**SL. No.10**

**NATIONAL COMPANY LAW TRIBUNAL**
**HYDERABAD BENCH**

**COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)**
**CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 05.08.2025 at 10:30 AM**

| | |
|---|---|
| **TRANSFER PETITION NO.** | |
| **COMPANY PETITION/APPLICATION NO.** | **Company Petition IB/30/9/HDB/2024** |
| **NAME OF THE COMPANY** | **Filatex Fashions Ltd** |
| **NAME OF THE PETITIONER(S)** | **Neeta Zanvar** |
| **NAME OF THE RESPONDENT(S)** | **Filatex Fashions Ltd** |
| **UNDER SECTION** | **9 of IBC** |

## ORDER

Orders pronounced, recorded vide separate sheets. In the result, the Company Petition IB/30/9/HDB/2024 dismissed.

**Sd/-**
**MEMBER (T)**

**Sd/-**
**MEMBER (J)**

Vamsi

**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**HYDERABAD BENCH, COURT-II**

**C.P (IB) No.30/9/HDB/2024**

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016, r/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

**In the matter of M/s.Filatex Fashions Limited**

**Between:**

**Mrs Neeta Zanvar,**
w/o Mr.Mukund Maheswari,
R/o.Flat No.401, Janpriya
Prameela Enclave, Umanagar,
Kundanbagh, Begumpet,
Hyderabad.

**...Petitioner/Operational Creditor**

***V e r s u s***

**M/s.Filatex Fashions Limited,**
No.1-80/40/SP/58-65,
3rd Floor, Shilpa Layout,
Gachibowli,
Hyderabad – 500 032

**... Respondent/Corporate Debtor**

Date of Order: 05.08.2025

**Coram:**

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri Sanjay Puri, Hon'ble Member (Technical)

**Counsels Present**

For the Petitioner : Mr.Mayur Mundra, Counsel
For the Respondent : M.Harsh Chowdhary, Counsel

**[P E R : Rajeev Bhardwaj]**

**O R D E R**

**1.** The present Application has been filed by Mrs Neeta Zanvar, (**Operational Creditor/OC/Applicant**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of the Corporate Insolvency Resolution Process (**CIRP**) against M/s. Filatex Fashions Limited, (**Corporate Debtor/CD /Respondent**) on account of an alleged operational debt amounting to ₹2,75,56,134/.

**2.** **Application/Petition:**

(i) The Applicant entered into a Memorandum of Understanding **(MoU**) dated 13.12.2017 with the Respondent, whereby the Applicant agreed to provide financial assistance to the Respondent through investment. In consideration thereof, the Respondent agreed to issue shares to the Applicant as security.

(ii) Pursuant to the said MoU, the Applicant invested a sum of ₹1,00,00,000/- (Rupees One Crore only), against which 20,00,000 (Twenty Lakh) equity shares of ₹5/- each were allotted by the Respondent.

(iii) As per the terms of the MoU, the Respondent undertook to provide an assured exit to the Applicant with returns/profit on the investment. It was specifically agreed that in the event the Respondent failed to provide the promised returns, it would be liable to repay the principal amount along with interest at the rate of 24% per annum.

(iv) The MoU stipulated that the transaction was to be completed within a period of 16 (sixteen) months from the date of execution. However, the Respondent failed to adhere to the terms and conditions of the MoU despite multiple reminders.

(v) In light of the default, the Applicant, as a mitigating measure, sold the 20,00,000 shares on 14.09.2021 and realized a sum of ₹57,29,313/-. As per the MoU, upon default, the Respondent became liable to repay the shortfall along with interest.

(vi) Thereafter, a second MoU dated 30.06.2023 was executed, wherein the Respondent acknowledged and agreed that a total sum of ₹2,75,56,134/- was due and payable to the Applicant, inclusive of interest and incidental charges. The date of default was mutually set as 30.09.2023 in case of non-payment.

(vii) Upon failure of the Respondent to make payment, the Applicant issued a demand notice under Section 8 of the IBC on 26.12.2023, demanding payment of ₹2,75,56,134/-.

**3. <u>Counter:</u>**

(i) It is submitted that a Section 7 application bearing CP (IB) No. 140/7/HDB/2023 has already been filed by the husband of the present Applicant based on the same transaction and documents, wherein the claim is styled as that of a financial creditor. The inconsistent position taken in the present application, where the Applicant now claims to be an operational creditor, is contradictory and indicative of mala fide intent.

(ii) The present application is also not maintainable as it is essentially filed for recovery of alleged losses suffered due to the sale of shares, which is in the nature of a commercial or investment dispute. Such claims, arising out of share transactions, do not qualify as "operational debt" under Section 5(21) of the IBC. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. & Anr. v. Union of India & Ors.*, (2019) 8 SCC 416**, wherein it was held that

proceedings under the IBC cannot be used as a substitute for recovery of disputed dues and cannot be invoked in cases of purely civil or contractual disputes.

(iii) The Section 8 demand notice is defective and invalid, having been issued by an advocate who holds no position or formal authority within the operational creditor entity. As held in ***Uttam Galva Steels Ltd. v. DF Deutsche Forfait AG*, Company Appeal (AT) (Insolvency) No. 39 of 2017**, such a notice issued without appropriate authorisation is non est in law.

(iv) The Applicant's claim arises from an equity investment pursuant to the MoU dated 13.12.2017. Once shares were allotted, there existed no outstanding liability. Equity is not a loan and does not give rise to a financial or operational debt within the meaning of Section 5(8) or Section 5(21) of the IBC.

(v) The purported return of 24% per annum was merely a contractual assurance and cannot transform a share subscription into a recoverable debt under the IBC.

(vi) The loss incurred by the Applicant on the sale of shares is an investment risk. There is no legal basis to recover such losses as an operational debt. The present proceedings are a disguised recovery action and should be dismissed for lack of a qualifying debt and default.

**4. <u>Rejoinder</u>**

(i) The Applicant reiterates the averments made in the main application. The true nature of the transaction, as evidenced by the MoUs dated 13.12.2017

and 30.06.2023, reflects financial assistance extended to the Respondent, with a structured return and fallback liability.

(ii) The MoU dated 13.12.2017 obligated the Respondent to repay the amount with interest if the investment terms were not honoured. Upon breach, the Applicant sold the shares and executed a fresh MoU dated 30.06.2023, wherein the Respondent unequivocally acknowledged liability to pay ₹2,75,56,134/-.

(iii) The issuance of shares was merely a security mechanism. The dominant intent of the transaction was financial assistance, which falls within the scope of "debt" under Section 3(11) and "default" under Section 3(12) of the IBC. The claim also qualifies as an "operational debt" under Section 5(21) of the IBC.

(iv) The pendency of a separate Section 7 application by the Applicant's husband cannot be grounds for dismissal. Both parties acted independently in their individual capacities, based on distinct transactions.

(v) The objection regarding the Section 8 notice is misconceived. The notice was duly issued by an authorised advocate, and the requirements under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 have been duly fulfilled. The *Uttam Galva* ruling is distinguishable and inapplicable

(vi) The Respondent's argument that the application is for recovery is incorrect. The application has been filed for resolution under the IBC. The debt is founded on a contractual obligation and a subsequent written admission of liability by the Respondent. The existence of debt and

default stands clearly established, warranting admission of the present application.

**5.** We have heard both the Learned Counsel and have also gone through the entire records

**6. <u>Findings</u>**

(i) It is an undisputed fact that the Applicant invested a sum of ₹1,00,00,000/- (Rupees One Crore only) and was allotted 20,00,000 equity shares of ₹5/- each by the Respondent Company pursuant to a MoU dated 13.12.2017. As per the said MoU, the Applicant contributed ₹2.50 per share, while the remaining ₹2.50 per share was to be borne by the Respondent.

**Nature of the Transaction — Equity Investment, Not Operational Debt**

(ii) The core issue before this Adjudicating Authority is whether the claim made by the Applicant constitutes an “operational debt” and whether there exists an “operational default” within the meaning of Sections 5(21) and 3(12) of the Insolvency and Bankruptcy Code, 2016, respectively.

(iii) Section 5(21) of the IBC defines "operational debt" as:

> *"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... payable to the Central Government, any State Government or any local authority."*

(iv) A plain reading of the above provision clearly indicates that a claim arising out of equity investment or share subscription—however couched—is not within the statutory contemplation of an operational

debt**.** It neither pertains to goods or services rendered, nor does it relate to statutory dues.

(v) To determine the true character of the transaction, it is essential to examine the relevant terms of the MoU dated 13.12.2017. Clauses 7 and 9, in particular, are critical to this adjudication and are reproduced below:

> *7. Both parties herein agrees that once share is listed in the market, the FIRST and SECOND PARTY shall amicably decide to sell or take exist at a particular price and profit coming out of the sale will be shared 50:50 ratio after deducting Principal value @ Rs. 2.50. invested by the SECOND PARTY only. The FIRST PARTY herein further agreed it shall bear all the expenses incurred by the SECOND PARTY towards the entire transaction which includes brokerage, STT, Transaction Tax, Surcharge, Service Tax, GST, Income Tax or any other charges levied by the concerned Departments/authorities from time to time.*
>
> *9. That the FIRST PARTY herein ensures the SECOND PARTY that it will abide with the terms of the present indenture and takes the responsibility to completed the entire transaction within sixteen months and give exist to the SECOND PARTY with profit substantially to the investment made. In the event of failure in performing the clauses mentioned above the FIRST PARTY shall return the principal amount received with interest @ 24% per annum to the SECOND PARTY within one month.*

(vi) A conjoint reading of the aforesaid clauses clearly indicates that the investment made by the Applicant was towards acquisition of equity shares and not towards any supply of goods or services. The MoU contemplated an exit strategy based on market performance, with profits to be shared equally after deducting the Applicant's capital contribution.

(vii) The promise of returns or refund in case of non-performance does not alter the nature of the arrangement. No goods were supplied, nor services rendered by the Applicant to the Respondent. The entire foundation of the claim rests upon a commercial MoU governing investment and share exit strategies, and therefore, lacks the character of an operational relationship.

(viii) The existence of a mere investment or commercial arrangement, without such disbursement, does not satisfy the statutory test. The Hon'ble NCLAT in ***Shubha Sharma v. Mansi Brar & Anr.,*** **Company Appeal (AT) (INS) No. 83 of 2020** ***(decided on 17.11.2020)***, and ***Nidhi Rekhan v. M/s. Samyak Projects Pvt. Ltd.,*** **Company Appeal (AT) (INS) No. 1035 of 2020** ***(decided on 31.01.2022***), held that must establish a debt involving time value of money, and not merely a commercial investment with conditional repayment. These decisions rely on the binding ratio of ***Anuj Jain, IRP v. Axis Bank Ltd., (2020) 8 SCC 401***.

(ix) In light of the above, the transaction clearly falls outside the ambit of Section 5(21). The present transaction, being an equity investment, does not relate to the provision of goods or services, and hence does not fall within the meaning of "operational debt" under the Code.

**Speculative Nature and Deviation from Exit Mechanism**

(x) The profit-sharing mechanism outlined in Clause 7 indicates that the transaction was speculative in nature and inherently linked to market performance. Notably, the clause is silent on the sharing of losses. Further, Clause 9, which provides for a fallback mechanism (repayment with 24% interest), is contingent upon the Respondent's failure to

provide an agreed exit route. However, it is undisputed that the Applicant unilaterally sold the shares on 14.09.2021, without mutual consent as required under Clause 7. Therefore, the precondition for invoking Clause 9 does not stand satisfied.

(xi) As such, Section 3(12) of the IBC, which defines "default" as:

*"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 corporate debtor,"*

cannot be said to have been triggered, since there was no due and payable amount under the contract that had been breached in the manner prescribed.

**Subsequent Settlement – Novation of Earlier Obligation**

(xii) Post-sale of shares, the parties entered into a fresh MoU dated 30.06.2023, whereby the Respondent agreed to a full and final settlement by payment of ₹30,00,000/- and allotment of 7,70,000 shares with a six-month lock-in.

(xiii) The relevant clauses are reproduced as below:

1. *The Party I has agreed to pay Rs. 30,00,000/- and issue 7,70,000/ number of equity shares of Filatex Fashions Ltd. (with 6 months locking period) to Party 2 as full and final settlement amount against the amount owed to Party 2. The locking starts from the date of allotment of shares. It is agreed by Party 1 that Rs. 12,50,000/- will be paid on Friday, 30,06,2023 and balance Rs. 17,50,000-will be paid before 15.07.2023.*

2. *On completion of locking period of six months, the party 2 is at liberty to either retain the shares or sell them. In the event party 2 decides to sell the shares (in part of full), the party 2 first needs to offer the quantity decided to be sold to party 1 at the prevailing market price of that particular day.*

*In the event of the Party 1 refuses to purchase the said shares from Party 2, the Party 2 is at liberty to sell them in the open market without any restrictions.*

(xiv) The relevant clauses also indicate that, after the lock-in period, the Applicant was required to first offer the shares to the Respondent at prevailing market price before selling them in the open market. Clause 5 of the MoU also required the Applicant to withdraw all complaints upon receipt of the consideration.

(xv) This 2023 MoU thus evidences a novation or replacement of prior obligations. Once the parties entered into a new settlement agreement with revised obligations, the earlier MoU cannot be independently enforced unless there is a breach of the new agreement. Here we may also refer to the decision of Hon'ble Supreme Court in ***H.R. Basavaraj v. Canara Bank (2010) 12 SCC 458.*** The parties have not kept the rights alive in the earlier agreement as also discussed in the decision ***Lata Construction v. Dr. Rameshchandra Ramniklal Shah, (2000) 1 SCC 586***, where parties substitute a new agreement for an old one, the original contract is extinguished so that it can be said there was no substitution of contract and, hence, no novation. The MoU dated 13.12.2017 ceases to have the original character and must be assessed on the basis of the new contractual arrangement.

(xvi) Thus, the MoU dated 30.06.2023 constitutes a novation under Section 62 of the Indian Contract Act, 1872, thereby superseding the earlier obligations.

(xvii) The subsequent arrangement, being in the nature of settlement and equity-based consideration, cannot be construed as giving rise to a

financial or operational debt. Accordingly, even if there was a breach of the 2023 MoU, it would not convert the underlying claim into an operational debt.

**Validity of Notice under Section 8 of the IBC**

(xviii) The demand notice under Section 8 of the Code was admittedly issued by an advocate, but there is no resolution or letter of authority on record empowering the advocate to act on behalf of the operational creditor entity. The Hon'ble NCLAT in ***Uttam Galva Steels Ltd. v. DF Deutsche Forfait AG***, ***Company Appeal (AT) (Insolvency) No. 39 of 2017***, held that:

> "An advocate/lawyer/chartered accountant/company secretary, in the absence of any authority from the Board of Directors or without holding any position concerning the operational creditor, cannot issue a demand notice under Section 8 of the IBC."

(xix) This principle has been reiterated in subsequent decisions, including ***IDBI Capital Markets and Securities Ltd. v. JBF Petrochemicals Ltd. [Company Appeal (AT)(Insolvency) No. 524 of 2020 decided On: 20.12.2021] and Yuvrraj Agarwal and Ors. v. Aspek Media Pvt. Ltd., [Company Appeal (AT) (Insolvency) No. 340 of 2021 decided on: 18.04.2022]***

(xx) Hence, the demand notice is not only defective in procedure but also substantively invalid, vitiating the application under Section 9.

**Availability of Alternate Forum**

(xxi) Even assuming there was a breach of contractual obligations, the Applicant is not without remedy. Civil courts or arbitral tribunals are

the appropriate forums to enforce such contracts. The Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.***, (2018) 1 SCC 353, emphasized that:

> "IBC proceedings are not to be used as a substitute for debt enforcement proceedings or recovery of monetary claims in civil courts."

(xxii) This is also decided in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India***, ***(2019) 8 SCC 416, K. Kishan v. M/S Vijay Nirman Company Pvt. Ltd. [2018] ibclaw.in 01 SC and Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited [2018] ibclaw.in 33 SC.***

(xxiii) In the present case, the entire dispute stems from a commercial investment for profit with fallback clauses, and not from an operational relationship involving supply of goods or services.

**Filing of Section 7 Petition by Applicant's husband**

(xxiv). It is clarified that the mere fact that the Applicant's husband has filed a separate Section 7 application based on similar documents and grounds does not bar the present adjudication. The Applicant and her husband are distinct legal persons, each having entered into separate contracts with the Respondent. Therefore, this ground alone cannot warrant dismissal.

## 7. <u>Final Order</u>

In view of the above findings, we hold that:

- The alleged claim does not constitute an "operational debt" under Section 5(21) of the Code;

- No operational default under Section 3(12) is established;
- The demand notice issued under Section 8 is invalid for want of proper authorisation

Accordingly, **C.P (IB) No.30/9/HDB/2024** is dismissed as not maintainable. No order as to costs.

SD/-

**(Sanjay Puri)**
**Member, Technical**

SD/-

**(Rajeev Bhardwaj)**
**Member, Judicial**

*Vinod*