannot form part of operational debt. Therefore, once excluded, the claim falls below the statutory threshold of INR 1 crore, rendering the application liable for rejection.
- g. The Ld. Counsel also contends that there exists a pre-existing dispute regarding the services rendered by Adaptio, which has not been disclosed by the Applicant. Such concealment undermines the maintainability of the application under Section 9 of the Code. The Applicant's failure to annex dispute-related correspondence, particularly emails sent by the Respondent, is stated to be deliberate. Reliance is placed on *SFO Technologies (P) Ltd. v. Vanu India (P) Ltd.*, wherein the Hon'ble NCLAT held that a Section 9 application is not maintainable where pre-existing disputes are evident.



h. Additionally, the Respondent objects to the Applicant's claim of interest amounting to INR 5,04,834.79, arguing that no contractually agreed provision for interest exists between the parties. Interest, it is contended, was unilaterally added in the invoices prepared by Adaptio, who is a third party to the proceedings. The service agreement between Adaptio and the Respondent is silent on interest, and the Applicant, not being a party to that agreement, cannot claim interest based on such unilateral documents. Reliance is placed on *Rohit Motawat v. Madhu Sharma* [Company Appeal (AT) (Ins.) 1152/2022] and the judgment of the Hon'ble Karnataka High Court in *Jyothi Limited v. Boving Fouress Limited*, which reiterate that interest claimed on the basis of invoices alone and being absent in contract is not admissible under the Code.

Analysis & Conclusion:

6. We have heard the Learned Counsels for the Applicant and the Respondent and have carefully examined the material placed on record. The primary issue that arises for our consideration is whether the present Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") satisfies the fundamental statutory requirements governing the initiation of the Corporate Insolvency Resolution Process (CIRP) by an Operational Creditor.
7. On perusal of the Application, particularly Annexure A3 at page 51 of the paper book, we find that the debt amounting to ₹1,08,82,770.32 has not been claimed by a single Operational Creditor. Instead, it is



evident that **multiple financiers** have discounted different invoices issued by Adaptio Facility Management Pvt. Ltd. and have collectively pooled their claims and appointed Mr. Arunava Ghosh to initiate insolvency proceedings on their behalf against the Respondent-Corporate Debtor. Annexure A3 of the Application is extracted below for reference:

ANNEXURE -3

Deal UID	Financier UID	Financier Name	Principal Payable	Interest Payable	Total Penal including Tax	Total Due Amount including Late Payment
DE4XP86N5X	FNE01PN6XP	Santhi Obbilisetty	1311954.46	32249.2	126169.37	1470373.03
DE4XP86N5X	FN1X9PV50J	Bangaru Raju Obbilisetty	788146.6	19373.79	75795.3	883315.69
DE4XP86N5X	FN20WJENM9	Arun Kumar Mendu	314145.78	7722.19	30211.09	352079.06
DE4XP86N5X	FNKMERGZ00	Manish Prem Nath Sehgal	531607.47	13067.84	51124.14	595799.45
DE5X7Y86GM	FNEMDO24PX	Parteek Singh	483093	21343.84	39471.21	543908.05
DE5X7Y86GM	FNWM2OWWX6	Manju Pramodkumar Mishra	500000	33127.34	58951.71	592079.05
DE5X7Y86GM	FNEMDOZPPX	Shivakumar G Acharya	600000	39752.8	70742.06	710494.86
DE7X3K158X	FNE01PN6XP	Santhi Obbilisetty	897728.78	53355.91	88988.41	1040073.1
DE7X3K158X	FNWM2JEWX6	Singhania Brothers Limited	1675499.44	99581.89	166085.82	1941167.15
DE7X3K24VX	FNKME7LPOG	Apurva Jain	305999	17085.98	27980.22	351065.2
DE7X3K24VX	FNE01PN6XP	Santhi Obbilisetty	604731	33971.44	55414.55	694116.99
DEE01RLEVO	FNGOGN1Y1X	Kumar Ramanathan	500000	30691.5	52245.53	582937.03
DEE01RLEVO	FN1X9PV50J	Bangaru Raju Obbilisetty	920738	56517.3	96208.91	1073464.21
DEJMYV8NGM	FN20WJENM9	Arun Kumar Mendu	329000	19447.71	32318.34	380766.05
DEJMYVONDM	FNKM4ZN8X1	Basanth Investment	315292	14115.65	19602.16	349009.81
DEVOLY702X	FNKM4ZN8X1	Basanth Investment	300000	13430.41	18651.42	332081.83
TOTAL			10377935.53	504834.79	1009960.24	11892730.56

8. It is to be noted that while there is **no specific statutory bar** under the IBC prohibiting joint applications by multiple Operational Creditors, the legislative framework **mandates** that every Operational Creditor must **individually satisfy the minimum threshold of default of ₹1 crore** as stipulated under Section 4 of the Code. In the present case, no single creditor has asserted a standalone claim that crosses this threshold. The Application is premised entirely on an aggregate default amount which has been collectively computed by



multiple parties, and this fundamental defect strikes at the very maintainability of the present proceedings.

9. In this context, it becomes relevant to examine and contrast **Section 7** and **Section 9** of the Insolvency and Bankruptcy Code, 2016:

Section 7(1) of IBC:

A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Section 9(1) of IBC:

After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

10. A careful reading of the statutory language reveals that **Section 7 expressly permits a joint application** by multiple Financial Creditors. This legislative design is premised on the unique nature of financial debt, which is often syndicated or advanced collectively by a group of lenders. However, **no such corresponding provision is found under Section 9**, which governs the initiation of CIRP by



Operational Creditors. Section 9 contemplates an application by “*the Operational Creditor*” (singular), and the procedure laid down under Sections 8 and 9 mandates that the notice of demand, opportunity to dispute, and the application to the Adjudicating Authority be by a specific creditor in relation to a specific operational debt.

11. Thus, while pooling of debts is statutorily recognised under Section 7, **such pooling is impermissible under Section 9**, unless each creditor independently satisfies all conditions of maintainability — including the individual minimum threshold and the issuance of a notice of demand under Section 8. In the present case, the financiers have not filed separate notices under Section 8; nor have they initiated separate Section 9 proceedings to assert their individual debts. Instead, they have clubbed together their individual claims and made a composite application through a common representative, which is legally untenable under the IBC framework.

12. In view of the above, and without adjudicating upon the other issues raised in the Application, we find that the present petition is **not maintainable** under Section 9 of the IBC due to failure to satisfy the basic jurisdictional and statutory prerequisite as stipulated under Section 4 of the IBC, 2016. It is well settled that where the application fails at the stage of maintainability, there is no occasion for this Tribunal to enter upon the merits of the claim or the veracity of the debt.



13. Accordingly, the Application **CP No.: IB 74(ND)/2024 is dismissed** at the threshold, with no order as to costs.

Sd/-

(ATUL CHATURVEDI)

MEMBER (TECHNICAL)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (JUDICIAL)