



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-1.

C.P. (IB)/328(MB)2025

CORAM

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING DATED **08.08.2025**

NAME OF THE PARTIES : **Indiacrete Ready Mix Private Limited**

Vs

Theme Developers Private Limited

Under Section 9 of the IBC, 2016.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate order. Detailed order is being uploaded on the NCLT portal today.

**Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)**

//SKS//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – VI**

CP(IB)/328/MB/2025

*(filed Under Section 9 of the Insolvency and Bankruptcy
Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016)*

*In the matter of **Indiacrete Ready Mix Private Limited***

INDIACRETE READY MIX PRIVATE LIMITED

401, Fourth Floor, Persipolis Premises
Co Op Soc Ltd, Plot No. 74,
Sector -17, Vashi, Navi
Mumbai, Maharashtra -
400703

... Applicant/ Operational Creditor

-Vs-

THEME DEVELOPERS PRIVATE LIMITED

302-303, Abhimaan II, Opp.
Forest Office Teen Hath Naka,
Thane-West, Thane, Maharashtra,
India - 400602.

... Respondent/Corporate Debtor

Order pronounced on.08.08.2025.

CORAM :

**SH. NILESH SHARMA, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE (IN V-C MODE)

For Operational Creditor : Adv. Ms. Mily Ghoshal

For Corporate Debtor : Adv. Mr. Nausher Kohli a/w Adv. Ms. Kurshi Shah,
Adv. Ms. Mitali Kamdar, Adv. Mr. Animesh Gupta,
Adv. Ms. Snehal Patel and Adv. Mr. Mahadev Paras
i/b Rajesh Shah & Co.

Indiacrete Ready mix Pvt. Ltd. v. Theme Developers Pvt. Ltd.



ORDER

PER: Bench

1. This is an Application filed under Section 9 of Insolvency and Bankruptcy Code, 2016 by ***Indiacrete Ready Mix Private Limited*** (hereinafter referred to as “**the Operational Creditor**”) against ***Theme Developers Private Limited*** (hereinafter referred to as “**the Corporate Debtor**”) seeking commencement of CIRP, appointment of IRP and declaration of moratorium upon the Respondent.
2. The Application has been affirmed by Mr. Prakash Kothawale, Head Sales and Marketing of the OC authorised Vide Board Resolution dated 28.11.2024.
3. Perusal of the Part I of the Application reveals that the Applicant is one ***Indiacrete Ready Mix Private Limited*** (hereinafter referred called as “**the Operational Creditor**”). The registered office of the Operational Creditor is located at 401, Fourth Floor, Persipolis Premises Co Op Soc Ltd, Plot No. 74, Sector-17, Vashi, Navi Mumbai, Maharashtra-400703 and is having CIN NO: U36102MH2014PTC259498.
4. Part II of the application reveals that the Corporate Debtor is one ***Theme Developers Private Limited***. The Corporate Debtor is registered under CIN NO: U45201MH2006PTC164958 and was incorporated on 27.09.2006. The registered office of the Corporate Debtor is located at 302-303, Abhiman II, Opp. Forest Office Teen Hath Naka, Thane-West, Thane, Maharashtra, India-400602.
5. Perusal of the Form III reveals that the Applicant has proposed the name of the following IRP :- **Debi Prasanna Sarangi** having **IP Registration No. IBBI/IPA-002/IP-N00158/2017-18/ 10405**. The proposed IRP has given his consent in Form No. 2 which is dated 30.12.2024. The AFA of the proposed IRP is valid till 30.06.2025.

Indiacrete Ready mix Pvt. Ltd. v. Theme Developers Pvt. Ltd.



6. The total amount of debt claimed in this Application is **Rs.2,03,17,263.28/- (Rupees Two Crore Three Lakh Seventeen Thousand Two Hundred Sixty-Three and Twenty-Eight Paise Only)** comprising of Principal Amount of **Rs. 1,44,30,033/- (Rupees One Crore Forty Four Lakh Thirty Thousand Thirty-three only)** and interests of **Rs.58,87,230.28/- (Rupees Fifty-Eight Lakh Eighty-Seven Thousand Two Hundred Thirty and Twenty-Eight Paise Only).**
7. It is stated that the Operational Creditor is engaged in the business of producing different range of Ready-Mix Concrete for the Construction Industry. The Corporate Debtor is engaged in the business of construction.
8. It is stated that the Corporate Debtor had issued the following purchase orders in favour of the Operational Creditor:-
 - i. Purchase Order dated 01.04.2022 bearing ref no. TDPL/Starliving-SB/PO/289/April-22 against Requisition No. 5306 for providing such material and on such terms and condition as more particularly mentioned therein for a total amount of Rs. 27,67,649 /- (Rupees Twenty-Seven Lakhs Sixty-Seven Thousand Six Hundred and Forty-Nine Only}
 - ii. Purchase Order dated 12.04.2022 bearing ref no. TDPL/Starliving-SB /PO/300/April-22 for providing such material and on such terms and conditions as more particularly mentioned therein for a total amount of Rs. 15,63,578/- (Rupees Fifteen Lakhs Sixty Three Thousand Five Hundred and Seventy Eight Only)
 - iii. Purchase Order dated 27.04.2022 bearing ref no. TDPL/Starliving-SB/PO/308A/ April-22 against Requisition No.



5301 for providing such material and on such terms and conditions as more particularly mentioned therein for a total amount of Rs. 5,50,529 /- (Rupees Five Lakhs Fifty Thousand Five Hundred and Twenty Nine Only)

- iv. Purchase Order dated 30.04.2022 bearing ref no. TDPL / Starliving-SB/PO /314 /April-22 against Requisition No. 5331 for providing such material and on such terms and conditions as more particularly mentioned therein for a total amount of Rs. 33,21, 178/- (Rupees Thirty Three Lakhs Twenty One Thousand One Hundred and Seventy Eight Only)
- v. Purchase Order dated 10.05.2022 bearing ref no. TD PL/ Starliving-SB/PO/320/May-22 against Requisition No. 5331 for providing such material and on such terms and conditions as more particularly mentioned therein for a total amount of Rs. 34,42,650/- (Rupees Thirty Four Lakhs Forty Two Thousand Six Hundred and Fifty Only)
- vi. Purchase Order dated 19.05.2022 bearing ref no. TDPL/ Starliving-SB / PO / 327 /May-22 against Requisition No. 5301 for providing such material and on such terms and conditions as more particularly mentioned therein for a total amount of Rs. 4,72,827/- (Rupees Four Lakhs Seventy Two Thousand Eight Hundred Twenty Only)
- vii. Purchase Order dated 25.06.2022 bearing ref no. TDPL/Starliving-SB/PO/353/June-22 for providing such material and on such terms and conditions as more



particularly mentioned therein for a total amount of Rs. 3,96,775/- (Rupees Three Lakhs Ninety Six Thousand Seven Hundred and Seventy Five Only).

viii. Purchase Order dated 23.07.2022 bearing ref no. TDPL/Starliving-SB/PO /646/July-22 against Requisition No. 5048 for providing such material and on such terms and conditions as more particularly mentioned therein for a total amount of Rs. 6,46,640/- (Rupees Six Lakhs Forty Six Thousand Six Hundred and Forty Only).

ix. Purchase Order dated 07.09.2022 bearing ref no. TDPL/Starliving-SB/PO / 412/Sept-22 against Requisition No. 5368 for providing such material and on such terms and conditions as more particularly mentioned therein for a total amount of Rs. 16,40,200/- (Rupees Sixteen Lakhs Forty Thousand and Two Hundred Only).

(Copy of the above-mentioned various purchase orders are annexed to the Application as **Exhibit "A"**.

9. It is stated that the Operational Creditor accordingly had supplied Ready Mix Concrete {"RMC"} of various grades to the Corporate Debtor during the period of 07th March 2022 to 04th November 2022 in accordance with the above Purchase Orders issued from time to time. The said material as provided in the said Purchase Orders was duly delivered on site having address: Prashant Nagar, Wadarwadi, Opp. Income Tax Office, Teen Hath Naka, Thane (West), Maharashtra and the same was received by Corporate the Debtor without any demure.



10. It is stated that thereafter the Operational Creditor raised various Invoices dated 7th March 2022 to 04th November 2022 for total value of Rs 6,32,08,162/ (Rupees Six Crore Thirty-two Lakh Eight Thousand One Hundred Sixty-two only). Copy of the said Invoices along with the list of invoices are annexed and marked as **Exhibit "B"**.
11. It is stated that against the said invoices the Corporate Debtor had made payment of Rs.4,87,78,129/- (Rupees Four Crore Eighty Seven Lakh Seventy eight Thousand One Hundred Twenty-nine only), thus leaving a balance amount of Rs. 1,44,30,033 /- (Rupees One Crore Forty-four Lakhs Thirty Thousand and Thirty Three Only), which remains unpaid.
12. It is stated that the Operational Creditor vide letter dated 01.05.2023 called upon the Corporate Debtor to make payment of Rs. 1,44,30,033 /- (Rupees One Crore Forty-four Lakhs Thirty Thousand and Thirty Three Only), including principal amount of Rs. 1,44,30,033 /- (Rupees One Crore Forty-four Lakhs Thirty Thousand and Thirty Three Only), and an interest at the rate of 24% pa. amounting to Rs. 23,00,283.05/- (Rupees Twenty Three Lakhs Two Hundred and Eight Three and five paise only) for the delay of 138 days till the date of issuance of the said notice. The said notice was duly received and acknowledged by the Corporate Debtor. (Copy of the said letter dated 01.05.2023 is annexed and marked as **Exhibit "C"**.
13. It is stated that the Operational Creditor has obtained the Ledger confirmation from the Corporate Debtor regarding outstanding amount of 1,52,63,088/ (Rupees One Crore Fifty-two Lakh Sixty-Three Thousand Eighty-eight only) as on 31st March 2023. The same was duly acknowledged by the Corporate Debtor on 27.04.2023. Copy of Ledger annexed and marked as **Exhibit "D"**.



14. It is stated that the audited balance sheet as on 31st March 2023 of the Operational Creditor also confirms that an amount of 1,52,63,245/- (Rupees One Crore Fifty-two Lakh Sixty-three Thousand Two Hundred Forty-five only) is receivable from the Corporate Debtor. Copy of audited balance sheet as on 31st March 2023 is annexed and marked as **Exhibit "E"**.
15. It is stated that the Corporate Debtor has paid an amount of Rs. 8,00,000 / (Rupees Eight Lakh only) on 5th September 2023. Further, an amount of Rs. 33,212/- (Rupees Thirty-three Thousand Two Hundred Twelve only) has been credited in the accounts of the Operational Creditor vide Credit Note dated 31st January 2024 bearing No. DECN/23- 24/216. Copy of Credit Note dated 31st January 2024 is annexed and marked as **Exhibit "F"**.
16. It is stated that the audited balance sheet as on 31st March 2024 of the Operational Creditor also confirms that an amount of 1,44,30,033/- (Rupees One Crore Forty Four Lakh Thirty Thousand and Thirty Three only) is receivable from the Corporate Debtor. Copy of audited balance sheet as on 31st March 2024 is annexed and marked as **Exhibit "G"**.
17. It is stated that the Operational Creditor had vide demand notice dated 28.05.2024 issued u/s 8 of the Insolvency and Bankruptcy Code, 2016 called upon the Corporate Debtor to make payments Rs. 2,03,17,263.28 (Rupees Two Crore Three Lakh Seventeen Thousand Two Hundred Sixty Three and Twenty-Eight Paise Only) including Principal Amount of Rs. 1,44,30,033/- (Rupees One Crore Forty-four Lakh Thirty Thousand Thirty-three only) along with interest of Rs. 58,87,230.28/- The said demand notice was sent vide speed post bearing no. RM082995142IN and the same was delivered on the Corporate Debtor on 30.05.2024. (Copy of the said



notice alongwith the speed postal receipt and tracking report are annexed marked as **Exhibit "H"**).

18. Operational Creditor states that they had been constantly reminding Corporate Debtor for the payments due and have gone extra vain to support Corporate Debtor but all in vain.
19. It is stated that thus, having no other remedy Operational Creditor is filing the present application.
20. **Date from which debt fell due:-** The debt fell due on 01/05/2023 being the date on which demand was raised by the Operational Creditor.
21. **Document under which debt has become due:**
 1. Purchase Order bearing Ref. No. TDPL/Starliving-SB/Po/289/April-22 dated 01/04/2022.
 2. Purchase Order bearing Ref. No. TDPL/Starliving-SB/PO/300/ April-22 dated 12/04/2022.
 3. Purchase Order bearing Ref. No. TDPL/ Starliving-SB / PO / 308A/ April-22 dated 27/04/2022.
 4. Purchase Order bearing Ref. No. TDPL/Starliving-SB/PO/314/April-22 dated 30/04/2022.
 5. Purchase Order bearing Ref. No. TDPL/Starliving-SB/PO /320/May-22 dated 10/05/2022.
 6. Purchase Order bearing Ref. No. TDPL/Starliving-SB/PO /327 /May-22 dated 19/05/2022.
 7. Purchase Order bearing Ref. No. TDPL/Starliving-SB/PO /353 /June-22 dated 25/06/2022.



8. Purchase Order bearing Ref. No. TDPL/Starliving-SB/PO /646 /July-22 dated 23/07/2022.
9. Purchase Order bearing Ref. No. TDPL/Starliving-SB/PO/412/Sept-22 dated: 07/09/2022.
10. Audited Balance Sheet as on 31st March 2023 for an amount of Rs. 1,52,63,245/- (Rupees One Crore Fifty-two Lakh Sixty three Thousand Two Hundred Forty-five only).
11. Ledger Confirmation by TDPL for an amount of Rs. 1,52,63,088/- (Rupees One Crore Fifty-Two Lakh Sixty-Three Thousands Eighty-Eight only).
12. Statement of accounts as on 18-03-2024.
13. Audited Balance Sheet of the Applicant as on 31st March 2024 for an amount of Rs. 1,44,30,033/- (Rupees One Crore Forty Four Lakh Thirty Thousand and Thirty Three only}.
14. Computation of the default.
15. Indian Contract Act.
16. Demand notice under section 8 of the Insolvency and Bankruptcy Code dated 28.05.2024 addressed to the Corporate Debtor.
22. Reply was filed by the Respondent through an affidavit dated 25.04.2025 affirmed by One Mr. Vinod Doulatani being the Authorized Signatory duly authorized by the Board Resolution dated 17.03.2025.
23. In reply the Corporate Debtor is admitting having issued the purchase orders, received the supply and making part payments.
24. In reply it is stated as under:-



1. The Respondent submits that the present Petition prima facie is not maintainable and ought to be dismissed on the following grounds:

A. Pre-Existing Dispute:

- i. I submit that, the Respondent placed several purchase orders with the Petitioner in respect of Ready Mix Concrete ("RMC") and accordingly, the delivery of the same was made by the Petitioner. However, there were certain discrepancies in the quality of the RMC and the same were communicated by the Respondent to the Petitioner at the time of delivery itself and vide various Emails as well. It is pertinent to note that till date the Petitioner has not made any attempt to rectify the same and has instead made unreasonable demands of monies from the Respondent. On this ground alone, the Petition ought to be prima facie dismissed. Respondent has annexed and marked as Exhibit "A" the copies of the Emails addressed by the representatives of the Respondent to the Petitioner in respect of the quality issues of the RMC.
- ii. In addition to the above, pursuant to the several purchase orders placed by the Respondent to the Petitioner, the Petitioner was required to provide a test certificate along with a weight slip in respect of the RMC supplied by the Petitioner to the Respondent at the time of their respective deliveries. However, till date the said test certificates and the weight slips have not been provided by the Petitioner even after multiple requests.

B. Due Date:



- i. I submit that the Petitioner has mentioned the due date as 11/09/2022 in part IV Sr. No. 1 of the Petition and as 01/05/2023 in part IV Sr. No.1 (13) of the Petition. Upon bare perusal of the above, it is crystal clear that the Petitioner has made contradictory statements and is merely attempting to confuse this Hon'ble Tribunal and forcing their way into making the Respondent to pay the absurd amounts claimed by them.
- ii. In addition to the above, the Petitioner has mentioned the due date as 04/11/2022 in Point No.2 of the Demand Notice dated 28/05/2024, annexed as Exhibit - H to their own Petition, thereby creating further confusion for the Hon'ble Tribunal to adjudicate the matter.
- iii. I submit that the Petitioner is misleading and suppressing the facts of the case by not providing true and correct facts.

C. Difference in Principal Amount of Claim:

- i. I submit that the Petitioner has claimed an amount of Rs. Rs.2,03,17,263.28/- (Rupees Two Crore Three Lakh Seventeen Thousand Two Hundred Sixty Three and Twenty Eight Paise only) including Principal Amount of Rs.1,44,30,033/- (Rupees One Crore Forty Four Lakh Thirty Thousand and Thirty Three only) along with interest of Rs.58,87,230.28/- (Rupees Fifty Eight Lakh Eighty Seven Thousand Two Hundred Thirty and Twenty Eight Paise only) as mentioned in the Petition.
- ii. I say that the outstanding amount mentioned in Part IV Sr. No. 1 (5) of the Petition aggregates to Rs.1,44,30,033/- (Rupees One



Crore Forty Four Lakh Thirty Thousand and Thirty Three only) as receivable from the Respondent whereas it is pertinent to note that the Petitioner has also mentioned in Part IV Sr. No. 1 (8) of the Petition that the outstanding amount aggregating to Rs. 1,52,63,245/- (Rupees One Crore Fifty Two Lakh Sixty Three Thousand Two Hundred and Forty Five only) is also receivable from the Respondent. In addition to the above, the outstanding amount allegedly payable by the Respondent has been mentioned as Rs. 1,52,63,088/- (Rupees One Crore Fifty Two Lakh Sixty Three Thousand and Eighty Eight only) in Part IV Sr. No. I (6) of the Petition.

- iii. It appears that the Petitioner with malafide intentions has conveniently pumped up the amount to be allegedly recovered from the Respondent from Rs. 1,44,30,033/- (Rupees One Crore Forty Four Lakh Thirty Thousand and Thirty Three only) to Rs. 1,52,63,245/- (Rupees One Crore Fifty Two Lakh Sixty Three Thousand Two Hundred and Forty Five only) or Rs. 1,52,63,088/- (Rupees One Crore Fifty Two Lakh Sixty Three Thousand and Eighty Eight only) thereby even increasing the amount of interest payable by the Respondent.
- iv. Further I state that the Petitioner claims that an amount of Rs. 1,44,30,033/- (Rupees One Crore Forty Four Lakh Thirty Thousand and Thirty Three only) was payable by the Respondent as on 31st March, 2023. Thereafter, admittedly further amounts of Rs. 8,00,000/- (Rupees Eight Lakh only) and Rs. 33,212/-



(Rupees Thirty Three Thousand Two Hundred and Twelve only) were paid by the Respondent to the Petitioner on 5th September, 2023 and 31st January, 2024, respectively. Considering the above admission of payments by the Petitioner it is safe to state that the alleged principal amount payable by the Respondent should have been Rs. 1,35,96,821/- (Rupees One Crore Thirty Five Lakh Ninety Six Thousand Eight Hundred and Twenty One only) and not Rs. 1,44,30,033/- (Rupees One Crore Forty Four Lakh Thirty Thousand and Thirty Three only) or Rs. 1,52,63,245/- (Rupees One Crore Fifty Two Lakh Sixty Three Thousand Two Hundred and Forty Five only) or Rs. 1,52,63,0881- (Rupees One Crore Fifty Two Lakh Sixty Three Thousand and Eighty Eight only) as claimed by the Petitioner. The difference in the aforesaid amounts is conclusive proof of defect in amount of claim and the malicious intention of the Petitioner to extort monies from the Respondent. In view of the aforesaid alone the present Petition ought to be dismissed with compensatory costs.

D. Availability of Alternate Remedies:

- i. I say that the Petitioner is a Company which is registered under The Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**") with the MSME Authority. Therefore, for the purpose of any recovery or claim by the Petitioner, the Petitioner ought to have opted for the remedy available under the MSMED Act before the appropriate MSME Authority. Further, even in the case of the Petitioner having cancelled their registration with the



MSME Authority for any reason whatsoever, the Petitioner ought to have taken the path of a civil remedy before the appropriate Civil Court. It is a settled law that any party should exhaust its legal remedies specifically available to them against their grievance before opting for any other remedy.

- ii. In view of the above, it is evident that the Petitioner has directly approached the Hon'ble Tribunal before exhausting the other legal remedies specifically available to them. Therefore, the present Petition ought to be dismissed with compensatory costs on this ground alone.

E. Discrepancy in charging of interest:

- i. I say that no interest can be charged on the alleged principal amount as claimed by the Petitioner as the clause of interest has been mentioned only in the several invoices raised by the Petitioner and there is a settled law that the claim of interest amount is not tenable on the basis of a unilateral condition / agreement/ document.
- ii. Further, I state that the Petitioner vide their letter dated 01/05/2023 addressed to the Respondent called upon the Respondent to pay principal amount plus interest at the rate of 24% p.a. however, the Petitioner failed to highlight the fact that while acknowledging receipt of the said letter on the office copy of the Petitioner, the representative of the Respondent, Mr. Vinod Doulatani, mentioned that: **"I will revert with details checking**



of same." This statement is clear evidence that the-rate of interest at the rate of 24% p.a. was not accepted by the Respondent.

- iii. In addition to the above, I say that the Petitioner vide their letter dated 01/05/2023 addressed to the Respondent called upon the Respondent to pay a sum of Rs. 1,75,63,371.05/- (Rupees One Crore Seventy Five Lakh Sixty Three Thousand Three Hundred and Seventy One and Five Paise only) including' principal amount of Rs. 1,52,63,088/- (Rupees One Crore Fifty Two Lakh Sixty Three Thousand and Eighty Eight only) maliciously adding interest at the rate of 24% amounting to Rs. 23,00,283.05/- (Rupees Twenty Three Lakh Two Hundred and Eighty Three and Five Paise only), whereas the Petitioner with ulterior motives suppressed the original principal amount aggregating to Rs. 1,44,30,033/- (Rupees One Crore Forty Four Lakh Thirty Thousand and Thirty Three only). Furthermore, the Respondent submits that the Petitioner with a malafide intention of extracting excessive monies from the Respondent demanded a sum of Rs. 1,75,63,371.05/- (Rupees One Crore Seventy Five Lakh Sixty Three Thousand Three Hundred and Seventy One and Five Paise only) subduing the original amount. It is evident from the aforesaid that the Petitioner has claimed an interest amount at the rate of 24% p.a. on the alleged claim. Contradictory to the above, it is mentioned in the invoices raised by the Petitioner which are annexed to the Petition as Exhibit - B that the rate of interest upon delay of payment shall be as per MSMED Act which is at the rate



of 3 times the rate of RBI on delayed payments. It is most pertinent to note that as per Section 16 of The Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act, 2006), the interest rate on delayed payments compounded at three times the RBI's bank rate is 20.25% (6.75% x 3). It appears that the Petitioner by mentioning multiple rates of interest is attempting to pull one on the Hon'ble Tribunal in order to extort monies from the Respondent. Further it is pertinent to note that the difference of principal amount mentioned in paragraph no. A would have a major impact on the quantum of interest chargeable on the alleged claim by the Petitioner against the Respondent. It is clear case of extortion at the hands of the Petitioner as and by way of demanding excessive claim amount from the Respondent.

F. Suppression of the issuance of previous Demand Notice dated 20th March, 2024 addressed by the Petitioner to the Respondent:

- i. I state that the Petitioner very conveniently suppressed the fact that the Petitioner originally had addressed a Demand Notice dated 20th March, 2024, calling upon the Respondent to pay an amount of Rs. 1,44,30,033/- (Rupees One Crore Forty Four Lakh Thirty Thousand and Thirty Three only) plus interest.
- ii. It is pertinent to note that the Petitioner with malafide intentions suppressed the above fact in order to overshadow the fact that the Petitioner had addressed multiple demand notices for the same cause of action. Hereto annexed and marked as Exhibit - "B" is a



copy of the Demand Notice dated 20/03/2024 addressed by the Petitioner to the Respondent.

G. Discrepancy in Documents annexed to the Petition:

- i. The Respondent states that, the Respondent would like to draw attention of the Hon 'ble Tribunal to the fact that the Petitioner has conveniently exhibited a Ledger and has falsely mentioned it as an Audited Balance Sheet as on 31st March, 2023, marked as Exhibit - "E" in the present Petition and swiftly avoided to provide actual copy of the Audited Balance Sheet to this Hon'ble Tribunal and the Respondent as well. Further, more importantly the Respondent submits that the Petitioner with an intention of moulding the facts according to their whims and wishes have conveniently inserted a Chartered Accountant's sign and stamp without containing any details whatsoever.
- ii. The Respondent with an intention of providing true and correct facts states that, the Petitioner has attached a copy of the Audited Balance Sheet as on 31st March, 2024, as Exhibit - G which contains the Balance Sheet as on 31st March, 2024 alongwith a Ledger reflecting entries only up till December 2022. It is highly noteworthy that according to their own Petition, the principal amount payable by the Respondent to the Petitioner was Rs. 1,44,30,033/- (Rupees One Crore Forty Four Lakh Thirty Thousand and Thirty Three only) as per the Ledger entries till December, 2022. However, it is pertinent to note that, the Respondent had made further payments to the Petitioner in the year 2023 and 2024



more specifically on 05/09/2023 and on 31/01/2024 tuning to the amounts of Rs. 8,00,000/- (Rupees Eight Lakh only) and Rs. 33,212/- (Rupees Thirty Three Thousand Two Hundred and Twelve only), respectively and the same have been suppressed in the said ledger annexed as Exhibit - G. Upon bare perusal of the above fact it is quite evident the Petitioner with malicious intentions has not set out the true and correct facts and has also committed mischief in respect of computation of the claim amount. On this ground alone, the present Petition ought to be dismissed with compensatory costs.

H. No authority given by the Respondent to Mr. Deepak Gaikwad:

- i. It is case of the Petitioner that one Mr. Deepak Gaikwad, who was the Assistant Manager of Billing of the Respondent had confirmed the accounts mentioned in the Demand Notice dated 20/03/2024 addressed by the Petitioner to the Respondent. However, it is pertinent to note that, the said Mr. Deepak Gaikwad had no authority whatsoever to sign or confirm the statement of accounts on behalf of the Respondent and in fact at the time of the alleged confirmation of Accounts, the said Mr. Deepak Gaikwad had already tendered his resignation and was on the completion of his notice period i.e. 29th April, 2023. Hereto annexed and marked as **Exhibit-"C"** is a copy of the Email dated 30th March, 2023 addressed by Mr. Deepak Gaikwad to the Human Resources Department of the Respondent tendering his resignation. In addition the Respondent states that vide a letter dated 06/08/2024



addressed to the Petitioner, the Respondent had mentioned more precisely therein that 'Mr. Deepak Gaikwad had no authority to sign or had no instructions from the Respondent to issue any confirmation of the accounts for the period from 1st April, 2022 to 31st March, 2023 '. Hereto annexed and marked as **Exhibit - "D"** is a copy of the letter dated 06/08/2024 addressed by the Respondent to the Petitioner. In view of the aforesaid the Respondent states that any ground taken by the Petitioner for any alleged default on the Respondent's part on the basis of mere confirmation of account for the period from 1st April, 2022 to 31st March, 2023, by Mr. Deepak Gaikwad is invalid and without any basis.

- ii. In addition to the above, I state that the confirmation of the accounts of the period from 1st April, 2022 to 31st March, 2023 enclosed in the Demand Notice dated 28/05/2024 addressed by the Petitioner to the Respondent does not bear any signature of the authorized signatory of the Respondent. Therefore, any ground taken by the Petitioner alleging default on the Respondent's part on the ground of confirmation of the account is invalid and without any basis. The Respondent further states that vide their letter dated 06/08/2024 addressed to the Petitioner, the Respondent intimated a query regarding the Petitioner having two separate sets of accounts of the Respondent, to which the Petitioner ignored to respond to the said query.



I. Insolvency and bankruptcy Code, 2016 is not a debt recovery mechanism:

- i. It is stated that it is a well settled position of law that the Insolvency and Bankruptcy Code, 2016 ("IBC") and the processes provided thereunder are not and cannot be used as debt-recovery mechanism and appropriate rights and remedies provided under any applicable laws should be exhausted for recovery of money. It appears that the Petitioner has not exhausted the alternate remedies available under the applicable laws in respect of the outstanding dues as alleged by the Petitioner. The Petitioner is merely attempting to take a shortcut into extorting monies from the Respondent.
- ii. Under IBC the law is well settled that a proceeding under IBC can be commenced against a company in case the company is incapable of making the payments due by the company and the same is not to be used merely for pressurising the company into making payments of absurd amounts and bowing down to the ulterior motives of the party commencing such proceedings which is the case in the present scenario.
- iii. In view of the above circumstances and grounds the present Petition ought to be dismissed with compensatory costs.

25. Respondent through its reply has filed a copy of the letter dated 06.08.2024. The said letter is in response to demand notices under the Insolvency and Bankruptcy Code, 2016 dated 20.03.2024 and 28.05.2024.

26. Order of this Tribunal dated 06.05.2025 records as under:-

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“1. In compliance of the order dated 07.04.2025, Respondent has filed reply affidavit, which is dated 25.04.2025. Ld. Counsel for the Respondent prays for condonation of delay in filing the reply. Since the Applicant’s Counsel is not objecting, the reply is taken on record.

2. At this stage, Ld. Counsel for the Applicant states that she is not willing to file rejoinder in the matter. Accordingly, the right of the Applicant to file rejoinder, is hereby closed. Both sides may file short synopses, along with citations, if any, after exchanging them with each other.”

27. Both the parties filed the written arguments alongwith citations; The Applicant is relying upon the following judgments:-

- A.** Winntus Scaffolding Pvt Ltd. Vs. Aishwarya Business Corporation Pvt. Ltd. dated 26.04.2023 passed by Ld. Kochi Bench of this Tribunal
- B.** Indiabulls Commercial Credit Ltd. Vs. Koshika Bioscience Pvt. Ltd. dated 16.04.2024 passed by Ld. Court-III of Mumbai Bench of this Tribunal.

The Respondent has relied upon the following judgments: -

- A.** Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [2017] 10 S.C.R. 1006 passed by Hon’ble Supreme Court.
- B.** Khushbu Dye Chem Private Limited Vs. Chemical Suppliers India Private Limited (Company Appeal (AT) (Insolvency) No. 664 of 2024) passed by Hon’ble NCLAT.
- C.** M/s Ultratech Cement Ltd. v. M/s Universal Journeys India Pvt. Ltd., Company Petition (IB) No. 1027 of 2020 passed by Ld. Court-III of New Delhi Bench of this Tribunal.



D. S.P. Changalvaraya Naidu (dead) by L.R's. v. Jagganath (dead) by L.R's. & Ors., MANU/SC/0192/1994 passed by Hon'ble Supreme Court.

E. Sarva Shramik Sangha v. Indian Oil Corporation Ltd., [2009] 16 S.C.R. 39 passed by Hon'ble Supreme Court.

F. Anand Bihari Lal v. Dinshaw and Co., (1946) 48 BOMLR 293.

G. HPCL Bio-Fuels Ltd. v. M/s Shahaji Bhanudas Bhad, 2024 INSC 85.

28. We have heard the various counsels and have perused the documents as are produced before us.
29. It is an admitted position that the Respondent has placed various orders upon the Applicant herein for supply of Ready-Mix Concrete (goods). The Applicant has supplied the same to the Respondent through various invoices during the period from March, 2022 to November, 2022.
30. Applicant states that the value of goods supplied aggregated to Rs. 6,32,08,162/- against which the respondent has made payments of Rs. 4,87,78,129/- and a balance of Rs. 1,44,30,033/- remains unpaid.
31. Demand notice was issued by the Applicant on 28.5.2024 which according to the applicant was never replied by the Respondent. The said demand notice was delivered on 30.05.2024 through speed post.
32. The date of default is mentioned as 1/5/2023, which is the date on which the Applicant raised a demand on the Respondent and requested it to make the payment on immediate basis. The said letter dated 01.05.2023 was served on the Respondent by hand. Before that the Respondent had not made any payment after 31.10.2022. However, after receipt of notice dated 01.05.2023, the Respondent made a payment of Rs. 8 Lakh to the Applicant on 05.09.2023 and on 31.01.2024,



the Applicant issued a credit note for an amount of Rs. 33,212/- to the Corporate Debtor.

33. In reply to the Petition/Application, corporate debtor is claiming pre-existing dispute.

In this regard the respondent has attached an e-mail dated 11.07.2022 issued by one Mr. Kailash Gaikwad, Manager QA and QC of STG (Shri Tirupati Group, addressed to Mr. Majid Hashmi, Managing Director of KMH Engineering and certain individuals belonging to STG Reality Group and KMH Engineering. The said email was thereafter forwarded by Mr. Kailash Gaikwad to different individuals being part of Indiacrete Group. Along with the said email some concrete cubes result for Star Living Project-1 have been attached. In response to the same the one Mr. Apurba Sikder, Head, QA/QC & Product Development of Indiacrete Group vide his email dated 12.07.2022 forwarded the Lab results/M-80 Cubes Test Report to Mr. Kailash Gaikwad and certain other individuals of STG group. Thereafter another mail dated 15.07.2022 was issued by Mr. Majid Hashmi to Mr. Kailash Gaikwad with copy to different individuals being part of STG Group and KMH Engineering. The said email refers to some very low value in respect of Indiacrete concrete and advises Mr. Kailas Gaikwad to investigate and inform the probable errors done in handling or in testing or in sampling of the Indiacrete concrete. The said email also contains a testing report dated 12.07.2022. The Respondent has further attached another email dated 28.04.2022 issued by one Mr. Vinit Basutkar, Assistant Engineering-Projects, Star Living, STG Group to the Indiacrete Team. Vide the said email some concern regarding delay in supply of concrete and its effect on the construction being made has been expressed. The email further advices the Indiacrete Team to instruct its team to be serious, more professional and manage to supply concrete on time. Another mail dated 07.05.2022 issued by Mr. Kailash Gaikwad to Indiacrete



Team advising to ensure good delivery of quality concrete supply in uniform consistency in future citing some delivery and quality issues in the previous week, has also been attached to the Reply.

34. The Respondent has with the help of the above few emails tried to establish that there existed a pre-existing dispute. The said emails relates to the period of April, 2022, May, 2022 and July, 2022, however, from the copy of computation of the outstanding as attached on page No. 439 to 444 of the Application, it is perused that the outstanding bills for supply made by the Applicant relates to the period from 03.04.2022 till November, 2022. As such the emails attached by the respondent relates to the initial period of supply made by the Applicant and thereafter the supplies have continued till November, 2022 and no other evidence of any quality issue/delay in delivery issue for the period of supply after July, 2022 has been attached. In case, the said issues had continued, the Respondent would have discontinued the procurement from the applicant, however, the respondent had continued to procure the material from the applicant till November, 2022 after which due to the default in payment by the respondent, the applicant discontinued making further supplies. The Applicant has stated that the material with respect to which certain minor issues were raised by the Respondent, was replaced and that is the reason that the CD has issued a balance confirming and outstanding of Rs. 1,52,63,088/- as on 31.03.2023 due and payable by the CD to the OC. Had there been some serious quality or supply issues been there, the Respondent would not have issued the confirmation of balance.

35. The Applicant states that Section 8 demand notice was delivered to the Corporate Debtor on 30.05.2024 for which the tracking report is available on record. Respondent in its reply has attached, at page no. 93, a letter dated 06.08.2024,



which is in response to the demand notice dated 20.03.2024 and 28.05.2024. Admittedly, the present petition has been based upon the demand notice dated 28.05.2024. Though the reply by the Corporate Debtor to the demand notice is at a much belated stage, it is pertinent to note that in the said reply the Respondent has not raised any issue relating to the quality and quantity of the goods supplied.

36. In view of the above, we are of the opinion that no sufficient evidence in respect of any material issue/dispute is placed by the Respondent on record. On the contrary the Applicant states that some minor quality issues were noticed and for which the applicant had replaced the material and also issued a credit note on 31/1/2024 for a sum of Rs. 33,212/. Existence of credit note is not denied by any of the parties. Hence, the objection of the Respondent qua a pre-existing dispute appears to be a moonshine defence.
37. Demand notice issued by the applicant on page 431 of the Application reveals the date on which the amount fell due as "Invoice dated 11-09-2022 to 4-11-2022. Part IV of the application reveals on page 9 that the amount claimed was due since 11.09.2022 and that on page 20, the principal outstanding amount is stated as Rs. 1,44,30033/-, which is the claim amount in the Application. Date of default is stated as 01/05/2023 in the Application. The basis of such date of default is mentioned as "being the date on which demand was raised by the Operational Creditor." This is based upon a letter by the applicant dated 01/05/2023 appended, at page 356 of the application, which was served upon the Respondent by hand on the same date. The Applicant states that the date of 01.05.2023 deals with the Demand notice when the entire invoices were called to be paid immediately on immediate basis. As this was the final opportunity given to the respondent to make the payment, which was not availed by the Respondent and it again defaulted in making payment



of the dues, the date of said demand notice i.e. 01.05.2023 is taken as the date of default. The Applicant has further stated that in the application in Part-IV, it has also disclosed that the invoices were due since 11.09.2022.

38. As regards discrepancies claimed by the respondent in the amount due, we overrule the same since the applicant has issued credit notes and has acknowledged the subsequent payments. The Principal outstanding claimed in the notice dated 01.05.2023 included principal amount of Rs. 1,52,63,088/- along with interest @ 24% p.a. Thereafter, the Corporate Debtor issued a ledger confirmation confirming an outstanding of Rs. 1,52,63,088/- as on 31.03.2023 due and payable by it to the OC. Thereafter, the CD made payment of Rs. 8,00,000/- on 05.09.2023 and another amount of Rs. 33,212/- was credited in the books of the OC in favour of the CD vide Credit Note dated 31.01.2024. Pursuant to the same, an amount of Rs. 1,44,30,033/- remained due and payable by the CD. The same amount is reflecting in the books of account of the Applicant recoverable from the CD. The same amount is also reflected in the audited balance sheet of the OC as on 31.03.2024.

39. It is seen that according to the Respondent the amount due is to the extent of Rs. 1,35,96,821/- and not Rs. 1,44,30,033/-. [Para C (iv)]. It appears that the Respondent is reducing the payment of Rs. 8 Lakh made by it on 05.09.2023 and credit note amount of Rs. 33,212/- out of the outstanding claimed by the Applicant in the Application though it is noted from page no. 382 of the Application that the outstanding of Rs. 1,44,30,033/- is the balance after considering the said two amounts of Rs. 8 Lakh and Rs. 33,212/-.

40. As regards contention of the respondent as to the alternate remedy available under MSME Act, the same according to us is the prerogative of the applicant, and the same cannot be taken as a defence in these proceedings. Moreover, the application



under Section 9 has been filed for seeking insolvency resolution of the CD and not for recovery of the dues by the Applicant for which other remedies are available.

41. The Respondent has raised the objection that no interest can be charged on the alleged principal amount as claimed by the petitioner as the clause of interest has been mentioned only in the several invoices raised by the petitioner and that the claim of amount is not tenable on the basis of a unilateral condition/agreement/document. The respondent further states that the applicant vide its letter notice 01.05.2023 called upon the Respondent to pay principal amount plus interest of @ 24% p.a. however, it failed to point out that the representative of the Respondent had while acknowledging receipt of the said letter mentioned "I will revert with details checking of same". The said noting was a clear evidence as per the respondent that the rate of interest was not acceptable to the Respondent. The Respondent further states that the petitioner has claimed interest @ of 24% p.a. in spite of the fact that it is mentioned in the invoices raised by the petitioner that the rate of interest upon delay of payment shall be as per MSME Act, which is at the rate of 3 times the rate of RBI, which amounts to 20.25%.
42. As has been stated above that the Applicant has with the support of different documents attached with the Application, been able to establish that the principal outstanding amounting to Rs. 1,44,30,033/- has remained unpaid by the CD and that there is a default by the CD with respect to the said amount. In view of the same, the issue raised by the Respondent that the interest rate should be 20.25% in place of interest applied by the Applicant @ 24% p.a., loses its significance. Even the principal amount established by the applicant is more than the threshold limit of Rs. One Crore, even after ignoring the claim of the Applicant in regard to interest, the Application filed by the Applicant meets the said threshold limit and



therefore, we reject the said objection raised by the respondent. The claim of the Applicant including with respect to interest shall be examined by the IRP/RP to be appointed, who will admit the claim of the Applicant based on the different documents produced before them. In case the respondent has any objection in regard to the same at that stage, it would be entitle to raise the same before the IRP/RP as the case may be.

43. Another contention of the respondent relates to issuance of multiple demand notices, the same is overruled as clearly as per the present application the demand notice is dated 28/05/2024 and that the Application is made on the basis of the said demand notice and the notice dated 20.03.2024 has no relevance to the present proceedings.
44. As regards discrepancy in the documents annexed to the application being audited balance sheet etc., since the respondent has admitted that an amount of Rs. 1,35,96,821/- is payable by them, we find that the objection loses its relevance.
45. The above logic also applies to objections regarding authority of Mr. Deepak Gaikwad (employee of the Corporate Debtor). Further, as per the own admission of the respondent the last working day of Mr. Deepak Gaikwad was 29.04.2024 and the balance confirmation was accepted by him on behalf of the CD on 27.04.2024, which is prior to the expiry of his notice period and as such the Respondent is bound by the said balance confirmation. Moreover, the Doctrine of "Indoor Management" squarely applies in the case.
46. The Applicant has also attached NeSL Record of Default which reflects that status of authentication of the debt and default as "deemed to be authenticated".
47. We are not in agreement with the respondent regarding use of the Code by the applicant as recovery mechanism.



48. In view of the above, we find that the Applicant has proved that there exists a debt of more than Rs. 1 Crores as prescribed under Section 4 of IBC, 2016, which is under default by the Respondent. The Applicant has attached all the documents required for establishing the debt and default and therefore, we hold that the Application is filed is incomplete. Further, we also find that there is no payment of the unpaid operational debt by the CD, the invoice or notice for payment to the CD has been delivered by the OC on the CD, no notice of pre-existing dispute has been received by the OC and from the Form-2 dated 30.12.2024 submitted by the proposed IRP Mr. Debi Prasanna Sarangi attached on page No. 463-465 of the Application, no disciplinary proceedings are pending against him. In view of the same, we are of the view that this Application is required admitted.

ORDER

49. In view of the above, we are forced to order commencement of Corporate Insolvency Resolution Process upon the Respondent herein.

- i. The Respondent/Corporate Debtor- ***Theme Developers Private Limited***, is admitted in the Corporate Insolvency Resolution Process under Section 9 of the IBC, 2016.
- ii. As a consequence, thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016:
 - a. the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



- b. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c. any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002;
 - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
 - e. The provisions of sub-section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any Operational sector regulator and to a surety in a contract of guarantee to the Corporate Debtor.
- iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- iv. It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- v. Since the Applicant has named an IRP, we hereby appoint **Debi Prasanna Sarangi** having **IP Registration No. IBBI/IPA-002/IP-N00158/2017-18/ 10405** as the IRP of the Corporate Debtor. From the



IBBI portal we have noticed that the AFA of the proposed IRP is valid till 31.12.2026.

- vi. The IRP shall perform all his functions as contemplated, inter-alia, under Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoters or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- vii. This Adjudicating Authority directs the IRP to make a public announcement for the initiation of CIRP and call for the submission of claims under Section 15, as required by section 13(1)(b) of the IBC, 2016.
- viii. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever.
- ix. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- x. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern, to the extent possible, as a part of obligation imposed by Section 20 of the IBC, 2016.



- xi. **The Operational Creditor is directed to pay an advance of Rs. 3,00,000/-** (Rupees Three Lakhs Only) to the IRP within a period of 7 days from the date of this order **to meet the cost of CIRP** arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- xii. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specifically mentioning regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.
- xiii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.
50. **Accordingly, CP(IB)/328/MB/2025** stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//MF&SS//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)