

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



ITEM No.303
C.P.(IB)/289(AHM)2025

Under Section 9 of IB Code, 2016

IN THE MATTER OF:

A.T Trade Overseas 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. 289/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

A.T. Trade Overseas Private Limited

A-601, Cello Triumph, 1 B Patel Road,
oppo. LaghuUdyog, Goregaon East,
Mumbai-400063

.... Applicant/ Operational Creditor

VERSUS

Electrotherm (India) Limited

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

.... Respondent/Corporate Debtor

Order Pronounced On: 17.04.2026

C O R A M :

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

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

A P P E A R A N C E :

For the 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



ORDER
(Per: Bench)

1. This Company Petition has been filed on 07.07.2025 by the Applicant – A.T. Trade Overseas Private Limited (hereinafter referred to as the ‘Operational Creditor’) against the Respondent – Electrotherm (India) Limited (hereinafter referred to as the ‘Corporate Debtor’) under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP), appointment of Interim Resolution Professional (IRP) and declaration of moratorium, for default in payment of operational debt of Rs. 15,70,06,420.95/- (Rupees Fifteen Crore Seventy Lakh Six Thousand Four Hundred Twenty and Ninety-Five Paise Only), as on 28.12.2022, which remains due and payable by the Respondent.

2. On perusal of Part-I of Form-5, it is revealed that the Petitioner – A.T. Trade Overseas Private Limited (having CIN: U99999MH1997PTC110234) is a company incorporated



under the provisions of the Companies Act and is having its registered office at A-601, Cello Triumph, I.B. Patel Road, Opp. Laghu Udyog, Goregaon East, Mumbai – 400063. The email address of the Petitioner is info@ihasiagroup.com. The Petitioner is an Operational Creditor within the meaning of Section 5(20) of the Insolvency and Bankruptcy Code, 2016.

3. On perusal of Part-II of Form-5, it is revealed that the Respondent – Electrotherm (India) Limited, bearing CIN: L29249GJ1986PLC009126, is a company incorporated on 29.10.1986, having its registered office at A-1, Skylark Apartment, Satellite Road, Ahmedabad – 380015, Gujarat, as evidenced from the MCA Master Data annexed to the Petition. The authorised share capital of the Respondent is Rs.78,59,00,000/-, and the paid-up share capital is Rs. 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 to the Petitioner is **Rs.15,70,06,420.95/-** (Rupees Fifteen Crore Seventy Lakh Six Thousand Four Hundred Twenty and Ninety-Five Paise Only), as on 28.12.2022, as reflected from the books of accounts and ledger maintained by the Petitioner. The said amount represents the principal outstanding amount due and payable by the Respondent.
6. It is further stated that the details of the outstanding operational debt, including invoice-wise breakup, dates and amounts due, are duly reflected in the ledger account of the Respondent maintained in the books of the Petitioner, which has been annexed to the application as **Annexure-III**.
7. It is further revealed that the Petitioner is engaged in the business of trading and supply of goods and, in the ordinary course of business, supplied goods to the Respondent pursuant to various purchase orders dated 03.05.2022, 01.09.2022, 03.09.2022 and 10.10.2022 placed by the



Respondent, copies whereof are annexed as **Annexure-I**.
(Purchase Orders).

8. Against the said purchase orders, the Petitioner raised several invoices upon the Respondent during the period September 2022 to November 2022, copies whereof are annexed as **Annexure-II (Invoices)**. As per the agreed terms between the parties, payment of the said invoices was required to be made within the stipulated credit period from the date of issuance of the respective invoices.
9. It is stated that despite supply of goods and raising of invoices, the Respondent failed to make payment of the outstanding dues within the agreed period. The Petitioner has further stated that it had discharged the applicable GST liability in respect of the said supplies and had repeatedly requested the Respondent to release the outstanding payments; however, the Respondent failed to clear the dues.
10. Thereafter, the Petitioner issued a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, Demand Notice dated 07.02.2025, to which the Respondent replied and the Petitioner issued a rejoinder, annexed as



Annexure-IV. Despite the same, the Respondent failed to make payment, resulting in the default forming the subject matter of the present application.

11. 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.
12. 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.
13. 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.

14. 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.

15. It is further revealed that the Petitioner has annexed the Demand Notice dated 07.02.2025 issued under Section 8 of the Insolvency and Bankruptcy Code, 2016, along with the reply dated 24.02.2025 and rejoinder dated 13.05.2025, together with proof of service, which are collectively annexed as Annexure–IV (Colly).

16. 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.

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

17.1. It is stated that the Petitioner, A.T. Trade Overseas Private Limited, is engaged in the business of trading and supply of goods. The Respondent, Electrotherm (India) Limited, is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing and allied industrial activities. In the ordinary course of business, the Respondent placed various purchase orders upon the Petitioner for supply of goods.

17.2. Pursuant to the said business relationship, the Petitioner supplied goods to the Respondent from time to time in accordance with the purchase orders placed by the Respondent, and the Respondent duly accepted the same without raising any dispute at the time of delivery.

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



during the period September 2022 to November 2022. As per the agreed terms between the parties, payment of the invoices was required to be made within the stipulated credit period from the date of the respective invoices.

17.4. It is further stated that despite receipt of the goods and the invoices, the Respondent failed to make payment of the outstanding dues within the stipulated period. The Petitioner repeatedly followed up with the Respondent for release of payments; however, the Respondent failed to clear the outstanding dues.

17.5. It is stated that thereafter, the Petitioner issued a Demand Notice dated 07.02.2025 under Section 8 of the Insolvency and Bankruptcy Code, 2016, calling upon the Respondent to make payment of the outstanding operational debt within the statutory period.

17.6. It is further stated that the Respondent replied to the said demand notice vide its reply dated 24.02.2025, wherein it raised certain contentions seeking to deny its liability; however, the same are stated to be untenable and without merit. The Petitioner thereafter issued a rejoinder dated 13.05.2025 refuting the allegations made by the Respondent.

17.7. That despite service of the demand notice and sufficient opportunity, the Respondent failed to discharge the outstanding operational debt of



Rs.15,70,06,420.95/-, thereby committing default within the meaning of Section 3(12) of the Insolvency and Bankruptcy Code, 2016.

- 17.8. It is therefore submitted that the present Petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Respondent.
18. 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.
19. The Petitioner/Operational Creditor has filed an **Additional Affidavit** on 28.07.2025 vide Inward Diary No. D-5062 (DMS Portal on 26.07.2025) placing on record copies of GSTR-Form 1 and GSTR-Form 3B returns for the relevant period, which is 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.

20. 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-5588 evidencing that the notice along with copy of the Petition and the said Order was duly served upon the Respondent.

21. 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.



22. 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.

23. 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:

23.1. 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.

23.2. 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.

23.3. 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.

24. The Corporate Debtor filed its Reply on DMS 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: -

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



A. On Maintainability

24.2. 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.

24.3. 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 parties have been in continuous business transactions since 2019; however, the Petitioner has produced only a selective ledger account for the period from 03.09.2022 to 31.03.2024 along with the Demand Notice. 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 ledger account annexed as Annexure-III does not pertain to the Petitioner but to some other entity, and therefore, in the absence of the correct ledger account, the present Petition is liable to be dismissed.
- iii. It is submitted that calculation of the outstanding amount annexed with the Demand Notice dated 07.02.2025 (at pages 109-110) reflects a



credit/payment of Rs.5,78,948.31, however, no corresponding entry of the said amount is reflected in the ledger accounts produced by the Petitioner. It is therefore alleged that the ledger accounts are disputed and, in the absence of complete records of all transactions and entries, the outstanding amount claimed by the Petitioner cannot be relied upon.

- iv. It is submitted that the Petition is vague and inconsistent, inasmuch as the Petitioner has referred to both services and supply of goods (coal, iron ore pellets, billets, etc.) without clarity as to the nature of transactions or supporting documents, and on this ground, the Petition is stated to be not maintainable.
- v. It is submitted that the Respondent/Corporate Debtor has contended that while the purchase orders stipulate varying credit periods ranging from 10 to 45 days, the Petitioner has uniformly calculated the due dates of all invoices at 30 days, thereby rendering the computation of the amount in default and the date of default incorrect and disputed, and on this ground, the Petition is liable to be dismissed.
- vi. It is submitted that the Respondent/Corporate Debtor has contended that certain invoices produced by the Petitioner (at pages 23, 26 and 97)



are incomplete and/or contain prima facie discrepancies, and therefore, on the basis of such deficient documents, the present Petition is liable to be dismissed.

B. Pre-existing disputes

24.4. 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.

24.5. The Respondent/Corporate Debtor has contended that the goods supplied by the Petitioner, namely coal, iron ore pellets and billets, were of inferior/defective quality and/or short supplied, and accordingly, the Respondent issued debit notes, which were communicated 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**.

24.6. 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, and therefore, such correspondence evidences the existence of pre-existing disputes between the parties with respect to quality



and short supply of goods. A copy of the said email dated 15.12.2023 is annexed as **Annexure-R2**.

24.7. The Respondent/Corporate Debtor has further contended that, vide email dated 15.12.2023, it informed the Petitioner that the debit notes were issued on the basis of 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 is annexed as **Annexure-R3**.

24.8. The Respondent/Corporate Debtor has contended that the debit notes were issued based on supporting documents and third-party 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**.

24.9. 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;

24.10. 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**.

24.11. 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**.

24.12. 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

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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

24.13. 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

24.14. 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.

24.15. 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 Samakhiali, 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).

24.16. 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.

24.17. 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.

24.18. 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. 2023-2024	4275.84	424.48	319.43
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**.

24.19. 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.

24.20. 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.

24.21. 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.

25. 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- 6620 (on DMS Portal on 27.09.2025). The contents of the said rejoinder are reproduced herein below:

25.1. 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.

25.2. 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

25.3. The Petitioner has clarified that the present Petition has been duly signed and verified by its authorised signatory, Mr. Adarsh Gupta, and is supported by a valid board resolution dated 12.05.2025, which is also available on record before this Hon'ble Tribunal.

25.4. The Petitioner has denied the objections raised by the Respondent with respect to the ledger and has stated that the existence of business transactions and issuance of invoices is not in dispute. It is further submitted that the Petitioner has placed on record a detailed amount due calculation and had also provided the ledger along with the demand notice dated 07.02.2025. It is contended that the Respondent has failed to produce its own ledger and is raising untenable objections. The Petitioner has further annexed the ledger as **Annexure-I**.

25.5. The Petitioner has denied the contentions raised by the Respondent and stated that although certain payments have been made, the Respondent has failed to clear the total outstanding dues as per the invoices raised. It is further submitted that an amount of Rs.5,78,948.31 received has been duly accounted for and adjusted towards the outstanding dues, and therefore, the



contention that the said amount is not reflected in the ledger is incorrect.

25.6. Further, the Petitioner has denied the contentions raised by the Respondent and stated that the objections are frivolous and immaterial to the present dispute, as it is not in dispute that the parties were engaged in business transactions and that goods were supplied by the Petitioner. It is further submitted that the Respondent has failed to clear the outstanding dues, and the objection regarding the nature of transactions is merely an attempt to raise a frivolous defence.

25.7. The Petitioner has denied the contentions raised by the Respondent and stated that none of the purchase orders placed on record reflect a payment period of 45 days, and it was agreed between the parties that the payment period would be 30 days. It is further submitted that the Respondent had never raised any objection in this regard earlier and is now raising frivolous and baseless contentions to mislead this Hon'ble Tribunal, which are liable to be rejected.

25.8. The Petitioner has denied the contentions raised by the Respondent and stated that all relevant details of the invoices have been duly placed on record in Form-5 by way of annexures as well as through an Additional Affidavit dated 18.08.2025. It is further submitted that there is no dispute with respect to the issuance or



contents of the invoices, and the objections raised by the Respondent are merely an attempt to deviate from the main dispute. It is specifically stated that copies of invoices bearing Nos. GUJ 2223/2666, GUJ 2223/2669 and GUJ 2223/2714, along with corresponding e-way bills, have been annexed as **Annexure-II (Colly)**.

B. Pre-existing disputes

25.9. It is submitted that the Petitioner has denied the contentions raised by the Respondent and stated that the parties have admittedly been in business transactions since 2019. It is further submitted that as per the Respondent's own email dated 11.12.2023, the alleged debit notes were issued on 03.12.2022, 13.01.2023 and 25.07.2023, which are much subsequent to the invoices raised and supply of goods.

25.10. The Respondent had earlier replied to the notice issued under Section 138 of the Negotiable Instruments Act, 1881, vide reply dated 24.01.2023, without raising any dispute as to the quality of goods or debit notes, and had only taken the defence of pendency of other proceedings. It is also noted that a summary case was registered on 21.02.2023, and even at that stage no dispute regarding quality was raised.

25.11. It is further submitted that the alleged debit notes do not correspond with the invoices and pertain to a period different from the actual supply of goods, which



was between 30.09.2022 to 28.11.2022, and therefore, the debit notes have been issued as an afterthought and are fabricated and unjustifiable.

25.12. The Petitioner has contended that the alleged debit notes were raised after consumption of goods and are merely an attempt to evade liability, constituting a “moonshine defence”. It is further submitted that the debit notes were issued unilaterally and were never accepted by the Petitioner, and no dispute regarding quality or supply was raised at the relevant time.

25.13. The alleged debit notes were raised subsequent to supply of goods and do not disclose any proper or cogent reasons regarding defects or short supply. The dispute raised is neither genuine nor bona fide and has been created as an afterthought to avoid payment.

25.14. The lab report relied upon by the Respondent cannot be considered valid in the absence of any certification or accreditation, and therefore, reliance on such report is misplaced. Accordingly, the alleged dispute cannot be treated as a pre-existing dispute under the provisions of the Insolvency and Bankruptcy Code, 2016.

25.15. The Petitioner has contended that the alleged debit notes lack bona fides, as the Respondent has availed Input Tax Credit (ITC) on the invoices raised by the Petitioner but has not reversed the same despite issuing debit notes. It is further submitted that such

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conduct is inconsistent with a genuine dispute, as reversal of ITC is mandatory under the applicable GST provisions where goods are rejected. Accordingly, the alleged dispute is a sham defence and cannot be considered a valid pre-existing dispute under Section 9 of the Insolvency and Bankruptcy Code, 2016.

25.16. It is submitted that without prejudice to the aforesaid contentions, even assuming the alleged debit notes to be valid, the total debit notes amount to Rs.3,18,32,031.96, whereas the total operational debt due is Rs.15,70,06,420.95, leaving an undisputed amount of Rs.12,51,74,388.04, which is well above the threshold limit prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016. It is therefore submitted that no valid defence survives, and the Petition is liable to be allowed.

25.17. The Petitioner has denied the contentions raised by the Respondent and stated that the Respondent is drawing a false implication from the NeSL Form-C, as the alleged dispute recorded therein is self-serving and baseless. It is further submitted that the records maintained by the Information Utility are merely informational in nature and do not constitute proof of a genuine pre-existing dispute. Accordingly, the contention of the Respondent is misleading and liable to be rejected.



25.18. It is submitted that the Petitioner has denied the contentions raised by the Respondent and stated that proceedings under Section 138 of the Negotiable Instruments Act, 1881 are criminal in nature for the offence of cheque dishonour and cannot be treated as recovery proceedings. It is further submitted that the pendency of such criminal proceedings cannot be construed as a pre-existing dispute under the Insolvency and Bankruptcy Code, 2016.

C. Corporate Debtor is solvent

25.19. 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.

25.20. 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

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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;"

25.21. 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.

25.22. It is submitted that 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.

26. This Adjudicating Authority, 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.

27. 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-7361, and the same has been taken on record by this Hon'ble Tribunal. The contents thereof are summarised/reproduced hereunder:

27.1. 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.

27.2. It is submitted that the Petitioner has contended that although the Respondent/Corporate Debtor has raised several debit notes against various invoices and purchase orders, the Petitioner has duly reconciled its books of accounts with respect to the alleged debit notes referred to by the Respondent in its reply. It is further submitted that the debit notes relied upon by



the Respondent (Annexure–R4 at Page 26) pertain to the period commencing from 30.04.2022, whereas the invoices forming the subject matter of the present Petition pertain to the period from 30.09.2022 onwards and remain outstanding.

27.3. It is further submitted that the debit notes which were found to be genuine and accepted by the Petitioner have already been duly accounted for, and corresponding credit notes/adjustments have been issued in the books of the Petitioner. Copies of such credit notes are annexed as **Annexure–A (Colly)**.

27.4. It is submitted that, pursuant to the directions of this Hon'ble Tribunal vide order dated 14.10.2025, the Applicant/Operational Creditor has duly reconciled its books of accounts in respect of the debit notes raised by the Corporate Debtor. The Applicant has prepared a detailed tabulated reconciliation statement setting out the debit note numbers, corresponding invoice references, debit amounts, and credit notes issued, as forming part of the present Affidavit.

27.5. It is submitted that the Applicant/Operational Creditor has already duly accounted for the amounts pertaining to the debit notes in its books of accounts, and the same is duly reflected in the ledger of the Applicant for the period from 01.01.2022 to 31.03.2023. It is further submitted that, in respect of Debit Note No. 2100003808 dated 21.09.2022, the Applicant has



provided credit for the entire consignment. The copy of the relevant ledger statement for the aforesaid period is annexed hereto and marked as **Annexure-B**.

27.6. It is submitted that even after duly accounting for all the debit notes in the books of the Applicant/Operational Creditor, as on the date of filing of the present Petition, an amount of ₹15,70,06,420.95 remains due and outstanding. It is further submitted that the debit notes raised by the Corporate Debtor pertain to invoices which have already been paid and do not form part of the present Petition. Therefore, the contention of the Corporate Debtor that such debit notes have not been considered by the Applicant is wholly unsustainable and liable to be rejected by this Hon'ble Tribunal.

27.7. Additionally, it is submitted that during the pendency of the present proceedings, the Corporate Debtor has made a payment to the Applicant/Operational Creditor and has issued an email dated 29.10.2025 in respect thereof. The Applicant has duly acknowledged the said payment vide email dated 30.10.2025, while clearly stating that such acceptance is without prejudice to its rights, remedies, and contentions in the present proceedings, and has appropriated the said amount in accordance with Section 60 of the Indian Contract Act, 1872, by applying the "first in, first out" (FIFO) principle. Copies of the said emails dated 29.10.2025



and 30.10.2025 are annexed hereto and marked as
Annexure-C (Colly.)

28. Further, the Respondent/Corporate Debtor has filed an **Affidavit** dated 10.11.2025 vide Inward Diary No. D-7454, placing on record certain additional submissions in support of its defence, which are summarised hereunder:

28.1. It is submitted that the Respondent/Corporate Debtor, in its Affidavit, has admitted that during the pendency of the present Petition, it has made payments aggregating to ₹12,83,66,263/- to the Applicant between 09.10.2025 and 07.11.2025 through RTGS, as per details set out therein.

28.2. It is further submitted that the Respondent has contended that debit notes amounting to ₹3,18,32,031.96 were raised prior to issuance of the Demand Notice, which fact itself indicates that such debit notes were within the knowledge of the Respondent at the relevant time.

28.3. It is submitted that the Respondent has further alleged that upon reconciliation of accounts and adjustment of debit notes with the payments made during the period from 09.10.2025 to 07.11.2025, no amount remains due and payable by the Corporate Debtor to the Applicant.



28.4. It is submitted that the aforesaid contention of the Respondent is misconceived and denied, since the payments made during the pendency of the present proceedings do not extinguish the operational debt which was due and payable as on the date of filing of the Petition, and the alleged adjustment sought to be made is contrary to the settled position of law.

29. 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. 8343, placing on record its submissions, which is summarised as below: -

29.1. The Respondent/Corporate Debtor has filed an Additional Affidavit in response to the Affidavit dated 05.11.2025 filed by the Applicant, reiterating that during the pendency of the present Petition, it has made payments aggregating to ₹12,83,66,263/- between 09.10.2025 to 07.11.2025.

29.2. The Respondent has contended that 108 debit notes aggregating to ₹3,18,32,031.96 were admittedly issued prior to issuance of the Demand Notice and therefore constitute a pre-existing dispute under Section 9 of the IBC.

29.3. The Respondent has relied upon the terms and conditions of the purchase orders to contend that the



Applicant was obligated to maintain the quality of goods and, therefore, the debit notes raised on account of alleged quality issues are valid and cannot be disputed by the Applicant.

29.4. The Respondent has further contended that the transactions between the parties were a running and continuous account, and therefore, debit notes cannot be adjusted against specific invoices but are required to be considered in relation to the entire account between the parties.

29.5. The Respondent has alleged that against the claimed default amount of ₹15,70,06,420.95, it has already paid ₹12,83,66,263/- during the pendency of the Petition and had raised debit notes amounting to ₹3,18,32,031.96 prior to issuance of the Demand Notice, and therefore, no amount remains due and payable.

29.6. 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.

29.7. The Respondent has sought to justify its reliance on laboratory reports by stating that it maintains an in-house testing laboratory accredited by NABL, and has



annexed the Certificate of Accreditation as **Annexure-S1**.

- 29.8. In response to allegations regarding Input Tax Credit (ITC), the Respondent has relied upon a Chartered Accountant's Certificate (**Annexure-S2**) to contend that it has not improperly availed ITC and has made necessary reversals in accordance with applicable law.
30. 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-8605, placing on record its submissions, which are reproduced/summarised hereunder:
- 30.1. The payments of ₹12,83,66,263/- made by the Corporate Debtor during the pendency of the present Petition are only liable to be recorded and do not affect the maintainability of the Petition, as the default is to be examined as on the date of filing of the Petition.
- 30.2. The contention of the Corporate Debtor regarding 108 debit notes is denied, and it is clarified that credit to the extent of ₹43,06,664.09 has already been given by the Operational Creditor, as reflected in the ledger filed with the Petition.
- 30.3. It is further submitted that the unadmitted portion of the alleged debit notes is only ₹2,75,25,367.87 and not



₹3,18,32,031.96, as incorrectly claimed by the Corporate Debtor.

- 30.4. It is further submitted that no dispute regarding quality, weight or debit notes was raised by the Corporate Debtor in its reply dated 24.01.2023, wherein only internal management issues were cited.
- 30.5. The alleged debit notes were first communicated on 11.12.2023, i.e., much after the earlier correspondence, thereby demonstrating that the alleged dispute is not contemporaneous.
- 30.6. It is further submitted that there is inconsistency in the Corporate Debtor's own case, since only 75 debit notes were mentioned in the email dated 11.12.2023, whereas 108 debit notes have been subsequently relied upon in the present proceedings.
- 30.7. It is submitted that the goods were supplied on an "as is where is basis," and the same were accepted, consumed, and paid for without any contemporaneous objection, rejection memo, or test report from the Corporate Debtor.
- 30.8. It is submitted that the contention regarding adjustment of debit notes in a running account is denied, as the said debit notes were never accepted, acknowledged, or acted upon by the Operational Creditor and do not pertain to the invoices forming subject matter of the present Petition.

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- 30.9. The date of filing of the Petition, an amount of ₹15,70,06,420.95 was due and payable, and the subsequent payments do not extinguish the default.
- 30.10. The payments made during the pendency of the Petition further establish the liability of the Corporate Debtor.
- 30.11. It is submitted that the laboratory report relied upon by the Corporate Debtor does not disclose sampling details, chain of custody, or invoice-wise linkage, and no such report was ever shared contemporaneously with the Operational Creditor.
- 30.12. It is submitted that the reliance on the Chartered Accountant's certificate regarding GST/ITC is unilateral in nature and does not alter the factual position that no corresponding credit notes were issued by the Operational Creditor.
- 30.13. In view of the above, it is submitted that the defence raised by the Corporate Debtor is unsustainable and the present Petition deserves to be admitted.
- 31.** The Respondent/Corporate Debtor has filed its **written submissions** on 19.12.2025 vide Inward Diary No. D- 8677 (On 17.12.2025 on DMS Portal). In the said written submissions, the Respondent has, inter alia, relied upon the following judgments:



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]*

32. Further, the Applicant/Operational Creditor has also filed its **written submissions** on 05.03.2026 vide Inward Diary No. D- 2013. In the said written submissions, the Operational Creditor has relied upon the following judgments :

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.*

- 33.** 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-1989 (On 03.03.2026 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.
- 34.** 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.
- 35.** 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 Petitioner / Operational Creditor	Claim Amount as per Petition (Rs.)	Debit Notes (Rs.)	Outstanding Amount as per Petition after adjustment of debit notes (Rs.)	Payment made (Rs.)
1.	C.P.(IB)/287(AHM)/2025	Intertex Pvt. Ltd.	19,02,97,336	18,79,07,985	23,89,351	29,32,869
2.	C.P.(IB)/289(AHM)/2025	A T Trade Overseas Pvt. Ltd.	15,70,06,421	3,18,32,032	12,51,74,389	12,83,66,263

36. 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.

37. 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 07.02.2025, 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?

38. We state below brief facts of the case:

38.1. 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 ₹ 15,70,06,420.95/-.

38.2. It is the case of the Petitioner that pursuant to Purchase Orders dated 03.05.2022, 01.09.2022, 03.09.2022, and 10.10.2022 (Annexure-I to the Petition), the Petitioner supplied goods, namely Imported coal, to the Corporate Debtor during the period September 2022 to November 2022, against which invoices were raised from time to time



(Annexure–II). The Petitioner has listed 77 invoices issued during the period of 30.09.2022 to 28.11.2022. 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.

38.3. The Petitioner thereafter issued a Demand Notice dated 07.02.2025 under Section 8 of the Code (Annexure–IV), to which the Corporate Debtor replied on 24.02.2025, raising disputes about the quality of goods supplied and enclosing details of debit notes. The Petitioner filed a rejoinder to the Reply of the Corporate Debtor dated 13.05.2025, denying the said contentions.

38.4. The Corporate Debtor, in its Reply, has contended that there exists a pre-existing dispute on account of alleged inferior quality of coal supplied, short supply and other commercial discrepancies affecting its operations, and has relied upon 108 debit notes aggregating to ₹3,18,32,031.96/- (Annexures R4 to Reply), which were issued prior to the demand notice. It is further contended that after adjustment of such debit notes and payments made, no amount remains due and payable.

38.5. 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.” Further, material has been placed on record indicating partial reconciliation of accounts and payments made by the Corporate Debtor during the pendency of the present petition.

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

Date	Event
03.05.2022, 01.09.2022, 03.09.2022 and 10.10.2022	Purchase Orders issued by the Corporate Debtor (Pages 13 to 20 of the Petition)
30.09.2022 to 28.11.2022	Issue of invoices by the Petitioner (Pages 21 to 98 of the Petition)
03.12.2022, 13.01.2023, and 25.07.2023	Issue of debit notes by the Corporate Debtor (Pages 26 to 651 of the Reply of the Respondent filed on 05.09.2025). These are listed on pages 26 and 27 of the Reply. These debit notes are for weight shortage, quality, and rate difference.
07.02.2025	Issue of demand notice under section 8 of the Code (Pages 104 to 110C of the Petition)
24.02.2025	Reply to the demand notice by the Corporate Debtor (Pages 111 and 112 of the Petition)
19.07.2025	Petition under section 9 is filed.

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

41. 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?



41.1. 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 03.05.2022, 01.09.2022, 03.09.2022 and 10.10.2022 (Annexure-I to the Petition) upon the Petitioner for supply of Imported Coal. Pursuant thereto, the Petitioner effected supplies from time to time and raised corresponding invoices during the period September 2022 to December 2022 (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.


41.2. The Petitioner has relied upon the said invoices, ledger account (Annexure-III) and the Demand Notice dated 07.02.2025 issued under Section 8 of the Code (Annexure-IV), to contend that an amount of ₹15,70,06,420.95/- 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.

41.3. It is 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 issued under section 8 of the Code, dated 24.02.2025 (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 inferior quality of coal, short supply, and other discrepancies. For the sake of convenience, the reply dated 24.02.2025 is reproduced hereinbelow: -

1. We are in receipt of your Demand Notice dated 07.02.2025 through Email on 14.02.2025 purportedly issued under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. We deny each and every averment made by you in your notice. In particular, we deny that a debt of Rs. 15,70,06,420.95 is due and payable by the undersigned Company to you.
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. 23.01 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. 3.18 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. 108 debit notes of Rs.



3.18 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.

41.4. The Corporate Debtor has further placed reliance upon 108 debit notes aggregating to ₹3,18,32,031.96/- (Annexures R4 to Reply), which, according to it, substantially reduce or extinguish the liability claimed by the Petitioner.

41.5. 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 indicates that the debt is marked as "disputed," thereby reflecting the existence of a contest regarding liability.

41.6. 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 108 debit notes aggregating to ₹3,18,32,031.96/-, 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 07.02.2025, and the same forms the subject matter of dispute between the parties.

41.7. 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.

42. 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 07.02.2025, thereby rendering the present petition under Section 9 of the Code not maintainable?

42.1. 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 13 to 20 of the Petition).
- ii. The description of Iron Ore Pallets 63% Indigenous as per a purchase order appearing on page 17 (dated 03.09.2022). 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:

S.No.		PO. Qty	SO. Qty	Rate	Rx.	Discnt	Exable	CGST		SGST		IGST		
Code/Description of Material/Delivery		D/P	D/M				Amount.	Rate %	Amt	Rate %	Amt	Rate %	Amt	
00000001 (MSM Code : 2601) IRON ORE PELLETS 65% INDIGENOUS Specification : Fe 62.5 (+/-0.50%), SiO2 : 5.0% Max., P2O5 : 1.50% Max., S : 0.010% Max., H: 0.00% Max., CaO: 1% Max., MgO: 1% Max., Moisture : 5% Max., Tumbler Index : 93-95% ; size : 6mm to 18mm, CCS : 220 kg/Pallet. Serials, Dtd & Qty 3125.09.2023 15,669. 0 3125.09.2022 14,113. 0 3125.09.2023 12,716 480		22,500.00	22,500.00	10,446.09	0.00	235,033,000.00	9.00	21,153,150.00	9.00	21,153,150.00	0.00	0.00	0.00	0.00
Total						235033,000.00		21,153,150.00		21,153,150.00		0.00		

Page 18 refers to terms and conditions of this purchase order and is extracted below:





ANNEXURE Terms & Condition:

Order Name: A.T. TRADE OVERSEAS PVT LTD

O. No: 6601004692

Date: 03.09.2022

Terms and Conditions:

Price Basis	: EXTRA FROM MUDRA PORT.
GGST	: Extra @ 9%
CGST	: Extra @ 9%
Freight	: Extra
Payment Terms	: 30 Days PDC
Delivery	: Immediate.
Test Certificate	: Lot wise T.C. Required.
Note	: Material of Jindal (Aashwinayaki)
RFQ	: SEP/02/22-23 DATE-03/09/2022
Weight/amt	: In case of any weight discrepancy Electrotherm weight will be final.
	1. Weighment slip is Mandatory of loading point.
	2. Shortage allowed 0.8% Max
	3. If any Moisture Difference then debit not issued.
	Material is to be delivered at:-
	ELECTROTHERM (INDIA) LTD (Steel Division),
	Survey no. 325, NH NO. 6A, 310 KM Stone, Nr. Toll tax booth,
	Village - Samakhiali, Kutch, Gujarat.
	REQUIRED DOCUMENTS FOR VEHICLE ENTRY:-
	1. Valid Registration

iii. Similarly in case of, Purchase Order No. 6601004503 dated 03.05.2022 has been issued for supply of goods, wherein the terms of delivery, quantity and rate have been specified (Page 13 of the Petition) is extracted below:



FORM NO. 11, 03/01, 1998, 1999, 2012/14/50550

STEEL DIVISION Steel ISU - RM Plant		PURCHASE ORDER (Indigenous).											
BS1300313 ETRADE OVERSEAS PVT LTD PLOT NO.305,1ST FLOOR,CABINNO.02,OFFICE No. 6, ROAD 12,GANDHIDHAM,370201 Gujarat,India GSTIN No: 24AACA7944A1Z1	Po No 6601004503 PO Date 03.05.2022 Amendment No. 0 Amendment Date: 03.05.2022 Qtn No Qtn Date Reference No	Delivery & Billing Address: ELECTROTHERM (INDIA) LTD, Survey No. 325, National Highway No. 8 A, 310 KM Stone, Village Samukhiyal, Near Toll Tax Booth, Talidhachan, Dist. Kutch, Pin:370140 Phno: 62837-283329/123346 GSTN No : 24AACE2669L1Z1											
Dear Sirs, Please supply under mentioned goods/services, in accordance with the terms & conditions as per this purchase order & rates agreed by you. Please mention our P.O.number and material code invariably in all your future correspondence, delivery challan & invoices with us.													
Sl. No.	Material Code/Description of Material/Delivery Date	PO. Qty U/P	PO. Qty I/M	Rate	Rs.	Discnt	Taxable Amount.	CGST		SGST		IGST	
								Rate*	Amt	Rate*	Amt	Rate*	Amt
1	1000000240 (HSN Code : 7207) Billet 100 X 100 - C25 H Min (FE500)	200.000	200.000	61,865.00		0.00	12,373,000.00	9.00	1,113,570.00	9.00	1,113,570.00	0.00	0.00
	sr [Deli. Date] Qty 1 03.05.2022 200.00		TO	TO									
Total							12,373,000.00	1,113,570.00	1,113,570.00	0.00			
in Words :- ONE CRORE FORTY SIX LAKH ONE HUNDRED FORTY RUPEES							Total Amount			14,600,140.00			
Payment Terms: PAYMENT AGAINST PDC													
Terms and Conditions : (Docs required with Supply : Your Invoices (IN DUPLICATE) & Delivery Challan/ Packing List. Also 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 Allocation. (Please provide Operational & Maintenance Manual if applicable). (If document attached to this PO : QAP/DRG/ Annexure/ Packing Spec/ Check List.													

Page 14 contains Terms and Conditions and is extracted below:



ANNEXURE Terms & Condition:

Order Name : A.T. TRADE OVERSEAS PVT LTD

Order No : 6601004503

Date : 03.05.2022

Terms and Conditions:

Price Basis	: FOR SAMAKHIYALI.
SGST	: Extra @ 9%
CGST	: Extra @ 9%
Freight	: Inclusive
Payments Terms	: 10 Days PDC
Delivery	: Immediate,
Booking Date	: 20.04.2022
Test Certificate	: Required.
Weightment	: Electrotherm Weight will be final.
Weighment slip is Mandatory of loading point.	
Material from NAVKAAR ISPAT	
Material is to be delivered at:-	
ELECTROTHERM (INDIA) LTD (Steel Division),	
Plot no. 325, NH NO. 8A, 310 KM Stone, Nr. Toll tax booth,	
Village - Samakhiyali, Kutch, Gujarat.	
REQUIRED DOCUMENTS FOR VEHICLE ENTRY:-	
Certificate of Vehicle Registration.	
Road Transport Permit.	
Vehicle Insurance Certificates.	

- iv. Page 28 of the Reply, for example, is a debit note for weight shortage and is extracted below. The Respondent has attached supporting documents like weighment slips, invoices, e-way bill and delivery challans along with the debit note.



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ET		DEBIT NOTE		ELECTROTHERM (INDIA) LTD.		(STEEL DIVISION)		
Survey No. 325, N.H.8A, Village: Samakhiali, Taluka: Bhachau, District: Kutch - 370150								
GSTIN No. : 24AAACE2669L1Z1				Against Invoice / Bill of Supply				
Debit Note No. : 210000235				Against Invoice No. : GUJ2223/0464				
Date of Issue : 30.04.2022				Date of Invoice : 23.04.2022				
State : Gujarat State Code : 24				PO No & Date : 8601004465 & 14.04.2022				
Details of Receiver (Billed To)				Details of Consignee(Shipped To)				
Name : A.T.TRADE OVERSEAS PVT LTD				Name : A.T.TRADE OVERSEAS PVT LTD				
Address : CABIN NO.3,PLOT NO.6,2ND FLOORRAJDEEP COMPLEX,PLOT NO.15, SECTOR 9A KUTCH GANDHIDHAM-370201				Address : CABIN NO.3,PLOT NO.6,2ND FLOORRAJDEEP COMPLEX,PLOT NO.15, SECTOR 9A KUTCH GANDHIDHAM-370201				
State :Gujarat				State :Gujarat				
Code :24				Code :24				
GSTIN Number :24AACCA7944A1Z3				GSTIN Number :24AACCA7944A1Z3				
Sr. No.	Description of Goods	HSN Code	UOM	Total Quantity	Rate (INR)	Total Value	Disc. Value	Taxable Value (INR)
1	IRON ORE PELLETS 65% INDIGENOUS. WEIGHT SHORTAGE CH QTY- 40.720-40.390=0.330 MT	2601	TO	0.330	14,860.00	4,906.44		4,906.44

v. By way of illustration, Debit Note No. 2100003627 dated 17.09.2022 has been issued against invoices raised under Purchase Order No. 6601004595, on page 455 of Reply of the Corporate Debtor wherein deductions have been computed on account of **high sulphur content in lam coke**, as reflected in the annexed statement showing invoice-wise quantity, sulphur percentage, excess over permissible limits and corresponding deduction amounts.

0
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**DEBIT NOTE
ELECTROTHERM (INDIA) LTD.
(STEEL DIVISION)**

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

GSTIN No. : 24AAACE2609L1Z1	Against Invoice / Bill of Supply
Debit Note No. : 2100003627	Against Invoice No. : PO-6601004505
Date of Issue : 17.09.2022	Date of Invoice : 17.09.2022
State : Gujarat State Code : 24	PO No & Date : 6601004595 & 20.07.2022
Details of Receiver (Billed To)	
Name : A.T.TRADE OVERSEAS PVT LTD	Name : A.T.TRADE OVERSEAS PVT LTD
Address : CABIN NO.3,PLOT NO.6,2ND FLOORRAJDEEP COMPLEX,PLOT NO.15, SECTOR 9A KUTCH GANDHIDHAM-370201	Address : CABIN NO.3,PLOT NO.6,2ND FLOORRAJDEEP COMPLEX,PLOT NO.15, SECTOR 9A KUTCH GANDHIDHAM-370201
State : Gujarat	State : Gujarat
Code : 24	Code : 24
GSTIN Number : 24AACCA7944A1Z3	GSTIN Number : 24AACCA7944A1Z3

Sr. No.	Description of Goods	HSN Code	UOM	Total Quantity	Rate (Rs)	Total Value	Disc. Value	Taxable Value
1	LAM COKE INDIGENOUS	2704	TO	26.830	887.00	23,798.21		23,798.21
2	LAM COKE INDIGENOUS	2704	TO	24.600	887.00	21,820.20		21,820.20
3	LAM COKE INDIGENOUS	2704	TO	20.240	895.00	18,114.80		18,114.80
4	LAM COKE INDIGENOUS DEBIT FOR HIGH SULPHUR AS PER ANNEXURE	2704	TO	10.870	895.00	17,783.65		17,783.65
							Total Taxable Value	81,516.86
							Add. CGST 2.50 %	2,037.93
							Add. SGST 2.50 %	2,037.93
							Add. IGST 0.00 %	0.00
							Round off	0.00
Total Amt (in Word) : EIGHTY FIVE THOUSAND FIVE HUNDRED NINETY TWO HUNDRED SEVENTY TWO PAISE ONLY							Total Amount (INR)	85,592.72

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Annexure										
Statement Showing Debit note in favour of A.T.Trade Overseas Pvt.Ltd for High Sulphur of Lam coke Against P.O. No. 6601004595 & Debit Note No. 2100003627 Date 17.09.2022										
Invoice No	Invoice Date	Insp. Qty.	Sulphur Recd.	Sio2 Limit	Excess Recd.	Deductio n Rate	PO Rate	Basic	GST	Amount
GUJ2223/1801	11-08-2022	26.83	0.926	0.7	0.226	887	47111	23798.21	1189.91	24988.12
GUJ2223/1802	11-08-2022	24.6	0.926	0.7	0.226	887	47111	21820.2	1091.01	22911.21
GUJ2223/1804	11-08-2022	20.24	0.928	0.7	0.228	895	47111	18114.8	905.74	19020.54
GUJ2223/1803	11-08-2022	19.87	0.928	0.7	0.228	895	47111	17783.65	889.18	18672.83
Total							3564	81516.86	4075.84	85592.70

vi. Further, Debit Note No. 2100005619 dated 31.12.2022 has been issued in respect of supply of billets, against Invoice No. GUJ2223/0839 dated 14.05.2022 under Purchase Order No. 6601004506 dated 05.05.2022, as appearing on page 601 of reply of the Corporate Debtor reflecting adjustment of amounts in relation to the said transaction.



ET		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. : 2100005619		Against Invoice No. : GUJ2223/0839		Date of Invoice : 14.05.2022				
Date of Issue : 31.12.2022		PO No & Date : 6601004506 & 05.05.2022						
State : Gujarat State Code : 24								
Details of Receiver (Billed To)			Details of Consignee(Shipped To)					
Name : A.T.TRADE OVERSEAS PVT LTD			Name : A.T.TRADE OVERSEAS PVT LTD					
Address : CABIN NO.3,PLOT NO.6,2ND FLOORRAJDEEP COMPLEX,PLOT NO.15, SECTOR 9A KUTCH GANDHDHAM-376201			Address : CABIN NO.3,PLOT NO.6,2ND FLOORRAJDEEP COMPLEX,PLOT NO.15, SECTOR 9A KUTCH GANDHDHAM-376201					
State :Gujarat			State :Gujarat					
Code :24			Code :24					
GSTIN Number :24AACCA7944A1Z3			GSTIN Number :24AACCA7944A1Z3					
Sr. No.	Description of Goods	HSN Code	UOM	Total Quantity	Rate (Rs)	Total Value	Disc. Value	Taxable Value
1	BILLET 100 X 100 - C25 H MN (FE600)	7207	TO	31.500	202.00	6,363.00		6,363.00
						Total Taxable Value		6,363.00
						Add. CGST 9.00 %		572.67
						Add. SGST 9.00 %		572.67
						Add. IGST 0.00 %		0.00
						Round off		0.00
Total Amt (In Word) : SEVEN THOUSAND FIVE HUNDRED EIGHT RUPEES THIRTY FOUR PAISE ONLY						Total Amount (INR)		7,508.34

42.2. 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 07.02.2025, to render the present petition under Section 9 of the Code not maintainable.

42.3. The Corporate Debtor has, in its Reply of 24.02.2025, to the Demand Notice (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 108 debit notes aggregating to ₹3,18,32,031.96/-. It is the specific case of the Corporate Debtor that such debit



notes were raised on account of inferior quality of coal supplied, weight shortage, and other commercial discrepancies, which adversely affected its furnace operations and commercial performance.

42.4. 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., September 2022 to 28.12.2022, and are significantly prior to the issuance of the Demand Notice dated 07.02.2025 under Section 8 of the Code. For the sake of convenience email dated 11.12.2023 is reproduced hereinbelow: -

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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 plr incorporate the same in your system & send the account ledger for reconciliation plr.

Nimesh Joshi

From: Adarsh Gupta [mailto:adarsh.gupta@hisaragroup.com]
Sent: 15 December 2023 14:15
To: nimesh.joshi@electrotherm.com
Cc: vishnu.gandley@electrotherm.com; 'Amit Patwarika'; rim@hisaragroup.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.gandley@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.

42.5. 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. The debit notes raised are supported by underlying documents like invoice, delivery challan, weighment slips, reports etc. Although the Petitioner has contested the correctness and evidentiary value of such material, the same prima facie reflects that objections relating to the quality, quantity and performance of the goods supplied were raised by the Corporate Debtor prior to the issuance of the Demand Notice.


42.6. 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.”

42.7. 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 with underlying documents supporting the debit notes, and contemporaneous correspondence, demonstrates that disputes relating to quality of iron billets, coal, short supply and corresponding financial adjustment 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.

42.8. 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 07.02.2025. 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. The debit notes, though disputed by the Operational Creditor, constitute material evidence of a pre-existing dispute raised prior to issuance of the demand notice under section 8 of the Code.

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

[Emphasis supplied]

42.10. 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]

42.11. 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.

42.12. 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 of coal supplied, short supply and the consequent financial adjustments claimed in the running account. 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.

42.13. 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.

42.14. 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.

42.15. 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.

42.16. 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.

42.17. 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.

42.18. 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.

42.19. 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 07.02.2025, and which cannot be adjudicated in proceedings under Section 9 of the Code.



43. 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?

43.1. The Petitioner has claimed that a sum of ₹15,70,06,420.95/- is due and payable towards supplies made pursuant to Purchase Orders dated 03.05.2022 (Annexure-I of petition) and invoices raised during the period September 2022 to December 2022 (Annexure-II), with the date of default stated as 28.12.2022, and reiterated in the Demand Notice dated 07.02.2025 (Annexure-IV).

43.2. The Corporate Debtor, in its Reply to the Demand Notice dated 24.02.2025 and in its Reply to the present petition, has disputed the said liability and has placed reliance upon 108 debit notes aggregating to ₹3,18,32,031.96/- (Annexures R4 to Reply, running from Pg. 26 to 651), 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.

43.3. The Corporate Debtor has further placed on record that substantial payments aggregating to ₹12,83,66,263/- have been made during the pendency of the present proceedings, through multiple RTGS transactions



during the period October 2025 to November 2025 as reflected in its additional affidavit and has contended that after giving effect to the aforesaid debit notes and payments, no amount remains payable.

43.4. It is also pertinent to note that during hearing, as recorded in the order dated 06.03.2026, the Corporate Debtor had demonstrated that after adjustment of debit notes amounting to ₹3,18,32,032/-, the balance amount stood at ₹12,51,74,389/-, against which payment of ₹12,83,66,263/- had already been made, thereby further evidencing dispute regarding the subsistence of liability.

43.5. 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 651) 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.



43.6. 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 and examination and cannot be undertaken in summary proceedings under Section 9 of the Code.

43.7. The material on record thus demonstrates that the quantum of adjustment of ₹3,18,32,031.96/-, the effect of the payment of ₹12,83,66,263/-, the reconciliation of accounts and the resultant outstanding liability are all seriously disputed between the parties and are not crystallised.

43.8. Accordingly, this Tribunal holds that the Petitioner has failed to establish the absence of a pre-existing dispute in respect of the operational debt claimed by the Corporate Debtor.

44. 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?

44.1. 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. The NeSL in Form D has noted the liability as “Disputed”.

- 44.2. The dispute in the present case pertains to the quality of coal supplied, short supply of iron billets and coal, and the consequent financial adjustments claimed by way of debit notes along with reconciliation of accounts and payments made during the pendency of the proceedings. Such disputes concerning quantum and contractual require the 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.
- 44.3. The facts indicate that the amount claimed due has either been paid or disputed and the non-payment is due to dispute raised by the Corporate Debtor and not a fit case for initiation of insolvency proceedings.
- 44.4. 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]

44.5. 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.

45. 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.

46. 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.

47. Accordingly, the present Company Petition **CP(IB) No. 289 (AHM) 2025** is not maintainable and is accordingly **dismissed**. No order as to costs.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Aditi /LRA

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)