



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 85/KB/2025

***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:

Epic Steel Industry

... Applicant/ Operational Creditor.

Versus

Ambey Castings Private Limited

... Respondent/ Corporate Debtor.

Date of Pronouncement: 24.09.2025.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

CMDE. SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Operational Creditor

Mr. Ishaan Saha, Adv.

Mr. Aishwarya Kumar Awasthi, Adv.

For the Corporate Debtor

Mr. Vikrant Pachnanda, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

- 1.** This Court congregated through a hybrid mode.
- 2.** Heard the Learned Counsels for both parties.
- 3.** The instant application is preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "IBC" by the Epic Steel Industry,

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hereinafter referred to as the **“Applicant”/ “Operational Creditor”** against, Ambey Castings Private Limited hereinafter referred to as **“Respondent” / “Corporate Debtor”** seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process, (for brevity “CIRP”) in respect of the Corporate Debtor.

4. Factual Matrix

4.1 Epic Steel Industry, the Operational Creditor, supplied 667.91 MT of pig iron and runner skull to the Corporate Debtor under 21 invoices issued between September 2023 and May 2024. All supplies were duly received and accepted without protest by the Corporate Debtor.

4.2 Under settled commercial law, delivery of goods and payment are concurrent obligations, rendering the amounts due immediately upon delivery. The Corporate Debtor, on 31 March 2024, provided a balance confirmation acknowledging an outstanding principal of ₹2,25,68,982.18.

4.3 Relying on the Corporate Debtor’s assurances of payment, the Operational Creditor continued supplies until May 2024, adding a further ₹49,70,768.88 to the outstanding balance. Partial ad hoc payments made by the Corporate Debtor were appropriated against these recent invoices, leaving a principal due of ₹2,05,14,749.58.

4.4 Despite repeated reminders and follow-ups, the Corporate Debtor failed to clear the dues. Consequently, the Operational Creditor issued a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, for ₹2,33,36,751.75 (inclusive of interest).

4.5 The Corporate Debtor’s reply disputed only the interest component, thereby implicitly admitting the principal amount due, which exceeds the

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₹1 crore threshold prescribed for initiation of proceedings under Section 9 of the Code. No pre-existing dispute exists regarding the principal liability, which remains in default.

4.6 In view of the default and absence of any genuine dispute, the Operational Creditor has sought initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor for restructuring and resolution under the provisions of the Insolvency and Bankruptcy Code, 2016.

5. Submissions of the Applicant:

- 5.1** It is contended that Epic Steel Industry, the Operational Creditor, supplied 667.91 MT of pig iron and runner skull to the Corporate Debtor under 21 invoices issued between 20 September 2023 and 30 May 2024, which were duly received and accepted without any reservation or protest.
- 5.2** It is claimed that under settled law, delivery of goods and payment of price are concurrent obligations, making the price payable immediately upon delivery. Accordingly, the Corporate Debtor became liable to pay the invoice amounts as soon as the goods were received.
- 5.3** It is submitted that on 31 March 2024, the Corporate Debtor issued a balance confirmation unequivocally acknowledging ₹2,25,68,982.18 as due and payable to the Operational Creditor for supplies made up to that date. Relying on this admission and assurances of payment, the Operational Creditor continued to supply goods until 30 May 2024, worth ₹49,70,768.88.
- 5.4** It is further submitted that between 01 April and 31 May 2024, the Corporate Debtor made ad hoc payments totaling ₹70,25,000. Of this, ₹49,70,768.88 was first appropriated towards invoices for goods supplied

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during April–May 2024, and the balance ₹20,54,232 was applied to earlier invoices, leaving a principal balance of ₹2,05,14,749.58 unpaid.

- 5.5** It is contended that despite repeated reminders, the Corporate Debtor failed and neglected to clear the dues. Consequently, a Section 8 Demand Notice under the Insolvency and Bankruptcy Code, 2016, was issued on 3 October 2024, claiming ₹2,33,36,751.75 (principal plus ₹28,22,002.17 interest at 18% per annum).
- 5.6** It is submitted that in its reply dated 24 October 2024, the Corporate Debtor did not dispute the principal debt but only questioned the interest component and raised procedural objections about the format of the Demand Notice. The Applicant clarifies that the Demand Notice was issued in full compliance with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- 5.7** It is further submitted that the Corporate Debtor’s claim of improper adjustment of payments is baseless, as lump sum payments made without allocation instructions may be appropriated at the creditor’s discretion, a right the Operational Creditor duly exercised.
- 5.8** It is contended that reliance on Section 61 of the Indian Contract Act by the Corporate Debtor is misplaced and without legal merit. The Operational Creditor has followed proper accounting and allocation principles in appropriating payments.
- 5.9** It is submitted that the Corporate Debtor’s reply implicitly admits liability, as the principal amount alone exceeds ₹1 crore, satisfying the statutory threshold under Section 4 of the IBC. No pre-existing dispute exists regarding the principal debt, which remains in default.

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- 5.10** It is further submitted that the Operational Creditor has produced comprehensive documentary evidence invoices, e-way bills, bank statements, balance confirmation, and the Section 8 Demand Notice clearly establishing the existence of debt and default. Filing a record of default with an information utility is not mandatory, and the Applicant's evidence suffices to establish default under settled law.
- 5.11** It is contended that the Corporate Debtor's non-payment and procedural objections are an attempt to delay legitimate recovery, causing financial hardship to the Operational Creditor and undermining the sanctity of commercial obligations.
- 5.12** It is finally submitted that in the absence of any genuine dispute and in view of the admitted debt exceeding ₹1 crore, the Applicant is entitled to initiation of the CIRP under Section 9 of the IBC, 2016, for restructuring and resolution of the Corporate Debtor.

6. Submissions of the Respondent

- 6.1** It is contended that the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 is not maintainable at the threshold as the Operational Creditor, Epic Steel Industry, is an unregistered partnership firm. In terms of Section 69(2) of the Partnership Act, 1932, an unregistered partnership cannot institute legal proceedings to enforce contractual rights.
- 6.2** Reliance is placed on **Raptakos Brett & Co. Ltd. v. Ganesh Property** (1998) 7 SCC 184 (Para 21) and on **Ethiopian Airlines v. Ganesh Narain Saboo** (2011) 8 SCC 539 (Paras 59–62), which clarified that the term “suit” includes all legal proceedings to enforce rights. The Kochi Bench of this Tribunal in **The Bangalore Sales Corporation v. Sark Spice Products Pvt. Ltd.** [C.P (IBC)/37/KOB/2022] has also

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held that an unregistered partnership cannot initiate insolvency proceedings.

- 6.3** It is claimed that the demand notice issued by the Operational Creditor is not in conformity with Section 8(1) of the IBC read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Invoices were raised under a contractual relationship, requiring issuance of a demand notice in Form 4 with copies of the undisputed invoices annexed. Instead, the Applicant used an incorrect format, rendering the demand notice defective.
- 6.4** It is submitted that the purchase orders relied upon by the Operational Creditor did not specify a payment timeline, and it was orally agreed that lump sum payments would be made from time to time and adjusted by the Operational Creditor. Ledger statements between 2022 and September 2023 show this established practice. The Corporate Debtor paid ₹70,25,000 between 1 April 2024 and 31 May 2024, as well as earlier payments, which the Applicant malafidely adjusted against later invoices (April–May 2024) instead of clearing earlier dues. This manipulation was allegedly done to extract higher interest and is contrary to Section 61 of the Contract Act, 1872.
- 6.5** It is further submitted that there was no agreement on interest payment between the parties. The invoices relied upon by the Operational Creditor do not mention any agreed rate of interest. Levying 18% interest is therefore unjustified. The NCLAT in **Pavan Enterprises v. Gammon India Ltd.** [Company Appeal (AT) (Insolvency) No. 144 of 2018] held that in the absence of a contractual provision for interest, only the principal amount constitutes operational debt.

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6.6 It is contended that the Corporate Debtor's reply to the Section 8 notice raised legitimate objections, including improper adjustment of payments and defects in the notice format. The Applicant's reliance on balance confirmation does not override these legal and procedural infirmities.

6.7 It is submitted that the Operational Creditor's attempt to invoke CIRP is a misuse of IBC proceedings as a recovery tool. The alleged defaults arise out of commercial accounting disputes rather than a clear operational debt without dispute.

7. Analysis and Findings

7.1 The present application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. For initiation of the CIRP against the Corporate Debtor. The amount claimed as operational debt is ₹2,33,36,751.75, which includes a principal sum of ₹2,05,14,749.58 and interest of ₹28,22,002.17. The statutory threshold for admission under Section 4 of the IBC is ₹1 crore, which the principal amount alone satisfies.

7.2 The Respondent has raised a preliminary objection that the Operational Creditor is an unregistered partnership firm and therefore barred under Section 69(2) of the Partnership Act, 1932 from instituting proceedings. **Section 69(2) of the Partnership Act provides as under:** "*Section 69(2) in The Indian Partnership Act, 1932 (2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm*".

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In a case filed by a partnership firm, all the partners have to agree or at least authorise the partner.

7.3 It would be apt to refer to the decision of Hon'ble NCLAT, Delhi in the matter of **Rourkela Steel Syndicate Vs Metistech Fabricators Pvt. Ltd.** reported in Company Appeal (AT)(Insolvency) No. 924 of 2022, wherein the Hon'ble NCLAT held that, an application under Section 9 of IBC cannot be said to be a suit. The relevant extract of the judgement is reproduced below for reference: - "*6. An application under Section 9 of IBC cannot be said to be a suit and analogy of Hon'ble Supreme Court judgment in **Hargovindbhai Dave's case**, is fully applicable to the application filed under Section 9 IBC also.* Further, also it is well settled by the judgment of the Hon'ble Supreme Court in **B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates**, (2019) Company Appeal (AT) (Insolvency) No. 924 of 2022 Page 4 of 4 11 SCC 633 that provision of Section 5 Limitation Act are also fully applicable in Section 7 & 9 IBC applications. Section 5 Limitation Act is not applicable in a suit which is also a clear indication that Application under Section 7 & 9 are not a suit.

7.4 The Respondent argues that the Section 8 demand notice was defective for not being issued in the correct form (Form 4) as required under Rule 5(1)(b). The Operational Creditor has produced the demand notice dated 03.10.2024, copies of invoices, e-way bills, and a balance confirmation. The Corporate Debtor replied on 24.10.2024, raising objections but did not claim ignorance of the debt or default.

7.4 The Applicant supplied 667.91 MT of pig iron and runner skull under 21 invoices between 20.09.2023 and 30.05.2024. The Corporate Debtor accepted the goods without protest and issued a balance

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confirmation on 31.03.2024, admitting ₹2,25,68,982.18 as due. Even after partial payments of ₹70,25,000 in April–May 2024, the principal balance remained ₹2,05,14,749.58. The Corporate Debtor’s reply to the Section 8 notice only disputes the interest component and format of the notice, not the supply of goods or the confirmed principal balance. These facts establish the existence of an operational debt.

7.5 The Respondent contends that the Operational Creditor misapplied lump sum payments to later invoices to inflate interest liability. Under Section 61 of the Indian Contract Act, 1872, when a debtor makes a payment without specifying which debt it is to be applied against, the creditor may appropriate it at its discretion. The Corporate Debtor has not produced evidence of specific instructions for allocation or any contemporaneous objection. Hence, this objection does not constitute a pre-existing dispute under the IBC.

7.6 The invoices relied upon by the Operational Creditor do not mention any agreed rate of interest. In this regard, it is pertinent to note that the Hon’ble Karnataka High Court in the matter of **Jyothi Ltd. vs. Boving Fouress Ltd. reported in 2000 SCC OnLine Kar 832** “ 21. while deciding upon the issue of awarding interest as a ‘debt’ due along with principal amount, has held as follows: “(a) The term ‘debt’ refers to an ascertained and definite amount ‘due’ and does not refer to a claim for compensation/damages or a claim which requires assessment by a court before it becomes due and payable. (b) The term ‘debt’ may refer not only to ‘principal’ (value of goods or amount advanced), but also to interest due thereon, where there is a contract to pay interest. Where the contract specifically provides for payment of interest, or where there is an admission or promise to pay interest by the company or where in proceedings for recovery of money, a competent court or arbitrator has

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determined the liability to pay interest, then non-payment of interest (whether with principal or interest alone) may amount to inability to pay debts. (c) Interest cannot be awarded merely on the basis of a term in a bill or invoice, unless the creditor proves that such provision is based on a contract or agreement on the part of the purchaser to pay interest. This is because a credit bill or an invoice is a unilateral demand by the supplier and is neither a bilateral agreement nor a promise by the purchaser to pay interest. Interest can be awarded on the basis of a provision in a bill/invoice, if it is supported by an agreement or promise to pay interest by the purchaser. Such agreement may be established with reference to correspondence, or by countersigning of the bill by the purchaser, or by acceptance by the purchaser of the term in the bill relating to interest. Where in the absence of an agreement or contract for payment of interest on the value of goods supplied, a notice of demand is sent by the supplier requiring payment of the value of goods supplied with interest thereon and a reply is sent by the purchaser in general terms seeking time to pay the bill amount, such reply cannot be construed as an admission to pay interest. Either an agreement to pay interest or a specific admission or promise to pay interest or an order or decree granting interest by a court or tribunal empowered to award interest, is a condition precedent to hold that interest is a debt due, for the purpose of a winding up petition. In the absence of a contractual or legal liability, mere omission to deny a demand made in a notice will not create a liability, nor act as an estoppel in regard to a subsequent denial by the company in legal proceedings.

7.7 Further, in **Steel India v. Theme Developers Pvt. Ltd. reported in Company Appeal (AT) (Insolvency) No. 1014 of 2019**, Hon'ble NCLAT observed that: "It is settled that the charging of interest, ought to be an actionable claim, enforceable under law, provided it was properly agreed upon between the parties."

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7.8 In **SS Polymers vs. Kanodia Technoplast Limited reported in CP(IB)121/ND/2019**, the *Ld. NCLT New Delhi bench* has also held that :
“not every interest can be treated as a debt. If in terms of the agreement, interest is payable to the operational and financial creditor; then the debt will include interest; otherwise, the principal amount is to be treated as a debt which is the liability in respect of the claim that can be made from the corporate debtor.”

(Emphasis Added)

Therefore, interest at 18% cannot be treated as operational debt for admission purposes. However, exclusion of interest does not affect the admitted principal amount, which independently crosses the statutory threshold.

7.9. The dictum laid down in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** has also been followed by Hon’ble NCLAT in catena of judgments wherein it is clearly held that the existence of the dispute must be pre-existing i.e., it must exist before the receipt of the demand notice or invoice. In the absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice, the application cannot be rejected under section 9 and is required to be admitted.

- 8.** Having regard to the conspectus of facts of the present case and the judgements cited (supra), we are of the considered view that the corporate debtor is in default of payment of the outstanding operational debt owed to the applicant, which has also been acknowledged by the Respondent and thus, the mandatory requirements as prescribed under Section 9(5) of the Code, 2016 are satisfied.

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9. In the light of the enumerations supra, the application bearing **C.P. (IB) No. 85/KB/2025**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 9 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by the **Epic Steel Industry (Operational Creditor)**, under **Section 9** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Ambey Casting Pvt. Ltd. (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 9 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - 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 asset 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 (54 of 2002);*

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d) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a 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, shall not be suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has not proposed any name as the "IRP". Hence, we appoint **Mrs. Rachna Jhunjhunwala Mobile no- 9831141167 IBBI/IPA-001/IP-P00389/2017-18/10707 Email id - egress.rac@gmail.com** . as the **Interim Resolution Professional (IRP)** of the Corporate Debtor, by invoking the provision under Section 16 (3) (a) of the I&B Code, 2016 to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The

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IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. 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.
- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.

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- x.** The IRP or the RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 9(5)(i) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means 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.
- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

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- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 10.** Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.
- 11.** Post the matter on **04 /11/2025** for filing the Periodical Progress Report by the IRP/RP.

**Cmde Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

The Order signed this, on the 24th day of September 2025.

V. Tiwari (LRA)