

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT NO. I,

KOLKATA

C.P (IB) NO. 255/KB/2023

***An Application under Section 9 of the Insolvency and Bankruptcy Code,
2016***

IN THE MATTER OF:

Laxmidhar Mohanty

... Operational Creditor

Versus

M/s. Simplex Infrastructures Limited

... Corporate Debtor

Date of Pronouncement of Order: 4th November, 2025

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Cmde. Siddharth Mishra, Member (Technical)

Appearance:

For the Operational Creditor:

Mr. A.K Srivastava, Adv.

Mr. Akash Sharma, Adv.

For the Corporate Debtor:

Mr. Joy Saha, Sr. Adv.

Mr. Shaunak Mitra, Adv.

Mr. Snehasish Sen, Adv.

Ms. Mihika Roy, Adv.

ORDER

Per: Cmde Siddharth Mishra, Member (Technical)

1. The court congregated through physical mode.

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2. Heard the Ld. Counsels of both the parties.

3. The present application is filed by **Laxmidhar Mohanty**, hereinafter referred to as the “Operational Creditor/OC” to seek initiation of Corporate Insolvency Resolution Process against **M/s. Simplex Infrastructures Limited**, hereinafter referred to as the “Corporate Debtor/CD”.

4. Facts in a Nutshell

4.1 The Operational Creditor is engaged in supply go services for earthwork construction and equipment. The dispute arises from the Corporate Debtor's failure to settle invoices for work done.

4.2 Despite submitting invoices, the Corporate Debtor neglected to pay the outstanding principal amount. After numerous requests via emails and letters, the Operational Creditor filed a complaint with the National Highways Authority of India. The Corporate Debtor had already acknowledged its liability of Rs. 7,37,44,476/- on 20.01.2020.

4.3 The Operational Creditor issued a demand notice on 19.09.2021 in compliance with Form 3 under Section 8 of the Insolvency and Bankruptcy Code, 2016 after the Corporate Debtor failed to dispute the amount within the stipulated 10-day period, A Company Petition under Section 9 of the IBC, 2016, was filed by the Operational Creditor, claiming a total of Rs. 9,55,28,392/- (including principal and interest) before this Tribunal.

4.4 During these legal proceedings, the Corporate Debtor proposed a Settlement Agreement dated 07.10.2022. This agreement detailed the Corporate Debtor's commitment to make instalment payments totalling Rs. 5,75,00,000/- for the full and final settlement of the dues. Subsequently, CP (IB) No. 397/KB/2021 was withdrawn as per the settlement terms.

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4.5 However, the Corporate Debtor failed to honour the settlement agreement, remitting only Rs. 1,00,00,000/- and leaving Rs. 6,37,44,476/- along with interest unpaid.

4.6 The Corporate Debtor owes Rs. 6,37,44,476/- along with interest at 18% per annum to the Operational Creditor, who, despite various attempts, has not received payment. The Corporate Debtor's breach of the settlement agreement and failure to respond to the recent Demand Notice has prompted the Operational Creditor to file this Section 9 Application.

5. Submissions of the Ld. Counsel on behalf of the Petitioner:

5.1 The present Company Petition has been filed on the basis of the original operational debt amounting to Rs.7.37 crores which stood admitted by the Corporate Debtor and further confirmed by NHAI vide its letter dated 15.01.2021 (page 109 of the CP).

5.2 The erstwhile CP No. 397 of 2021 was filed for this principal amount and was withdrawn on 25.10.2022 pursuant to the execution of a settlement agreement dated 07.10.2022 (pages 120-125 of the CP).

5.3 In terms of clause 6 of the said agreement, liberty was reserved by the Operational Creditor to seek restoration or pursue the outstanding dues in the event of default by the Corporate Debtor.

5.4 It is an admitted position that the Corporate Debtor defaulted on 01.11.2022 (page 22 of the CP). A demand notice was issued on 19.04.2023 (pages 130-135 of the CP). The present petition was thereafter filed on 13.12.2023 for the admitted default of Rs. 6,37,44,476/-.

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5.5 The Corporate Debtor has till date made part-payments of Rs.1 crore on 06.10.2022, Rs.1 crore on 29.02.2024, Rs.1 crore on 09.04.2024, and Rs.2.75 crores on 21.10.2024, aggregating to Rs. 4.75 crores. Thus, the outstanding dues presently amount to Rs.1.62 crores exclusive of interest.

5.6 It is submitted that the Hon'ble NCLAT in ***Priyal Kantilal Patel v. IREP Credit Capital Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 1423 of 2022***, wherein in paragraph 12 it was held that where a petition is based on the original debt, the breach of settlement does not wipe out or alter the character of the debt.

5.7 Further it is submitted that in ***Shraddha Enterprises vs. Simplex Infrastructures Ltd., Company Appeal (AT) (Insolvency) No. 1661 of 2023***, in paragraphs 10 to 13, the Appellate Tribunal strongly condemned the practice of the instant Corporate Debtor (SIMPLEX), as unscrupulous in entering into settlements, making part payments, and thereafter defaulting, and directed restoration of the Section 9 petition with costs of Rs.2 lacs.

6. Submissions of the Ld. Counsel on behalf of the Respondent

6.1 It is submitted that the OC filed CP (IB) No. 397 of 2021 claiming a sum of Rs. 7,37,44,476/-. ON 06.10.2022. Thereafter Rs. 1 Crore paid by the CD to the OC under Settlement arrived at between the parties.

6.2 A Formal Settlement agreement signed between the parties. Order passed in CP (IB) No.397 of 2021 dismissing it as withdrawn.

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6.3 The Relevant Clauses of the Settlement Agreement dated 7th October, 2022 :

Para 1 (page 14 of the Reply Affidavit)

The Parties hereby expressly agree and acknowledge by that in view of the settlement arrived between the parties SIMPLEX shall pay a sum of Rs. 5,75,00,000/- (Rupees Five Crores Seventy-five lakhs only) (hereinafter referred to as the "Settlement Amount") towards full and final settlement of the dues of LAXMIDHAR MOHANTY."

Para 3 (page 14 of the Reply Affidavit)

LAXMIDHAR MOHANTY expressly acknowledges and agrees that the settlement amount represent full and final satisfaction of anything and everything that LAXMIDHAR MOHANTY claims or could claim that SIMPLEX owes to LAXMIDHAR MOHANTY and by signing this agreement and accepting the consideration provided therein, LAXMIDHAR MOHANTY is wishfully giving up forever any right to seek any additional payment, benefit, compensation, damage or relief (monetary or otherwise), for anything arising from or related to the purchase/service orders which forms part of CP (IB) No. 397/KB/2021 between LAXMIDHAR MOHANTY and SIMPLEX or any of their past or present agents, representatives or employees. (emphasis supplied)

Para 5 (page 14 of the Reply Affidavit)

Except as otherwise agreed herein, this Agreement supersedes all prior discussion and agreement (whether oral or written including all correspondences) if any, between the parties with respect to the subject matter of this Agreement. (emphasis supplied)

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Para 6 (page 15)

" It is agreed between the parties that on presentation of this settlement agreement, the C.P. (IB) No.397/KB/2021 shall be withdrawn with liberty for restoration in case Simplex defaults in making payment as mentioned in this agreement. It is further agreed that in case Simplex defaults, then Laxmidhar Mohanty will be at liberty to claim the unpaid outstanding dues of the settlement amount along with interest @ 12%."

6.4 It is submitted that from the said settlement agreement executed between the parties and which is binding on parties as per the terms and conditions as envisaged therein, it is evident and an admitted position that on execution of the said settlement agreement, the OC has wishfully given up forever all its claims against the CD save and except the amount under the settlement agreement.

6.5 Further it is submitted that from the terms of the settlement agreement i.e. "**..... liberty to claim the unpaid outstanding dues of the settlement amount..**", it is apparent that, in the event of default, the only recourse and or remedy of the OC is to claim the "unpaid outstanding dues of the settlement amount along with interest @ 12%.

6.6 That the aforesaid clause also reinforces the understanding between the parties that the OC has given up its other claims and makes it clear that upon any default being committed by the CD to make payment of the settlement amount within the stipulated period of time, the original debt does not revive.

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6.7 It is submitted that the settlement agreement dated 7th October 2022 was not formally taken on record on the order dated 25th October 2022 passed by this Tribunal and no leave was granted to the OC to institute any fresh CP under section 9 of the I &B. Code at the time of passing of the said order.

6.8 That the CD has made payments in entirety of the settlement amount of Rs. 5.75 crores which has been duly accepted by the OC without any objection. The details of the proposed payment schedule are mentioned in the settlement agreement made between the parties. The said schedule of proposed payment is reproduced from the settlement agreement for the sake of convenience.

PARTICULARS

DATE	AMOUNT
06.10.2022	1,00,00,000
28.02.2024	1,00,00,000
08.04.2024	1,00,00,000
21.10.2024	2,73,55,454
Paid TDS	1,44,546
Total	Rs. 5,75,00,000/-

6.9 It is submitted that the I&B Code is not a proceeding for recovery of debt. The CD has made payment of the entire settled amount of Rs. 5.75 crores, a proceeding under the I&B Code cannot be maintained on the ground of any further alleged dues under the original transactions or on account of interest. Even the terms and conditions of the Settlement Agreement prevents the OC from filing such an application as the OC has given up all its claims forever save and except the settlement amount which has been duly paid by the CD.

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6.10. For the proposition that I&B Code cannot be entertained for the purpose of recovery of dues, reliance is placed on ***HDFC Bank Ltd. -vs- Bhagwandas Auto Finance Ltd.*** reported in ***2019 SCC Online NCLAT 1338*** and ***Jai Balaji Industries -vs- D.K. Mohanty & ors.*** reported in ***2021 SCC Online SC 3104***, Paras 26 and 40.

6.11 Further Company Petition is not maintainable as the same has been filed for alleged non-payment of dues under the settlement agreement. A proceeding under section 7 or 9 of the I&B. Code is not maintainable for enforcement or realization of claims under a term of settlement.

6.12 That no leave given to revive the previous CP (IB) NO.397 OF 2021 or to file a fresh CP. A perusal of the order dated 25th October 2022 will reveal that while withdrawing the CP (IB) No. 397 of 2021 no leave was granted fresh either to file a CP of revive CP (IB) No. 397 of 2021. Consequently, the present CP could not, have been filed. Reliance is placed on *Sarguja Transport Service vs State Transport Appellate tribunal, Gwalior, MP & Ors* reported in 1987 1 SCC 5 (paras 7 and 9)., *Jacob Cherian -vs- K.M. Cherian* (1973) 43 Company Cases 235 (para 10), *Rajinder -vs- Harsh Vohra* 2011 SCC Online Delhi 852 Para 8, *Kalabati Debi -vs- Pratapi Debi* 2009 SCC Online Cal 1544.

6.13 That the OC has claimed a sum of Rs. 3,92,02,850/- being interest @ 18% per annum calculated from 1st April, 2023. Under the original transactions there was no agreement between the parties for payment of any interest. Having regard to the fact that there is no agreement between the parties for payment of interest in respect of the original transactions the claim on account of interest @ 18% per annum being Rs. 3,92,02,850/ is palpably not maintainable. Reliance is placed on *Gandhar Oil Refinery & India Ltd -vs- City Oil Pvt Ltd.* 2023 SCC

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Online 28836, CBRE South Asia Pvt Ltd -vs- United Concepts and Solution Pvt Ltd. 2022 SCC Online NCLT 36, Steel India -vs- Theme Developers Pvt Ltd. 2019 SCC Online NCLT 26724, SS Polymers -vs- Kanodia Technoplast Pvt Ltd. 2019 SCC Online NCLT 12685.

6.14 That the case of ***Priyal Kantilal Patel vs IREP Credit Capital Pvt Ltd. Company Appeal (AT) (Insolvency) No. 1423 of 2022*** as is relied upon by the OC is distinguished on the ground that in any event, the recovery of the original debt is specifically excluded as per para/clause 6 of the settlement agreement and no leave has been granted in the order of withdrawal dated 25th October 2022 to file any fresh petition. Moreover, there has been some delay but no default on part of the CD in payment of the settlement amount. Further, the settlement amount has been paid subsequently and the same has been duly accepted by the OC without any protest or demurrer.

6.15 The decision of ***Shraddha Enterprises vs Simplex Infrastructures Ltd. Company Appeal (AT) (Insolvency) No. 1661 of 2023*** has also been distinguished on the ground that in the present case the entire settled amount of Rs. 5.75 crores has been paid. In the circumstances, the CD cannot be deemed to be unscrupulous or to have cheated any gullible operational creditor. The judgment thus has no application in the facts of the instant case.

7. We have heard the Ld. Counsels of both the parties and perused the documents on record.

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ANALYSIS AND FINDINGS

8. On the Settlement Agreement and the Original Debt :-

8.1 The settlement agreement dated 07.10.2022 clearly stated that the OC gave up all claims arising from the original operational debt upon receipt of the settlement amount of Rs. 5.75 crores.

8.2 Clause 3 unequivocally states that this amount represents "full and final satisfaction" and that the OC shall not seek any further claim.

8.3 However, Clause 6 of the same agreement provides that in the event of default by the CD, the OC shall have "liberty to claim the unpaid outstanding dues of the settlement amount along with interest @12%."

8.4 While the OC retains the right to recover unpaid settlement dues in case of default, the agreement does not support revival of the entire original debt. The revival is only limited to the "unpaid portion" of the settlement amount, not the entire admitted debt of 7.37 crores. This can be derived from Clause 6 of the settlement agreement which is as follows:

*"6. It is agreed between the parties that on presentation of this settlement agreement, the C.P.(IB)No. KB/2021 shall be withdrawn with liberty for restoration in case Simplex defaults in making payment as soned in this agreement. It is further agreed that in case Simplex defaults, then Laxmidhar Mohanty will be at liberty to claim the **unpaid outstanding dues of the settlement amount** along with interest @12%."*

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8.5 The CD has established that the entire settlement amount of Rs. 5.75 crores has been paid, including through TDS, by October 2024. No protest was raised by the OC at the time of accepting these payments.

8.6 This full and final payment extinguishes any liability under the settlement agreement, and by extension, bars the OC from now initiating CIRP under the I&B Code based on the earlier operational debt.

9. We also note that the order passed on 25th October, 2022 passed by this Tribunal held as follow:

“2. Ld. Counsel for Operational Creditor submits that the matter has been settled out of court. Recording these submissions C.P (IB) NO. 397/KB/2021 is dismissed as withdrawn”.

10. At this juncture we would like to refer to the decision of the Hon’ble NCLAT in ***Trafigura India Private Limited vs. TDT Copper Limited*** reported in ***2022 SCC Online NCLAT 3885*** wherein it was held that that breach of settlement agreement made between the operational creditor and corporate debtor does not amount to a default as operational debt, as such a settlement agreement loses the characteristics of operational debt. The relevant portion of the order is reproduced hereunder:

*“ 17.The Adjudicating Authority has considered the Settlement Agreement and rightly come to the conclusion that **default of instalment of Settlement Agreement does not come within the definition of ‘operational debt’ as it does not fall within the definition of additional debt as per Section 5(21) of the IBC** and further prayer made by the Corporate Debtor that the*

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matter be referred to the Arbitration under Section 8 of the Arbitration and Conciliation Act, the Adjudicating Authority has also rightly held that the role of National Company Law Tribunal is very limited while exercising its power under Section 7, 9 and 10 of the IBC, 2016, it is beyond the scope of Section 9 of the IBC....”.

Further in ***Maldar Barrels Pvt Ltd v Pearson Drums and Barrels Pvt Ltd***, in **Company Appeal (AT) (Ins) 872 of 2020** the NCLAT affirmed the decision of the NCLT, which held that the NCLT was not the forum where parties could seek implementation of the Settlement Agreement and left it open the parties to resort to other legal remedies available for enforcement of the Settlement Agreement.

11. We would discern that this instant petition has been preferred to recover the rest of the amount due and payable in terms of the Settlement Agreement dated 07.10.2022. Thus, in light of the judgment rendered in *Trafigura (Supra)* and *Maldar (Supra)*, we are of the view that this Adjudicating Authority is not a forum to recover money arising in default of instalment of a settlement agreement.

12. Breach of the terms and conditions of payment in accordance with a settlement agreement does not constitute an “Operational Debt” as per the definition under Section 5 (21) of the I&B Code and accordingly that cannot be a ground to trigger CIRP against the Corporate Debtor. Thus, the outstanding due claimed herein has lost its substratum or characteristics of being an “Operational Debt” under the I&B Code.

13. We find that the entire amount as per the settlement agreement has been paid though not as per the time frame provided in the settlement agreement.

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Thus, what remains to be paid is the interest at a rate_. At this juncture we would place reliance on the judgment dated 25.11.2019, passed by the Hon'ble NCLAT in ***SBF Pharma Vs. Gujarat Liqui Pharmacaps Pvt. Ltd.*** in Company Appeal (AT) (Insolvency) No. 883 of 2019, wherein the Hon'ble NCLAT laid down that:

*“7. In the present case, we find that the Respondent- ‘Corporate Debtor’ is not insolvent and viable and feasible to pay the claim amount. **Only for recovery of the interest, the Appellant is pursuing the Insolvency Resolution Process which, according to us, is malicious intent for any purpose other than for the resolution of insolvency, or liquidation.**”*

(Emphasis Added)

14. It is undisputed that the withdrawal order dated 25.10.2022 in CP No. 397/2021 did not expressly grant liberty to revive the petition or file a fresh one. Once a matter is withdrawn without liberty, a fresh proceeding on the same cause of action is not maintainable.

15. In terms of foregoing discussion, this petition being **C.P. (IB) No. 255/KB/2023** filed under Section 9 of the I&B Code stands **dismissed** and accordingly **disposed of**.

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16. A certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

**Cmde Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on this, the 4th November, 2025

Oindrila, K. (LRA)