NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1742 of 2026

[Arising out of the Impugned Order dated 09.09.2026 passed by the Adjudicating Authority, National Company Law Tribunal, Indore Bench) in RCP(IB)/3(MP)2025 (Old Case), CP(IB)/23(MP)2025]

IN THE MATTER OF:

LALIT NARWARE
Ex-Director of Flexituff Technology International Limited
Having its Registered Office at: C-41-50, Sector-III, SEZ Industrial Area, Pithampur, Dhar, Madhya Pradesh – 454775
Email: info@flexitech.in

..Appellant

Vs.

1. MARVEL INDUSTRIES AND SERVICES PRIVATE LIMITED
Having its Registered Office at: A-40, Rajouri Garden, New Delhi – 110027
Email: cs@marvelvinyls.com

..Respondent No. 1

2. MS. APEKSHA KEKRE
Interim Resolution Professional of Flexituff Technology International Limited IBBI Regn. No. IBBI/IPA-002/IP N01279/2023-2024/ 14358607, Chetak Centre, RNT Marg, Nr. Hotel Shreemaya, Indore, MP-452001
Email: apekshakekre@gmail.com

..Respondent No. 2

For Appellant Mr. Krishnendu Dutta, Sr. Advocate with Mr. Yash Tandon, Mr. Mahesh Agarwal, Mr. Shivam Shukla, Mr. Anshul Vats, Mr. Ankur Saigal, Ms. Geetika Sharma, Mr. Chitransha Singh, Advocates.

For Respondents Mr. Vaibhav Gaggar, Sr. Advocate with Mr. Ankit Gupta, Mr. Dhrav Dewan, Mr. Kunal Dave, Advocates Mr. Chitrangada Singh, Advocate.

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

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**' in short) by the Appellant arises out of the

Order dated 09.09.2026 (hereinafter referred to as the '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Indore Bench) in RCP(IB)/3(MP)2025 (Old Case), CP(IB)/23(MP)2025. By the said impugned order, the Adjudicating Authority has admitted the application filed under Section 9 of the IBC admitting the Corporate Debtor into the rigours of Corporate Insolvency Resolution Process ('**CIRP**' in short). Being aggrieved by the impugned order, the Appellant has come up in appeal.

2. Coming to the factual matrix of the case, a corporate entity, namely, Flexituff Ventures International Limited ('**FVIL'** in short) had entered into a Memorandum of Understanding (**'MoU'** in short) with the Operational Creditor-Marvel Industries and Services Private Limited on 08.09.2022. By virtue of this MoU, the Operational Creditor was to act as an intermediary between FVIL and its overseas customers. On 28.08.2023 FVIL executed a Business Transfer Agreement (**'BTA'** in short) with Flexituff Technology International Limited ('**FTIL'** in short) which is the Corporate Debtor in the given factual matrix. In terms of the aforesaid BTA, FVIL sold its Flexible Intermediate Bulk Container Manufacturing Business to FTIL-Corporate Debtor. This BTA was a bipartite agreement signed only between FVIL and FTIL. The process of transfer as stipulated in the BTA was completed eventually on 30.04.2024.

3. The Operational Creditor had raised a debit note dated 29.07.2024 upon FVIL qua which, after reconciliation, an amount of Rs. 1.92 Cr. was payable by FVIL. However, instead of FVIL, it was the Corporate Debtor-FTIL which remitted an amount of Rs. 40 lakhs to the Operational Creditor on 07.09.2024. Thereafter, the Corporate Debtor-FTIL sent a letter to the

Operational Creditor on 09.09.2024 in which reference was made to the debit note dated 29.07.2024 and four post-dated cheques amounting to Rs. 1.52 Cr. towards the debit note were also enclosed. As one of the post-dated cheques got dishonoured on 31.10.2024, the Operational Creditor issued a Section 138 notice under Negotiable Instruments Act on 16.11.2024 both to FVIL and also to the Directors of FTIL-Corporate Debtor. Since the cheques issued by FTIL continued to get dishonoured, the Operational Creditor issued a Section 8 Demand Notice on 18.02.2025 and thereafter on 27.03.2025 filed a Section 9 petition seeking initiation of CIRP of the Corporate Debtor-FTIL which was admitted by the Adjudicating Authority. vide impugned order dated 09.09.2026. The present Appeal has been preferred challenging the impugned order by the Appellant-Suspended Director of the Corporate Debtor.

4. Shri Krishnendu Dutta, Ld. Sr. Counsel making submissions on behalf of the Appellant submitted that the Adjudicating Authority had erroneously admitted the Section 9 application without appreciating the fact that the said application was not maintainable against the Corporate Debtor-FTIL since the claim of operational debt arose under the MoU of 08.09.2022 in which the Corporate Debtor was not a party. It is contended that when no business relationship existed between the Corporate Debtor and the Operational Creditor and there was no privity of contract, there was no question of any operational debt having arisen which was payable by the Appellant to the Operational Creditor-Respondent No.1.

5. While admitting the fact that FVIL was the wholly owned subsidiary of the Corporate Debtor, it was stoutly contended that since a holding company and its subsidiary are separate legal entities, the debt of the subsidiary

company cannot be visited upon the holding company or *vice versa* on account of such association. In support of this contention, reliance was placed on the judgment of this Tribunal in ***Phanindhar Chivukula, Suspended Director of Sapura Engineering & Constructions (India) Pvt. Ltd. v. CEVA Logistics India Pvt. Ltd. & Anr. in CA(AT)(Ins)No. 477 of 2024*** wherein it was clearly held that holding company and its subsidiary constituted two distinct legal entities and that such incidental conduct could not fasten one's liability on the other.

6. The Ld. Sr. Counsel for the Operational Creditor, Shri Vaibhav Daggar rebutted the contentions raised by the Corporate Debtor as being devoid of merit and stated that the Adjudicating Authority had correctly noticed that this was a case of debt and default and there being no credible evidence of pre-existing dispute, the Section 9 application was rightly admitted.

7. We have heard Ld. Counsel for the parties and perused the records carefully.

8. It is the case of the Appellant that the claim of the Operational Creditor was qua FVIL as it was these two entities which had entered into a contractual arrangement. When there was no contractual arrangement between the Operational Creditor and the Corporate Debtor-FTIL, the Operational Creditor could not have fastened any liability upon the Corporate Debtor for supplies received from them by FVIL. It is also their case that even if FVIL was a subsidiary of FTIL, yet the debt of FVIL cannot be transposed upon the FTIL merely because it was a holding company since both the holding company and its subsidiary enjoy separate legal persona and their financial debt and liabilities are not automatically transferable.

9. When we look at the impugned order, we find that issue of debt and default of the Corporate Debtor in the context of the MoU of 08.09.2022 has been dealt in the following paras as reproduced hereunder:

> *"36. The principal objection is that the Corporate Debtor was a stranger to the MOU dated 08.09.2022, which was executed between the Applicant and FVIL, and owed no obligation to the Applicant. This objection does not survive as the Corporate Debtor's own Letter dated 09.09.2024, by which it admitted a net payable sum of Rs. 1,92,95,580/-, paid Rs. 40,00,000 and for the balance amount issued four post-dated cheques for the balance. A debt so admitted, part-paid and secured by cheques of the Corporate Debtor's own hand is a duly acknowledged debt of the Corporate Debtor, whatever the position between the Applicant and FVIL may have been at the outset.*
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> *37. It is accordingly not necessary for this Tribunal to go into the further explanation offered in the Rejoinder as to whether the Corporate Debtor is the holding company of FVIL. Since it has no bearing on the finding that the debt is the Corporate Debtor's own admitted debt."*

10. When we look at the material available on record, we find that that the MoU of 08.09.2022 was the foundational contractual document which had been entered into between the Operational Creditor and FVIL. The Corporate Debtor was clearly not a signatory to the MoU and therefore had no express contractual business relationship with the Operational Creditor. Nor is it shown that the Appellant had received the supply underlying the claim of Respondent No. 1-Operational Creditor. We also find that the Corporate Debtor in para 17 of their reply to the Section 9 application which appears at page 480 of the Appeal Paper Book ('**APB**' in short) has asserted that the Appellant has failed to establish any business relationship between the Appellant and the Corporate Debtor for which any operational debt became due and payable by the Corporate Debtor. Further at para 29 of their reply at

page 483 of the APB, it has been submitted that the Respondent No. 1-Operational Creditor has also failed to bring on record any document through which it could be ascertained that any operational debt was owed by the Corporate Debtor to them.

11. At this stage it may be relevant to draw our attention to the judgment of the Hon'ble Apex Court in ***Vodafone International Holdings B.V. Vs. Union of India and Anr 2012 6 SCC 613*** wherein it has been clearly held that a subsidiary company is a separate legal persona from the parent company and both have independent and separate commercial interests to guard. Conflating this ratio, it can be safely inferred that the liability of the subsidiary cannot be held to be that of the parent company unless it is acting as an agent.

12. We are thus inclined to agree with the Appellant that FVIL which had signed the MoU with the Operational Creditor was a company distinct from the Corporate Debtor and hence the supply underlying the claim of the Operational Creditor having arisen out of the MoU of 08.09.2022, the liability on account of supplies made basis the MoU of 08.09.2022, cannot be fixated on the Corporate Debtor.

13. Be that as it may, this brings us to the related question as to whether the letter dated 09.09.2024 from the Corporate Debtor-FTIL to the Operational Creditor can be read as an acknowledgement and an undertaking of the debt as has been held by the Adjudicating Authority in the impugned order at paras 36 and 37 which has already been extracted above.

14. It is the contention of the Appellant that the said letter dated 09.09.2024 at its highest is at best a bare, unilateral document which is

legally incapable of binding the Appellant to a debt that was never its own. To buttress their contention, reliance has been placed on the judgment of this Tribunal in ***Mohd. Zaheer v. Ashu Agencies & Anr. in CA(AT)(Ins) No. 1526 of 2025*** where a letter by which the Operational Creditor had purported to consent to the transfer of its dues to a third party was held incapable of effecting a novation. It was submitted that in the present facts of the case, the Respondent No. 1-Operational Creditor has failed to show any novation of the MoU of 08.09.2022 nor shown any tripartite agreement to this effect between FVIL, FTIL-Appellant and Respondent No. 1. The absence of a tripartite agreement implies failure to satisfy the requirements of Section 62 of the Indian Contract Act,1872. Moreover, submission was pressed that since the Operational Creditor failed to demonstrate that the alleged novated contract was supported and sustained by any consideration, this deficiency attracted Section 25 of the Indian Contract Act,1872 rendering the alleged novated contract as void. It was vehemently asserted that this is not a case of a legally enforceable liability against the Appellant and that the Adjudicating Authority failed to appreciate this aspect while passing the impugned order.

15. This brings us to the BTA of 28.08.2023 executed between FVIL and FTIL-Appellant which has been placed on record by the Appellant before this Bench by way of an additional affidavit. We notice that as per the BTA, the business of FVIL was transferred to the Appellant but the liabilities of FVIL which were to be assumed by the Appellant was to be as on and from the "Closing Date" of 30.04.2024 and not for any earlier period. Clause 9.3.2 of the BTA specifically provides that where a contract, is not novated in favour of the FTIL by the Closing Date, FTIL assumes no liability for it and that any

such liability remains solely that of FVIL. This is reinforced by Clause 9.3.3 which provides that nothing in the BTA shall make the FTIL-Appellant liable for any obligation of FVIL falling due, or any default of FVIL, on or before the Closing Date. Further Clause 1.1 of the BTA defines "Excluded Liabilities" to include all liabilities arising or accruing prior to the Closing Date.

16. Seen against the backdrop of the BTA, we notice that the Debit Note is addressed by the Operational Creditor to FVIL and not to the Appellant-FTIL as is seen at page 77 of APB. The debit note also refers to price reevaluation charges for supplies for the period FY 2022-23 and FY 2023-24 which periods stood concluded before the Closing Date. Furthermore, the letter dated 09.09.2024 states that it is issued "in relation to the outstanding amount owed by Flexituff Ventures International Limited to Marvel Industries & Services Private Limited" and therefore not an admission of any liability by the Appellant as their own untrammelled liability.

17. When Respondent No. 1 itself continued to treat FVIL and not the Appellant to be liable for dues and the dues so claimed pertain to a period prior to the Closing Date, the contention of the Operational Creditor that the debt was qua the Appellant lacks merit. When there was no contract between the Operational Creditor and the Corporate Debtor nor any novation of contract took place between FTIL and FVIL, the Corporate Debtor could not have been fastened with any liability which had been incurred by FVIL. There is force in the contention of the Appellant that even if the letter dated 09.09.2024 issued by them is taken into account, this letter was only a unilateral document which cannot be read as having effectuated a novation of the MoU to bind the Corporate Debtor to a debt that was never its own.

18. In these circumstances, when Clauses 9.3.2 and 9.3.3 is read conjointly with the scope of "Excluded Liabilities" as stipulated in Clause 1.1, no liability of FVIL for any period prior to the "Closing Date" can be read to have been transferred to, or payable by the Appellant, thereby reinforcing the submission that no operational debt is due and payable by the Appellant to Respondent No. 1. Section 9 cannot be invoked and substituted for recovery or adjudication of any disputed commercial claim. The Corporate Debtor having therefore raised a substantive dispute concerning the very existence of the debt, this issue goes to the root of the alleged liability. Hence the finding returned by the Adjudicating Authority admitting the Section 9 application that this was case of debt and default cannot be sustained, particularly when the nature and enforceability of the alleged liability against the Appellant stood disputed.

19. In view of the foregoing reasons, we are of the considered view that the Adjudicating Authority has erroneously admitted the application under Section 9 of the IBC. We allow the Appeal and set aside the impugned order. The Corporate Debtor company is released from the rigours of CIRP and allowed to function independently through its board of directors with immediate effect. No order as to costs.

[Justice Yogesh Khanna]
Officiating Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date : 04.11.2026
Sheetal/Farhan