

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

RCP (IB) 1/MB /2025

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016.

In the matter of

Ramesh Bokadia

...Operational Creditor/Applicant

Versus

Orbit Electomech India Pvt Ltd.

...Corporate Debtor/Respondent

Order Delivered on 26.05.2025

Coram:

Shri.Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor	: Rohan Agarwal ,Adv.
For the Corporate Debtor	: Avinash R. Khanolkar i/b Ruturaj Bankar,Adv.

ORDER

1. This Petition RCP (IB) 1/MB/2025 (Old Case C.P. (IB)/2814/MB/2019 Restored on 06/01/2025) is filed by M/s Ramesh Bokadia (hereinafter referred as '**Applicant**'/ ('**Operational Creditor**')) under Section 8 & 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the **Code/IBC**') seeking initiation of Corporate Insolvency Resolution Process ("**CIRP**") against Orbit Electomech India Pvt Ltd

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(hereinafter referred as '**Respondent**'/ '**Corporate Debtor**') for non-payment of Operational Debt of Rs. 1,27,97,715/- Inclusive of Interest.

2. The principal amount is Rs. 1,03,94,983 and the interest of 18% on the outstanding debt which amounts to Rs 24,02,534/-, as of 05.07.2019.
3. The date of default as per respective invoices, as per Part IV of the Application, is:

	Invoice No.	Date of Default
i.	Invoice No.0258/17-18	:06.03.2018
ii.	Invoice No.0262/17-18	:10.03.2018
iii.	Invoice No.0278/17-18	:21.03.2018
iv.	Invoice No.0279/17-18	:23.03.2018
v.	Invoice No.0280/17-18	:23.03.2018
vi.	Invoice No.0290/17-18	:29.03.2018
vii.	Invoice No.0293/17-18	:30.03.2018
viii.	Invoice No.0298/17-18	:01.04.2018
ix.	Invoice No.0258/17-18	:09.04.2018
x.	Invoice No.0003/17-18	:18.05.2018
xi.	Invoice No.0008/17-18	: 22.05.2018

Submissions made by the Operational Creditor/Petitioner:

4. The Operational Creditor submits that the debt arises from the various invoices that became due and payable by the Corporate Debtor in respect of goods supplied by the Operational Creditor:

Sr.No.	Date	Invoice Number	Amount Rs.
01.	20.01.2018	0258/17-18	39,26,906/-
02.	24.01.2018	0262/17-18	15,340/-
03.	04.02.2018	0278/17-18	26,96,330/-

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04.	06.02.2018	0279/17-18	2,14,023/-
05.	12.02.2018	0280/17-18	5,99,204/-
06.	12.02.2018	0290/17-18	4,22,942/-
07.	13.02.2018	0293/17-18	1,08,696/-
08.	17.02.2018	0298/17-18	74,178/-
09.	23.02.2018	0306/17-18	15,21,185/-
10.	03.04.2018	0003/18	7,44,627/-
11.	07.04.2018	0008/18	71,012/-
		Total =	1,03,94,443

The amount became payable at expiry of 45 days from the date of the respective invoices.

5. The Operational Creditor submits that, on 18.02.2019, the Corporate Debtor made a part payment of ₹2,00,000.
6. The amount outstanding from the Corporate Debtor is duly recorded in the books of accounts and is also reflected in the Balance Sheet of the Operational Creditor.
7. Under these circumstances, the Operational Creditor issued a demand notice to the Corporate Debtor on 03.06.2019, demanding a sum of Rs. **1,03,94,983/-**. within Ten days from the receipt of the demand notice.
8. The Operational Creditor submits that, during the pendency of this Petition, consent terms were executed between the parties on 01.12.2023, wherein it was recorded that all disputes between them had been settled. Prior to the execution of the consent terms, the Corporate Debtor made the payments to the Operational Creditor via RTGS/NEFT i.e. ₹50,000 on 08.07.2023, ₹10,00,000 on 13.09.2023, ₹1,00,000 on 08.11.2023, and ₹12,44,983 on 21.11.2023. Further, under the said consent terms, the

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Corporate Debtor undertook before this Tribunal to pay the Operational Creditor an amount of ₹80,00,000 by way of post-dated cheques, in five installments, towards full and final settlement of its dues.

9. The Operational Creditor submits that, pursuant to an Agreement to Lease dated 13.09.2013 executed between the Maharashtra Industrial Development Corporation and the Corporate Debtor, the Corporate Debtor became the lessee of a plot situated in Aurangabad, Maharashtra. This property was offered as security to the Operational Creditor. It was further recorded in the consent terms that, in the event of default in payment of the remaining amount as stipulated, the Operational Creditor would be entitled to revive the present Company Petition, in addition to enforcing the security.
10. In the Restoration Application, the Operational Creditor submits that, prior to the execution of the consent terms, the Corporate Debtor had paid an amount of ₹23,94,983 to the Applicant.
11. In the consent terms, the Respondent undertook to pay the Applicant an amount of ₹80,00,000 by way of five post-dated cheques, towards full and final settlement of its dues in five instalments. However, when the Applicant presented the cheques for clearance, they were returned dishonoured for various reasons.
12. The Corporate Debtor had assured the Applicant that it would maintain sufficient funds in its bank account; however, failed to do so, thereby breaching the consent terms.
13. The Applicant, through its advocates, issued a letter dated 05.06.2024 to the Corporate Debtor, calling upon it to pay the outstanding amount of ₹80,00,000 along with interest at 18% per annum, amounting to ₹2,47,069, thereby aggregating to a total of ₹82,47,069. The Corporate Debtor has not responded to the said letter.

14. The Applicant, on multiple occasions, attempted to contact the Corporate Debtor telephonically regarding compliance with the payment obligations; however, the Respondent did not respond to the calls.

Submissions made by the Corporate Debtor:

15. The Corporate Debtor submits, in the reply filed in the year 2019 to the earlier company petition, that the Petitioner is not entitled to charge interest, as no contract was entered into between the parties in respect thereof. Furthermore, none of the Applicant's invoices contain any stipulation regarding the payment of interest for delayed payments.
16. The Corporate Debtor submits that none of the invoice refers any purchase order raised by the Respondent over the Petitioner this regard it is stated and submitted that the Corporate Debtor have never issued any written purchase order/work order to the Petitioner. Every contract between the parties was oral and it was limited only for that time being.
17. The Corporate Debtor relies on the judgment of the Hon'ble NCLAT in *International Road Dynamics South Asia Private Limited vs. Reliance Infrastructure Limited*, Company Appeal (AT) Insolvency No. 72 of 2017, wherein the Appellate Authority held that claims arising out of different work orders, involving different amounts and different dates of default, cannot be clubbed together in a single petition.
18. The Corporate Debtor submits that the demand notice is bad in law, as it pertains to different dates of default arising from distinct work orders. Therefore, the Petition deserves to be dismissed on this ground alone.
19. Furthermore, without prejudice to the foregoing submissions, the Respondent additionally states and submits that no "Notice of Dispute"

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has been filed in the present Petition, as required under Section 9(3)(b) of the Code.

Findings:

20. Heard learned Counsel for both the parties and have duly perused the documents on record.
21. The Petitioner has filed this Petition on the basis of default, alleged to have been committed by the Corporate Debtor, in payment of invoice(s) issued from 20.01.2018 to 07.04.2018 against the alleged supply of goods.
22. The Purchase Order issued by the Applicant contemplates (a) supply of goods to M/s Orbit Electromech Private Limited; (b) payment within 45 days; and (c) goods are to be delivered to the Corporate Debtor and payment becomes due and payable once the goods are supplied to the Corporate Debtor, but in the said purchase order does not contemplate interest payment on delayed payment. Further, the invoice(s) raised by the Petitioner also does not contemplate payment of interest on delayed payment, which can be understood from the fact that the payment was assured within 45 days by issuance of PDC. Hence, the claim of interest is not permissible in these proceedings in the absence of mutual agreement between the parties in relation to liability for interest on delayed payment.
23. We find no merit in the Corporate Debtor's argument that the absence of invoices renders the Demand Notice defective or incomplete in view of decision of Hon'ble NCLAT in the case of *Neeraj Jain Director of M/s Flipkart India Private Limited vs. Cloudwalker Streaming Technologies Private Limited (Company Appeal (AT)(Insolvency) No.1354 of 2019*, wherein it was held that :

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47.the choice of issuance of demand notice u/s 8(1) of the Code, either in Form 3 or Form 4, under the Application to Adjudicating Authority Rules 2016, depends on the nature of Operational Debt. Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice either Form 3 or Form 4, as per its convenience. The applicability of Form 3 or Form 4 depends on whether the invoices were generated during the course of transaction or not. It is also made clear that the copy of the invoice is not mandatory if the demand notice is issued in Form 3 of the Application to Adjudicating Authority Rules 2016 provided the documents to prove the existence of operational debt and the amount in default is attached with the application.”

24. It is noted that both parties, during the pendency of the Petition, mutually agreed to enter into consent terms to settle the matter. However, the consent terms dated 22.11.2023 were breached by the Corporate Debtor, as it failed to comply with Clause (6), which provided that in the event of default in payment by the Respondent, the Applicant would be entitled to revive the Company Petition. The Order dated 01.12.2023 also records that the Applicant shall have the liberty to revive the Company Petition in case of breach by the Respondent and to proceed in accordance with law. The Respondent has admittedly defaulted in its payment obligations under the consent terms, and the Applicant is therefore entitled to seek revival of the said Company Petition.
25. We note from the submission of Applicant that prior to the execution of the consent terms, the Corporate Debtor had paid an amount of ₹23,94,983 to the Applicant.
26. It is noted that both parties entered into consent terms wherein the Respondent undertook to pay ₹80,00,000 to the Applicant by way of five post-dated cheques, in five instalments, towards full and final settlement.

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However, the cheques were dishonoured upon presentation. Despite assuring the Applicant that sufficient funds would be maintained, the Respondent failed to do so, breaching the consent terms. The Applicant issued a demand letter dated 05.06.2024, seeking ₹80,00,000 along with interest of ₹2,47,069, totaling ₹82,47,069, but received no response. Multiple attempts to contact the Respondent telephonically also went unanswered, evidencing default and justifying revival of the Petition.

27. Since, the transaction in question is evidenced by the invoice(s), purchase order and other contemporaneous evidences, we are of considered view that it is not necessary to have an agreement or contract between the parties.
28. In our considered view the principal claim at the time of filing of present petition, even after excluding the interest alone, meets the threshold limit at the relevant time period, under the Insolvency and Bankruptcy Code, 2016. The petition is complete in all respect; accordingly, we are of considered view that it deserves to be allowed.

Order

- a. In the above circumstances the petition bearing **RCP(IB)1/2019MB/C-I**/filed by Ramesh Bokadia, the Operational Creditor, under section 8 and 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Orbit Electromech India Private Limited , the Corporate Debtor, is allowed.
- b. This Bench hereby appoints Mr. Charudutt Pandhrinath Marathe , **Registration No:IBBI/IPA-001/IP-P00350/2017-2018/10651** as the **Interim Resolution Professional** having email: - **charuduttm@yahoo.co.in**, ; Mobile No.9371432369 ; Office at Gomed, 915, Khare Town, Dharampeth ,Nagpur,Maharashtra

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,440010 ; to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. There shall be a moratorium under section 14 of the IBC, in regard to the following:

- i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

d. Notwithstanding the above, during the period of moratorium: -

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

e. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Sub-Section (1) of Section 31 of the Code or

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passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

- f. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. The Operational Creditor shall deposit an amount of **Rs. Three Lakhs** towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- h. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- i. The following persons/ authorities shall provide access to the books of account, records and other relevant documents and information to the interim resolution professional or the resolution professional, to the extent relevant for discharging his duties under the Code:
 - i. depositories of securities;
 - ii. professional advisors of the corporate debtor;
 - iii. information utilities;
 - iv. other registries that records the ownership of assets;
 - v. members, promoters, partners, board of directors and joint venture partners of the corporate debtor; and

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- vi. contractual counterparties of the corporate debtor.
- j. The creditor shall provide to the interim resolution professional or resolution professional, the information in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and such other information which shall assist the interim resolution professional or the resolution professional in preparing the information memorandum, getting valuation determined and in conducting the corporate insolvency resolution process.
- k. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by speed post and email immediately, and in any case, not later than two days from the date of this Order.
- l. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
PRABHAT KUMAR
Member (Technical)

Sd/-
JUSTICE V.G BISHT
Member (Judicial)