

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



ITEM No.302
C.P.(IB)/287(AHM)2025

Under Section 9 of IB Code, 2016

IN THE MATTER OF:

Intertex Pvt. Ltd
V/s
Electrotherm (India) Limited

.....Applicant

.....Respondent

Order delivered on: 17/04/2026

C O R A M:

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

ORDER
(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)

— SD —

SHAMMI KHAN
MEMBER (JUDICIAL)

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

CP (IB) No. 287/AHM/2025

(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: Electrotherm (India) Limited

Intertex Private Limited

384-M, Dabholkarwadi, 4th Floor, Room No. 12,
Kalbadevi Road, Mumbai-400002
Email- intertex@intertexpl.com

.... Applicant/ Operational Creditor

VERSUS

Electrotherm (India) Limited

A-1, Skylark Apartment, Satellite Road,
Ahmedabad-380015

.... Respondent/Corporate Debtor

Order Pronounced On: 17.04.2026

CORAM:

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

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

APPEARANCE:

For the Petitioner/OC : Mr. Manish Bhatt, Sr. adv

: a.w. Mr. Yash Dadhich, Adv

For the Respondent/CD: Mr. Saurabh Soparkar, Sr. Advocate

: Mr. Rashesh Sanjanwala, Sr.

: Adv a.w. Mr. Ravi Pahwa, Adv

CP (IB) No. 287 of 2025

Intertex Private Limited V Electrotherm (India) Limited



ORDER
(Per: Bench)

1. This Company Petition is filed on 19.07.2025 by the Applicant – Intertex Private Limited (hereinafter referred to as ‘Operational Creditor’) against the Respondent – Electrotherm (India) Limited (hereinafter referred to as ‘Corporate Debtor’) under Section 9 of the IBC, 2016 read with Rule 6 of the IB (AAA) Rules, 2016 for initiation of CIRP, appointment of IRP and declaration of moratorium for default in payment of operational debt of Rs. 19,02,97,336.41/-, being the amount due and payable by the Corporate Debtor towards supply of goods, along with applicable interest, as detailed in the Petition.
2. On perusal of Part-I of Form-5, it is revealed that the Petitioner – Intertex Private Limited, a company incorporated under the provisions of the Companies Act, is having its registered office at 384-M, Dabholkarwadi, 4th Floor, Room No. 12, Kalbadevi Road, Mumbai – 400002. The Petitioner, being a company, is having CIN: U17120MH1982PTC028909.
3. On perusal of Part-II of Form-5, it is revealed that the Respondent – Electrotherm (India) Limited, bearing CIN



Number: L29249GJ1986PLC009126, is a company incorporated on 29.10.1986, having its registered office at A-1, Skylark Apartment, Satellite Road, Ahmedabad – 380015, Gujarat, India, as evidenced from the material on record. The Respondent's authorised share capital is Rs. 78,59,00,000/-, and its paid-up share capital is ₹24,74,28,140/-, as reflected in the said Master Data.

4. On perusal of Part-III of Form-5, it is revealed that the Petitioner has not proposed the name of any Interim Resolution Professional for appointment as IRP under Section 13(1)(c) of the IBC, 2016, and the relevant particulars in respect thereof are stated as "NA" in the application.
5. On perusal of Part-IV of Form-5, it is revealed that the total amount of operational debt due and payable by the Respondent/Corporate Debtor to the Petitioner/Operational Creditor is ₹19,02,97,336.41/- (Rupees Nineteen Crore Two Lakh Ninety-Seven Thousand Three Hundred Thirty-Six and Forty-One Paise Only) as on 11.02.2023, being the date of default. Part IV provided other information: -



- i. Details of seven purchase orders mentioning PO No., PO date, Payment date, and PO values. This shows purchase orders were place during the period 13.10.2022 to 05.11.2022.
 - ii. The payments were to be made within 30 days of the date of invoice.
 - iii. A total of 274 invoices were raised in the period 19.10.2022 to 11.01.2023 for amounts totalling to Rs 19,07,35,840.63 and payment of Rs 4,38,504.22 was received and balance amount due was Rs 19,02,97,336.41. The date of default for the present application is stated to be 11.02.2023.
6. The Operational Creditor is engaged in the business of trading and supply of goods, including iron ore pellets and lam coke, and during its business dealings, the Corporate Debtor approached the Operational Creditor from time to time for procurement of such goods.
7. The Corporate Debtor placed various purchase orders upon the Operational Creditor on different dates, inter alia including purchase orders dated 13.10.2022, 17.10.2022, 18.10.2022, 28.10.2022, 03.11.2022 and 05.11.2022, specifying the description of goods, quantity, price, delivery terms, and other commercial conditions. It was expressly agreed between the parties that payment against the invoices raised pursuant to such purchase orders shall be made



within 30 days from the date of invoice. The said purchase orders form the basis of the contractual relationship between the parties and are annexed herewith and marked as **Annexure-I (Colly)**.

8. It is further submitted that in pursuance of the aforesaid purchase orders, the Operational Creditor duly supplied the goods to the Corporate Debtor from time to time and raised various invoices in respect thereof during the period from 19.10.2022 to 11.01.2023, clearly reflecting the invoice number, date, due date and amount payable. The due dates of the invoices were calculated in accordance with the agreed credit period of 30 days. The details of such invoices, along with copies thereof, are annexed collectively as **Annexure-II (Colly)**.

9. The Petition notes that despite receipt of goods without any demur and acceptance of the invoices raised by the Operational Creditor, the Corporate Debtor failed and neglected to make payment of the outstanding amounts within the stipulated time. The Operational Creditor maintained a running ledger account in the ordinary course



of business, reflecting all transactions, invoices raised and payments received, if any. As per the said ledger account, a sum of ₹19,02,97,336.41/- remains due and payable by the Corporate Debtor. The copy of the ledger account is annexed herewith and marked as **Annexure-III**.

10. The Petition further notes that the Corporate Debtor has committed default in payment of the aforesaid operational debt and the date of default is 11.02.2023, being the date on which the amount became due and remained unpaid. Despite repeated follow-ups and requests made by the Operational Creditor, the Corporate Debtor failed to discharge its liability.
11. The Petition states that the Operational Creditor, in compliance with the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016, issued a Demand Notice dated 04.02.2025 in Form 3 calling upon the Corporate Debtor to pay the outstanding operational debt. The Corporate Debtor replied to the said Demand Notice vide reply dated 21.02.2025, raising untenable and baseless contentions, which were duly refuted by the Operational Creditor by way of a rejoinder dated 19.05.2025. The copies of the Demand



Notice, reply and rejoinder along with their annexures are annexed herewith and marked as **Annexure-IV (Colly)**.

12. On perusal of Part-V of Form-5, it is revealed that the Petitioner/Operational Creditor has categorically stated that it does not hold any security interest in respect of the operational debt claimed in the present application. It is further stated that there is no retention of title or reservation of ownership clause in respect of the goods supplied to the Corporate Debtor forming the subject matter of the present petition.
13. It is further revealed that there is no order or decree passed by any Court of law, Tribunal or Arbitral Authority adjudicating upon the operational debt or default in question. The Petitioner has also clarified that the provisions relating to succession certificate, probate of will or letters of administration are not applicable to the present case.
14. It is stated that the Petitioner has relied upon the record of default, if any, maintained with the Information Utility, and has annexed relevant documents evidencing the occurrence of default. In the present case, the Operational Creditor has



primarily relied upon documentary evidence such as purchase orders, invoices, and ledger account to substantiate the claim of default.

15. It is further revealed that the Petitioner has placed on record the ledger account of the Corporate Debtor maintained in the ordinary course of business, reflecting the transactions between the parties and the outstanding operational debt, which has been annexed as Annexure–III. The Petitioner has also annexed copies of invoices (Annexure–II Colly) and purchase orders (Annexure–I Colly) in support of the claim.

16. It is further revealed that the Petitioner has annexed the Demand Notice dated 04.02.2025 issued under Section 8 of the Insolvency and Bankruptcy Code, 2016, along with the reply dated 21.02.2025 and rejoinder dated 13.05.2025, together with proof of service, which are collectively annexed as Annexure–IV (Colly).

17. The Petitioner has further stated that apart from the aforesaid documents, all other relevant documents evidencing the existence of operational debt and default, including correspondence exchanged between the parties,




have also been annexed to the present application. The said documents clearly establish the liability of the Corporate Debtor and the occurrence of default within the meaning of the Insolvency and Bankruptcy Code, 2016.

18. The Petitioner has placed the facts through this Petition in the following manner: -

18.1. It is stated that the Petitioner, *Intertex Private Limited*, is engaged in the business of trading and supply of goods, including iron ore pellets and lam coke. The Respondent, *Electrotherm (India) Limited*, is a company incorporated under the provisions of the Companies Act and is engaged in manufacturing and allied industrial activities. In the ordinary course of business, the Respondent approached the Petitioner and placed purchase orders for supply of the aforesaid goods from time to time.

18.2. Pursuant to the said business relationship, the Respondent issued various purchase orders upon the Petitioner, inter alia, specifying the description of goods, quantity, price, delivery terms and other commercial conditions. The Petitioner duly supplied the goods in accordance with the said purchase orders without any demur or dispute from the Respondent.

18.3. It is stated that against the aforesaid supplies, the Petitioner raised several invoices upon the Respondent



during the period from 19.10.2022 to 11.01.2023, clearly reflecting the invoice number, date, due date and amount payable. As per the agreed terms between the parties, payment of the invoices was required to be made within 30 days from the date of invoice.

18.4. It is further stated that despite receipt and acceptance of the goods and invoices, the Respondent failed to make payment of the outstanding dues within the stipulated period. The due dates of the invoices fell between November 2022 and February 2023 (including 11.01.2023), and upon failure of the Respondent to clear the dues, the Petitioner repeatedly followed up with the Respondent requesting payment of the outstanding amounts.

18.5. It is stated that despite repeated requests and follow-ups, the Respondent failed and neglected to discharge its liability towards the Petitioner, resulting in accumulation of outstanding dues. The Petitioner maintained a running ledger account in the ordinary course of business, reflecting the transactions between the parties and the outstanding amount payable by the Respondent.

18.6. It is stated that since the Respondent failed to clear the outstanding dues, the Petitioner issued a Demand Notice dated 04.02.2025 under Section 8 of the Insolvency and Bankruptcy Code, 2016, calling upon the Respondent to pay the outstanding operational debt. The said demand notice was duly served upon the Respondent.



- 18.7. Thereafter, the Respondent replied to the said Demand Notice vide reply dated 21.02.2025, raising untenable and baseless contentions, which were duly refuted by the Petitioner by way of a rejoinder dated 19.05.2025. The Respondent, however, failed to make payment of the outstanding dues.
- 18.8. It is further stated that as per the books of account and ledger maintained by the Petitioner, a sum of Rs. 19,02,97,336.41/- remains due and payable by the Respondent, and the Respondent has committed default in payment of the said operational debt, the date of default being 11.02.2023.
- 18.9. It is therefore submitted that despite service of the demand notice and sufficient opportunity, the Respondent has failed to discharge the outstanding operational debt, thereby committing default within the meaning of Section 3(12) of the Insolvency and Bankruptcy Code, 2016, and consequently, the Petitioner has filed the present application under Section 9 of the Code seeking initiation of Corporate Insolvency Resolution Process against the Respondent.
19. The Petitioner has filed an **Undertaking** through its authorised signatory confirming that the claim has been duly submitted with the Information Utility, namely National E-Governance Services Limited (NeSL) and that **Form-C has already been filed** as part of the present Petition. The



Petitioner has further undertaken to file Form-D upon receipt from the Information Utility before this Hon'ble Tribunal.

20. The Petitioner/Operational Creditor has filed an **Additional Affidavit** on 28.07.2025 vide Inward Diary No. D- 5063 (DMS Portal on 26.07.2025) placing on record copies of GSTR-Form 1 and GSTR-Form 3B returns for the relevant period, which are annexed as **Annexure-I (Colly)**. The said statutory returns reflect the outward supply of goods made by the Petitioner to the Corporate Debtor and substantiate the transactions forming part of the operational debt claimed in the present Petition.
21. This Adjudicating Authority vide Order dated 28.07.2025, directed issuance of notice to the Respondent and further directed the Petitioner to serve the same through Registered Post/Speed Post, Dasti, and Email. In compliance with the said Order, the Petitioner has filed an **Affidavit of Service** on 18.08.2025 vide Inward Diary No. D-5589 evidencing that the notice along with copy of the Petition and the said Order was duly served upon the Respondent.



22. It is seen from the Affidavit of Service that the Petitioner initially attempted to serve the notice at the registered address of the Respondent; however, the same was refused by the Respondent. Thereafter, the Petitioner caused service through letter dated 31.07.2025 (Annexure-B) along with tracking details, and further effected service through email dated 01.08.2025 (Annexure-C) upon the registered email address of the Respondent. The postal tracking records (as seen in the annexed documents) indicate that the article was duly processed and delivered.

23. This Adjudicating Authority, vide Order dated 28.07.2025, directed the Applicant/Operational Creditor to place on record the bank account statements along with bank certificate and the last audited financial statements of the Operational Creditor by way of an additional affidavit.

24. In compliance with the aforesaid directions of this Adjudicating Authority, the Applicant/Operational Creditor has filed an **Additional Affidavit** on 21.08.2025, vide Inward Diary No.D- 5608, placing on record various documents in



support of the present Petition, which are summarised hereunder:

- 24.1. It is submitted that the Applicant/Operational Creditor has placed on record the bank statements for the period from September 2022 to July 2025 along with the bank certificate, which are collectively annexed as **Annexure-I (Colly)**. The said bank statements, commencing from September 2022, clearly demonstrate the financial transactions undertaken in the ordinary course of business and corroborate the commercial dealings between the parties.
- 24.2. It is further seen that the Petitioner has also annexed the last audited financial statements of the Operational Creditor as **Annexure-II**, thereby establishing the financial standing and regular course of business of the Petitioner. Additionally, the Petitioner has placed on record copies of invoices along with corresponding e-way bills, collectively annexed as **Annexure-III (Colly)** (running into multiple volumes), evidencing the actual supply and movement of goods to the Corporate Debtor.
- 24.3. It is submitted that the aforesaid documents, including bank statements, audited financials, and invoices with e-way bills, clearly establish the genuineness of transactions, supply of goods and existence of operational debt, and the same have been taken on record by this Tribunal.



25. The Corporate Debtor filed its Reply on DMOS Portal on 05.09.2025. This Adjudicating Authority, vide Order dated 12.09.2025, took on record the reply filed by the Respondent, despite a delay of a few days in filing the same, which delay was condoned. The contentions of the respondent are mentioned hereunder: -

25.1. It is submitted that the Respondent/Corporate Debtor, through its authorised signatory, has filed an Affidavit-in-Reply (11 pages) opposing the present Petition and the reliefs sought therein, and has raised various objections against the admission of the Petition.

A. On Maintainability

25.2. The Respondent/Corporate Debtor has contended that the present Petition is not supported by any authority letter or board resolution, and on this ground alone, the Petition is liable to be rejected.

25.3. The present Petition suffers from various defects, as detailed in the Affidavit-in-Reply, and has sought rejection of the Petition on such grounds:

- i. It is submitted that the Respondent/Corporate Debtor has contended that the parties have had continuous business transactions since 2018, however, the Petitioner has placed on record only a selective ledger account for the period from



26.08.2022 to 31.03.2024 (Annexure-III). It is alleged that in the absence of complete ledger accounts reflecting the entire course of dealings, including prior transactions and debit/credit notes, the present Petition cannot be properly appreciated in its entirety.

- ii. It is submitted that the Respondent/Corporate Debtor has contended that the calculation of the outstanding amount annexed with the Demand Notice dated 04.02.2025 (at pages 342-348) reflects a credit/payment of Rs.4,38,504.22, however, no corresponding entry of the said amount is reflected in the ledger accounts produced by the Petitioner. On this basis, it is alleged that the ledger accounts relied upon by the Petitioner are disputed, and in the absence of complete ledger accounts reflecting all transactions and accounting entries, the outstanding amount claimed by the Petitioner cannot be relied upon.
- iii. It is submitted that the Petition is vague and inconsistent, since the Petitioner has referred to both services and supply of goods (iron ore pellets, lam coke, etc.) without clarity regarding the nature of transactions or supporting documents, and on this ground, the Petition is stated to be not maintainable.
- iv. It is submitted that the Respondent/Corporate Debtor has contended that the Demand Notice dated




04.02.2025 is defective, as though it refers to annexed invoices, the copies of such invoices were not annexed thereto, and on this ground, the present Petition is stated to be liable to be dismissed.

B. Pre-Existing Disputes

25.4. The Respondent/Corporate Debtor has contended that there exist pre-existing disputes between the parties, which were duly communicated prior to issuance of the Demand Notice under the Insolvency and Bankruptcy Code, 2016.

25.5. The Respondent/Corporate Debtor has contended that the goods supplied by the Petitioner, namely iron ore pellets, lam coke and lam coke fines, were of inferior/defective quality and/or short supplied, and accordingly, the Respondent issued debit notes in respect thereof. It is further stated that such debit notes were communicated to the Petitioner through courier on 03.12.2022, 25.07.2023 and 06.12.2023, and via email dated 11.12.2023, i.e., prior to issuance of the Demand Notice. A copy of the email dated 11.12.2023 is annexed as **Annexure-R1**.

25.6. The Respondent/Corporate Debtor has further contended that the Petitioner, vide email dated 15.12.2023, refused to accept the debit notes and stated that the same were returned on 08.12.2022, 29.07.2023 and 08.12.2023. It is alleged that the said correspondence evidences the existence of pre-existing disputes between the parties



with respect to quality and short supply of goods prior to issuance of the Demand Notice. A copy of the email dated 15.12.2023 is annexed as **Annexure-R2**.

25.7. The Respondent/Corporate Debtor has further contended that, vide email dated 15.12.2023, it informed the Petitioner that the debit notes were issued based on QC reports, and that the performance of its furnaces was adversely affected during the period of supply. The Respondent also requested the Petitioner to provide a revised ledger account for reconciliation purposes. A copy of the said email dated 15.12.2023 is annexed as **Annexure-R3**.

25.8. The Respondent/Corporate Debtor has contended that the debit notes issued by it were based on supporting documents and laboratory reports, which allegedly establish that the goods supplied were of inferior quality. Copies of the debit notes along with relevant documents and the lab report are annexed as **Annexure-R4**.

25.9. It is further contended that the Petitioner has also initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 against the Respondent, which are stated to be pending adjudication. It is further contended, by placing reliance on Section 5(6) of the Insolvency and Bankruptcy Code, 2016, that the existence of such proceedings constitutes a "dispute" within the meaning of the Code.

5(6) "dispute" includes a suit or arbitration proceedings relating to



- (a) the existence of amount of debt;
- (b) the quality of goods or services;
- (c) the breach of a representation or warranty;

25.10. The Respondent/Corporate Debtor has contended that the proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881, pending before the Learned JMFC, Mumbai, constitute a pre-existing dispute between the parties. In support thereof, the Respondent has annexed copies of the notice dated 09.01.2023, reply dated 24.01.2023 and the status report of Criminal Case bearing Summary Case No. 3300575/2023, collectively annexed as **Annexure-R5**.

25.11. The Respondent/Corporate Debtor has contended that, in view of the alleged pre-existing disputes, even the record of default filed with the Information Utility in Form-C reflects a disputed status. In support thereof, the Respondent has annexed a copy of the Record of Financial Information (Form-C) issued by National E-Governance Services Limited (NeSL) as **Annexure-R6**.

25.12. The Respondent/Corporate Debtor has contended that there exists a history of disputes between the parties, including transactions in the year 2020, wherein it is alleged that the Petitioner had supplied inferior quality/short quantity of goods and failed to adjust debit notes. It is further stated that the Petitioner had initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881, which were subsequently withdrawn upon reconciliation and amicable settlement



before Lok Adalat. In support thereof, the Respondent has annexed copies of the notice dated 30.11.2020, status report of SS Case No. 4300499/2021 and Order of disposal dated 13.08.2022, collectively as **Annexure-R7**.

C. Corporate Debtor is Commercially Solvent, Going Concern 6b Operational and viable entity

25.13. It is submitted that the Respondent/Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and sale of induction furnaces, engineering equipment, steel, ductile iron pipes, electric vehicles, transformers, and allied products. The Respondent has also disclosed its authorised, issued, and paid-up share capital is as under: -

Particulars	Amount (₹)
Authorised Share Capital	78,59,00,000
Issued Share Capital	24,74,28,140
Paid-Up Share Capital	24,74,28,140

25.14. It is submitted that the Respondent/Corporate Debtor was incorporated on 29.10.1986 as Foremost Chemical Limited and was subsequently renamed as Electrotherm (India) Limited in the year 1994. It is further stated that the Company was initially listed with regional stock exchanges and thereafter listed on the Bombay Stock Exchange (BSE) in October 1994 and on the National Stock Exchange of India Limited (NSE) in August 2007, and presently has approximately 9,000 shareholders.



25.15. It is submitted that the Respondent/Corporate Debtor is a multi-divisional, multi-product and multi-location company, having its manufacturing facilities at Palodia, Taluka Kalol, District Gandhinagar (Engineering & Technologies Division) and Samakhiyali, Taluka Bhachau, District Kutch (Special Steel & Electric Vehicle Division). It is further stated that the Respondent also has certain inoperative divisions/assets situated at Juni Jithardi (Vadodara), Vatva Industrial Estate (Ahmedabad) and Dhank (Rajkot).

25.16. It is submitted that the Respondent/Corporate Debtor operates through three principal business verticals, namely: (i) Engineering & Technologies Division catering to the metal melting industry, (ii) Steel Division, being a fully integrated steel plant manufacturing TMT bars and DI pipes, and (iii) Electric Vehicle Division engaged in manufacturing battery-operated two-wheelers. It is further stated that the Respondent is a leading manufacturer of induction melting furnaces and refining equipment, with global presence through installations across multiple countries, and is also engaged in execution of turnkey projects. The Respondent has further claimed a strong market presence in steel and DI pipe products, supported by an established distribution network and approvals from various government and private entities.



25.17. It is submitted that the Respondent/Corporate Debtor has contended that its Engineering & Technologies Division supplies metal melting furnaces to steel producers globally and smaller furnaces to the domestic foundry industry, and maintains a substantial order book of approximately Rs.700–Rs.800 Crores, contributing significantly to its revenues. It is further stated that the Respondent's TMT division (ET TMT) caters to various infrastructure and construction companies, while its ductile iron pipe business supplies to government departments and infrastructure entities in India and has also undertaken exports to international markets. The Respondent has further stated that it has substantial receivables from government and other customers arising from such supplies.

25.18. It is submitted that the Respondent/Corporate Debtor is a going concern and a running industrial unit, and has placed on record its financial performance for the last five financial years, reflecting its operational and financial position. The financial snapshot of the Respondent for the said period is set out hereinbelow:

(Rs. in Crores)

Year	Revenue	Profit Before Interest, Depreciation and Tax	Profit after Tax*
F.Y. 2020–2021	2530.96	230.04	63.30
F.Y. 2021–2022	2834.04	99.14	(31.99)
F.Y. 2022–2023	3080.74	141.24	28.09
F.Y. 2023–	4275.84	424.48	319.43



2024			
F.Y. 2024-2025	4122.95	379.59	321.82

*Profit after Tax before Exceptional Item

The relevant pages of Statement of Profit & Loss of the Annual Report of respective years at **Annexure-R8**.

25.19. It is submitted that the Respondent/Corporate Debtor has contended that it provides direct and indirect employment to more than 5,000 employees/workmen, thereby reflecting its status as a significant running industrial concern.

25.20. It is submitted that the Respondent/Corporate Debtor has contended that more than 5,000 families are dependent on its operations, and that its financial viability is evident from the fact that it has paid salaries and wages amounting to Rs.311.39 Crores in F.Y. 2024-2025, thereby demonstrating its status as a going concern.

25.21. It is submitted that the Respondent/Corporate Debtor has contended that it is a commercially solvent and going concern, and that the present Petition has been filed as a recovery mechanism for disputed dues, which is impermissible under the scheme and object of the Insolvency and Bankruptcy Code, 2016. It is further alleged that the claim is subject to pending reconciliation of accounts, and therefore, the present Petition is liable to be dismissed with exemplary costs.



26. In compliance with the order dated 12.09.2025, the Applicant/Operational Creditor has filed its **rejoinder** on 29.09.2025 vide Inward Diary No. D- 6621 (on DMS Portal on 26.09.2025). The contents of the said rejoinder are reproduced herein below:


26.1. The Respondent/Corporate Debtor has contended that it is a commercially solvent and a going concern, and that the present Petition has been filed as a mere recovery proceeding in respect of disputed dues, which is impermissible under the scheme and object of the Insolvency and Bankruptcy Code, 2016. It is further contended that the claim is subject to pending reconciliation of accounts, and therefore, the present Petition is liable to be dismissed with exemplary costs.

26.2. It is submitted, without prejudice to the other contentions of the Petitioner, that the Affidavit-in-Reply filed by the Corporate Debtor has been signed and verified by one Mr. Shailesh Bhandari, stated to be the authorised signatory/Executive Vice Chairman, however, no valid board resolution or authority has been placed on record in support thereof. It is therefore contended that the said Affidavit-in-Reply is defective and cannot be treated as a valid or duly authorised response.

A. On Maintainability



- 26.3. The Petitioner has clarified that the present Petition has been duly signed and verified by its authorised signatory, Mr. Arvind Sanghai, and is supported by a valid board resolution dated 12.05.2025, which is also available on record before this Hon'ble Tribunal.
- 26.4. The Petitioner has denied the contention of the Corporate Debtor regarding incomplete ledger and has stated that it has raised several invoices and placed on record a ledger account commencing from 26.08.2022, which is relevant for the present Petition and sufficiently reflects the business transactions between the parties.
- 26.5. It is further submitted that the said ledger clearly evidences the payments made by the Corporate Debtor as well as the default in payment of outstanding dues, and therefore, there is no requirement to produce the entire ledger since the year 2018. It is further contended that the Corporate Debtor has not denied the existence of business transactions, and has itself admitted issuance of debit notes dated 03.12.2022, 13.01.2023 and 25.07.2023, and therefore, cannot dispute the transactions or the ledger placed on record by the Petitioner.
- 26.6. The Petitioner has denied the contention of the Corporate Debtor and has stated that although certain payments were made by the Corporate Debtor, it has failed to clear the entire outstanding dues in terms of the invoices raised. It is further submitted that the Petitioner has



duly accounted for and adjusted an amount of Rs.4,38,504.22 towards payments received, and therefore, the allegation that such amount is not reflected in the ledger is incorrect and misconceived.

26.7. The Petitioner has denied the contentions of the Corporate Debtor and has contended that the objection regarding the nature of business transactions is frivolous and immaterial, because it is clearly established that the parties were engaged in business transactions involving supply of goods, and that the Corporate Debtor has failed to clear the outstanding dues. It is further submitted that there is no dispute about supply of goods by the Petitioner, and therefore, the objection raised by the Corporate Debtor is merely an attempt to raise a frivolous and untenable defence.


26.8. The Petitioner has denied the contention of the Corporate Debtor and has stated that the objection regarding alleged defect in the Demand Notice is misplaced and an attempt to derail the proceedings, particularly when the Corporate Debtor had replied to the Demand Notice on 21.02.2025 without raising such objection at the relevant time. It is further submitted that, in any event, it is a settled position of law that a defective demand notice does not render the Petition non-maintainable, and therefore, the said contention of the Corporate Debtor is liable to be rejected.



B. Pre-Existing dispute

26.9. The Petitioner has denied the contention of the Corporate Debtor regarding existence of pre-existing dispute and has contended that the Corporate Debtor itself has admitted that the parties have been in continuous business transactions since 2019. It is further submitted that, as per the email dated 11.12.2023 placed on record by the Corporate Debtor, the alleged debit notes were issued on 03.12.2022, 13.01.2023 and 25.07.2023, which are much after the invoices raised and supply of goods. It is further submitted that the Corporate Debtor had, in response to the notice dated 09.01.2023 issued under Section 138 of the Negotiable Instruments Act, 1881, replied vide letter dated 24.01.2023 without raising any dispute with respect to quality of goods or issuance of debit notes, and had only taken a defence of pendency of proceedings. It is further submitted that the Corporate Debtor has also placed on record the status of the said proceedings, registered on 21.02.2023, thereby demonstrating that no dispute existed at the relevant time.


26.10. It is further submitted that the alleged debit notes were raised only after issuance of notice and initiation of proceedings, and therefore, are an afterthought. It is further contended that the said debit notes pertain to the period 31.07.2022 to 15.12.2022, whereas the goods were supplied only between 19.10.2022 to 08.11.2022,



and moreover, the said debit notes do not correspond with the invoices raised by the Petitioner. Accordingly, it is submitted that the alleged debit notes are fabricated, unjustified and raised belatedly, and do not constitute a genuine pre-existing dispute.

26.11. The Petitioner has further contended, without prejudice, that the alleged debit notes raised by the Corporate Debtor were issued after consumption of the goods and are merely an attempt to evade liability, constituting a “moonshine defence”. It is further submitted that such debit notes were raised unilaterally as an afterthought upon apprehension of legal proceedings, and were never accepted by the Petitioner. It is contended that the Corporate Debtor had not raised any issue regarding quality or supply at the relevant time, and that the alleged debit notes were issued nearly a month after supply of goods and do not contain any proper or cogent objection with respect to quality or quantity.

26.12. It is further submitted that the alleged dispute is neither genuine nor bona fide, but is feeble and contrived solely to avoid payment, and therefore cannot qualify as a valid pre-existing dispute under the Insolvency and Bankruptcy Code, 2016. It is further contended that the lab reports relied upon by the Corporate Debtor are not supported by any certification or accreditation by competent authorities, and hence cannot be relied upon, and consequently, the reliance placed on such



documents to justify debit notes is misplaced and unsustainable in law.

- 26.13. The Petitioner has contended that the alleged debit notes lack bona fides, as the Corporate Debtor has availed Input Tax Credit (ITC) on the invoices but has not reversed the same, which is mandatory in cases of rejection of goods under the GST regime. It is submitted that such conduct is inconsistent with a genuine dispute and indicates acceptance of supply, thereby rendering the alleged dispute a sham defence.
- 26.14. Reliance is placed on the judgment of the Hon'ble NCLAT in ***Promila Taneja v. Surendri Design Pvt. Ltd., Company Appeal (AT) (Insolvency) No.459 of 2020*** to contend that non-reversal of ITC undermines claims of pre-existing dispute.
- 26.15. The Petitioner has denied the contention of the Corporate Debtor regarding reliance on NeSL Form-C, and has contended that the Corporate Debtor is drawing a false implication by terming the same as disputed. It is submitted that merely recording a dispute in the Information Utility does not establish the existence of a genuine pre-existing dispute; as such records are informational in nature and cannot be relied upon as a valid defence. It is further contended that the conduct of the Corporate Debtor in this regard is misleading and liable to be rejected.



26.16. The Petitioner has contended that the proceedings under Section 138 of the Negotiable Instruments Act, 1881 are criminal in nature and pertain to the offence of cheque dishonour, and therefore cannot be construed as recovery proceedings or as evidence of a pre-existing dispute. It is further submitted that the Corporate Debtor cannot rely on the pendency of such criminal proceedings to contend existence of a dispute under the Insolvency and Bankruptcy Code, 2016.

C. Corporate Debtor is solvent

26.17. It is submitted that the Petitioner has denied the contention of the Corporate Debtor regarding its commercial solvency and has contended that the same is immaterial for the purposes of admission of a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016.

26.18. It is submitted that the relevant consideration is the existence of an operational debt under Section 5(21) of the Code and default in repayment thereof under Section 3(12), and once such debt and default are established, the financial position of the Corporate Debtor is not a valid defence.

"(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"



"(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not Paid by the debtor or the corporate debtor, as the case may be;"

- 26.19. It is submitted that there is no dispute regarding the existence of business transactions, supply of goods and issuance of invoices, and that the Corporate Debtor has defaulted in payment of the outstanding dues, thereby constituting a default under the Insolvency and Bankruptcy Code, 2016. It is further submitted that the operational debt is due and payable, and the contention of the Corporate Debtor regarding its commercial solvency is immaterial and not a valid defence under Section 9 of the Code.
- 26.20. The Petitioner has denied the contentions raised by the Corporate Debtor and has contended that the Corporate Debtor has failed to establish any valid defence, having raised baseless and frivolous arguments, and therefore, the reply filed by the Corporate Debtor is liable to be rejected in its entirety.
- 27.** This Hon'ble Tribunal, vide Order dated 14.10.2025, after hearing the Learned Senior Counsel for the parties, recorded that the Learned Senior Counsel for the Applicant/Operational Creditor agreed to undertake reconciliation of the debit notes referred to by the Corporate



Debtor with its books of account to verify whether those amounts are accounted or not.

28. It was further directed that the Applicant shall file an **Additional Affidavit** in this regard. In compliance thereof, the Applicant has filed the said Additional Affidavit, albeit belatedly, on 07.11.2025, vide Inward Diary No. D-7362, and the same has been taken on record by this Hon'ble Tribunal.

The contents thereof are summarised/reproduced hereunder:

- 28.1. It is submitted that, in compliance with the order dated 14.10.2025 passed by this Hon'ble Tribunal, the Applicant/Operational Creditor has filed an Affidavit in Compliance placing on record reconciliation of debit notes raised by the Corporate Debtor with the books of accounts of the Applicant.
- 28.2. It is further submitted that the Corporate Debtor had raised various debit notes against invoices; however, upon reconciliation, the Applicant has duly accounted for such debit notes in its books, to the extent accepted, and the same stands reflected in the accounts.
- 28.3. The debit notes pertain to period from 31.07.2022. The invoices raised by the Applicant for the period from 19.10.2022 onwards remain outstanding and unpaid, thereby constituting operational debt due and payable.



- 28.4. The debit notes issued by the Corporate Debtor which were genuine and accepted by the OC were already accounted for in the books of account of the OC.
- 28.5. It is submitted that the Applicant has issued corresponding credit notes, wherever applicable, in respect of accepted debit notes, and the same are collectively annexed as **Annexure-A (Colly)**.
- 28.6. It is further submitted that the ledger account of the Corporate Debtor for the period 01.04.2022 to 31.03.2023, reflecting all transactions including adjustments, payments and outstanding balances, is annexed as **Annexure-B**, which clearly establishes the subsisting default.
- 28.7. It is submitted that even after giving effect to all debit/credit adjustments, an amount of Rs.19,02,97,336.41/- remains due and payable as on the date of filing of the Petition for the invoices for period 19.10.2022 to 11.01.2023, thereby evidencing default under the provisions of the Insolvency and Bankruptcy Code, 2016.
- 28.8. It is further submitted that the debit notes issued by the Corporate Debtor have neither been duly substantiated nor accepted in entirety and are therefore unsustainable and liable to be disregarded by this Hon'ble Tribunal.
29. Further, the Respondent/Corporate Debtor has filed an

Affidavit dated 10.11.2025 vide Inward Diary No. D-7455,



(On 18.11.2025 on DMS Portal) placing on record certain additional submissions in support of its defence, which are summarised hereunder:

- 29.1. It is submitted that the Respondent – Corporate Debtor has filed an Affidavit placing on record that the deponent is the authorised signatory/Executive Vice Chairman and is duly competent and authorised to depose in the present matter.
- 29.2. It is further submitted that during the pendency of the present Petition, the Corporate Debtor has made a payment of Rs.29,32,869/- on 07.11.2025 through RTGS (UTR Ref. No. RTGS Dr-IDIB000F523-INTERTEX PRIVATE LTD-AHMEDABAD-YESBR52025110756555840), which has been acknowledged in the said affidavit.
- 29.3. It is submitted that the Corporate Debtor has contended that it had issued debit notes amounting to Rs.18,79,07,985.55 prior to issuance of the Demand Notice, which according to it constitutes adjustment against the alleged dues.
- 29.4. It is further submitted that the Corporate Debtor has alleged that upon reconciliation of ledger accounts and adjustment of debit notes along with the aforesaid payment dated 07.11.2025, the entire outstanding amount stands paid and no amount remains due and payable.



29.5. It is submitted that based on the above contentions, the Corporate Debtor has prayed for dismissal of the present Petition.

30. In compliance with the Order dated 10.11.2025, the Respondent/Corporate Debtor has filed its **Counter Affidavit** to the affidavit filed by the Applicant on 10.12.2025, vide Inward Diary No. 8344, placing on record its submissions, which is summarised as below: -

30.1. The Respondent/Corporate Debtor has filed an Additional Affidavit in response to the Affidavit dated 05.11.2025 filed by the Petitioner, through its authorised signatory, who is duly competent and conversant with the facts of the case.

30.2. The Corporate Debtor has reiterated that, during the pendency of the Petition, it has made a payment of Rs.29,32,869/- on 07.11.2025 through RTGS, which has been duly placed on record.

30.3. The Corporate Debtor has contended that 370 debit notes amounting to Rs.18,79,07,985.55 were issued and served upon the Petitioner prior to issuance of the Demand Notice, and therefore, the same constitute a pre-existing dispute under the Code.

30.4. The Corporate Debtor has contended that the issue regarding acceptance or non-acceptance of debit notes is irrelevant for the purpose of Section 9 proceedings, and



that such disputes pertaining to quality of goods are required to be adjudicated by a competent court and not under summary jurisdiction of this Hon'ble Tribunal.

- 30.5. The Corporate Debtor has relied upon the terms and conditions of purchase orders, contending that the Petitioner was obligated to maintain quality of goods and therefore cannot dispute the debit notes raised on account of quality issues.
- 30.6. The Corporate Debtor has contended that the transactions between the parties were running and continuous in nature, and therefore, debit notes are required to be adjusted against the entire account and not against specific invoices.
- 30.7. The Corporate Debtor has contended that regarding alleged default of Rs 19,02,97,336.41 after adjusting debit notes and payments, no amount remains due and payable, and therefore, the present Petition is liable to be dismissed.
- 30.8. The Respondent/Corporate Debtor has placed reliance on the judgment of this Hon'ble Tribunal in ***Shah Paper Mills Limited vs. Shree Rama News Print and Paper Limited***, to contend that a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 cannot be maintained as a recovery proceeding.
- 30.9. The Corporate Debtor has relied upon a judgment to contend that a defective demand notice may render the




Petition non-maintainable, contrary to the submissions of the Petitioner.

- 30.10. The Respondent/Corporate Debtor has relied upon the judgment in ***N H Scrap Traders through its Proprietor Nareshkumar Harishchandra Shakya vs. Kena Alloys Private Limited***, to contend that a defective demand notice renders the petition non-maintainable.
- 30.11. The Corporate Debtor has contended that its in-house Chemical & Physical Testing Laboratory is accredited by NABL, and in support thereof, has annexed a copy of the NABL Certificate as **Annexure-S1**.
- 30.12. The Corporate Debtor has also placed on record a Chartered Accountant Certificate (**Annexure-S2**) to contend that it has not wrongly availed Input Tax Credit (ITC), and that ITC has been reversed in accordance with the provisions of the GST law.
- 30.13. Based on the aforesaid contentions, the Corporate Debtor has prayed for dismissal of the present Petition with exemplary costs.
31. Further, in compliance with the Order dated 10.11.2025, the Applicant/Operational Creditor has filed its **Rejoinder to the Counter Affidavit** of the Respondent on 16.12.2025 vide Inward Diary No. D-8606, placing on record its submissions, which are reproduced/summarised hereunder:



- 31.1. The present Rejoinder has been filed by the Applicant/Operational Creditor in response to the Additional Affidavit dated 09.12.2025 filed by the Corporate Debtor, placing on record its submissions in compliance with the directions of this Hon'ble Tribunal.
- 31.2. The payment of Rs.29,32,869/- made on 07.11.2025 by the Corporate Debtor does not affect the maintainability of the present Petition, as the default is to be determined as on the date of filing of the Petition, and such payment only evidences acknowledgment of liability.
- 31.3. The said payment demonstrates a continuing admission of liability by the Corporate Debtor and negates the allegation of any pre-existing dispute.
- 31.4. Alleged 370 debit notes amounting to Rs.18,79,07,985.55 do not constitute a valid pre-existing dispute and have been specifically denied by the Petitioner, and the Petitioner has already given credit of Rs.5,68,697.09 as reflected in the ledger.
- 31.5. The Corporate Debtor, in its reply dated 24.01.2023 to the notice under Section 138 of the Negotiable Instruments Act, did not raise any dispute regarding quality, weight or debit notes, and only cited internal issues, thereby establishing that the alleged dispute is an afterthought.
- 31.6. The debit notes were first communicated much later vide email dated 11.12.2023, after a substantial delay, which



further establishes that the defence of pre-existing dispute is a moonshine defence.

31.7. The purchase orders relied upon by the Corporate Debtor do not contain quality specifications and the goods were supplied on “as is where is” basis, and were duly consumed without objection, thereby negating any allegation of defective supply.


31.8. It is submitted that no contemporaneous complaint, rejection memo, test report, or evidence of deficiency was ever raised by the Corporate Debtor, and therefore, the allegation of quality issues is unsustainable.

31.9. The debit notes cannot be unilaterally adjusted in a running account unless accepted by the supplier, and the Petitioner has neither accepted nor acted upon such debit notes, and the same do not relate to the invoices forming the subject matter of the present Petition.

31.10. The date of filing of the Petition, the operational debt amounted to ₹19,02,97,336.41 (principal) and remained unpaid, and subsequent payments are irrelevant for determining default under the Code.

31.11. The Corporate Debtor cannot reduce its liability unilaterally by issuing debit notes and thereafter claim that the Petition has become infructuous.

31.12. The test reports relied upon by the Corporate Debtor do not disclose sampling details, chain of custody, or correlation with specific invoices, and no such reports



were ever shared contemporaneously with the Petitioner, and therefore cannot be relied upon.

31.13. It is further submitted that reliance on NABL accreditation is misplaced, as a general accreditation does not establish existence of a dispute, particularly when raised after filing of the Petition.

31.14. It is submitted that the reliance placed on a Chartered Accountant Certificate for GST adjustments is unilateral, incapable of independent verification, and does not establish acceptance of debit notes or existence of a dispute.

32. The Respondent/Corporate Debtor has filed its **written submissions** on 19.12.2025 vide Inward Diary No. D- 8678 (On 17.12.2025 on DMS Portal). In the said written submissions, the Respondent has, inter alia, relied upon the following judgments, the relevant extracts whereof are reproduced hereinbelow:

1. *Mohit Minerals Limited v. Shree Rama News Print Limited. Hon'ble NCLAT in Company Appeal (AT) (Ins) No.620 of 2019*
2. *Tirupati Enterprise v. Sadbhav Engineering Ltd Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 95 of 2025*



3. *Tirupati Enterprise v. Sadbhav Engineering Ltd.*
[Copy of order dated 14.11,2025 passed by the
Hon'ble Supreme Court in Civil Appeal No. 31747 of
2025]

33. Further, the Applicant/Operational Creditor has also filed its **written submissions** on 05.03.2026 vide Inward Diary No. D- 2014. In the said written submissions, the Operational Creditor has relied upon the following judgments, the relevant extracts whereof are reproduced herein below:

1. *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*
2. *Mr. Mukesh Goel v. Aldous Commodities Private Limited and Anr.*
3. *Anup Sushil Dubey Suspended Board Member Umarai Worldwide (P) Ltd. v. National Agriculture Co-operative Marketing Federation of India Ltd. and Anr.*
4. *M/s Saraswati Wire and Cable Industries v. Mohammad Moinuddin Khan*
5. *R.J. Packwells Pvt. Ltd. v. Maurya Printers Pvt. Ltd.*
6. *Kewan Krishan Sharma v. Navneet Gupta (RP) and Anr.*

34. Furthermore, in compliance with the order dated 18.12.2025, an additional affidavit has been filed by the



Applicant/Operational Creditor on 05.03.2026 vide Inward Diary No. D-1990 (On 03.12.2025 on DMS Portal) to **place on record the Form-D** generated by Information Utility being record of default with the status of the debt and default is recorded as "Disputed". The same is taken on record.

35. This Tribunal vide order dated 06.03.2026, recorded that during hearing, the learned Senior Counsel appearing for the Respondent/Corporate Debtor contended that in the present case also the amount of debt and default shown no more exists in view of the debit notes raised by the Corporate Debtor and balance amount has already been paid which is in excess of the balance amount.
36. It is submitted that the Corporate Debtor has placed reliance on a tabular statement reflecting the alleged adjustment of debit notes and payments, contending that the outstanding amount stands fully discharged.

S r. N o.	Petition No.	Name of Petitio ner / Operati onal Credito r	Claim Amount as per Petition (Rs.)	Debit Notes (Rs.)	Outstan ding Amount as per Petition after adjustm ent of debit	Paymen t made (Rs.)
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					notes (Rs.)	
1.	C.P.(IB)/287(AH M)/2025	Intertex Pvt. Ltd.	19,02,9 7,336	18,79,0 7,985	23,89,3 51	29,32,8 69
2.	C.P.(IB)/289(AH M)/2025	A T Trade Oversea s Pvt. Ltd.	15,70,0 6,421	3,18,32, 032	12,51,7 4,389	12,83,6 6,263

37. It is further submitted that the learned Senior Counsel for the Applicant/Operational Creditor has disputed the unilateral adjustment of debit notes, and has contended that the amount claimed in the Petition continues to remain due and payable, thereby constituting default under the Code.

38. We have heard the arguments of the Ld. Sr. Counsel for the Petitioner/Operational Creditor as well as Ld. Sr. Counsel for the Respondent/Corporate Debtor and have perused the material available on record. We frame the following issues for our determination:

A. Whether there exist an operational debt and default within the meaning of Section 5(21) and Section 3(12) of the Insolvency and Bankruptcy Code, 2016?

B. Whether a pre-existing dispute, including in respect of debit notes and the quantum of liability, existed between the parties prior to the issuance of the Demand Notice dated 04.02.2025, thereby rendering the present petition under Section 9 of the Code not maintainable?



- C. Whether, in view of the payments made and adjustments claimed, any amount remains due and payable by the Corporate Debtor to the Petitioner?
- D. Whether the present petition filed under Section 9 of the Code is maintainable in the facts and circumstances of the case?

39. We state below brief facts of the case:

- 39.1. The present Company Petition has been filed by the Petitioner/Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor for an alleged default of ₹19,02,97,336.41/-.
- 39.2. It is the case of the Petitioner that pursuant to Purchase Orders dated 13.10.2022 (Annexure-I to the Petition), the Petitioner supplied goods, namely Iron Ore Pellets and LAM Coke Fines, to the Corporate Debtor during the period October 2022 to February 2023, against which invoices were raised from time to time (Annexure-II). As per the terms of the transaction, payment was to be made within 30 days from the date of invoice. It is further submitted that despite repeated reminders, the Corporate Debtor failed to make payment of the outstanding dues.
- 39.3. The Petitioner thereafter issued a Demand Notice dated 04.02.2025 under Section 8 of the Code (Annexure-IV), to which the Corporate Debtor replied on 21.02.2025, raising disputes about the quality of goods supplied



and enclosing details of debit notes. The Petitioner filed a rejoinder dated 13.05.2025, denying the said contentions.

39.4. The Corporate Debtor, in its Reply, has contended that there exists a pre-existing dispute on account of defective quality of goods, short supply and discrepancies, and has relied upon 370 debit notes aggregating to ₹18,79,07,985.55/- (Annexures R4 to Reply), which were issued prior to the issue of demand notice. It is further contended that after adjustment of such debit notes and payments made, no amount remains due and payable.

39.5. Additional affidavits have been filed by both parties, including the record of default (Form-D) obtained from the Information Utility, wherein the status of the debt is recorded as “disputed.”

40. We also summarise the chronology of events leading to the filing of the Present Petition by the Operational Creditor:

Date	Event
13.10.2022, 17.10.2022, 18.10.2022, 28.10.2022, 3.11.2022, 5.11.2022	Purchase Orders issued by the Corporate Debtor (Pages 21 to 34 of the Petition)
19.10.2022 to 11.02.2023	Issue of invoices by the Petitioner (Pages 35 to 308 of the Petition)
03.12.2022, 13.01.2023,	Issue of debit notes by the Corporate Debtor (Pages 26 to 1909 of the Reply of the Respondent filed on



and 25.07.2023	05.09.2025)
04.02.2025	Issue of demand notice under section 8 of the Code (Pages 338 to 348 of the Petition)
21.02.2025	Reply to the demand notice by the Corporate Debtor (Pages 349 and 350 of the Petition)
19.07.2025	Petition under section 9 is filed.

41. Based on the facts of the case, we now consider the issues framed.


42. **Findings on Issue No. A:** Whether there exist an operational debt and default within the meaning of Section 5(21) and Section 3(12) of the Insolvency and Bankruptcy Code, 2016?

42.1. Upon consideration of the pleadings and documents placed on record, this Adjudicating Authority observes that the existence of commercial transactions between the parties is not in dispute. The record reveals that the Corporate Debtor had placed Purchase Orders on various dates from 13.10.2022 to 5.11.2022) (Annexure-I to the Petition) upon the Petitioner for supply of Iron Ore Pellets and LAM Coke Fines. Pursuant thereto, the Petitioner effected supplies from time to time and raised corresponding invoices during the period October 2022 to 11.02.2023 (Annexure-II to the Petition). The terms of payment, as reflected from the invoices, stipulated that the amounts were payable within 30 days from the date of invoice.



42.2. The Petitioner has relied upon the said invoices, ledger account (Annexure-III) and the Demand Notice dated 04.02.2025 issued under Section 8 of the Code (Annexure-IV), to contend that an amount of ₹19,02,97,336.41/- remained unpaid and in default. The Corporate Debtor has not denied receipt of goods nor has it disputed the underlying business relationship between the parties. There is no dispute on the issue of invoices and supply of material except that raised in the debit notes discussed later in this order.

42.3. However, it is equally evident from the record that the Corporate Debtor has not admitted the liability in the amount claimed by the Petitioner. In its Reply to the Demand Notice dated 21.02.2025 (Annexure-IV, Colly.), the Corporate Debtor has specifically disputed the quantum of liability and has contended that substantial deductions are liable to be made on account of debit notes raised towards defective quality of goods, short supply, and other discrepancies. For the sake of convenience, the reply dated 21.02.2025 is



reproduced

hereinbelow:


2. We state that the goods supplied by you were defective/short supply and we had issued debit notes for the supply of defective/ short supply of goods. You have also filed a complaint for dishonour of cheque to the tune of Rs. 28.60 Crores. Therefore it is clear that there are pre-existing disputes between the parties. Further, Section 5(6) of IBC which defines "dispute" includes a suit or arbitration or any other proceeding in relation to the existence of the amount of debt.
3. As per the Terms and Conditions of the Purchase Order, Debit notes will be issued if the material supplied is not as per the specifications. It is to state that you had supplied substandard and defective goods for which we have issued various Debit Notes to the tune of Rs. 18.79 Crores before issuance of Demand Notice. We have also requested you to take back the defective goods which you have not done. This makes it clear that there are pre-existing disputes between the parties.
4. There are also various communications exchanged between the parties for reconciliation of the accounts. It is settled law that "reconciliation" also amounts to existence of pre-existing disputes between the parties. It is to state that in reconciliation of accounts, you have not booked approx. 370 debit notes of Rs.

18.79 crores issued by us as the quality of goods supplied were not as per the quality specified by company like High Sulphur / Moisture / Low FC / High Ash/shortage of quantity.

5. In view of above, it is clear that there are pre-existing disputes between the parties, which may not be gone into by the Hon'ble Adjudicating Authority in the summary jurisdiction bestowed upon it. We deny that any amount is due and payable by us to you.
6. In view of above, we call upon you to forthwith withdraw the Demand Notice. If despite this Notice of Dispute, you initiate any action, the same will be defended at your cost, risk and consequences.

42.4. The Corporate Debtor has further placed reliance upon 370 debit notes aggregating to ₹18,79,07,985.55/- (Annexures R4 to Reply), which, according to it, substantially reduce or extinguish the liability claimed by the Petitioner.

42.5. It is also pertinent to note that the date of default has been stated as 11.02.2023, being the date on which the last invoice fell due, and the said position is also reflected in the record of default obtained from the



Information Utility (Form-D placed on record by way of additional affidavit). However, the said record itself indicates that the debt is marked as “disputed,” thereby reflecting the existence of a contest regarding liability.

42.6. In these circumstances, although the supply of goods and raising of invoices stand established from the material on record, the **existence of an operational debt in the amount claimed and the occurrence of default cannot be stated to be with certainty.** The determination of the actual amount due, if any, is intrinsically dependent upon the validity, enforceability, and adjustment of the 370 debit notes aggregating to ₹18,79,07,985.55/-, which have been raised by the Corporate Debtor on 03.12.2022, 13.01.2023 and 25.07.2023 and communicated via email on 11.12.2023 prior to the issuance of the Demand Notice dated 04.02.2025, and the same forms the subject matter of dispute between the parties.

42.7. Accordingly, this Tribunal holds that although the supply of goods and raising of invoices stand established. However, in view of the existence of a pre-existing dispute, this Adjudicating Authority refrains from conclusively determining the existence of default in terms of Section 3(12) of the Code.

43. **Findings on Issue No. B:** Whether a pre-existing dispute, including in respect of debit notes and the quantum of



liability, existed between the parties prior to the issuance of the Demand Notice dated 04.02.2025, thereby rendering the present petition under Section 9 of the Code not maintainable?

43.1. To decide this issue, we refer to the contents of relevant documents:

- i. The Petitioner has filed copy of purchase orders issued by Electrotherm (India) Limited on pages 21 to 34 of the Petition).
- ii. The description of Iron Ore Pellets 63% Indigenous as per a purchase order appearing on page 25 (dated 28.10.2022). The purchase order refers to specification of the product stating the contents of various items with limits. One such purchase order, for illustration, is extracted below:

Sr. Material No.	Code/Description of Material/Delivery Data	EO.Qty	PO.Qty	Rate	Rs.	Discnt	Taxable Amount.	CGST		SGST		IGST	
								Rate	Amnt	Rate	Amnt	Rate	Amnt
								J/P	J/M				
1	4000000001 (HSN Code : 2601) IRON ORE PELLETS 63% INDIGENOUS Specification : Fe : 63 % (+/-0.20%), SiO2 : 6.0% Max., Al2O3 : 1.50% Max., S : 0.010% Max., P : 0.040% Max., CaO : 1% Max., MgO : 1% Max., Moisture : 0.50% Max., Tumbler Index : 93-95 ; Size : 6mm to 15mm, CCH : 220 Kgo/Pallet. Sr/Deli.Date/Qty 21/10.11.2022/2,000 00	2,000.000	2,000.000	9,881.00	0.00	19,762,000.00	9.00	1,778,580.00	9.00	1,778,580.00	0.00	0.00	
				Total		19,762,000.00		1,778,580.00		1,778,580.00		0.00	

- iii. Similarly in case of Lam coke fines, the other material, for example, the description of material, with contents of various constituents/, ordered



as appearing in the purchase order dated 18.10.2022 (Page 24 of the Petition) is extracted below:

Laxmi, India PO Date GSTN No: 24AAACE266911Z1
 GSTIN No: 24AAACE266911Z1 Reference No

Dear Sirs,

Please supply under mentioned goods/services, in accordance with the terms & conditions as per this purchase order and rates agreed by you. Please mention our P.O. number and material code invariably in all your future correspondence, delivery challan & invoice with us.

Sr. No.	Material Code/Description of Material/Delivery Data	PO Qty	PO Qty	Rate	Rs.	Local	Taxable Amount	CGST		SGST		IGST	
								Rate%	Amt	Rate%	Amt	Rate%	Amt
1	100000037 (HSN Code : 2704) LAM COKE FINES FC : 703 Min, VM: 43, Ash: 254 (+/-2), TH: 105, Size : 0-5mm (95%) Sr/Dat1, Date/Qty 1130.16.2022 250.00	250.000	250.000	17.411.00	0.00	1,352,750.00	1.50	103,818.75	1.50	103,818.75	0.00	0.00	0.00
Total						1,352,750.00		103,818.75		103,818.75		0.00	

In Words: - FORTY FIVE LAKH SEVENTY THOUSAND THREE HUNDRED NINETY SEVEN RUPEES FIFTY PAISE

Payment Terms: PAYMENT AGAINST POC

Terms and Conditions:

Dues required with Supply : Your Invoices (IN DUPLICATE) & Delivery Challan/ Packing List, Ash Test Certificate, Drawing, QAP, Internal Inspection Report.

In case of Short receipt of material, we shall consider our Weight / Nos as FINAL. Subsequently it will be effect given to Bill Passing & Freight

Please provide Operational & Maintenance Manual if applicable.

Document attached to this PO : QAP/DRG/ Assurance/ Packing Sheet/ Check List.

iv. A sample copy of Debit note, concerning LAM COKE, for adjustments due to high sulphur content, as appearing on page 37 of the Reply of the Corporate Debtor is extracted below:



**DEBIT NOTE
ELECTROTHERM (INDIA) LTD.
(STEEL DIVISION)**

Survey No. 325, N.H.8A, Village: Samakhlyal, Taluka: Bhachau, District: Kutch - 370150

GSTIN No. : 24AAACE2669L1Z1		Against Invoice / Bill of Supply						
Debit Note No. : 2100001064		Against Invoice No. : PO-6601004594						
Date of Issue : 31.07.2022		Date of Invoice : 31.07.2022						
State : Gujarat State Code : 24		PO No & Date : 6601004594 & 20.07.2022						
Details of Receiver (Billed To)		Details of Consignee(Shipped To)						
Name : INTERTEX PRIVATE LIMITED		Name : INTERTEX PRIVATE LIMITED						
Address : CABIN NO.3,OFFICE NO.8,1ST FLOORKOMAL COMPLEX,PLOT NO.305,WARD 12B, KUTCH GANDHIDHAM-370201		Address : CABIN NO.3,OFFICE NO.8,1ST FLOORKOMAL COMPLEX,PLOT NO.305,WARD 12B, KUTCH GANDHIDHAM-370201						
State :Gujarat		State :Gujarat						
Code :24		Code :24						
GSTIN Number :24AAACI7043Q1ZA		GSTIN Number :24AAACI7043Q1ZA						
Sr. No.	Description of Goods	HSN Code	UOM	Total Quantity	Rate (Rs)	Total Value	Disc. Value	Taxable Value
1	LAM COKE INDIGENOUS DEBIT FOR HIGH SULFUR AS PER ANNEXURE	2704	TO	24.780	16,580.00	410,844.71		410,844.71
Total Taxable Value								410,844.71

- v. Copy of Debit note (sample) concerning the Iron Or, due to low phosphorus, as appearing on page 530 of the Reply of the Corporate Debtor is extracted below:



ET		DEBIT NOTE ELECTROTHERM (INDIA) LTD. (STEEL DIVISION)						
Survey No. 325, N.H.8A, Village: Samakhilyali, Taluka: Bhachau, District: Kutch - 370150								
GSTIN No.	: 24AAACE2669L1Z1	Against Invoice / Bill of Supply						
Debit Note No.	: 2100003577	Against Invoice No.	: IPL/GD/2223/1401					
Date of issue	: 31.08.2022	Date of Invoice	: 19.07.2022					
State	: Gujarat State Code : 24	PO No & Date	: 6601004557 & 22.08.2022					
Details of Receiver (Billed To)		Details of Consignee(Shipped To)						
Name	: INTERTEX PRIVATE LIMITED	Name	: INTERTEX PRIVATE LIMITED					
Address	: UNIT NO 01, 2ND FLOOR, OFFICE NO.01RAJDEEP COMPLEX,PLOT NO 15, SECTOR 9A, KUTCH GANDHIDHAM-370201	Address	: UNIT NO 01, 2ND FLOOR, OFFICE NO.01RAJDEEP COMPLEX,PLOT NO 15, SECTOR 9A, KUTCH GANDHIDHAM-370201					
State	:Gujarat	State	:Gujarat					
Code	:24	Code	:24					
GSTIN Number	:24AAACI7043Q1ZA	GSTIN Number	:24AAACI7043Q1ZA					
Sr. No.	Description of Goods	HSN Code	UOM	Total Quantity	Rate (Rs)	Total Value	Disc. Value	Taxable Value
1	IRON ORE PELLETS (LOW PHOS) RATE DIFF VIDE CN-83 DTD 31.08.2022	2601	TO	41.710	513.00	21,397.00		21,397.00
						Total Taxable Value		21,397.00
						Add. CGST 9.00 %		1,925.73
						Add. SGST 9.00 %		1,925.73
						Add. IGST 0.00 %		0.00
						Round off		0.00
Total Amt (In Word): TWENTY FIVE THOUSAND TWO HUNDRED FORTY EIGHT						Total Amount (INR)		25,248.46


43.2. The principal issue that arises for consideration is whether a dispute with respect to the goods supplied and the consequent liability had been raised by the Corporate Debtor prior to the issuance of the Demand Notice dated 04.02.2025, to render the present petition under Section 9 of the Code not maintainable.

43.3. The Corporate Debtor has, in its Reply to the Demand Notice dated 21.02.2025 (Annexure-IV, Colly. to the Petition), as well as in its detailed Reply to the present petition, categorically disputed the liability claimed by



the Petitioner and has placed reliance upon 370 debit notes aggregating to ₹18,79,07,985.55/-. It is the specific case of the Corporate Debtor that such debit notes were raised on account of defective and inferior quality of goods, short supply, and other discrepancies, which adversely affected its furnace operations and commercial performance.

43.4. It is observed that the said debit notes were not raised for the first time in response to the Demand Notice, but were issued in the ordinary course of business transactions between the parties. The debit notes have been shown to have been issued on various dates commencing from 03.12.2022, including 13.01.2023 and 25.07.2023, and were subsequently consolidated and communicated to the Petitioner through email dated 11.12.2023. These dates clearly fall within and immediately subsequent to the period of supply of goods, i.e., October 2022 to 11.02.2023, and are significantly prior to the issuance of the Demand Notice dated 04.02.2025 under Section 8 of the Code. For the sake of convenience email dated 11.12.2023 is reproduced hereinbelow: -



The said debit note has been generated after the QC report & telephonic discussion against the terms of the order. Also, payment has been issued to you in advance-dated Cheques as per the terms of the order. As you know our plant suffered a lot & the performance of both furnaces was very bad during the supplies.

Based on the telephone discussion & your adjustment assurance we have continued using this bad-quality material, so we humbly request you, to pls incorporate the same in your system & send the account ledger for reconciliation pls.
Nimesh Joshi

From: Adarsh Gupta (<mailto:adarsh.gupta@hisariagroup.com>)
Sent: 15 December 2023 14:15
To: nimesh.joshi@electrotherm.com
Cc: vishnu.pandey@electrotherm.com; 'Amit Patwarika'; ajm@hisariagroup.com; 'Sandeep Hisaria'
Subject: Electrotherm India - Sent Debit Note

Dear Sir,

In reference to your email dated 11-12-2023, kindly note that we do not accept the wrongful debit notes raised by your Company and cannot get away from the gross liability for material supplied by us under the respective Purchase Orders (PO) Issued by your Company. These supplies were duly accepted in good order against the issuance of cheques good for payment, which you have failed to honor on presentation.

Your attention is once again invited for earliest payment of outstanding due alongwith other charges and to note that we have returned back such wrongful Debit note on 08-12-2022 vide Docket No. 162400760953, 29-07-2023 vide Docket No.162400788530 and on 08-12-2023 vide Docket No.162400823437, all sent through Shree Tirupati Courier Services Pvt. Ltd.

This is without prejudice to our rights under the law.

Regards
Adarsh Gupta

From: Nimesh Joshi (<mailto:nimesh.joshi@electrotherm.com>)
Sent: 11 December 2023 17:40
To: 'Ram Mansukhani'; 'Sandeep Hisaria'
Cc: vishnu.pandey@electrotherm.com; amit.patwarika@electrotherm.com
Subject: Sent Debit Note

Dear Sir,

We have sent you Debit Notes on dated 6th December 2023 through Shree Anjani Courier (Docket No. 10900005435), kindly confirm. We have already sent you this Debit Notes earlier on Dated 03/12/2022, 13/01/2023 and 25/07/2023. For your ready reference detail as below.

43.5. The Corporate Debtor has further placed reliance upon contemporaneous correspondence exchanged between the parties, including email dated 11.12.2023, as well as certain technical/laboratory reports, to support its contention regarding deficiencies in the goods supplied. Although the Petitioner has contested the correctness and evidentiary value of such material, the same prima facie reflects that objections relating to the quality and performance of the goods were raised by the Corporate Debtor prior to the issuance of the Demand Notice.

43.6. Per contra, the Petitioner has contended that the debit notes are unilateral in nature, were not accepted by it and therefore cannot be relied upon to reduce or extinguish the liability. It has further been contended that the dispute is an afterthought and that no contemporaneous objection was raised at the time of



supply, and has also relied upon the terms of invoices stating that the goods were supplied on an “as is where is basis.”

43.7. The contention of the Petitioner that no dispute was raised in earlier proceedings under the Negotiable Instruments Act does not, in the considered view of this Tribunal, negate the existence of dispute, because the material placed on record, including debit notes and contemporaneous correspondence, demonstrates that disputes relating to quality and adjustments had arisen during transactions and prior to the issuance of the demand notice under section 8 of the Code. The existence of dispute is to be assessed based on overall material and not on isolated pleadings in separate proceedings.

43.8. Upon a careful consideration of the debit notes and period of issue, this Adjudicating Authority finds that the debit notes relied upon by the Corporate Debtor cannot be said to be a mere afterthought or a spurious defence. The issuance of debit notes commencing from 03.12.2022, i.e., during the subsistence of the transactions, followed by further debit notes on 13.01.2023 and 25.07.2023, and their communication through email dated 11.12.2023, clearly establishes that the Corporate Debtor had raised disputes in respect of the goods supplied well prior to the issuance of the Demand Notice dated 04.02.2025. The




contention of the Petitioner that the dispute has been raised only as a defence to the Demand Notice is therefore not borne out from the record.

43.9. In this regard, reliance placed by the Corporate Debtor on the judgment of the Hon'ble NCLAT in ***M/s Mohit Minerals Limited v. M/s Shree Rama Newsprint Ltd. Company Appeal (AT)(Insolvency) No. 620 of 2019*** wherein it has been held that debit notes and disputes raised prior to the issuance of the demand notice constitute a pre-existing dispute and the application under Section 9 is liable to be rejected. In para 10 of the judgement following has been laid down: -

*"10. The Appellant filed the application before the Adjudicating Authority claiming an amount of Rs. 49,53,335/- from the Respondent. In paragraph-4 of the application, the Appellant clearly stated that the Respondent- Corporate Debtor, on 09.08.2016, placed an order on Appellant for purchase of 3000 MT of non-coking coal of Indonesian origin at the rate of Rs. 4350 per MT. However, the Operational Creditor (Appellant herein) was not in a position to supply coal because of shortage of coal in the market and the said Purchase Order was cancelled by the Corporate Debtor (Respondent herein). Thus, the Appellant clearly admitted that they could not supply the material as per the Purchase Order and **the Respondent had issued a Debit Note on the Appellant debiting an amount of Rs. 49,50,000/- and the same has been communicated to the Appellant by e-mail dated 23.09.2017 at 12:58 P.M. and the Appellant had received the said e-mail and replied to the said e-mail on the very same day i.e., on 23.09.2017 at 3.14 P.M.***

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Thus, it is a case of pre-existence of dispute prior to the issuance of Demand Notice dated 01.02.2018.”

[Emphasis supplied]

43.10. Similarly, in **Tirupati Drilling & Mining Services Private Limited v. Sadbhav Engineering Limited Company Appeal (AT) (Insolvency) No. 95 of 2025 & I.A. No. 395 of 2025**, the Hon'ble Appellate Tribunal has held that disputes relating to the quantum of amount and contractual claims, when raised prior to the demand notice, constitute a valid pre-existing dispute disentitling admission of a petition under Section 9 of the Code.

“22. From the above exchange of correspondence between the Appellant and the Respondent, we find that there is a dispute with respect to quantum of the amount payable by the Respondent. We also find that this issue has been raised multiple times prior to the issuance of the demand notice dated 31.12.2021 by the Appellant. This has not been satisfactorily resolved. We are inclined to agree with the submissions of the Respondent that that UCIL is a Govt. body and all work done is to be certified by a third-party independent agency and the invoices have to be backed by the logbook maintained by the Appellant duly signed by the respondent and certified by an independent agency otherwise these are mere one-sided statements. Furthermore, we also agree with the contention of the respondent that mere stamping of the tax/proforma invoices done at the site office by lower functionaries of the respondent is indicative of mere receipt of



the same; it does not mean that the same has been accepted by the respondent company.

23. In the facts and circumstances of this case **we therefore, find that there is a dispute with respect to the quantum of amount which is much prior to the issuance of the demand notice dated 31.12.2021 by the Appellant.** As per Section 8(2) (a) of the Code, the respondent has brought on record the existence of a dispute. **The AA as per the provisions of Section 9(5) on finding a notice of a pre-existing dispute has not admitted the Section 9 Application.** The law has been well settled by Hon'ble Apex Court in *Mobilox Innovations (P) Ltd. V. Kirusa Software (P) Ltd. (supra)*"

[Emphasis supplied]

43.11. A similar view has been taken by the Hon'ble National Company Law Appellate Tribunal in ***Shri Durga Scaffolding Noida Pvt. Ltd. v. Kanwar Enterprises Pvt. Ltd., (2026) ibclaw.in 52 NCLAT***, wherein it has been held that disputes relating to quality of goods, reconciliation of accounts and determination of the quantum of liability, when raised prior to the issuance of the demand notice, constitute valid pre-existing disputes within the meaning of Section 8(2) of the Code. The Hon'ble Appellate Tribunal has further observed that the Adjudicating Authority is not required to examine the merits of such disputes and that once a plausible dispute, supported by material on record, is shown to exist, the application under Section 9 is liable to be rejected.



43.12. It is also pertinent to note that the dispute raised by the Corporate Debtor is not a mere bald or unsupported assertion. The Corporate Debtor has placed on record voluminous documentary material, including debit notes and supporting correspondence, which prima facie indicate that the dispute relates to the quality, quantity and commercial acceptability of the goods supplied and the consequent financial adjustments claimed by it. Such disputes inherently involve questions of fact and technical evaluation, which would require detailed evidence and cannot be adjudicated in summary proceedings under Section 9 of the Code.

43.13. The Petitioner has relied upon judgments including ***Mr. Mukesh Goel v. Aldous Commodities Private Limited and Anr. Company Appeal (AT) (Insolvency) No.1235 of 2023*** and ***Anup Sushil Dubey Suspended Board Member Umarai Worldwide (P) Ltd. v. National Agriculture Co-operative Marketing Federation of India Ltd. and Anr. Company Appeal (AT) (Insolvency) No. 229 of 2020*** to contend that a mere assertion or unsupported defence cannot be treated as a dispute. However, the said judgments are distinguishable on facts, as in the present case the dispute raised by the Corporate Debtor is supported by contemporaneous material, including debit notes and correspondence prior to the demand notice.



43.14. The reliance placed by the Petitioner on **M/s. Saraswati Wire and Cable Industries v. Mohammad Moinuddin Khan and others CIVIL APPEAL NO. 12261 OF 2024** to contend that continued payments negate the existence of dispute is also misplaced, as the payments in the present case form part of a running account and do not obliterate disputes arising from debit notes and adjustments.

43.15. Further, the **Record of Default (Form-D)** placed on record by the Petitioner itself, as part of its additional affidavit (Annexure-II thereto), reflects the status of the debt as **“disputed,”** with remarks indicating that disputes exist about quality, quantity, and short supply of goods. Although such record may not be determinative of the issue, it is nevertheless a relevant circumstance which lends support to the stand of the Corporate Debtor that the liability is disputed.

43.16. In this regard, the Hon'ble National Company Law Appellate Tribunal in **Bhuvan Kumar Gupta v. Maverick Developers and Colonisers Pvt. Ltd. (2025) ibclaw.in 1058 NCLAT** has held that where the record of default in the Information Utility reflects the status of the debt as 'disputed', the Adjudicating Authority is obliged to reject the application under Section 9(5)(ii)(d) of the Code. In the present case, the Form-D placed on record also reflects the status of the debt as



“disputed”, which further corroborates the existence of a pre-existing dispute between the parties.

43.17. At this stage, this Adjudicating Authority is only required to examine whether there exists a plausible contention requiring further investigation and that the dispute is not a patently feeble legal argument, and not to adjudicate upon the merits of the dispute.

43.18. Applying the aforesaid test to the facts of the present case, this Adjudicating Authority is satisfied that the defence raised by the Corporate Debtor is supported by contemporaneous documents, including debit notes and correspondence, and raises a real and substantial dispute which is not spurious, hypothetical, or illusory.

43.19. Accordingly, this Adjudicating Authority holds that there exists a pre-existing dispute between the parties, which arose prior to the issuance of the Demand Notice dated 04.02.2025, and which cannot be adjudicated in proceedings under Section 9 of the Code.

44. Findings on Issue No. C: Whether, in view of the payments made and adjustments claimed, any amount remains due and payable by the Corporate Debtor to the Petitioner?

44.1. The Petitioner has claimed that a sum of ₹19,02,97,336.41/- is due and payable towards supplies made pursuant to Purchase Orders dated 13.10.2022 (Annexure-I of petition) and invoices raised during the period October 2022 to 11.02.2023



(Annexure-II), with the date of default stated as 11.02.2023, and reiterated in the Demand Notice dated 04.02.2025 (Annexure-IV).

44.2. The Corporate Debtor, in its Reply to the Demand Notice dated 21.02.2025 and in its Reply to the present petition, has disputed the said liability and has placed reliance upon 370 debit notes aggregating to ₹18,79,07,985.55/- (Annexures R4 to Reply, running from Pg. 26 to 1909), which, according to it, were issued in the ordinary course of transactions on various dates commencing from 03.12.2022, including 13.01.2023 and 25.07.2023, and were communicated to the Petitioner prior to the Demand Notice, including through email dated 11.12.2023 forming part of the Reply.

44.3. The Corporate Debtor has further placed on record proof of part payment of ₹29,32,869/- made on 07.11.2025 through RTGS, vide UTR Ref No; RTGS Dr-1D1B000F523-INTERTEX PRIVATE LTD-AHMEDABAD-YESBR52025110756555840 as reflected in its additional affidavit and has contended that after giving effect to the aforesaid debit notes and payments, no amount remains payable. Such payment, made during pendency of proceedings, does not ipso facto establish admission of undisputed liability nor cure the existence of pre-existing dispute.

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44.4. This Adjudicating Authority observes that the claim of the Corporate Debtor is based on adjustment/set-off of the aforesaid debit notes (Annexures R4 to the Reply, running from Pg. 26 to 1909) against the running account of the Petitioner. It is further noted from the record, including the ledger account of the Petitioner that the Petitioner has accepted certain debit notes to a limited extent by issuance of corresponding credit notes (Annexure A colly of affidavit), while disputing the remaining debit notes. The partial acceptance and partial denial of debit notes by the Petitioner itself demonstrates that the reconciliation of accounts between the parties is not final and remains disputed.

44.5. In these circumstances, the determination of the actual amount payable, if any, necessarily requires adjudication of

- i. the validity and permissibility of the debit notes,
 - ii. the extent to which such debit notes can be adjusted against the invoices, and
 - iii. reconciliation of the running account between the parties,
- which are matters requiring detailed evidence, examination and cannot be undertaken in summary proceedings under Section 9 of the Code.

44.6. The material on record thus demonstrates that the quantum of adjustment of ₹18,79,07,985.55/-, the effect of the payment of ₹29,32,869/-, and the



resultant outstanding liability are all seriously disputed between the parties and are not crystallised.

44.7. Accordingly, this Tribunal holds that the Petitioner has failed to establish the existence of a crystallised and undisputed operational debt payable by the Corporate Debtor.

45. Findings on Issue No. D: Whether, in view of the pre-existing dispute between the parties, the present petition is liable to be rejected under Section 9(5)(ii)(d) of the Code?

45.1. In view of the findings recorded under Issue No. (B), the present case falls within the ambit of Section 9(5)(ii)(d) of the Code, which mandates rejection of an application where notice of dispute has been received or there exists a record of dispute.

45.2. The dispute in the present case pertains to the quality of goods supplied and the consequent liability of the Corporate Debtor after adjustment of debit notes. Such disputes are contractual disputes requiring detailed examination of evidence and cannot be resolved in proceedings under the Insolvency and Bankruptcy Code, which is intended for resolution of insolvency and not for adjudication of disputed claims. The present proceedings, in essence, seek adjudication of disputed contractual claims and cannot be permitted to be used as a substitute for recovery proceedings.




45.3. The Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2017) ibclaw.in01SC** has held that,

*"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. **Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence.** It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. **So long as a dispute truly exists in fact and is not spurious, hypothetical, or illusory, the adjudicating authority has to reject the application.**"*

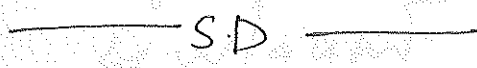
[Emphasis supplied]

45.4. Accordingly, this Adjudicating Authority holds that the present petition does not satisfy the requirements for admission under Section 9 of the Code and is therefore not maintainable. The defence raised by the Corporate



Debtor satisfies the test of a 'plausible contention requiring further investigation' and cannot be termed as a patently feeble legal argument.

- 46.** In view of the foregoing discussion and findings recorded under Issue Nos. (A) to (D), this Adjudicating Authority is satisfied that **there exists a pre-existing dispute** within the meaning of **Section 9(5)(ii)(d)** of the Code and that the Petitioner has failed to establish the existence of a clear and undisputed operational debt and default in view of the pre-existing dispute.
- 47.** It is, however, clarified that this order shall not preclude the Petitioner from pursuing such other remedies as may be available to it in accordance with law.
- 48.** Accordingly, the present Company Petition **CP (IB) No. 287(AHM)2025**, is not maintainable and is accordingly **dismissed**. No order as to costs.


SANJEEV SHARMA
MEMBER (TECHNICAL)

Aditi /LRA


SHAMMI KHAN
MEMBER (JUDICIAL)