IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.302
C.P.(IB)/231(AHM)2026

Under Section 9 of IB Code 2016

IN THE MATTER OF:

Kusters Colico Machinery Pvt. Ltd ....**Applicant**
V/s
HYS Industries Pvt. Ltd. ....**Respondent**

Order delivered on: 13/08/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

Note: This order of the Bench consisting of Hon'ble Member (Judicial) and Hon'ble Member (Technical), is pronounced in open court on behalf of the Bench by Hon'ble Member (Judicial), under Rule 151 of the NCLT Rules, 2016.

-SD-

(Paresh Vedani)
Court Officer

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT–I, AHMEDABAD

CP (IB) No.231/9/AHM/2026

(Petition 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:

Kusters Calico Machinery Private Limited
(CIN: U29260GJ1996PTC054866)
Registered Office at: Bamangam,
NH No. 48, Taluka Karjan,
District Vadodara, Gujarat-391243.

...Applicant/Operational Creditor

VERSUS

HYS Industries Private Limited
(CIN: U17299GJ2020PTC118189)
Registered Office at: Survey No. 274,
Ogan, Ahmedabad, Viramgam,
Gujarat-382150.

Also at: Survey No. 1035/A,
Near Ayodhya Township,
Shilaj, Ghatlodia, Ahmedabad
Gujarat -380058.

...Respondent/Corporate Debtor

Order Pronounced On: 13.08.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicant/OC	:	Mr. Ravi Pahwa, Advocate a. w. Ms. Gunjan Agarwal, Advocate.
For the Respondent/CD	:	Mr. Devan Parikh, Sr. Advocate a.w. Mr, Parth Shah, Advocate.

ORDER
Per Bench

1. This Company Petition, registered on 17.07.2026, has been filed by Kusters Calico Machinery Private Limited (hereinafter referred to as the "Operational Creditor") against HYS Industries Private Limited (hereinafter referred to as the "Corporate Debtor") 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, seeking initiation of Corporate Insolvency Resolution Process (CIRP) on account of alleged default in payment of operational debt amounting to **Rs.7,54,13,452/-,** comprising the balance 5% retention/commissioning amount, GST and statutory interest, and expenses claimed towards accommodation of deputed service engineers.

2. On perusal of Part-I of Form-5, it is seen that the Operational Creditor, Kusters Calico Machinery Private Limited, is a company incorporated on 01.07.1996 under the Companies Act, 1956, bearing CIN U29260GJ1996PTC054866, having its registered office at Bamangam, NH No.48, Taluka Karjan, District Vadodara, Gujarat-391243. The present Petition has been filed through Mr. Sushil Verma, authorised by Board Resolution annexed with the Petition as Annexure-B.

3. On perusal of Part-II of Form-5, it is seen that the Corporate Debtor, HYS Industries Private Limited, bearing CIN U17299GJ2020PTC118189, was incorporated on 11.12.2020 under the Companies Act, 2013. Its registered office is at Survey No.274, Ogan, Ahmedabad, Viramgam, Gujarat-382150. The authorised share capital is stated to be Rs.31,00,00,000/- and the paid-up share capital is stated to be Rs.29,42,77,931/-, as per the Master Data obtained from the Ministry of Corporate Affairs website, annexed with the Petition as Annexure-A.

4. On perusal of Part-III of Form-5, it is seen that the Operational Creditor has not proposed any name for appointment of an Interim Resolution Professional and has sought appointment of an Interim Resolution Professional by this Tribunal from the empanelment list of the IBBI, as applicable at the time of admission of the Petition.

5. On perusal of Part-IV of Form-5, it is seen that the Operational Creditor has claimed an aggregate amount of Rs.7,54,13,452/- as operational debt, comprising Rs.3,90,95,000/- towards the alleged balance 5% retention/commissioning amount, Rs.4,59,84,239/- towards GST liability and statutory interest, and Rs.5,32,500/- towards hotel accommodation for deputed service engineers, after adjustment of the advance and TDS. The date of default has been stated as 21.05.2025.

6. Upon perusal of Part-IV and Part-V of Form-5, it is observed that the Operational Creditor has set out the following facts in support of the present Petition: -

6.1 The Operational Creditor submitted that the Corporate Debtor placed a Purchase Order dated 04.07.2023 for supply, erection and commissioning of textile processing machinery for Rs.1,37,00,00,000/-. Thereafter, the parties executed a Memorandum of Agreement dated 16.10.2023 prescribing the scope of work, phased delivery schedule and payment terms. Copies thereof are annexed as Annexures-F (Colly.) and G.

6.2 It is stated that the supplies were to be made under the Export Promotion Capital Goods (EPCG)/Deemed Export Scheme on the representation of the Corporate

Debtor that it possessed a valid EPCG Authorisation covering the contract value. Accordingly, the Operational Creditor supplied the machinery and raised invoices from 05.12.2023 onwards under the Deemed Export Scheme. Copies of invoices, GSTR-1, GSTR-3B and E-way Bills are annexed as Annexure-H (Colly.).

6.3 The Operational Creditor has pleaded that under the agreed payment terms, 95% of the contract value was payable through Letter of Credit, while the balance 5% was payable upon commissioning of the machinery and production of the stipulated quantity of fabric, or within four months from the date of invoice, whichever was earlier. It is further stated that the Corporate Debtor was required to provide Rs.4,00,00,000/- towards GST security but paid only Rs.1,00,00,000/-.

6.4 The Operational Creditor has stated that machinery valued at Rs.62,20,00,000/- under Group-A and Rs.22,50,00,000/- under Group-B was supplied. According to the Operational Creditor, the Corporate Debtor opened Letters of Credit only to the aforesaid extent and thereafter cancelled the balance order valued at Rs.52,30,00,000/-. Thereafter, the Operational Creditor came to know that the EPCG Authorisation did not cover the entire supplies, resulting in reversal of GST refund earlier claimed under the Deemed Export Scheme.

6.5 The Operational Creditor has stated that out of 20 machines supplied, 15 machines were commissioned and the remaining 5 machines were substantially completed. It is further stated that commissioning was completed during the period from 08.07.2025 to 15.10.2025, and production exceeded the contractual benchmark of 1,000 metres of fabric, thereby, according to the Operational Creditor, making the balance retention amount payable.

6.6 The Operational Creditor has claimed an aggregate amount of Rs.7,54,13,452/-, comprising Rs.3,90,95,000/- towards 5% retention amount, Rs.4,59,84,239/- towards GST liability together with interest and Rs.5,32,500/- towards hotel accommodation of deputed service engineers, after adjustment of advance and TDS. The computation is annexed as Annexure-D.

6.7 It is further stated that tax invoices were raised during the period from 25.11.2024 to 21.01.2025 towards reimbursement of GST liability. Thereafter, the Operational Creditor deposited Rs.4,59,84,239/- towards GST and interest through Form GST DRC-03 dated 22.11.2025. A copy of Form GST DRC-03 and the payment challan are annexed as Annexure-L.

6.8 The Operational Creditor has relied upon e-mails dated 03.11.2025, 04.11.2025, 18.11.2025 and 20.11.2025, wherein the Corporate Debtor is stated to have acknowledged that reimbursement of GST would be made after the GST credit became available on its GST portal. The said correspondence has been relied upon as acknowledgment of liability and is annexed as Annexure-K.

6.9 It is stated that despite the above correspondence, the Corporate Debtor issued a Legal Notice dated 01.12.2025 claiming damages of Rs.278,00,00,000/-. The Operational Creditor thereafter sent its Reply and Counter Notice dated 07.01.2026 disputing the allegations. Copies thereof are annexed as Annexures-I and J.

6.10 Thereafter, the Operational Creditor issued a Demand Notice in Form-3 under Section 8 of the Insolvency and Bankruptcy Code, 2016 on 12.05.2026, calling upon the Corporate Debtor to pay Rs.7,54,13,452/-. According to the Petition, the operational debt became due on 21.05.2025, being four months from the last tax invoice dated 21.01.2025, and the said date has been treated as the date of default. Copies of the Demand Notice and proof of service are annexed as Annexure-O (Colly.).

6.11 The Corporate Debtor replied to the Demand Notice on 22.05.2026, raising objections regarding delay in execution, pending supplies, arbitration clause and contractual issues. According to the Operational Creditor, the said objections are similar to those raised in the earlier Legal Notice dated 01.12.2025 and do not constitute a pre-existing dispute in respect of the operational debt. The reply is annexed as Annexure-P.

6.12 In the additional affidavit, the Operational Creditor has relied upon e-mail correspondence dated 26.09.2023 requesting opening of Letters of Credit for the entire contract value and further correspondence exchanged during the period from 19.02.2025 to 09.03.2025 relating to pending supplies, commissioning activities, payment issues and project execution. Copies thereof are annexed as Annexure-A and Annexure-B (Colly.).

6.13 It has further stated that Form-C before the Information Utility could not be filed due to technical issues on the portal and that Form-1A has been filed before the Insolvency and Bankruptcy Board of India. A copy of Form-1A is annexed as Annexure-E.

6.14 In view of the above facts, the Operational Creditor has sought admission of the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016, initiation of CIRP against the Corporate Debtor and grant of consequential reliefs in accordance with law.

7. That on issuance of notice in the Company Petition and after due service thereof, the Corporate Debtor appeared through counsel and filed its Reply on 04.08.2026 vide Inward Diary No. D-6472, Addl. Affidavit with documents on 06.08.2026 vide Inward Diary No. D-6588, denying the averments made in the Company Petition. The Corporate Debtor has placed the facts through the Reply in the following manner: -

7.1 The Corporate Debtor stated that the matter concerns a turnkey project for supply, erection and commissioning of machinery and that issues of delay, short supply, cancellation of part of the order, missing parts, incomplete commissioning, technical defects and GST treatment stand recorded in the correspondence exchanged between the parties.

7.2 It is stated that the Application combines three separate claims into one demand of Rs.7,54,13,452/-, namely retention of Rs.3,90,95,000/-, GST of Rs.4,05,00,000/- together with statutory interest of Rs.54,84,239/- and a sum of Rs.5,32,500/- towards hotel accommodation and pocket allowance of service engineers. The same date of default of 21.05.2025 has been assigned to all three claims.

7.3 The Corporate Debtor has stated that it had been raising issues of delayed delivery, missing parts and incomplete commissioning since the year 2024. By June to August 2025, the parties were in disagreement on whether the machines had been commissioned and whether the limited running amounted only to trial. The notice dated 01.12.2025 and the reply dated 07.01.2026 preceded the Section 8 notice dated 12.05.2026.

7.4 The Purchase Order dated 04.07.2023, the August 2023 correspondence and the Memorandum of Agreement dated 16.10.2023 fixed the part-wise programme of Part A by 31.03.2024, Part B by 31.07.2024 and Part C by 31.10.2024. These documents are placed as Annexure R-1 (Colly.). The Applicant agreed to the timelines subject to a maximum supplier-side extension of two months.

7.5 The first Letter of Credit No.006LC03232450002 dated 13.09.2023 issued through HDFC Bank covered Rs.62,20,00,000/- for Part A out of the proforma invoice of Rs.73,39,60,000/-. It fixed 31.03.2024 as the latest shipment date and required a certificate for machine erection and commissioning issued by Raghuvir Synthetics Limited for release of the final five percent. The said Letter of Credit forms part of Annexure R-1 (Colly.).

7.6 Part A was not supplied within the agreed date. The Corporate Debtor has placed correspondence from 19.04.2024 to 25.07.2024 as Annexure R-2 (Colly.) recording bank pressure, revised dispatch programmes, short supply and further revised dates. Invoices continued until 21.01.2025 and parts continued to arrive thereafter.

7.7 On 17.05.2024 the Applicant proposed a fresh programme for Part A and sought acceptance of Letter of Credit discrepancy for July delivery. On 17.07.2024 the

Corporate Debtor recorded that only about Rs.21,30,00,000/- of material had been received against Part A of approximately Rs.62,50,00,000/-. The Applicant thereafter gave a schedule running until September 2024.

7.8 The original dates for Parts B and C were 31.07.2024 and 31.10.2024. By e-mail dated 17.05.2024 the Applicant sought a fresh Letter of Credit with delivery of seven to twelve months. The Corporate Debtor rejected those dates by its e-mail of the same day. The correspondence is placed as Annexure R-3 (Colly.).

7.9 On 22.05.2024 the Applicant offered four machines worth Rs.22,50,00,000/- by December 2024 and the remaining machines only by June 2025. The Corporate Debtor cancelled the purchase order of the balance machines by e-mail dated 22.05.2024 and retained only the reduced block. The cancellation e-mail dated 22.05.2024 is placed as Annexure R-4.

7.10 The matter was escalated to the Board level of Jagenberg. Communications dated 18.07.2024 to 23.07.2024 recorded that a Board meeting had been held and that the order had been given top priority. These communications are placed as Annexure R-5 (Colly.).

7.11 The payment documents linked the final five percent to erection and commissioning. The Memorandum of Agreement dated 16.10.2023 required a signed and stamped commissioning report. No such signed and stamped commissioning certificate for any machine has been produced with the Application. The related correspondence is placed as Annexure R-6 (Colly.).

7.12 Correspondence from 13.06.2025 to 30.07.2025 records that machines remained under commissioning, that promised handover dates passed, that specialised engineer availability was limited and that parts continued to arrive after the last invoice dated 21.01.2025. The Corporate Debtor recorded daily interest cost and stated that outside engineering costs would be debited to the Applicant.

7.13 Correspondence from 11.08.2025 to 25.08.2025 placed as Annexure R-7 (Colly.) records technical issues relating to scroll-roll and bleaching machine, further trials, machines yet to be put in auto mode and a production trial of 40,000 metres that remained in progress. The Applicant stated that the German unit had been closed and that services would be provided from Kusters Calico Machinery.

7.14 The Corporate Debtor has stated that it employed more than 150 persons and had customer and export commitments. It therefore commenced limited and staggered production on some machines to reduce continuing loss. The notice dated 01.12.2025 records that this step was taken by way of mitigation and does not amount to unconditional acceptance of performance.

7.15 The Corporate Debtor repeatedly reserved its claim for losses and charges arising from delay. In the e-mail dated 19.07.2024 it stated that interest cost of the entire project post July would be debited to the Applicant. On 18.07.2025 it recorded daily interest of approximately Rs.25,00,000/- and stated that outside engineer costs, interest and production loss would be charged to the Applicant.

7.16 The Corporate Debtor obtained EPCG Authorisation No.0831009858 dated 05.12.2023. It is stated that the Corporate Debtor remained responsible for its own export obligations but did not assume ownership of the invoice descriptions, use of the EPCG number, refund calculations or refund applications made by the Applicant. The authorisation is placed as Annexure R-8.

7.17 Certified deemed-export refund packets covering the period from March 2024 to January 2025 are placed as Annexure R-9 (Colly.). The Form GST DRC-03 dated 22.11.2025 records that Rs.4,05,00,000/- of refund had been claimed in excess by the Applicant and was repaid voluntarily with interest.

7.18 Correspondence from 03.11.2025 to 11.11.2025 placed as Annexure R-10 (Colly.) records the stand of the Corporate Debtor that the EPCG licence number had been used on invoices beyond the machines covered and that payment of GST would follow only after corresponding credit appeared in its portal. The same thread also records the allegation of remote stoppage and the proposal regarding retention and further engineering support.

7.19 The Corporate Debtor issued a Legal Notice dated 01.12.2025 setting out the history of delayed delivery, cancellation of balance scope, missing parts, incomplete commissioning and the resulting claim for compensation of Rs.178 crores for loss of profit and damage caused by delayed supply, installation and commissioning, Rs.100 crores towards further damage and reputation, and Rs.25 lakhs per day from the alleged remote shutdown. The notice is placed as Annexure R-11.

7.20 The Applicant issued a Reply and Counter-Notice dated 07.01.2026 setting out its case on the Letters of Credit, cancelled scope, design changes, utilities, commissioning reports and GST. The said reply is placed as Annexure R-12.

7.21 The Corporate Debtor filed its reply to the Demand Notice under Section 8 of the Code on 22.05.2026. The said reply is placed as Annexure R-13. The parties had therefore formally joined issue months before the Demand Notice, while the correspondence relied upon by the Corporate Debtor extends back to the years 2023 and 2024

7.22 The Corporate Debtor has relied upon following judgments: -

(i). *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, (2018) 1 SCC 353,

(ii). *GLS Films Industries Private Limited v. Chemical Suppliers India Private Limited*, 2026 INSC 344,

(iii). *Rattan Singh Builders Private Limited v. Indorama Ventures Yarns Private Limited*, Company Appeal (AT) (Insolvency) No.453 of 2026,

(iv). *Airtech Airconditioners v. Kamladityya Construction Private Limited*, Company Appeal (AT) (Insolvency) No.1295 of 2025,

(v). *Bharat Industrial Projects Pvt. Ltd. v. Anupam Industries Ltd.*, (2025) ibclaw.in 02 NCLT, Ahmedabad Bench,

(vi). *Akshay Kumar Bhatia v. Cue Learn Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No.454 of 2025,

(vii). *Shitanshu Bipin Vora v. Shree Hari Yarns Private Limited*, Company Appeal (AT) (Insolvency) No.2204 of 2024, decided on 16.04.2025, 2025 SCC OnLine NCLAT 694,

(viii). *S.S. Engineers v. Hindustan Petroleum Corporation Limited & Ors.*, Civil Appeal No.4583 of 2022, decided on 15.07.2022, (2022) 13 SCC 294,

(ix). *Swiss Ribbons Private Limited v. Union of India*, (2019) 4 SCC 17.

7.23 The Corporate Debtor has submitted that the retention claim has not crystallised as one admitted debt in the absence of machine-wise reconciliation, that the GST component is a disputed reimbursement claim arising from the Applicant's own excess refund, that the engineer-expense claim lacks particulars, that the common default date of 21.05.2025 cannot govern claims arising thereafter, and that no record of default from an Information Utility has been produced.

7.24 On the above facts, the Corporate Debtor has prayed for dismissal of the present Company Petition on the ground that no operational debt is due, no default has occurred within the meaning of the Code, the claim is disputed on facts and law, and the proceedings under Section 9 are therefore not maintainable.

8. The Operational Creditor has also filed an Affidavit-in-Rejoinder on 07.08.2026 vide Inward Diary No. D-6618, denying the contentions raised by the Corporate Debtor in its Reply. The Operational Creditor has placed the facts through the Rejoinder in the following manner: -

8.1 The Operational Creditor submits that the Reply does not disclose any ground for dismissal of the Petition. It reiterates that the Corporate Debtor misrepresented that it held EPCG Authorisation for the complete order value of Rs.137,00,00,000/-, whereas it did not hold such authorisation for the whole value, which resulted in reversal of GST refund of Rs.4,05,00,000/-, paid back with interest of Rs.54,84,239/- through Form GST DRC-03 annexed as Annexure-S1.

8.2 It is stated that after depositing Rs.4,59,84,239/- through Form GST DRC-03 dated 22.11.2025, the Operational Creditor repeatedly requested reimbursement from the Corporate Debtor. The Operational Creditor relies upon e-mail correspondence dated 20.01.2025, 07.03.2025 and 30.06.2025 and invoices relating to processing of refund under the EPCG Scheme annexed as Annexure-S2 (Colly.).

8.3 The Operational Creditor contends that the Corporate Debtor has taken inconsistent stands by alleging wrongful refund on one hand while admitting that it had engaged a Chartered Accountant and incurred expenses for processing the refund. It contends that the refund under the EPCG Scheme could be claimed only on the basis of documents furnished by the Corporate Debtor.

8.4 The Operational Creditor contends that after supply of the machinery, tax invoices were issued and the details were duly reflected in GSTR-1 and GSTR-3B. It is stated that the Corporate Debtor neither rejected nor disputed the invoices on the GST portal, resulting, according to the Operational Creditor, in deemed acceptance of the invoices and availment of Input Tax Credit.

8.5 It is further submitted that after availing Input Tax Credit, the Corporate Debtor cannot retain the benefit of such credit while refusing to reimburse the GST amount deposited by the Operational Creditor. Proof of GST payment is relied upon as Annexure-S3.

8.6 The Operational Creditor submits that the Corporate Debtor has withheld Rs.4,59,84,239/-, comprising GST of Rs.4,05,00,000/- and statutory interest of

Rs.54,84,239/-, despite acknowledging its liability through e-mail correspondence dated 04.11.2025. According to the Operational Creditor, the claim exceeds the threshold prescribed under Section 4 of the Code and the default is established.

8.7 It is contended that no pre-existing dispute existed prior to issuance of the Demand Notice under Section 8 of the Code. The objections raised in the Reply are stated to be subsequent defences and do not affect the maintainability of the Petition under Section 9.

8.8 In support of its contentions, the Operational Creditor has relied upon *Hardik v. Ramdeo R. Agrawal and Another*, Company Appeal (AT) (Ins.) No.1295 of 2023, decided on 29.08.2025, to contend that filing of GST returns, sales invoices and corresponding records establish operational debt and default. It has also reiterated its reliance upon *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, (2018) 1 SCC 353.

8.9 The Operational Creditor further relies upon *Gulshankumar Ahuja v. Monika Garg, Sole Proprietor Aggarwal Enterprises & Ors.*, Company Appeal (AT) (Ins.) No.1202 of 2024, judgment dated 22.08.2024, wherein NCLAT considered a dispute concerning GST proceedings between the Corporate Debtor and the Department and its relevance to Section 9 maintainability.

8.10 The Operational Creditor states that the Corporate Debtor was required under the Purchase Order dated 04.07.2023 and MoA dated 16.10.2023 to open an LC for Rs.137,00,00,000/-, but opened only partial LCs of Rs.62,20,00,000/- and Rs.22,50,00,000/-. It states that the last invoice was dated 21.01.2025, the four-month period expired on 21.05.2025, and the said date was stated as the date of default in Part IV of the Petition.

8.11 The Operational Creditor submits that the Corporate Debtor has failed to produce any document showing rejection of invoices, denial of GST credit or any dispute raised before issuance of the statutory Demand Notice. It therefore prays that the objections raised in the Reply be rejected.

8.12 On the above facts, the Operational Creditor has prayed that the Reply filed by the Corporate Debtor be rejected, the Rejoinder be taken on record and the present Company Petition be admitted by initiating Corporate Insolvency Resolution Process against the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

9. The Operational Creditor filed written submissions on 10.08.2026 vide inward diary no. D-6702 Operational Creditor, in its written submissions, has reiterated that the balance 5% retention amount became payable under the contractual terms upon fulfilment of the stipulated conditions or expiry of the contractual period, whichever was earlier. It has further submitted that the GST amount and statutory interest deposited through Form GST DRC-03 were liable to be reimbursed by the Corporate Debtor and that the correspondence exchanged between the parties evidenced such liability. The major contentions of the Operational Creditor are as follows: -

9.1 The Operational Creditor has contended that the Corporate Debtor's objections regarding delay, commissioning and GST were either subsequent defences or did not constitute a genuine pre-existing dispute in respect of the amounts claimed. It has relied upon the judgments in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, (2018) 1 SCC 353, ***Hardik v. Ramdeo R. Agrawal and Another***, and ***Gulshankumar Ahuja v. Monika Garg, Sole Proprietor Aggarwal Enterprises & Ors.***, in support of its submissions.

9.2 It is further submitted that the Corporate Debtor had not rejected the invoices or denied the GST credit on the GST portal and that the correspondence concerning reimbursement constituted acknowledgment of liability. The Operational Creditor has therefore prayed for admission of the Company Petition and initiation of CIRP.

10. The Corporate Debtor has also filed written submissions through e-mode on 10.08.2026. The Corporate Debtor, in its written submissions, has contended that the present claim arises from a turnkey contract involving supply, erection and commissioning of machinery and that disputes concerning delayed delivery, short supply, cancellation of part of the order, pending components, incomplete commissioning, technical issues and GST/EPCG transactions had arisen substantially before issuance of the Section 8 Demand Notice. The submissions and judgment relied on by the Corporate Debtor are as follows: -

10.1. The Corporate Debtor has submitted that the balance 5% amount was contractually linked to completion of erection and commissioning and the stipulated production/certification requirements, which, according to it, were not fulfilled. It has relied upon contemporaneous correspondence exchanged during 2024 and 2025 recording delayed supplies, revised delivery schedules, pending parts, technical issues, commissioning activities and production trials.

10.2 With regard to GST, the Corporate Debtor has disputed its liability to reimburse the amount deposited by the Operational Creditor through Form GST DRC-03 and has contended that the dispute arose from the manner in which the EPCG/deemed-export transactions and refund claims were undertaken. It has submitted that the correspondence relied upon by the Operational Creditor cannot be treated as an unequivocal admission of liability.

10.3 The Corporate Debtor has further relied upon its Legal Notice dated 01.12.2025, wherein it raised claims arising from alleged delay, incomplete commissioning, cancellation of scope, technical issues and consequential losses. It has contended that the said notice, together with the earlier correspondence, demonstrates that the dispute was already in existence before the Section 8 Demand Notice.

10.4 Reliance has been placed upon ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, (2018) 1 SCC 353, ***S.S. Engineers v. Hindustan Petroleum Corporation Limited & Ors.***, (2022) 13 SCC 294, ***GLS Films Industries Private Limited v. Chemical Suppliers India Private Limited***, 2026 INSC 344, ***Rattan Singh Builders Private Limited v. Indorama Ventures Yarns Private Limited***, Company Appeal (AT) (Insolvency) No.453 of 2026 and other judgments, in support of the contention that a genuine pre-existing dispute requiring further investigation constitutes a bar to admission under Section 9. The Corporate Debtor has accordingly prayed for rejection of the Company Petition.

11. We have heard the learned Counsel appearing for the Operational Creditor and the learned Senior Counsel appearing for the Corporate Debtor. We have perused the Company Petition, Reply, Rejoinder, additional affidavits, documents placed on record, written submissions and the judgments relied upon by the parties.

12. The question which arises for consideration is whether the present Company Petition satisfies the requirements of Section 9 of the Insolvency and Bankruptcy Code, 2016, and, in particular, whether there existed a genuine dispute between the parties prior to receipt of the Demand Notice dated 12.05.2026 so as to attract the bar contained in Section 9(5)(ii)(d) of the Code.

13. Section 5(6) of the Code defines "dispute" to include a suit or arbitration proceeding relating to the existence of the amount of debt, the quality of goods or services, or breach of a representation or warranty. While considering an Application under Section 9, the Adjudicating Authority is required to examine whether an operational debt is due and payable, whether default has occurred and whether a dispute existed prior to receipt of the Demand Notice. Where a genuine pre-existing dispute is demonstrated, the Adjudicating Authority is not required to adjudicate the ultimate merits of the rival claims.

14. The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited,*** (2018) 1 SCC 353, has held that the Adjudicating Authority is required to examine whether there is a plausible contention requiring further investigation and whether the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence. The Adjudicating Authority is not required to determine whether the defence is ultimately likely to succeed. If the dispute truly exists in fact and is not spurious, hypothetical or illusory, the Application under Section 9 cannot be admitted.

15. The aforesaid principle has been reiterated by the Hon'ble Supreme Court in ***S.S. Engineers v. Hindustan Petroleum Corporation Limited & Ors.,*** (2022) 13 SCC 294, and more recently in ***GLS Films Industries Private Limited v. Chemical Suppliers India Private Limited***, 2026 INSC 344. The test at the stage of Section 9 is therefore whether the material on record discloses a genuine pre-existing dispute requiring investigation, and not whether the defence raised by the Corporate Debtor would ultimately succeed on merits.

16. In the present case, the contractual relationship between the parties was not confined to a simple sale of goods. The Purchase Order dated 04.07.2023 and the Memorandum of Agreement dated 16.10.2023 contemplated supply, erection and commissioning of textile processing machinery, phased delivery, Letters of Credit and payment of the balance amount subject to the contractual terms. The entitlement to the balance 5% amount is therefore connected with the performance and completion of the contractual obligations.

17. The documents placed on record by the Corporate Debtor disclose that disputes concerning delivery and performance had arisen substantially before issuance of the Demand Notice. The correspondence commencing from April 2024 records delayed delivery, revised delivery programmes, short supply and pending components. The record further shows that the parties exchanged correspondence concerning revised delivery schedules for Parts A, B and C and that the balance scope of the Purchase Order was cancelled by the Corporate Debtor by e-mail dated 22.05.2024. These circumstances demonstrate that the contractual relationship had become contentious well before issuance of the Section 8 Demand Notice.

18. The dispute thereafter continued in relation to erection and commissioning of the machinery. The correspondence relied upon by the Corporate Debtor records issues concerning pending parts, availability of specialised engineers, commissioning activities, technical issues, trials and handover of machinery during June to August 2025. These communications substantially pre-date the Demand Notice dated 12.05.2026 and are not documents created for the first time in response thereto.

19. The entitlement to the balance 5% amount cannot, at this stage, be determined merely on the basis of the assertion that the machinery stood commissioned. The contractual terms relied upon by the Operational Creditor require examination as to the applicable trigger for payment, including the provisions relating to commissioning, production and the alternative period calculated from the respective invoice dates. The Corporate Debtor, on the other hand, has relied upon contemporaneous correspondence raising specific objections concerning incomplete commissioning, pending parts, technical issues and the contractual certification required for release of the balance amount. Whether, notwithstanding such objections, the amount had become due and payable under the contractual mechanism is therefore a matter requiring further investigation and adjudication.

20. The limited use or trial production of certain machines does not, at the threshold stage, conclusively establish unconditional acceptance or completion of the contractual obligations, particularly when contemporaneous correspondence records continuing technical and commissioning issues. The effect of such use upon the contractual rights of the parties is therefore not required to be finally determined in the present proceedings.

21. The claim relating to GST reimbursement also cannot be considered in isolation from the contractual and EPCG/deemed-export transactions between the parties. The Operational Creditor relies upon correspondence dated 03.11.2025 onwards to contend that the Corporate Debtor agreed to reimburse the GST amount upon availability of the corresponding credit on its GST portal. The Corporate Debtor, however, disputes the underlying liability and contends that the GST consequence arose from the manner in which the EPCG/deemed-export transactions and refund claims were undertaken.

22. It is further on record that the Operational Creditor deposited Rs.4,59,84,239/- towards GST and interest through Form GST DRC-03 dated 22.11.2025. The Corporate Debtor disputes its liability to reimburse the said amount. For the purposes of the present proceedings, it is sufficient to note that the correspondence exchanged prior to the Demand Notice reflects differing positions concerning the EPCG/deemed-export transactions, GST credit and the responsibility for the amount deposited by the Operational Creditor. Whether the Corporate Debtor is ultimately liable to reimburse the said amount is a matter for adjudication before the appropriate forum and need not be decided herein.

23. The Legal Notice dated 01.12.2025 issued by the Corporate Debtor assumes particular significance as it substantially predates the Section 8 Demand Notice dated 12.05.2026. The said notice records grievances concerning delayed supply, cancellation of the balance scope, pending components, incomplete commissioning, technical issues and consequential losses, apart from claims for compensation/damages. It therefore constitutes contemporaneous documentary evidence that the dispute was already in existence before invocation of Section 8.

24. The Operational Creditor responded to the aforesaid Legal Notice by Reply and Counter Notice dated 07.01.2026. The said reply itself demonstrates that the parties had joined issue, prior to issuance of the Demand Notice, on matters concerning contractual performance, commissioning, cancellation of scope and GST liability. The dispute, therefore, cannot be characterised as one raised for the first time in response to the statutory Demand Notice.

25. The reply dated 22.05.2026 to the Section 8 Demand Notice reiterates and elaborates upon the disputes already reflected in the earlier correspondence. The mere fact that the Corporate Debtor restated its objections in its statutory reply does not render the dispute subsequent in point of time when the underlying disputes are demonstrably traceable to correspondence exchanged substantially earlier.

26. The present case is therefore distinguishable from a case where a Corporate Debtor raises a bald and unsupported objection for the first time after receipt of a Section 8 Demand Notice. In the present case, the record contains substantial contemporaneous correspondence exchanged between the parties concerning delay, delivery schedules, cancellation of scope, commissioning, technical issues and GST/EPCG transactions. The material is not confined to the reply to the Demand Notice and demonstrates that the parties were in dispute substantially prior thereto.

27. We are conscious that the mere existence of a counterclaim or an allegation of damages does not, by itself, constitute a pre-existing dispute. The requirement is that the dispute must be real and not spurious, hypothetical or illusory. In

the present case, however, the disputes relied upon by the Corporate Debtor are supported by contemporaneous documentary material generated during the subsistence and performance of the contractual relationship. They are therefore not mere assertions made for defeating the present Company Petition.

28. The e-mails relied upon by the Operational Creditor concerning GST reimbursement cannot, at this stage, be treated as an unequivocal admission of the entire amount claimed. The correspondence refers to the GST portal, availability of credit and payment upon receipt thereof, whereas the subsequent correspondence and pleadings disclose a continuing dispute concerning the underlying EPCG/deemed-export transactions and the liability to reimburse the amount deposited by the Operational Creditor. The ultimate liability is not required to be adjudicated in the present proceedings.

29. Similarly, the invoices, GST returns and Form GST DRC-03 relied upon by the Operational Creditor may constitute evidence of the underlying transactions and payment of GST. Their existence, however, does not dispense with the requirement of examining whether the liability claimed as operational debt was subject to a genuine dispute existing prior to receipt of the Demand Notice. The issue before this Tribunal is not whether the Operational Creditor may have a claim capable of adjudication in an appropriate proceeding, but whether such disputed claim can form the basis for initiation of CIRP under Section 9.

30. Applying the aforesaid principles, we find that the Corporate Debtor has placed on record contemporaneous correspondence exchanged substantially prior to the Demand Notice, raising specific disputes concerning delay in supply, short supply, cancellation of the balance scope, commissioning, technical performance and the contractual entitlement to the balance 5% amount. The record further discloses a prior controversy concerning the EPCG/deemed-export transactions and the liability to reimburse the GST amount deposited by the Operational Creditor. These disputes are supported by documentary material and cannot be characterised as a defence raised for the first time after receipt of the Section 8 Demand Notice.

31. The claim stated in the Petition comprises distinct components arising from different contractual and factual circumstances. The material on record does not establish that all such components became due and payable on the same date. In particular, the GST amount is stated to have been deposited through Form GST DRC-03 on 22.11.2025, whereas the retention claim and the claim towards engineer-related accommodation expenses arise from separate contractual terms and factual events. The common date of default stated in Part-IV of Form-5, therefore, cannot by itself establish default in respect of each component of the claim.

32. As regards the absence of a Record of Default from the Information Utility, the same cannot, by itself, constitute a ground for rejection of the Company Petition. Section 9(3)(d) of the Code contemplates furnishing of such record "if available", while Section 9(3)(e) permits furnishing of other evidence confirming that there is no payment of the unpaid operational debt. The absence of an Information Utility record is therefore not determinative of the present proceedings.

33. The judgments relied upon by the Operational Creditor concerning the evidentiary value of invoices, GST records and proceedings involving GST authorities do not alter the conclusion reached herein. The issue before this Tribunal is not merely whether the underlying transactions or payment of GST are evidenced by documents, but whether the liability claimed as operational debt was subject to a genuine dispute existing prior to receipt of the Demand Notice. Those authorities therefore do not displace the principles governing pre-existing dispute under Sections 8 and 9 of the Code.

34. We accordingly refrain from expressing any opinion on the ultimate merits of the rival claims relating to delay, commissioning, technical deficiencies, damages, GST liability, EPCG/deemed-export transactions, reimbursement or entitlement to the retention amount. Nothing contained in this order shall be construed as an adjudication upon the merits of such claims or counterclaims.

35. On an overall consideration of the pleadings and documents, we are satisfied that the Corporate Debtor has demonstrated, through contemporaneous documentary material, the existence of genuine disputes which pre-date the Demand Notice dated 12.05.2026. The disputes concern, inter alia, contractual performance, commissioning, entitlement to the balance 5% amount and liability towards GST reimbursement. The disputes are neither spurious nor illusory and require further investigation/adjudication outside the summary jurisdiction under Section 9 of the Code.

36. In view of the aforesaid discussion, the statutory requirements for admission of the present Company Petition under Section 9 are not satisfied. The material on record establishes the existence of genuine and pre-existing disputes between the parties prior to receipt of the Demand Notice dated 12.05.2026. Consequently, the condition contemplated under Section 9(5)(ii)(d) of the Code is attracted.

37. In view of the principles laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, (2018) 1 SCC 353, ***S.S. Engineers v. Hindustan Petroleum Corporation Limited & Ors.***, (2022) 13 SCC 294, and ***GLS Films Industries Private Limited v. Chemical Suppliers India Private Limited,*** 2026 INSC 344, the present Company Petition cannot be admitted where the operational debt is subject to a genuine pre-existing dispute.

38. Accordingly, **C.P. (IB) No.231/9/AHM/2026**, filed by Kusters Calico Machinery Private Limited, Operational Creditor, under Section 9 of the Insolvency and Bankruptcy Code, 2016, against HYS Industries Private Limited, Corporate Debtor, is **rejected**.

39. The rejection of the present Company Petition shall not be construed as an adjudication upon the merits of the rival contractual claims or counterclaims of the parties. The parties shall be at liberty to avail such remedies as may be available to them in accordance with law before the appropriate forum.

40. The Registry is directed to communicate a copy of this order to the Operational Creditor and the Corporate Debtor forthwith. There shall be no order as to costs.

-SD-

SANJEEV SHARMA
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

Note: This order of the Bench consisting of Hon'ble Member (Judicial) and Hon'ble Member (Technical), is pronounced in open court on behalf of the Bench by Hon'ble Member (Judicial), under Rule 151 of the NCLT Rules, 2016.

Sd/-

(Paresh Vedani)
Court Officer