



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AMARAVATI BENCH**  
(Through Hybrid Mode)

**Item No.1**  
**CP (IB)/65/9/AMR/2024**

**IN THE MATTER OF:**

M/s. Damodar Valley Corporation

... Petitioner/  
Operational Creditor

**Versus**

M/s. Srinivasa Ferro Alloys Ltd.

... Respondent/  
Corporate Debtor

**Under Section: 9 of IBC, 2016**

**Order delivered on 25.09.2025**

**CORAM:**

**SHRI UMESH KUMAR SHUKLA**  
**HON'BLE MEMBER (TECHNICAL)**

**SHRI KISHORE VEMULAPALLI**  
**HON'BLE MEMBER (JUDICIAL)**

**PRESENT:**

For the Operational Creditor : Mr. Sricharan T., Adv.

For the Corporate Debtor : Mr. Ganga Anil Kumar, PCS

**ORDER**

Order pronounced and recorded *vide* separate sheets. The Petition bearing **CP (IB)/65/9/AMR/2024** filed by the Operational Creditor under Section 9 of the IBC, 2016 is **admitted**, and the IRP is appointed.

**Sd/-**  
**(UMESH KUMAR SHUKLA)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(KISHORE VEMULAPALLI)**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT MANGALAGIRI**

*(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)*

**CP (IB)/65/9/AMR/2024**

**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:**

**Damodar Valley Corporation**

DVC Towers, VIP Road,  
Kolkata-700054.

.... Operational Creditor

**Versus**

**SRINIVASA FERRO ALLOYS LIMITED**

D. No. 50-113-6/2/1, MIG- 225, TPT Colony,  
Seethammadhara, NE Layout,  
Visakhapatnam, Andhra Pradesh-530013

.... Corporate Debtor

**Order delivered on: 25.09.2025**

**Coram: HON'BLE Mr. KISHORE VEMULAPALLI, MEMBER (JUDICIAL)  
HON'BLE Mr. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

**Present:**

For the Operational Creditor : Mr. Sri Charan T., Advocate

For the Corporate Debtor : Mr. Ganga Anil Kumar, PCS

**ORDER  
PER: BENCH**

The Operational Creditor filed the Company Petition bearing No. CP(IB)/65/9/AMR/2024 on 27.11.2024 vide Dairy No.1705 under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**” or “**Code**”) read with Rule 6 of the Insolvency and Bankruptcy (Application to



Adjudicating Authority) Rules, 2016 (hereinafter referred to as the “**IB Rules**”) by Damodar Valley Corporation (hereinafter referred to as the “**Operational Creditor**”) with a prayer to initiate Corporate Insolvency Resolution Process (hereinafter referred to as the “**CIRP**”) against **Srinivasa Ferro Alloys Limited** (hereinafter referred to as the “**Corporate Debtor**”).

2. The Corporate Debtor is a Company incorporated on 23.02.1988 under the provisions of Companies Act, 1956 with its registered office at D.No.50-113-6/2/1, MIG- 225, TPT Colony, Seethammadhara, NE Layout, Visakhapatnam, Andhra Pradesh-530003. Hence, the territorial jurisdiction lies with this Adjudicating Authority.

### **FACTS OF THE CASE:**

3. The brief facts of the case, as stated by the Operational Creditor in the Petition, are summarised below:

- (i) The Operational Creditor and the Corporate Debtor entered into a Power Purchase Agreement (hereinafter referred to as the “**PPA**”) dated 12.03.1996, under which the Operational Creditor supplied and delivered power to the Corporate Debtor at its factory located at Angadpur Village, Durgapur, District Burdwan, West Bengal. Pursuant to the West Bengal Electricity Regulatory Commission (hereinafter referred to as the “**WBERC**”) Order dated 19.06.2020, the Operational Creditor raised a final bill dated 01.01.2021 in respect of arrears for the period 2006-09, after giving due adjustments towards old dues, delayed payment surcharge (hereinafter referred to as the “**DPS**”), excess payment (if any), shortfall in security deposit (if any), and carrying cost. The billed amount of



Rs.10,47,92,599/- was partly paid in instalments, leaving an outstanding sum of Rs.8,15,08,151/-.

- (ii) Subsequently, in accordance with tariff orders of the WBERC, the Operational Creditor raised a bill dated 02.06.2022 for the period FY 2017-18 pursuant to the Tariff Order dated 05.05.2022, and a bill dated 01.07.2022 for the periods FY 2018-19 and FY 2019-20 pursuant to the Tariff Order dated 17.06.2022. Consequently, the Operational Creditor issued a notice of disconnection dated 20.06.2022, and thereafter, the electricity connection of the Corporate Debtor was disconnected on 05.07.2022.
- (iii) As the outstanding amounts continued to remain unpaid, the Operational Creditor issued a Demand Notice dated 27.07.2023 under Section 8 of the Code. The Corporate Debtor, vide reply dated 14.08.2023, raised untenable grounds.
- (iv) As per Part-IV of Form 5, total amount of debt, the amount claimed to be in default and the date of default are given below:

**Part – IV**

<b>PARTICULARS OF OPERATIONAL DEBT</b>		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	<p>The total amount of debt is Rs 20,46,53,026/- (apart from the dues payable by Corporate Debtor towards TDS) along with applicable delayed payment surcharge in terms of West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation, 2011 till the date of actual payment.</p> <p><b>Details of Transaction:</b></p> <p>(a) Damodar Valley Corporation (DVC / <b>Operational Creditor</b>) is a public sector enterprise acting under the Ministry of Power and incorporated under the Damodar Valley Corporation Act, 1948.</p> <p>(b) It is a generating company, and DVC / OC entered into a Power Purchase Agreement dated 12.03.1996 with the Corporate Debtor. In terms thereof, DVC / OC sold, supplied and delivered electrical power to the Corporate Debtor at their factory premise situated at Angadpur Village, Durgapur District, Burdwan, West Bengal.</p>



(c) The Operational Creditor had raised invoices / bills from time to time in respect of energy consumed by the Corporate Debtor in terms of the PPA and in accordance with the tariff fixed by West Bengal Electricity Regulatory Commission (WBERC).

(d) Thus, upon determination of the final tariff by WBERC for the periods of 2017-2018 and 2018-2020, DVC had raised the final / differential bills for the said period.

(e) Thus, as of date an amount of Rs. 20,46,53,026 is due and payable to DVC from the Corporate Debtor as follows:

Description	BILL DATE	AMOUNT
Unpaid arrear bill for 2006-09	01/01/2021	Rs. 8,15,08,151/-
Arrear 2017-18	02/6/2022	Rs. 7,74,03,361/-
Arrear 18-20	01/7/2022	Rs. 2,88,51,059/-
Final claim after adjustment of security deposit with outstanding energy bills		Rs. 1,68,90,455/-
	<b>Total</b>	<b>Rs 20,46,53,026</b>

(f) It is submitted that in respect of Arrears for the period 2006-2009 are concerned, the same were determined by WBERC Order dated 19.06.2020 and accordingly a final bill dated 01.01.2021 after adjustment of old dues, delayed payment surcharge (DPS), Excess Payment (if any), Shortfall in SD (if any) and carrying cost.

(g) It is submitted that the final bill for the period 2006-2009 in terms of the aforementioned WBERC Order dated 19.06.2020 was raised on 01.01.2021 for an amount of Rs. 10,47,92,599/-, which was partly paid by the Corporate Debtor in instalments. The last instalment for the arrears of FY 2006-2009 was on 15.03.2022. Upon adjustment of the aforementioned instalments received, the outstanding amount for the arrears for the period 2006-2009 is Rs. 8,15,08,151. It is submitted though that Delayed Payment Surcharge (DPS) component in the bill stood challenged in W.P.A. No. 4670 of 2022 in respect of which an order was passed in the aforementioned W.P. not to take any coercive steps, the balance amount in the bill dated 01.01.2021 is still pending to be paid.

(h) It is submitted that in respect of Arrears for the periods FY 2017-2018, the bill in terms of the WBERC Tariff Order dated 05.05.2022 was issued on 02.06.2022 to the Corporate Debtor.

(i) It is submitted that in respect of Arrears for the periods FY 2018-2019 and FY 2019-2020, the final bill in terms of the WBERC Tariff Order dated 17.06.2022 was issued on 01.07.2022 to the Corporate Debtor. It is submitted that though the WBERC Tariff Order dated 05.05.2022 and subsequently the Tariff Order dated 17.06.2022 stood challenged before the APTEL, the Hon'ble Authority



		<p>(and subsequently the Hon'ble Supreme Court) while staying the direction of the Commission for payment of arrears, directed that the said stay is subject to the condition that the consumer pays full tariff at the rate as determined by the Commission from the date of order and continues to do so month by month against the periodic bills. This order continues to be operational, however the Corporate Debtor failed to pay the periodic bills ought to be paid and thus, the interim protection granted under W.P.A. No. 17114 of 2022 with W.P.A. No. 17116 of 2022 to the Corporate Debtor is no longer operational.</p> <p>(j) Despite repeated requests and reminders, the Corporate Debtor failed to pay the electricity charges amount.</p> <p>(k) Thus, a demand notice dated 27.07.2023 under Section 8 of the Insolvency and Bankruptcy Code, 2016 was issued on the Corporate Debtor which was duly served. Despite receipt of the said demand notice, the Corporate Debtor failed to come forward and pay the amount, however chose to issue a reply notice dated 14.08.2023, baldly denying the liability to pay and attempting to hide behind the ongoing cases, which do not exonerate the Corporate Debtor from its liability to pay the determined charges and more specifically the periodic charges being payable.</p> <p>(l) It is submitted that even the energy bill for the consumption for the month of May 2022 was not completely paid and thus due to non-payment, after serving the disconnection notice on 20.06.2022, the connection of the Corporate Debtor was disconnected on 05.07.2022 and as of date the Corporate Debtor is no longer a current consumer of DVC.</p> <p>(m) Thus, constrained by the above, the Operational Creditor is filing the present applicable before this Hon'ble Tribunal to initiate insolvency proceedings against the Corporate Debtor due to its failure to pay the due amounts to the Operational Creditor.</p> <p><b>Date of Default:</b> Each of the aforementioned bills raised fell due on their respective due dates and the said amounts remain pending as of date. The last instalment for the arrears of FY 2006-2009 was on 15.03.2022. The date of default in terms of the bill for the arrears for FY 2017 – 2018 is 17.06.2022 and no amount was received from the Corporate Debtor for these amounts. The date of default for the bill raised for the arrears of FY 2018-2019 and FY 2019 -2020 is 16.07.2022 and no amounts were received from the Corporate Debtor.</p> <p>The Debt continues to be due and payable as of date.</p>
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2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	<p>The total amount of debt is Rs 20,46,53,026/- along with applicable delayed payment surcharge in terms of West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation, 2011 till the date of actual payment.</p> <p>The details of the amount claimed to be in default is attached herewith as <b>Annexure B</b>.</p> <p><b>Date of Default:</b> Each of the aforementioned bills raised fell due on their respective due dates and the said amounts remain pending as of date. The last instalment for the arrears of FY 2006-2009 was on 15.03.2022.</p> <p>The date of default in terms of the bill for the arrears for FY 2017 – 2018 is 17.06.2022 and no amount was received from the Corporate Debtor for these amounts.</p> <p>The date of default for the bill raised for the arrears of FY 2018-2019 and FY 2019 -2020 is 16.07.2022 and no amounts were received from the Corporate Debtor.</p> <p>The Debt continues to be due and payable as of date.</p>
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#### **COUNTER OF THE CORPORATE DEBTOR:**

4. In response to the receipt of notice of the Petition, the Corporate Debtor filed its reply vide Diary No.856 dated 02.05.2025 and inter alia contended as under:

- (i) The Petition filed under Section 9 of the Code is not maintainable, as there exist genuine and pre-existing disputes between the parties prior to issuance of the Demand Notice under Section 8(1) of the Code. The Operational Creditor itself has admitted that legal proceedings were already pending before the issuance of the Demand Notice, which is evident from its affidavit/ Petition. Further, the Operational Creditor has failed to furnish the mandatory affidavit under Section 9(3)(b) of the Code affirming that no notice of dispute had been received from the Corporate Debtor in relation to the claimed operational debt. Instead, a defective affidavit was filed, thereby rendering the present Petition non-compliant with Section 9(5)(ii)(d) of the Code and liable to be rejected.



- (ii) The Corporate Debtor has duly brought to the notice of the Operational Creditor, the existence of disputes within the stipulated time period prescribed under Section 8(2) of the Code. The claims sought to be enforced are already subject matter of pending proceedings before the Hon'ble High Court at Calcutta and the Appellate Tribunal for Electricity (hereinafter referred to as the "**APTEL**"), making them sub-judice. In these circumstances, the demand raised is arbitrary, mala fide, and premature, intended only to harass the Corporate Debtor. Accordingly, the Petition is not maintainable either in law or on facts.
- (iii) Despite being aware of the aforesaid facts, the Operational Creditor made the demand and filed this Petition. The allegation that the Corporate Debtor failed or neglected to pay electricity bills on a regular basis is incorrect. The Corporate Debtor denies the existence of any outstanding dues. The claim for alleged arrears is premised on disputed and contested bills, which are the subject of pending legal proceedings. Nevertheless, the Operational Creditor has claimed a sum of Rs.20,46,53,026/-, comprising arrear bills for 2006-09, arrear dues for 2018-20, and final claim adjustments post-security deposit in the following manner:

Description	Bill Date	Amount (Rs.)
Unpaid arrear bill for 2006-09	01.01.2021	8,15,08,151/-
Arrear 2017-18	02.06.2022	7,74,03,361
Arrear 2018-20	01.07.2022	2,88,51,059/-
Final Claim after adjustment of security deposit with outstanding energy bills	-	1,68,90,455/-
<b>Total</b>	-	<b>20,46,53,026/-</b>

- (iv) The tariff for the period 2006-09 was determined by order dated 19.06.2022. Pursuant thereto, the Operational Creditor issued a summary statement dated 01.01.2021, wherein it specifically admitted that the





Corporate Debtor was entitled to a refund of Rs.24,20,40,777/- for the said period. Despite this admission, the Operational Creditor simultaneously raised a claim towards DPS for the tariff period 2009-13. The Corporate Debtor disputed the said demand and challenged it before the Hon'ble High Court at Calcutta by filing WPA No. 4670 of 2022. The Hon'ble High Court, vide orders dated 16.03.2022 and 18.04.2022, was pleased to grant interim protection by staying the levy of DPS, and the Writ Petition is still pending adjudication. The Operational Creditor is having full knowledge of these facts and still made claim in the present proceedings.

- (v) There is no legally enforceable right in favour of the Operational Creditor to recover any amount towards arrear charges for the relevant period, in view of the binding orders of the Hon'ble High Court. On the contrary, the Operational Creditor has itself acknowledged a refund of Rs.24,20,40,777/- as payable to the Corporate Debtor. Its failure to adjust or refund the said sum before seeking to raise further demands clearly reflects malafide intent of the Operational Creditor. The wrongful withholding of this refund has caused serious financial stress to the Corporate Debtor.
- (vi) The Operational Creditor is fully aware that there are pending litigations before various forums in connection with arrear dues for the tariff periods 2017-18, 2018-19, and 2019-20. Despite this, the Operational Creditor has raised the present demand, showing scant regard for the judicial orders passed by different forums, including the Hon'ble Supreme Court, on the issue of arrear charges. The tariff for the period 2017-18 was determined



by tariff order dated 05.05.2022, while the tariff for 2018-19 and 2019-20 was determined by tariff order dated 17.06.2022.

- (vii) The Damodar Valley Power Consumers' Association (hereinafter referred to as the "**DVPCA**") and several other consumers challenged the tariff order dated 05.05.2022 before the Hon'ble APTEL. Initially, APTEL by order dated 06.06.2022 granted interim protection to one consumer, Inox Air Products Pvt. Ltd., by staying the payment of arrear charges, subject to payment of current tariff. Subsequently, in similar appeals filed by DVPCA and Dinman Polypacks Pvt. Ltd., the Hon'ble APTEL passed orders dated 21.06.2022 and 01.07.2022, respectively, clarifying that the order of stay would extend to all consumers, including those, who had not approached the Hon'ble APTEL. The Hon'ble High Court of Calcutta, in a batch of Writ Petitions, vide order dated 16.03.2023, held that the APTEL order dated 01.07.2022 would be binding on all consumers including consumers, who had not approached. This order was assailed before the Hon'ble Division Bench of the Calcutta High Court, but no stay was granted, and the matter remains pending.
- (viii) Further, by order dated 17.10.2022, the Hon'ble APTEL stayed both the tariff orders dated 05.05.2022 and 17.06.2022. Though the said order was assailed before the Hon'ble Supreme Court, by order dated 23.11.2022, the Hon'ble Supreme Court restored APTEL's earlier order dated 06.06.2022. An application filed by the Operational Creditor to vacate the interim stay was also rejected by the Hon'ble APTEL on 31.03.2023. The Operational Creditor further approached the Hon'ble Supreme Court against the said order, but the Hon'ble Supreme Court did not interfere.



- (ix) In parallel proceedings, several appeals concerning the arrear dues for 2017-18 remain pending before the Division Bench of the Hon'ble Calcutta High Court. Both the Operational Creditor and groups of consumers have filed separate appeals, and the issue is sub judice. In addition, the Corporate Debtor filed WPA No. 17116 of 2022 before the Hon'ble High Court at Calcutta, inter alia, challenging the jurisdiction of the WBERC in passing the tariff order dated 17.06.2022 for the FY 2018-19 and 2019-20. On the same issue, other consumers had also filed Writ Petition, which are pending before the Hon'ble High Court at Calcutta. In these proceedings, by order dated 02.08.2022, the Hon'ble Single Judge directed that the Operational Creditor shall not take any coercive steps on the basis of the impugned arrear demands. This order has been extended from time to time and continues to remain in force. In these circumstances, the Operational Creditor cannot make any claim to recover the arrear charges.
- (x) The final claim demanded by the Operational Creditor arises from the bill dated 04.08.2022. At the time of issuance of the Demand Notice, the matter concerning this bill was already pending adjudication before the Learned Ombudsman. Further, an order has since been passed by the Ombudsman after the issuance of the Demand Notice, which is annexed as Annexure-8 of the Counter. The Corporate Debtor has specifically highlighted that the bill dated 04.08.2022 is arbitrary, whimsical, and beyond jurisdiction. Despite being aware of the pendency of such proceedings, and despite actively participating therein, the Operational Creditor has proceeded to issue the Demand Notice and filed the present Petition, with the sole intention of harassing the Corporate Debtor.



- (xi) The Operational Creditor has claimed a sum of Rs.20,46,53,026/-. However, the Corporate Debtor is entitled to a refund of Rs.24,20,40,777/- on account of excess payments, which gives rise to a valid and subsisting counterclaim for the differential sum of Rs.3,73,87,751/-. In these circumstances, not only is the claim of the Operational Creditor disputed, but the Corporate Debtor has an affirmative right to recover excess amounts wrongfully withheld.
- (xii) Therefore, this Petition is not maintainable under Section 9(5)(ii)(d) of the Code, as there exists a genuine and substantial pre-dispute regarding the operational debt. Multiple Writ Petitions and appeals are pending before the Hon'ble High Court at Calcutta, APTEL, and the Hon'ble Supreme Court on the issues of tariff determination and arrear charges. The Hon'ble High Court, by order dated 16.03.2023, has explicitly held that arrear charge recovery cannot be enforced against consumers, who have challenged the tariff orders. Hon'ble APTEL, by its order dated 17.10.2022, stayed the tariff orders dated 05.05.2022 and 17.06.2022, and the Hon'ble Supreme Court has upheld this protection. Further, in WPA No. 17116 of 2022, the Hon'ble High Court has restrained the Operational Creditor from taking any coercive steps for recovery of arrear charges, and this order continues to remain in force.
- (xiii) The ***Hon'ble Supreme Court in Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd., Civil Appeal No.1137 of 2019, 2021 INSC 394*** has categorically held that insolvency proceedings cannot be initiated, where substantial disputes exist. Further, in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt.***



**Ltd., Civil Appeal No.9405 of 2017**, it was held that where a pre-existing dispute exists prior to issuance of a demand notice under Section 8(1), the Petition under Section 9 must be dismissed.

- (xiv) In the present case, multiple litigations, including proceedings before the Hon'ble High Court, Hon'ble APTEL, and Hon'ble Supreme Court, establish that the claims of the Operational Creditor are disputed and sub-judice. Therefore, the demand raised by the Operational Creditor is in clear disregard of binding judicial orders and is premature, speculative, and unenforceable.
- (xv) The present Petition is nothing but an abuse of process intended to coerce the Corporate Debtor into making payments that are not legally due. The Hon'ble Supreme Court has repeatedly disapproved such misuse of insolvency as a debt recovery tool, including in **Transmission Corporation of Andhra Pradesh v. Equipment Conductors and Cables Ltd, Civil Appeal No. 9597 of 2018** and **Vidarbha Industries Power Ltd. v. Axis Bank Ltd. 8 SCC 352 (2022)**, emphasizing that the IBC cannot be used as a coercive mechanism.

#### **REJOINDER BY THE OPERATIONAL CREDITOR:**

5. The Operational Creditor in its rejoinder filed vide Dairy No.1127 dated 13.06.2025, denied all the contentions raised by the Corporate Debtor and stated that:

- (i) The claims and averments raised by the Corporate Debtor in its Counter are wholly untenable, misleading, and not maintainable. The Corporate Debtor has deliberately suppressed material facts and sought to present selective information to mislead this Adjudicating Authority.



- (ii) The debt due and payable by the Corporate Debtor to the Operational Creditor is based on true facts. Despite repeated reminders, the Corporate Debtor has avoided payment and is now taking the defence of pre-existing dispute by way of feeble and misguided arguments. By disregarding binding orders of various forums, the Corporate Debtor is in contempt of these authorities and cannot seek the cover of the said orders to evade the liability.
- (iii) The interim orders relied upon by the Corporate Debtor do not bar payment of ongoing energy bills; rather, they were conditional upon continued payment of current dues, which the Corporate Debtor has failed to honour. Further, the Corporate Debtor is not even a party in all such proceedings to seek such protection. The reliance placed on WPA No. 4670 of 2022 is equally misplaced, as the interim order therein cannot absolve the Corporate Debtor from its clear liability under the bill dated 01.01.2021 for Rs. 10,47,92,599/-, which remains unpaid.
- (iv) The contention raised by the Corporate Debtor is unsustainable and without legal basis. A bare perusal of the Bill dated 01.01.2021 (Annexure D, Page 65 of Volume I) clearly demonstrates that the said bill comprises several components, including unpaid dues till April 2010, net unpaid amounts since May 2010, and the DPS billed and adjusted for the net arrear claims for the period 2009-2013. The Corporate Debtor's challenge in WPA No.4670 of 2022 was confined only to the DPS component relating to the 2010-13 dues (component E in the said Bill), amounting to Rs.1,48,12,354/-. The balance components of the bill remain unchallenged and unpaid. Further, vide order dated 24.01.2022, the Hon'ble Calcutta



High Court has entitled the Operational Creditor to raise bills as arrears from its consumers based on tariff orders passed by the WBERC.

- (v) The orders dated 16.03.2022 and 18.04.2022 passed in WPA No. 4670 of 2022 make it evident that the issue before the Hon'ble High Court was only with respect to the legality of DPS levied by the Operational Creditor. No blanket protection was granted to the Corporate Debtor from paying ongoing electricity dues. There is no stay on the recovery of regular energy charges, which remain undisputed. However, the Corporate Debtor has defaulted repeatedly in paying its energy bills, ultimately leading to disconnection of power supply on 05.07.2023.
- (vi) The Corporate Debtor itself executed a written undertaking dated 12.08.2021 agreeing to pay Rs.10,47,92,599/- (entire principal due under the Bill dated 01.01.2021) in 36 monthly instalments, while also committing to pay ongoing bills. However, after payment of 8 instalments, the Corporate Debtor defaulted on the balance, leaving Rs.8,15,08,151/- outstanding, which forms part of the present demand. A detailed statement of instalment payments is annexed as Annexure E.
- (vii) There exists no pending dispute in relation to the bill dated 01.01.2021. The entire bill amount as raised therein remains valid and recoverable. The Corporate Debtor cannot take cover under any interim orders or pending proceedings to evade its liability to pay the electricity dues, which were raised periodically and subsequently defaulted upon. Each of the interim orders relied upon by the Corporate Debtor were conditional on the continued payment of current dues. Having failed to comply with such



obligations, the Corporate Debtor is not entitled to invoke such orders to avoid its responsibility to settle outstanding energy bills.

- (viii) An arrear bill dated 02.06.2022 was raised by the Operational Creditor based on the Tariff Order dated 05.05.2022 issued by the WBERC. A relevant extract of the said tariff order has been filed as Annexure F to substantiate the claim.
- (ix) In respect of the bill dated 02.06.2022 raised for an amount of Rs.7,74,03,361/-, the Corporate Debtor seeks to evade its liability by relying upon orders dated (a) 06.06.2022 in IA No. 896 of 2022 in DFR No. 229 of 2022 & IA Nos. 895 & 894 of 2022, (b) 21.06.2022 in IA No. 923 of 2022 in Appeal No. 244 of 2022 & IA No. 922 of 2022, and (c) 01.07.2022 in IA No. 989 of 2022 in DFR No. 256 of 2022 & IA Nos. 988 & 987 of 2022. Additionally, reliance is also placed by the Corporate Debtor on the orders of the Hon'ble Calcutta High Court dated 16.03.2023 in the batch of matters pending before it.
- (x) With respect to proceedings before the Hon'ble APTEL, it is submitted that Inox Air Products Private Limited had challenged the WBERC Tariff Order dated 05.05.2022 determining provisional tariff for FY 2017-18. In its challenge, it sought a stay on the recovery of arrear dues, with the condition that current dues at prevailing rates would continue to be paid. Hon'ble APTEL, vide its order dated 06.06.2022 in IA No. 896 of 2022 in DFR No. 229 of 2022 & IA Nos. 895 & 894 of 2022, stayed recovery of arrear dues for FY 2017-18, based on the said condition. Thereafter, a group of consumers of the Operational Creditor known as DVPCA (of which the Corporate Debtor is not a member) filed similar appeals against





the same tariff order. Vide order dated 21.06.2022 in IA No. 923 of 2022 in Appeal No. 244 of 2022 & IA No. 922 of 2022, a similar stay was granted. On 01.07.2022, the stay on recovery of arrears was extended to all similarly placed consumers of the Operational Creditor and a blanket “*in rem*” order was passed.

- (xi) However, the protection sought to be claimed by the Corporate Debtor under the above proceedings is untenable. The “*in rem*” order was vacated vide order dated 22.08.2024 and vide order dated 07.10.2024. Thereafter, individual members of DVPCA were made parties to the proceedings. Additionally, the additional affidavit filed by DVPCA furnishing details of its members before the Hon’ble APTEL in Appeal No. 244 of 2022 is also annexed as Annexure I. Further, on 17.01.2025, the Hon’ble APTEL directed that 50% of the arrear dues be paid in cash and the remaining 50% be secured by way of Bank Guarantee. A copy of the order dated 17.01.2025 is annexed as Annexure J.
- (xii) With respect to proceedings before the Hon’ble Calcutta High Court, a group of consumers challenged the single year tariff for FY 2017-18 and the subsequent two-year tariff for FY 2018-19 and 2019-20. They contended that a single-year tariff order was violative of the Multi-Year Tariff (hereinafter referred to as the “**MYT**”) framework under the Electricity Act, 2003 and the WBERC Tariff Regulation No. 48 dated 25.04.2011. This challenge, however, was rejected, and the tariff orders were upheld vide order dated 17.02.2023. A copy of the said order in WPA No. 9857 of 2022 is annexed as Annexure K.



(xiii) Subsequently, certain consumers challenged disconnection notices issued by the Operational Creditor for non-payment of arrears in terms of the Tariff Order dated 05.05.2022. The Hon'ble Calcutta High Court vide its order dated 16.03.2023 observed that the Hon'ble APTEL order dated 01.07.2022, which applied to all similarly placed consumers, would govern the Corporate Debtor. The Court restrained the Operational Creditor from taking coercive measures. However, the Corporate Debtor cannot rely on these proceedings as (a) it is neither a party nor has it challenged the WBERC Tariff Orders, and (b) vide subsequent orders dated 30.09.2024, the Hon'ble High Court clarified that (i) those not paying current consumption charges could face disconnection; (ii) only consumers before the High Court and who provided undertakings were protected by its order dated 19.04.2023; and (iii) interim protections applied only to Petitioners before the Court in these batch of cases. Further, vide order dated 10.02.2025, the Hon'ble High Court directed consumers before it to pay 50% of arrear dues in cash and secure the remaining 50% via bank guarantee. The copies of the orders dated 30.09.2024 and 10.02.2025 are annexed as Annexure L and Annexure M.

(xiv) Another arrear bill dated 01.07.2022 was issued based on the WBERC Tariff Order dated 17.06.2022. A copy of the relevant extract of the tariff order is filed as Annexure N.

(xv) The Corporate Debtor challenged the said tariff order by filing WPA No. 17114 of 2022 with WPA No. 17116 of 2022 before the Hon'ble High Court. While the matter remains pending, the order dated 02.08.2022 itself clarified that although no coercive action could be taken, the Corporate



Debtor was mandated to continue paying current electricity charges, failing which the interim protection would automatically stand vacated. The Corporate Debtor defaulted even on current dues, and therefore, cannot rely upon the said order.

(xvi) The bill dated 04.08.2022 pertains to unpaid electricity dues which, after adjustments of security deposits and part payments, still left an outstanding balance of Rs.1,68,90,455/-. A perusal of this bill shows that as of 31.07.2022, the dues for consumption up to June 2022 totalled Rs.18,46,26,116/-, demonstrating persistent non-payment by the Corporate Debtor. Even after adjustments, arrears remained outstanding. Additionally, the Ombudsman's order dated 14.12.2023, relied on by the Corporate Debtor, was in fact passed in favour of the Operational Creditor, confirming the charges levied.

(xvii) As the amount of Rs.1,68,90,455/- remained unpaid, a disconnection notice was issued on 20.06.2022, and supply to the Corporate Debtor was disconnected on 05.07.2022. Presently, the Corporate Debtor is no longer a consumer of the Operational Creditor. Therefore, it cannot seek protection under interim orders of the Hon'ble APTEL or the High Court, which were all conditional on the Corporate Debtor continuing to be a customer of Operational Creditor.

(xviii) In view of the above, the Corporate Debtor cannot claim protection under any pending proceedings or interim orders to refute liability. Its reliance on such orders is misplaced and unsustainable. No pre-existing dispute existed between the Operational Creditor and the Corporate Debtor prior



to issuance of the Demand Notice. As the ingredients of Sections 8 and 9 of the Code stand satisfied, this Petition is to be admitted.

- (xix) The Affidavit filed by the Operational Creditor complies fully with Section 9(3)(b) of the Code. Although certain litigations are pending, these do not relate to the demanded amounts against this Corporate Debtor. The Corporate Debtor has further concealed material facts, particularly its failure to comply with orders already binding upon it.
- (xx) The Corporate Debtor is in contempt of several orders of the Hon'ble Calcutta High Court and the Hon'ble APTEL by failing to pay arrears as directed. The Corporate Debtor made part payments for arrears of 2006-09, with the last being on 15.03.2022. This itself establishes subsisting arrears.
- (xxi) The bill dated 01.01.2021, annexed as Annexure D, reflects that Rs.24,20,40,777/- was already adjusted under "Net Principal Arrear for 2006-09" before the bill was raised. Post adjustment, Rs.8,15,08,151/- remains outstanding. Thus, the Corporate Debtor is not entitled to any refund. Its reliance on WPA No. 4670 of 2022 is untenable, and its non-compliance with the instalment schedule under orders dated 16.03.2022 and 18.04.2022 of the Hon'ble High Court places it in contempt and it cannot be interpreted to mean that there is a blanket embargo on the right of this Operational Creditor to seek legal remedy.
- (xxii) The Order dated 16.03.2023 of the Hon'ble High Court, as well as interim orders of the Hon'ble APTEL, have since been revised. Further, the Hon'ble APTEL in IA No. 1436 of 2024 in Appeal No. 288 of 2023 vide



order dated 22.08.2024 clarified that extending interim relief to non-parties was beyond its jurisdiction under Section 111 of the Electricity Act, 2003.

(xxiii) Thus, the stay order of 17.10.2022 stands vacated, and in any event, the Corporate Debtor, being neither a party to Appeal No. 244 of 2022, nor to Appeals 288 or 286 of 2023 before the Hon'ble APTEL, could not claim any protection under them.

(xxiv) Further, vide orders dated 17.01.2025 in IA Nos. 1148, 1159, and 1154 of 2024, the Hon'ble APTEL modified its earlier interim relief, holding that the Operational Creditor had been subjected to undue hardship by being prevented from recovering arrears. Accordingly, the Hon'ble APTEL directed that 50% of arrears be paid within 30 days and the balance secured by Bank Guarantee. It was also clarified that full tariff as per interim orders of 06.06.2022, 21.06.2022, and 01.07.2022 must be complied with. The interim arrangement remains subject to outcome of the main appeal.

(xxv) A bare reading of the above orders establishes that the Hon'ble APTEL recognized the hardship caused to the Operational Creditor by the initial stay, as reflected in its direction for consumers to pay 50% arrears to the Operational Creditor. With the stay now vacated or modified, the Corporate Debtor's reliance on interim protection is untenable. Its persistent default renders its defence baseless, and the present Petition be admitted into the CIRP.

6. During the course of hearing on 24.04.2025, the Counsel for the Operational Creditor sought two weeks' time to file additional documents and the orders passed



by the WBERC & other statutory appellate authorities and both the parties also sought time to submit, whether there was any pre-existing dispute between the parties along with the relevant documents.

7. During the course of hearing on 07.07.2025, the Counsel for the Corporate Debtor contended that there is a pre-existing dispute and sought one week's time to file a copy of WPA No. 4670 of 2022 and this Adjudicating Authority, vide its Order dated 07.07.2025 directed the Counsel for the Corporate Debtor to serve a copy of the said WPA to the Counsel for the Operational Creditor, who shall examine whether it attracts any pre-existing dispute in relation to the regular bills forming the subject matter of the present claim made by the Operational Creditor and also file legal propositions, if any, pertaining to the existence of a pre-existing dispute by way of any suit or writ filed by the Corporate Debtor relating specifically to the claim amount under consideration in the present Petition.

8. In compliance with the order dated 21.07.2025, both the Operational Creditor and the Corporate Debtor submitted their respective memos, recorded under Diary No. 1550 dated 29.07.2025 and Diary No. 1543 dated 28.07.2025 respectively.

9. The matter was heard at length on 04.08.2025, the discussions as recorded in this Adjudicating Authority Order dated 04.08.2025 are summarised below:

- (i) During the course of hearing, it was observed that the present subject matter of the Petition is confined to a limited issue, as agreed upon by both counsels, namely, the existence of a pre-existing dispute specifically, whether any suit or writ petition, including the said WPA No. 4670 of 2022, has been filed by the Corporate Debtor in relation to the claim amount under consideration in the present Petition. In this matter, the amount



claimed in Part-IV of the Petition pertains to four claims, cumulatively amounting to Rs.20,46,53,026/-. The four claims are extracted below:

<b>S. No</b>	<b>Description</b>	<b>BILL DATE</b>	<b>AMOUNT in Rupees</b>
1	Unpaid arrear bill for 2006-09	01/01/2021	8,15,08,151/-
2	Arrear 2017-18	02/06/2022	7,74,03,361/-
3	Arrear 18-20	01/07/2022	2,88,51,059/-
4	Final claim after adjustment of security deposit with outstanding energy bills		1,68,90,455/-
<b>Total</b>			<b>20,46,53,026</b>

- (ii) During the course of hearing, on a specific query, the Counsel for the Corporate Debtor clarified that the contentions raised in WPA No. 4670 of 2022 are in respect of the unpaid arrear bill from 2006-09 i.e., the first claim set out in Part-IV of the petition and none of the contentions raised in the Writ Petition relate to other three claims in Part-IV. The Counsel for the Operational Creditor submitted that even after excluding the disputed claim i.e., 1<sup>st</sup> claim in the Part-IV, the Petition is maintainable, since the other three claims is more than the threshold limit. The Counsel further submitted that the maintainability of a Section 9 Petition is not vitiated merely because one of the claims is disputed or sub judice, provided that the remaining undisputed claims, when considered independently, meet or exceed the statutory threshold as prescribed under the IBC. The counsel for the Operational Creditor relied on a judgment in a similar matter, where the Corporate Debtor was admitted into CIRP, specifically referring to the decision of the **Hon'ble NCLAT, New Delhi in Mrs. Leena Salot, Proprietor of Riddhim Textiles vs. Ridham Synthetics Pvt. Ltd., Company Appeal (AT) (Ins) No. 375/2024 & IA No. 1278/2024 dated 03.07.2025**, as reproduced below:



63. We have noted that the claims of the Appellant as per part IV of Section 9 application is Rs.. 1,36,06,646/- and even three invoices amount is excluded (the all three invoices which have been mentioned by the Adjudicating Authority) (total amounting to Rs. 20,01,948/-), the remaining residual amount of default is still is Rs. 1,16,04,698/- which is more than the threshold limit of Rs. 1 Crores.

- (iii) The Counsel for the Operational Creditor further relied upon the judgment asserting that the facts of the present case are in pari materia with those in the following matter, wherein the Corporate Debtor was admitted into CIRP, specifically referring to the decision of the **NCLT, Kolkata Bench in Damodar Valley Corporation vs. M/s. Jai Venketesh Concast Pvt. Ltd., CP (IB) No. 243/KB/ 2023** dated 19.06.2025, as reproduced below:

The CD herein has failed to demonstrate or establish that it is not required to pay the arrears. Assuming that it is not required to pay 50% of the arrears, still the default is way above the threshold.

a. The application bearing **C.P (IB) NO. 243/KB/2023** filed by **Damodar Valley Corporation**, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s. Jai Venketesh Concast Private Limited**, the Corporate Debtor, is **admitted**.

- (iv) Despite having been granted several opportunities, the Counsel for the Corporate Debtor failed to advance or substantiate any contrary legal proposition to rebut the position relied upon by the Operational Creditor.

### **ANALYSIS AND FINDINGS:**

10. We have heard the counsels appearing for the Operational Creditor and Corporate Debtor and have perused the records carefully.





11. The first issue for consideration before us is **“Whether this Petition is filed within the period of limitation”**

- (i) The Operational Creditors has claimed Rs.20,46,53,026/-, the details and the date of default of which as mentioned in the Petition, are as below:

Sl. No.	Description	Bill Date	Amount (Rs.)	Date of Default
(i)	Unpaid arrear bill for 2006-09	01.01.2021	81508151	15.03.2022
(ii)	Arrear 2017-18	02.06.2022	77403361	17.06.2022
(iii)	Arrear 2018-20	01.07.2022	28851059	16.07.2022
(iv)	Final claim after adjustment of security deposit with outstanding energy bills		16890455	
	<b>Total</b>		204653026	

- (ii) With regard to claim at (i), it is noted that pursuant to the WBERC Traffic Order dated 19.06.2020, the Operational Creditor had prepared the bill dated 01.01.2021 for the period of FY 2006 to 2009 amounting to Rs.10,47,92,599/- and the Corporate Debtor, by an undertaking dated 12.08.2021, agreed to pay Rs.10,47,92,599/- in 36 instalments. However, the Corporate Debtor, defaulted after payment of only eight instalments and therefore, the outstanding amount as on 15.03.2022 remained Rs. 8,15,08,151/- as detailed below:

Instalment No	Instalment Amount	Date of payment
1	2910906	12-08-2021
2	2910906	14-09-2021
3	2910906	14-10-2021
4	2910906	15-11-2021
5	2910206	15-12-2021
6	2910206	15-01-2022
7	2910206	15-02-2022
8	2910206	15-03-2022
Total instalment paid as per undertaking on account of bill dated 01.01.2021 amounting to Rs 104792599		23284448

Remaining amount **81508151**  
Only eight instalment was paid out of the agreed 36 instalments

- (iii) With regard to (ii) and (iii), the claim pertains to the bills i.e. 02.06.2022 and 01.07.2022 respectively.



- (iv) With regard to claim at (iv), the claim pertains to bill dated 04.08.2022.
- (v) We note that the present Petition was filed on 27.11.2024 i.e. within three years of the bills for the claims at (i) to (iv) and the issue of limitation has not been contested by either party.
- (vi) Therefore, we are of the considered view that the Petition has been filed within the limitation period.

12. The second issue for consideration is **“Whether the Demand Notice dated 27.07.2023 was properly served”**.

- (i) A perusal of the record reveals that the Operational Creditor issued a Demand Notice dated 27.07.2023 in Form-3, the relevant extract of which is reproduced below:

कमिशनरी प्रत  
OFFICE COPY

**DAMODAR VALLEY CORPORATION**  
COMMERCIAL DEPARTMENT  
DVC TOWERS, VIP ROAD  
KOLKATA - 700 054.  
Tel. No. + 91 33 2355 7931 / 6041 ; Fax No. + 91 33 2355 2129.

Comd / LRB / Discm - 1709 - FORM 3- 27 JUL 2023

DEMAND NOTICE / INVOICE DEMANDING PAYMENT UNDER THE  
INSOLVENCY AND BANKRUPTCY CODE 2016  
(Under Rule 5 of the Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules 2016)

27<sup>th</sup> July 2023 **Speed Post with A/d** EW 39567279 8 W

M/s.SRINIVASA FERRO ALLOYS LTD  
D.No. 50-113-6/2/1, MIG- 225, TPT Colony,  
Seethammadhara,  
North Extension Layout  
Visakhapatnam AP 530013 IN

Also at  
JL No-89, Angadpur, Durgapur,  
Dist: Burdwan,  
West Bengal- 713215

From,  
Damodar Valley Corporation,  
DVC Towers, VIP Road, Kolkata-700054.

Subject: Demand notice/invoice demanding payment in respect  
of unpaid operational debt due from SRINIVASA FERRO  
ALLOYS LTD under section 8 of the Insolvency and Bankruptcy  
code, 2016.

Madam/Sir,

1. This letter is a demand notice/invoice demanding payment of an unpaid operational debt due from SRINIVASA FERRO ALLOYS LTD



- (ii) Although, no proof of service of the Demand Notice has been filed by the Operation Creditor, however, the reply to the demand notice has been given by the Corporate Debtor on 14.08.2023 (Annexure- I at Page no- 179-216 of the Petition).
- (iii) In view of the above, we consider that the Demand Notice was served.

13. The next issue for consideration before us is **“Whether there is any pre-existing disputes between the Operational Creditor and the Corporate Debtor and the undisputed amount is above the threshold of Rs.one crore”**.

- (i) The Corporate Debtor has taken the shelter of pre-existing disputes and referred the judgement of the Hon’ble Supreme Court in the matter of ***Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd (2018) 1 SCC 353***, wherein, the Hon’ble Supreme Court was pleased to hold, *inter alia*, as follows:

*“40. ....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.”*

- (ii) We note that the Operational Creditors has claimed Rs.20,46,53,026/-, the details and the date of default of which are as below:

S. N.	Description	Bill Date	Amount (Rs.)	Date of Default
(i)	Unpaid arrear bill for 2006-09	01.01.2021	8,15,08,151	15.03.2022
(ii)	Arrear 2017-18	02.06.2022	7,74,03,361	17.06.2022
(iii)	Arrear 2018-20	01.07.2022	2,88,51,059	16.07.2022



S. N.	Description	Bill Date	Amount (Rs.)	Date of Default
(iv)	Final claim after adjustment of security deposit with outstanding energy bills		1,68,90,455	Not mentioned
	<b>Total</b>		204653026	

(iii) With regard to unpaid arrear bill for 2006-09, the Corporate Debtor in its Counter, has submitted the copy of WPA No. 4670 of 2022 filed before Hon'ble High Court of Calcutta by Corporate Debtor on 14.03.2022, in which it has prayed for the following reliefs:

- a) A declaration that the levy of DPS and the alleged dues of 2010 in the Summary statement dated 01.01.2021 is ultra vires to the provisions of the Constitution of India and the Electricity Act, 2003 and the Rules framed thereunder and accordingly be declared as null and void.
- b) A writ in the nature of Mandamus commanding the respondents and their men, agents and/ or assigns to forthwith refund the sum levied on account of DPS along with interest and the sum adjusted against the dues of 2010;
- c) A writ in the nature of Mandamus "commanding the respondents and their men, agents and/ or assigns to forthwith refund the amount paid against the summary statement dated 01.01.2021 and all receivables for both the tariff period ( 2006-09 and 2009-13) all along with interest;
- d) A writ in the nature of Certiorari directing the respondents, its agent and/ or assigns to transmit the entire record of the case to this Hon'ble Court so that conscionable justice be done by quashing the summary statement dated 01.01.2021;
- e) Any other appropriate writ or writs and/ or direction or directions as may deem fit and proper;
- f) Rule NISI in terms of prayer b) to e) as above;
- g) An order staying the operation of the summary statement dated 01.01.2021;
- h) An order restraining DVC from levying any further amount mentioned in the summary statement 01.01.2021;
- i) Ad interim order in terms of g) and h);
- j) Such other order or orders as may deem fit and proper."

(iv) It is noted that pursuant to the WBERC Traffic Order dated 19.06.2020, the Operational Creditor had prepared the bill dated 01.01.2021 for the period of FY 2006 to 2009 amounting to Rs.10,47,92,599/- The relevant extract of above bill is reproduced below:



# DAMODAR VALLEY CORPORATION

दामोदर घाटी निगम

Commercial Department, DVC Towers, VIP Road, Kolkata-700054

65

Letter No : Coml/Arrear/440135

Date : 01/01/2021

To,

Consumer ID :- 440135

Srinivasa Ferro Alloys Ltd JL No-89, Angadpur, Durgapur, West Bengal. Pin-713215, Dist: Burdwan, West Bengal.

Sub : Final claim after adjustment of Old Dues, Delayed Payment Surcharge (DPS), Excess Payment(if any), Shortfall in SD(if any) and Carrying Cost since April 06.

Dear Sir/Madam,

This is to inform you that Hon'ble West Bengal Electricity Regulatory Commission has published tariff order for FY 2006 to 2009 on 19th June 2020. DVC has prepared the bill for the period of FY 2006 to 2009. The net payable amount after adjustment of Old Dues, Delayed Payment Surcharge (DPS), Excess Payment(if any), Shortfall in SD(if any) and Carrying Cost comes to Rs.104792599.

The detail break up of adjustment of Old Dues, Delayed Payment Surcharge (DPS), Excess Payment(if any), Shortfall in SD(if any) and Carrying Cost is given in annexure pages. Errors, if any, or any lawful change, if required, will be done and the same will be adjusted in subsequent bill(s).

Regards,

Deputy Chief Engineer (Comm)

- (v) The Corporate Debtor, by an undertaking dated 12.08.2021, agreed to pay Rs.10,47,92,599/- in 36 instalments. However, the Corporate Debtor, defaulted after payment of only eight instalments and therefore, the outstanding amount as on 15.03.2022 remained Rs.8,15,08,151/- as detailed below:



Instalment No	Instalment Amount	Date of payment
1	2910906	12-08-2021
2	2910906	14-09-2021
3	2910906	14-10-2021
4	2910906	15-11-2021
5	2910206	15-12-2021
6	2910206	15-01-2022
7	2910206	15-02-2022
8	2910206	15-03-2022
Total instalment paid as per undertaking on account of bill dated 01.01.2021 amounting to Rs 104792599		23284448

Remaining amount 81508151  
Only eight instalment was paid out of the agreed 36 instalments

- (vi) However, we note that the WPA No. 4670 of 2022 relates to unpaid arrear bill including DPS for 2006-09 for which the Corporate Debtor, by an undertaking dated 12.08.2021, agreed to pay Rs.10,47,92,599/- in 36 instalments and after paying 8 instalments have filed the WPA before the Hon'ble High Court of Calcutta, which is although prior to issuance of the demand notice and pending litigation before the Hon'ble High Court of Calcutta, the Corporate Debtor defaulted the payment of remaining instalments and future bills and also the Corporate Debtor has acknowledged the debt by giving an undertaking, which may amount to a binding contract between the parties. Therefore, the pendency of the litigation cannot be taken as a pre-existing dispute.
- (vii) With regard to arrears of 2017-18 and 2018-20, the Corporate Debtor in its Counter, has stated that Writ Petition WPA No.17116 of 2022 was filed challenging the jurisdiction of WBERC in passing the Tariff Order dated 13.06.2022 for the period 2018-19 and 2019-20, however, the copy of the same has not been submitted, in the absence of which we are not able to examine the same. Further, we note that the with regard to arrears of 2017-18, nothing has been stated in the Counter of the Corporate Debtor and we presume that there is no pre-existing dispute with regard to Arrear of 2017-18 amounting to Rs.7,74,03,361/-



- (viii) With regard to final claim after adjustment of security deposit with outstanding energy bills, the Corporate Debtor in its Counter, has stated that the final claim is in connection with the bill dated 04.08.2022, which is pending before Learned Ombudsmen as on the date of Demand Notice and an order has been after issue of the Demand Notice. However, from the perusal of the order dated 14.12.2023 of the Learned Ombudsmen, we note that the case was filed on 20.01.2023 before the issue of the demand notice i.e. 27.07.2023 and thus may amount to a dispute between the parties. The relevant extract of the Learned Ombudsmen order is reproduced below:

Office of the Ombudsman, West Bengal,  
(Appointed under Sec.42 (6) of the Electricity Act, 2003)  
West Bengal Electricity Regulatory Commission  
Dongfang Electric (India) Pvt. Ltd. Building,  
Plot No – AH/5, Premises No. MAR 16 – 1111  
Action Area, 1 A, New Town, Rajarhat, Kolkata – 700 163  
Telephone : 033 2962 3766, Extension – 409 / 407  
Email address: [wberombudsman2012@gmail.com](mailto:wberombudsman2012@gmail.com)

**ORDER SHEET**

Representation No. DVC-1 SB / 2023  
Under sec. 42(6) of the Electricity Act, 2003.

In the matter of :

Shri Chetan Prakash Bagaria On behalf of M/s. Srinivasa Ferro Alloys Ltd. Plot-89, Angadpur, Durgapur, Pin – 713 215	-	Appellant / Petitioner
<b>VERSUS</b>	-	
Damodar Valley Corporation (DVC)	-	Licensee / Opposite Party (OP)
Date of Filing of Representation	-	20.1.23
Date of Draft Settlement Order	-	06.11.23
Date of Final Order	-	14.12.23

**FINAL ORDER**

This appeal has been preferred against the Order dated 30.12.22 passed by the CGRO (WB) of Damodar Valley Corporation stating that the petitioner had raised a dispute in connection with the bill dated 04.8.22 raised by Damodar Valley Corporation (DVC). From the bill dated 04.8.22, it appears that the DVC has claimed that it has supplied electricity for 744 hours for the period starting from 01.7.22 to 31.7.22. DVC has further claimed a sum of Rs.32,64,000/- as demand charges. It would appear from the said bill that DVC has levied electricity duty, load factor surcharge and has claimed that the petitioner has consumed 1 KWH of gross energy. The petitioner being aggrieved by the said bill filed an application before the CGRO on 26.9.22 which was rejected. The order dated 30.12.22 passed by the CGRO has not considered the specific stand taken by the petitioner in its application. The CGRO wrongly came to a conclusion that the DVC has

- (ix) The Operational Creditor has filed the judgement of the **Hon'ble NCLAT, New Delhi in the matter of Mrs. Leena Salot, Proprietor of Riddhim Textiles vs. Ridham Synthetics Pvt. Ltd. (Supra)**, wherein the judgement of the **Hon'ble Supreme Court in the matter of Mobilox**



***Innovations Private Ltd vs Kirusa Software Private Ltd (Supra)*** is also referred, pleading that if undisputed claim amount in section 9 Petition is above the threshold limit of Rs. one crore, the Section 9 Petition needs to be admitted. The relevant extracts of the judgment are reproduced below;

*“54. We need to appreciate that the admission of an application filed under Section 9 of the Code may sometimes containing some minor or illusionary disputes in the view of the Corporate Debtor, however a significant portion of debt may remain undisputed. In **Mobilox Innovations Pvt. Ltd. (Supra)** the Hon’ble Supreme Court has stated that dispute must be “plausible contention which requires further investigation and not patently feeble legal argument or assertion of fact unsupported by evidence”. .....*

*55. We note that the Respondent/Corporate Debtor vide its Email dated 21.11.2019 acknowledged the Operational Debt to the tune of Rs.1,76,35,029/-. We further note that the Respondent vide e-mail dated 23.06.2022 once again shared Ledger while admitting and acknowledging the outstanding liability of an amount of Rs.1,39,85,901/-. Both these acknowledgements were exclusive of the 2 Invoices, being Invoice No.207 and 228, which were subsequently disputed by the Corporate Debtor. Therefore, admittedly, in any case, the total admitted outstanding was above the threshold limits of Rs.1,00,00,000/- Thus, we hold that the Respondent, indeed has acknowledged the debt.*

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*60. We need to emphasis that while general rule is that any genuine dispute can and should lead to rejection of Section 9 application, however, if the undisputed portion of the debt is significantly above the minimum threshold limit of Rs.1 Crore and the dispute pertains to a very relatively non-significant part of the claim, the Tribunal ought to have admitted the application of the Appellant under Section 9 of the Code especially if the disputes appears frivolous. We note that the similar stand was taken by this Appellate Tribunal in Company Appeal (AT ) (Ins.) No. 583/ 2024 dated 13.11.2024.*

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

*63. We have noted that the claims of the Appellant as per part IV of Section 9 application is Rs.1,36,06,646/- and even three invoices amount is excluded (the all three invoices which have been mentioned by the Adjudicating Authority) (total amounting to Rs. 20,01,948/-), the remaining residual amount of default is still is Rs.1,16,04,698/-, which is more than the threshold limit of Rs.1 Crores.*

*64. Based on above detailed analysis and taking into consideration the judgments of the Hon’ble Supreme Court of India as well as this Appellate Tribunal and further taking into consideration the various records discussed earlier, we find that the Adjudicating Authority clearly erred in rejecting the application filed under Section 9 of the Code of the Appellant.”*

- (x) In view of the judgement of the **Hon’ble NCLAT, New Delhi in the matter of Mrs. Leena Salot, Proprietor of Riddhim Textiles vs. Ridham**





**Synthetics Pvt. Ltd. (Supra)**, we are of the considered opinion that the undisputed amount exceeds the threshold limit of rupees one crore. Accordingly, the Petition filed under section 9 of the IBC is maintainable after splitting the bills as reflected in Part-IV of the Petition and is liable to be admitted.

14. Before admission, this Adjudicating Authority has to satisfy that the Petition is complete. We have gone through the contents of the Petition filed by the Operational Creditor and found that the same is complete.

15. As a sequel to the discussion above, the present Petition bearing CP (IB)/65/9/AMR/2024 filed by the Operational Creditor under section 9 of the Code for initiating CIRP against the Corporate Debtor **Srinivasa Ferro Alloys Limited** (CIN: L27109AP1988PLC008340), is hereby admitted and accordingly, the Moratorium is declared in terms of Section 14 of the Code:

- (i) Moratorium under section 14 (1) for prohibiting all of the following, namely:
  - (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, 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 Financial 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.
- (ii) It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;
- (iii) The provisions of sub-section of section 14(1) shall not apply to such transactions, agreements or other arrangement, as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and also to a surety in a contract of guarantee to a corporate debtor.
- (iv) The supply of essential goods or services to the Corporate Debtor, as may be specified, shall not be terminated or suspended or interrupted during moratorium period, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances, as may be specified.



- (v) The order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 as the case may be.

16. The Operational Creditor in Part III of the petition has not proposed the name of the IRP and has stated that the same shall be provided at the time of admission, however, the same has not been provided even at the time of reserving for order. In view of the above, we consider to appoint **Mr. Srinivas Gudla Rao** as IRP in the matter from the list of Insolvency Professional provided by the IBBI for the period of July, 2025 to December, 2025. The credentials of the proposed IRP was verified on the IBBI website; the relevant extract of the IBBI website is as below:

Name of the IP	SRINIVAS GUDLA RAO
Registration no	IBBI/IPA-001/IP-P-02093/2020-2021/13333
Date of Registration	18-Jan-21
Member of IPA	Indian Institute of Insolvency Professionals of ICAI
Member of IPA Since	25-Aug-20
Member of IPE	
Email id	gudlasrinivasrao[at]gmail[dot]com
Address	6-20-20/3, FLAT NO 201, AQUA TOWERS ,EAST POINT COLONY ,BACK GATE CHAITANYA COLLEGE ,Visakhapatnam,Andhra Pradesh ,530017
Have Valid AFA	Yes
AFA Certificate No.	AA1/13333/02/311225/107694
AFA Valid Upto	31-Dec-25
Total CPE Earned	66
Total Assignments	11

17. Accordingly, we hereby appoint Mr. Srinivas Gudla Rao, Registration No. IBBI/IPA-001/IP-P-02093/2020-2021/13333 e-mail ID- [gudlasrinivasrao@gmail.com](mailto:gudlasrinivasrao@gmail.com) having registered address at: 6-20-20/3, Flat No. 201, Aqua Towers, East Point Colony, Back Gate Chaitanya College, Visakhapatnam, Andhra Pradesh-530017 as IRP in the matter with the following directions:



- (i) The term of appointment of **Mr. Srinivas Gudla Rao** shall be in accordance with the provisions of Section 16(5) of the Code, subject to his written consent to be filed within 7 days of this order;
- (ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the IRP and the officers and the managers of the Corporate Debtor shall report to the IRP, who shall be enjoined to exercise all the powers, as are vested with the IRP and strictly perform all the duties as are enjoined on the IRP under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets, over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18(1)(f) of the Code. The IRP is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- (iii) The IRP shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- (iv) The IRP shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the CIRP in terms of Section 13(1)(b) read with Section 15 of the Code calling for the submission of claims against Corporate Debtor;



- (v) The IRP/RP shall prepare the Audited Financial Statements as on date of the CIRP and shall submit before the CoC for consideration.
- (vi) The IRP/RP shall also ensure that all the assets appearing in the Financial Statements on the CIRP date have been considered in the valuation report. The IRP/ RP shall send individual communication through post or electronic means along with a copy of public announcement to all the creditors as per last available books of accounts/ financial statements on the CIRP date of Corporate Debtor as prescribed under Regulation 6A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (vii) The Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the IRP in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- (viii) The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the Corporate Debtor maintained under Section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case



accounting software for maintaining the books of accounts is used by the Corporate Debtor, then IRP/ RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than eight financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

- (ix) In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/ RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the Corporate Debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.
- (x) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, the IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/ RP in implementing this order for retrieval of relevant information from the systems of the Corporate Debtor, the IRP/ RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating



to the Corporate Debtor, particularly for government portals, for various compliances. The IRP is also directed to make a specific mention of noncompliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- (xi) The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/ documents available with those authorities/ institutions/ others pertaining to the Corporate Debtor, which would be relevant in the CIRP. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIRP as per law.
- (xii) The IRP shall, after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee;
- (xiii) The IRP shall also serve a copy of this order to all relevant statutory departments such as Income Tax, GST (Centre and State), Provident Fund authorities, trade unions, and employee associations to inform them about the commencement of CIRP.
- (xiv) The IRP is directed to send a regular progress report to this Adjudicating Authority every fortnight.



18. The Operational Creditor is directed to deposit Rs.4,00,000/- (Rupees Four Lakhs only) with the IRP to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Operational Creditor.

19. A copy of this Order shall immediately be communicated to the Operational Creditor, the Corporate Debtor, IBBI, and the IRP named above by the Court Officer/ Registry of this Adjudicating Authority.

**Accordingly, CP (IB)/65/9/AMR/2024 stands admitted.**

**Sd-  
(Umesh Kumar Shukla)  
Member (Technical)**

**Sd-  
(Kishore Vemulapalli)  
Member (Judicial)**

*Reddy Pavani, LRA*