



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

**COMPANY PETITION IB (IBC)/142 (ND)/2024**

*An Application 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:**

**M/s Liberium Global Resources Private Limited**

Registered Address -UB-1 Corporate Building, FC 9-10,  
Sector 16A, Film City, Noida, Gautam Buddha Nagar,  
Uttar Pradesh-201301

***...Operational Creditor***

***Versus***

**M/s Amritsar MSW Limited**

Regd. Add: 232 B, Okhla Industrial Area Phase 3,  
Delhi, South Delhi, India, 110020.

***...Corporate Debtor***

**Order Delivered on: 09.05.2025**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**  
**ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**Appearances (through Video Conferencing/physical hearing)**

<b><i>For the Applicant</i></b>	: Mr. Utsav Mukherjee, Mr. Saksham Ahuja, Mr. Mayukh Roy, Mr. Bhaskar Pandey, Advs.
<b><i>For the Respondent</i></b>	: Mr. Aslam Ahmed, Mr. Rohit Jain, Mr. Harilal, Mr. Zeeshan Haidar, Mr. Shubham Soni, Advs



**O R D E R**  
**PER – BENCH**

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s. Liberium Global Resources Private Limited (*‘Operational Creditor’*)** is duly authorized for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against **M/s. Amritsar MSW Limited (*‘Corporate Debtor’*)**.
2. **M/s. Liberium Global Resources Private Limited (Operational Creditor)** having office at UB-1, Corporate Building, FC 9-10, Sector - 16A, Film City, Noida Gautam Buddha Nagar, Uttar Pradesh-201301. **M/s. Amritsar MSW Limited (Corporate Debtor)** is a Company registered under the Companies Act, 2013 having its office at 232 B, Okhla Industrial Area Phase-3, Delhi, South Delhi, India, 110020. The Corporate Debtor has Authorized Share Capital of Rs. 5,00,000/- (Rupees Five Lakh Only) and Paid-Up Share Capital of Rs 5,00,000/- (Rupees Five Lakh Only).
3. The present Petition was filed on 14.10.2023 before this Adjudicating Authority for the initiation of CIRP Proceedings by **M/s. Liberium Global Resources Private Limited (Operational Creditor)** against the **M/s. Amritsar MSW Limited (Corporate Debtor)** under Section 9 of the IB Code. The total amount claimed in default is **Rs. 2,28,65,774/- (Rupees Two Crores and Twenty-Eight Lakhs and Sixty-Five Thousand and Seven Hundred and Seventy-Four Only)** along with interest @ 12% only being due and payable by the Corporate Debtor to the Operational Creditor on account of the unpaid invoices. The date of default is stated to be on 02.01.2022.



**4. Facts of the case as submitted by the Ld. Counsel appearing on behalf of the Operational Creditor.**

- i. The Concession Agreement was entered into between the Municipal Corporation of Amritsar ("Concessioneing Authority"), Amritsar MSW Limited ("Concessionaire"), Essel Infraprojects Limited ("Selected Bidder") and the Department of Local Punjab Government, Punjab.
- ii. The Concessioneing Authority was desirous of establishing a suitable mechanism on regional basis to scientifically manage the collection, transportation processing and disposal of municipal solid waste generated from residential and other areas with a view to meet environmental regulations and for health and hygiene.
- iii. Following the issuance of the Letter of Intent, the Concessionaire and the Selected Bidder made the payment of required fees and performance security upon which the implementation of the project was awarded to the Concessionaire subject to compliance with the terms and conditions in the Concession Agreement.
- iv. For purpose of implementation of the project, Amritsar MSW Limited, the Concessionaire herein, entered into a **Sale Agreement** with the Applicant which was to be effective from 01st April, 2018 with retrospective effect for the purpose and on terms and conditions as set out in the said Agreement.
- v. Averda Waste Management Investments India Private Limited ("Averda"), was a member of a multinational group of companies undertaking and implementing waste management projects in Europe, Asia, and Africa. The Selected Bidder sought Averda's



participation to enable the due implementation of certain projects and Averda agreed to the same with the intention of taking over the ownership, management, and control of the concessionaire and/ or the projects.

- vi. A conditional approval to Averda was granted to acquire the control, operation and management of the Collection and Transportation Project and bioremediation project with the replacement of the ownership / control of the Concessionaire based on which a Supplemental Concessionaire Agreement dated 19<sup>th</sup> June 2020 was entered into between the original parties of the Concessionaire Agreement and Averda.,
- vii. In accordance with the Supplemental Concession Agreement, inter alia, the responsibilities of the Concessionaire which was taken over by Averda on 19<sup>th</sup> June 2020 include payment of all charges, taxes, fines in relation to the use of utilities and services by the Concessionaire or its contractors including any increase effected from time to time by any governmental authority. Further, in terms of the Confidential Agreement, the liability of payment on account of enhancement in minimum wages or statutory labour charges was to be paid by Amritsar MSW Limited only which was under the control and management of Averda from 19<sup>th</sup> June 2020 onwards.
- viii. In November 2021, the Minimum Wages Act as applicable in the State of Punjab was amended. As the communication relating to the Sale Agreement executed with AMSW was being carried out through Averda accordingly, vide email of 16<sup>th</sup> December 2021, the revised salary structure of employees was sent by the Applicant to Averda for confirmation which was replied by Averda vide email



dated 17th December 2021 with some revisions. Thereafter, a final email dated 17th December 2021 was sent by the Applicant, to Averda attaching the revised salary structure of Amritsar employees with effect from 01st September 2020. Vide email dated 22nd December 2021, the liability for such enhanced payment on account of increase in minimum wages was duly accepted, admitted, and confirmed by the Averda and Applicant, was advised by Averda to proceed with the revised CTC structure.

- ix. On March 2, 2022, the Applicant sent Averda the register for the Concessionaire for the month of January 2022 in accordance with the revised structure. Without any reason, however, vide email dated 4<sup>th</sup> March 2022, Averda wrote to the Applicant stating that the minimum wages notification had been challenged before the Punjab and Haryana High Court and the matter is sub judice, hence, they would continue with the old wages and compliances which were processed for October 2021, i.e., prior to the notification of escalation of minimum wages.
- x. Despite regular follow ups, Averda refused to release payments or process the invoices. Thereupon, Averda unilaterally terminated the agreement vide letter dated 24th March 2022 erroneously stating that the same will be terminated on 24th August 2022 in terms of the Agreement which was thereafter corrected to 24th September 2022 after 5 months vide letter dated 26th August 2022. The aforementioned correspondences have been collectively annexed with the Petition.
- xi. The liability to pay any increase in statutory dues was squarely on Averda through Amritsar MSW in terms of the Concession Agreement, Sale Agreement and Supplementary Concession



Agreement. Averda duly admitted and confirmed its liability to pay the same vide email dated 7th December 2021 only to do an absolute volte face on 4th March 2022. Averda has also duly paid the invoices of December 2021 with the revised increased minimum wages for the months of December 2021, however, that was the only invoice processed in full and inclusive of the revised wages. Further, invoices of April to September 2022 were not demurred to within 2 days of receipt and Averda deliberately shirked off its responsibility to pay the outstanding invoices from April 2022 on the sham of the notification regarding statutory revision of minimum wages being challenged despite no stay or any legal impediment to its compliance. Notwithstanding the termination of the Agreement and in terms thereof, Averda was legally bound to pay its unpaid operational debts to the Applicant for the months of November 2021- September 2022.

- xii. Through the Demand Notice dated 28th July, 2023, an operational debt of Rs. 2,43,01,006/- was claimed by the Operational Creditor as against the Corporate Debtor, which, however, erroneously included invoices raised on Averda based on a Confidential Agreement between the parties. Upon obtaining the reply dated 29th July, 2023, a demand notice under Section 8 of the Code was sent to the Corporate Debtor based solely on the invoices raised only on the Corporate Debtor in terms of the Agreements between and binding them as stated hereinabove. The Operational Creditor received the reply on behalf of the Corporate Debtor which denied the existence of operational debt on the purported basis of existence of sham and illusory disputes and relying upon the Confidential Agreement, which was not at all the subject matter of the operational debt claimed vide demand notice dated 23rd July, 2023.



- xiii. The amount claimed now in present case is a result of non-payment of the invoices raised pursuant to the services extended by the Operational Creditor and such, non-payment is a breach of the Concession Agreement, Supply Agreement, and the Supplementary Concession Agreement. The limited payment made in respect of the transaction clearly demonstrates that there is no legal or procedural issue in the payment, however, payment has admittedly not been made solely due to the pending challenge to increase the minimum wages.
- xiv. In light of the above, an operational debt of Rs. 2,28,65,774.00 (Two Crores and Twenty-Eight Lakhs and Sixty-Five Thousand Rupees and Seven Hundred and Seventy-Four Rupees) along with interest @ 12% only is due and payable by the Corporate Debtor to the Operational Creditor on account of the unpaid invoices.

**5. The Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor as below: -**

- i. The Petitioner and the Respondent had entered into a Sale Agreement dated 1.2.2019 whereby the respondent was purchasing MSW from Petitioner for the purpose of setting up a plant for converting the waste into electricity. This agreement was for 5 years period and had retrospective effect from 1st April 2018 to 31st March 2023. The Sale Agreement was executed when the respondent was a subsidiary and under the management of Essel Infraprojects Ltd. (EIL). (*Liberium and EIL are both part of same Essel Group with EIL being the infrastructure and utilities arm of the Essel Group, Liberium is the human resource management arm of Essel group*)



- ii. Monthly sales invoices were raised by the Petitioner, and which were paid by the Respondent. Each invoice was a function of INR 525 per tonne plus an incentive or a discount depending upon achievement of monthly plan for waste pick up. During the period January 2021 to December 2021, the Respondent received a total of 18 invoices. Pertinently, all the 18 invoices have been duly paid and nothing remains due against the Respondent. **The statement detailing the invoices received along with the true copy of the invoices and proof of payment is annexed with the reply.**
- iii. During 2021, total invoices in the sum of INR 8,97,69,008/- were raised by the Petitioner and the Respondent has in fact made an excess payment of INR 9,00,87,241 /- This excess payment was adjusted in the next billing cycle after taking into account the invoice.
- iv. Apart from the Sale Agreement dated 01st February 2019, no other agreement was executed between Petitioner and the Respondent and therefore the Sale Agreement dated 01.02.2019 comprises of the entire contractual agreement between both the parties.
- v. The Petitioner falsely relies on admission by the Respondent. Firstly, there is no admission by the Respondent. The so-called admission by the related parties of the Respondent has no contractual basis to give rise to any cause of action against the Respondent. The email dated 17.12.2021, where admission is sought to be made out was followed by an email 22.12.2021 where it was made clear that any dues have to be agreed in writing. Further, under Section 31 of the Indian Evidence Act, 1872 (under Section 25 of Bharatiya Sakshya Adhiniyam, 2023), an admission can always be explained and does not create a liability without any proven underlying cause. Moreover, the said





emails were an exchange of narratives without intervention and confirmation of Legal and Contracts team of either side. There was no discussion of email exchanges for making an amendment to the sale agreement. In para 24 and 25 of the petition, the Petitioner states that Averda Waste Management Investments India Pvt. Ltd. (Averda) did not make payment since November 2021. Notably, Averda is not a party in the petition.

- vi. The Petitioner then states that Averda through Respondent AMSW was liable to make payment of any statutory increase and paid invoices of December 2021. So therefore, the dues till December 2021 are also clear admittedly. The Petitioner then states that the invoices of April to September 2022 have not been paid. These invoices have not been annexed in the notice u/s 8 or in the petition.
- vii. The Petitioner also states that the invoices of April to September 2022 have not been paid by the Respondent, but the so called claimed invoices have not been annexed with the instant petition. It is also pertinent to mention that the Annexures 5 and 6 of Application contains only 4 invoices of the period November and December 2021 and one invoice is a proforma invoice. The proforma invoice which is Annexure 5 of Application at page no. 289 of the petition, as well as few other invoices which are annexed in Annexure 5 has also been disputed by the Respondent.
- viii. The Operational Creditor has not filed any information with Information Utility and thus the petition is defective.
- ix. The quantity of MSW mentioned in the invoices at page 286 and 287 of the petition for two consecutive months are same, the same is not possible considering the nature of materials, hence it is clear that invoices are fabricated.



- x. The invoice raised by the Operational Creditor/ Petitioner at page 287 of the petition invoice no LGRPLMSW2122023 for INR 1.5 crores approximately, cannot be raised by the Petitioner as per the contractual terms and conditions. As there is no contractual foundation for any arrear/wages statutory due as per the sale agreement date 01.02.2019. Moreover, the invoice for the same month was already raised and sent.
- xi. The Annexures 5 and 6 of the petition contains only 4 invoices of the period November and December 2021 out of which one of the invoices is a proforma invoice. It is well settled law that proforma invoices are not invoices and also the same is disputed by the Corporate Debtor/ Respondent on the very own existence of the proforma invoice. The Operational Creditor/ Petitioner has not annexed any proof of so called proforma invoice being acknowledged by the Corporate Debtor/ Respondent.
- xii. It is the case of the Operational Creditor/ Petitioner that the invoice of January 2021 is raised in December 2021 can be correlated from Annexure 6 at page 290 of the petition, which is also disputed by the Corporate Debtor/ Respondent on the grounds that the same had never been raised by the Operational Creditor/ Petitioner to the Corporate Debtor/ Respondent.

### ***Analysis & Findings***

6. We have heard the Learned Counsel for the Operational Creditor and perused the averments made in the petition and also in additional affidavits filed by the Operational Creditor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under



Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.

7. The Concession Agreement dated 18.03.2016, wherein Amritsar MSW Limited (the Corporate Debtor) is the Concessionaire, lays down Concessionaire's Obligations under Article 5. The Clause 5.1 (c) states the liabilities of the Concessionaire towards personnel and labour. Further, it is specifically stated that the obligation under Clause 5.1 (c) of the Concession Agreement would continue despite expiration or prior termination of the agreement. The said Clause 5.1 (c) (at Page Nos. 52-53 of Volume-I of the Application) has been reproduced here:

***"ARTICLE 5. THE CONCESSIONAIRE'S OBLIGATIONS***

*In addition to and not in derogation or substitution of any of its other obligations under this Agreement, The Concessionaire shall have the following obligations:*

***5.1. General Obligations of Concessionaire***

*The Concessionaire shall meet the Conditions Precedent for Concessionaire - CT&D and Conditions Precedent for Concessionaire - P&D in timely manner. Further, the Concessionaire shall meet the following obligations at its cost during the Concession Period, and beyond the Concession Period in case of Post Closure Activities:*

***(c) Liability***

*(iv) be liable for its contracts with its Contractors, personnel, labour or any Third Party. The Concessioning Authority shall not be liable in any manner in this behalf.*

*The obligation set out in this Clause 5.1(c) shall survive the expiration or prior termination of this Agreement."*

8. The Clause 5.1 (f) of the Concession Agreement (at Page No. 54 of Volume-I of the Application) states the Concessionaire's Obligations towards Personnel and Labour employed by it under the Agreement. As per Clause 5.1(f)(iv), the Corporate Debtor would remain exclusively responsible and liable towards compliance with applicable laws relating to labour, staff and personnel employed by it and its contractors for implementation of the project. That Clause 5.1(f)(iv) has been reproduced below:-



*"5.1. General Obligations of Concessionaire*

*(f) Personnel and Labour*

*(iv) be solely responsible and liable for compliance with Applicable Laws, including labour and local laws, pertaining to the employment of labour, staff and personnel by it and its Contractors for implementation of the Project."*

**9.** Considering the above, it is stated that the Corporate Debtor was wholly and solely responsible for compliance with prevailing laws including but not limited to labour and employment laws.

**10.** The Clause 8.11 of the Concession Agreement (at Page No. 74 of Volume-I of the Application) lays down events where 'Change in Law' shall be applicable. As per Clause 8.11 (a) (ii) Change in Law shall mean and include repeal, modification, or re-enactment of any existing Indian law. Therefore, the Corporate Debtor was liable to pay revised salary structure of employees as per amended Minimum Wages Act, 1948 w.e.f. 1st September 2020. Clause 8.11 of the Concession Agreement has been reproduced herein below:

*" 8.11. Change in Law*

*(a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:*

*i. The enactment of any new Indian law;*

*ii. The repeal, modification or re-enactment of any existing Indian law;*

*iii. A change in the interpretation or application of any Indian law by a court of record;*

*iv. Any order, decision or direction of a court of record.*

*Provided that Change in Law shall not include:*

*i. Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,*

*ii. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge;*

*iii. Any change in the rates of the Taxes."*



- 11.** It is to be noted that the Appointed Date is defined under Gause 1.1.13 of the Concession Agreement (at Page No. 28 of Volume-I of the Application) as the date of execution of the Concession Agreement, i.e., 18th March, 2016.
- 12.** It is also pertinent to state here that the invoices raised by the Applicant included revised wages of the personnel employed in the project. A summary of invoices which have remained outstanding has been given below:-

S. No.	Invoice No.	Invoice Date	Invoice amount (Rs.)	Due date of invoice	Outstanding amount as on due date (Rs.)	Date of default
1.	LGRPLMSW2122021	31.12.2021	1,86,514/-	02.01.2022	24,101/-	03.01.2022
2.	LGRPLMSW2122022	31.12.2021	99,78,950/-	02.01.2022	17,84,852/-	03.01.2022
3.	LGRPLMSW2122023	31.12.2021	1,56,76,772/-	02.01.2022	1,56,61,111/-	03.01.2022
4.	LGRPLMSW2122025	31.12.2021	1,90,765/-	02.01.2022	12,238/-	03.01.2022
5.	LGRPL19202140608	31.03.2022	53,83,472/-	02.04.2022	53,83,472/-	03.04.2022
TOTAL					2,28,65,774/-	

It is evident from the aforesaid table (also given at Page Nos. 290-291 of Volume-II of the Application) that the Corporate Debtor had made prior payments which also included wages. It is also pertinent to note that the Corporate Debtor had made complete payment of invoice for December 2021 comprising of revised wage structure. However, it is the only invoice which was paid in full having revised wages. That despite no objection being raised against the invoices, the Corporate Debtor failed to make payment of revised wages.

- 13.** As per Clause 3.1 of the Sale Agreement dated 01.02.2019 (at Page No. 253 of Volume-II of the Application), the Applicant was required to raise invoices in favour of the Corporate Debtor, i.e., Amritsar MSW Limited.



Moreover, after execution of the Supplementary Agreement dated 19.06.2020, Averda had assumed ownership of the Corporate Debtor, and all pending projects of the Corporate Debtor were to be managed by Averda. That the relevant clauses of the Supplementary Agreement (at Page Nos. 261-262 of Volume-II of the Application) conferring ownership of the Corporate Debtor on Averda has been given below:

*" 5. All the Parties agree that the Concession Agreement is amended, on the terms and conditions set out in this Supplementary Agreement. The terms and conditions set out in this Supplementary Agreement will be applicable along with the terms already executed under Concession Agreement except to the extent expressly amended and supplemented by this Supplementary Agreement. All other terms and conditions of the Concession Agreement shall remain unchanged and in full force and effect. This Supplementary Agreement shall be considered to be a part of the Concession Agreement. Without prejudice to the foregoing, where the context allows references to the Concession Agreement, it shall be read and construed as references to the Concession Agreement as amended and supplemented by this Supplementary Agreement.*

*6. In consideration of Averda having agreed to (A) perform this Supplementary Agreement; (B) replace the - ownership of the Concessionaire; and (C) to implement the C&T project and the bio-remediation project and establishment of waste processing facility in accordance with the Concession Agreement to the extent contemplated by this Supplementary Agreement, Article 5.1 (xxi) and (xxii) of the Concession Agreement are hereby waived in respect of the M/s Essel Infraprojects Limited and the Concessionaire, as for the procedure defined for remedial process in Article 9.4 of the Concession Agreement.*

*7. After Closing, all the conditions as mentioned in the Article 5.1 (xxi) and (xxii) of the Concession Agreement will be applicable for Averda. The conditions of the Article 5.1 (xxi) and (xxii) are mentioned below:*

*Article 5.1 (xxi):- The Concessionaire shall have minimum 51% (Fifty one percent) of its issued and paid up equity capital from selected bidder or lead member (In case of a consortium being selected bidder) during the Construction Period and 15 (Fifteen) years following COD CTP&D, and shall have minimum 26% (Twenty six percent) of its issued and paid up equity capital from selected bidder or lead member (In case of a consortium being selected bidder) during the remaining term of the Agreement.*

*Article 5.1 (xxii):- The Concessionaire shall maintain the consortium member(s) (In case of a consortium) respective shareholding commitment, as provided in MOU as a part of its proposal, during the construction period and at least for a period of 15 (Fifteen) years following the Commercial Operational Date of processing and Disposal (COD- CTP&D)."*



14. Subsequently, all the correspondences relating to the supply of MSW to the Corporate Debtor as per the Sale Agreement dated 1<sup>st</sup> February 2019 were done with Averda. Later, the Applicant had received the notice dated 24.03.2022 (at Page No. 283 of Volume-II of the Application) and letter dated 26.08.2022 (at Page No. 284 of Volume-II of the Application) from Averda unilaterally terminating the Sale Agreement dated 1<sup>st</sup> February 2019 and were sent on behalf of the Corporate Debtor, i.e., Amritsar MSW Limited. The said notice and letter have been reproduced herein below for the convenience of this Hon'ble Adjudicating Authority:

*"Liberium Global Resources Private Limited  
18<sup>th</sup> Floor, Marathon Futurex, N.M Joshi Marg,  
Lower Parel, Mumbai, 400013,  
Maharashtra, India*

*24<sup>th</sup> of March 2022*

**Subject: Termination of Sale Agreement between Liberium Global Resources Private Limited (Liberium) and Amritsar MSW Limited (AMSW) dated 1<sup>st</sup> February 2019 (the Agreement)**

*Dear Sir,*

*We refer to the above referenced Agreement and we do and hereby give notice of our intention to terminate the Agreement pursuant to Clause 4 of the same.*

*Clause 4 permits either party to terminate the Agreement upon six (6) month's written notice. As such, the Agreement, and all services thereunder, will terminate on the 23<sup>rd</sup> of August 2022 (the Termination Date).*

*Please return and handover to AMSW all confidential information, including but not limited to any proprietary materials, letterheads, materials containing trademarks and logos no later than the Termination Date.*

*We would like to thank you for our long-standing collaboration.*

*Yours faithfully,*

*Sd/-*

*Amit Bajpai*

*For Amritsar MSW Limited"*

*"26<sup>th</sup> August 2022*

*To, Liberium Global Resources Private Limited  
18<sup>th</sup> Floor, Marathon Futurex, N. M Joshi Marg,  
Lower Parel, Mumbai, 400013,  
Maharashtra, India*

**Ref: Termination Notice dated 24 March 2022 (Termination Notice) for Termination of Sale Agreement between Liberium Global Resources Private Limited (Liberium) and Amritsar MSW Limited (AMSW) dated 1 February 2019 (the Agreement)**

*Dear Sir,*

*We refer to the above Termination Notice pursuant to which AMSW has given its notice to terminate the Agreement with Liberium as per the provisions of the Agreement, which has been duly received and accepted by Liberium.*

*Please note that in the subject Termination Notice, inadvertently the period of six (6) month's written notice i.e., the Termination Date is mentioned as 23<sup>rd</sup> of August 2022 instead of 24<sup>th</sup> of September 2022. Therefore, please read 23<sup>rd</sup> of August 2022 as 24<sup>th</sup> of September 2022.*

*We further reiterate and request you to please return and handover to AMSW all confidential information, including but not limited to any proprietary materials, letterheads, materials containing trademarks and logos no later than the Termination Date.*

*Yours faithfully,*

*Sd/-*

*Amit Bajpai, For Amritsar MSW Limited"*



- 15.** The Averda through the Corporate Debtor vide emails dated 20.12.2021 and 22.12.2021 (both at Page No. 270 of Volume-II of the Application) had given a clearance to the Applicant to proceed with the revised wage structure of employees as per the amendments introduced in the Minimum Wages Act, 1948. However, the Corporate Debtor vide email dated 04.03.2022 (at Page Nos. 281-282 of Volume-II of the Application) made a complete reversal in their position stating that the notification for revision of wages had been challenged before the Hon'ble Punjab and Haryana High Court and they would continue with the old wages. Despite the Applicant informing the Corporate Debtor that in absence of any stay on the said notification revised wages were applicable, however the Corporate Debtor remained adamant on continuing with old wages and compliances.
- 16.** It is pertinent to note that the Corporate Debtor had made payment of invoice for December 2021 comprising of revised wage, structure. However, it is the only invoice which was paid in full having revised wages. It is also stated that despite raising no objection against the invoices for the months from April to September 2022, the Corporate Debtor failed to make payment of revised wages. Notwithstanding the termination notice dated 24th March 2022, the Corporate Debtor was contractually bound to pay the outstanding invoices from April to September 2022 (detailed computation at Page Nos. 290-291 of Volume-II of the Application).
- 17.** It is also important to point out that no dispute ever arose between the parties until the service of demand notices dated 18th July 2023 and 23rd August 2023, respectively. It is submitted that the Applicant's first demand notice dated 18th July 2023 was defective, therefore the Applicant had served another demand notice dated 23rd August 2023





upon the Corporate Debtor. Further, even from the email correspondences between the parties it can be inferred that the Corporate Debtor neither denied nor disputed payment of the revised wages. The only contention of the Corporate Debtor was that the revision of wages notification was challenged before the Hon'ble Punjab and Haryana High Court. However, it is important to note that neither the Applicant and the Corporate Debtor herein are parties to the proceedings before the Hon'ble High Court nor has the Hon'ble High Court granted any stay on the operation of the said notification till date.

**18.** It is to be noted that the 'Operational Creditor' had sent a demand notice dated 30.11.2023 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues. As per the requirement of Section 8(2) of the IB Code, 2016, the Corporate Debtor is required to file reply to the demand notice within 10 days of the Receipt of the Demand Notice. However, in the present case, no such reply has been placed on record before us.

**19. In the landmark judgment of *Mobilox Innovations Pvt. Ltd. vs. Kirnsa Software Pvt. Ltd.* (2018) 1 SCC 353 (Annexed and marked here as Annexure A-1), the Hon'ble Supreme Court** has discussed constituents of a pre-existing dispute under Section 9 of the Code as given below:



*“33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). **What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.** [...] It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2). [...]*

*51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. **It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. 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. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical, or illusory, the adjudicating authority has to reject the application.”*

- 20.** The Corporate Debtor vide emails dated 20.12.2021 and 22.12.2021 had acknowledged revision in the wages and told the Applicant to proceed with the revised wage structure by adjusting it with the credit amount of November 2021 invoice. Thus, the Corporate Debtor had made payment of invoice for December 2021, having revised wages, in-full. Further, the Corporate Debtor also never raised any dispute relating to the quality of services provided by the Applicant. Therefore, no pre-existing dispute was present in relation to payment of revised wages by the Corporate Debtor.



- 21.** The Hon'ble Supreme Court in ***Union of India vs. N. Murugesan etc. (2022) 2 SCC 25 (Annexed and marked here as Annexure A-2)*** has held that a party cannot accept the transaction to obtain advantage and later refute it to gain some other advantage. The relevant paragraph of the judgment has been reproduced below:

*"26. These phrases are borrowed from the Scott's law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."*

- 22.** In our considered view, the Applicant has been able to comply with all the parameters as laid down by the **Hon'ble Supreme Court in the case of Mobilox Innovations (Supra)**. Further, the Corporate Debtor



has not been able to establish either a pre-existing dispute or that the demand notice or the application under Section 9 was defective.

**23.** In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Code. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code (stipulated at the relevant point of time). In the light of the above facts and circumstances, it is, hereby ordered as follows: -

- a) The application bearing *CP (IB) No. 142/ND/2024* filed by of **M/S M/s. Liberium Global Resources Private Limited**, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s. Amritsar MSW Limited**, the Corporate Debtor, is **admitted**.
- b) The Operational Creditor has not proposed any name for the Interim Resolution Professional ("IRP"). Therefore, we appoint name **Mr. Deepak Kumar Goyal** as Interim Resolution Professional ("IRP") having address Flat no 101, Shridher Apartments 884/6, Ward-6, Mehrauli, State Bank of India, South, National Capital Territory of Delhi-110030. His Email id is ca.deepak.mba@gmail.com and his Contact No. is 9990045308. His registration number is IBBI/IPA-001/IP-P-02490/2022-2023/14143. Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.



- c) Therefore, **Mr. Deepak Kumar Goyal**, Registration Number IBBI/IPA-001/IP-P-02490/2022-2023/14143, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to submission of Form AA, Disclosure and a valid Authorization for Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.
- d) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely **Mr. Deepak Kumar Goyal**, to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
- e) We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- (a) 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;*
  - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
  - (c) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

*(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”*

*(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”*

f) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

g) Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

h) In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as



clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- i) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- j) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- k) 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.
- l) In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing



an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- m) In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this Application must be notified.
- n) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
- o) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

**-SD/-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**-SD/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**