



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - V**

**C.P. (I.B) No.176/MB/2024**

**Under Section 9** of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**M/s. Kisaan Steels Pvt. Ltd.**

Having its registered address at B-12,  
Industrial Area Bulandshahar Road  
Ghaziabad, UP- 201001

**... Operational Creditor**

Vs

**M/s. Gemini Engi-Fab Pvt. Ltd.**

Having its registered address at 501,  
Palm spring, next to Dmart Link Road,  
Malad West, Mumbai -400 064

**... Corporate Debtor**

**Order Dated:24.03.2025**

**Coram:**

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

**Appearances: Physical/ VC**

**For the Petitioner:** Adv. Shreshth Jain

**For the Respondent:** Adv. Subhradeep Banerjee (VC)



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**ORDER**

***Per: Madhu Sinha Member (Technical)***

1. This Company Petition is filed by **M/s. Kisaan Steels Pvt. Ltd** (hereinafter referred as “**the Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **M/s. Gemini Engi-Feb Pvt. Ltd** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a total Operational Debt of Rs. 3,97,44,173/- (Rupees Three Crore Ninety-Seven Lacs Forty Four Thousand one Hundred and Seventy Three Only).

**FACTS AND SUBMISSIONS OF THE OPERATIONAL DEBTOR-**

2. The Petitioner submits that **Kisaan Steels Pvt. Ltd.** (hereinafter referred to as the "Operational Creditor") is a private limited company incorporated under the Companies Act, 1956. It is engaged in the manufacturing of steel forgings and is registered under **CIN No. U27310UP1973PTC003661**. The Corporate Debtor, **Gemini Engi-Feb Pvt. Ltd.**, is a company registered under the Companies Act, 1956, and is engaged in the manufacturing and fabrication of custom-made process equipment for various industrial sectors, including **Oil & Gas, Petrochemicals, Fertilizers, Food & Dairy, Cement, and Nuclear Plants**.
3. The Petitioner states that in **November 2021**, the Corporate Debtor approached the Operational Creditor seeking the supply of various categories of steel forgings. Relying on the Corporate Debtor's assurances of continued business and its reputed standing, the



Operational Creditor agreed to supply the required goods. The Corporate Debtor subsequently issued multiple **purchase orders**, which were duly acknowledged and executed by the Operational Creditor. The details of the major purchase orders are as follows:

S. No.	Particulars	Purchase Order No.	Purchase Order Date	Amount (Including GST)
1.	Tubesheet	GEF/PO/079/22-23	10.06.2022	₹ 4,83,800/-
2.	Forgings	GEF/PO/053/22-23	09.06.2022	₹ 21,35,799/-
3.	Forgings	GEF/PO/326/21-22	08.12.2021	₹ 5,86,03,983/-
4.	Forgings	GEF/PO/004/22-23	04.04.2022	₹ 19,47,003/-
5.	Forgings	GEF/PO/343/21-22	22.12.2021	₹ 7,434/-
6.	Forgings	GEF/PO/005/22-23	04.04.2022	₹ 2,08,23,394/-

4. The Petitioner further submits that the goods were supplied in accordance with the agreed terms, and delivery was made to the designated location of the Corporate Debtor. Prior to dispatch, the goods underwent inspection by an agency appointed by the Corporate Debtor. The dispatch was carried out only after receiving approval from the Corporate Debtor based on the inspection report.

5. The Petitioner states that against each purchase order, the Operational Creditor raised **tax invoices**, which were duly delivered



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to the Corporate Debtor. The Corporate Debtor received and acknowledged the supplies without raising any disputes regarding the quality or quantity of the goods. However, despite accepting the invoices and receiving the supplies, the Corporate Debtor failed to make full payments as per the agreed terms.

6. It is further submitted that the Corporate Debtor made partial payments on certain invoices and also deducted Tax Deducted at Source (TDS) on the invoices, thereby admitting its liability. The total value of the goods supplied by the Operational Creditor amounts to Rs. 8,40,01,413/- (Rupees Eight Crore Forty Lakh One Thousand Four Hundred and Thirteen Only). However, as of the date of filing the present petition, a substantial amount of Rs. 6,13,53,270.70/- (Rupees Six Crore Thirteen Lakh Fifty-Three Thousand Two Hundred Seventy and Seventy Paise Only) remains outstanding despite repeated demands and follow-ups.
7. The Petitioner states that several oral and written requests were made for the clearance of the outstanding dues. A formal email was sent on 07.01.2023, followed by a meeting on 24.01.2023, wherein the Corporate Debtor assured payment but failed to fulfil its commitment. A follow-up email dated 11.02.2023 was also sent, urging immediate payment; however, no substantial response was received from the Corporate Debtor.
8. The Petitioner further states that left with no alternative, a statutory demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, was issued on 15.03.2023, demanding payment of the outstanding amount. However, the Corporate Debtor neither responded to the demand notice nor made any payment within the stipulated period.
9. In light of the Corporate Debtor's continued default in making payments despite multiple reminders and the issuance of a statutory demand notice, the present petition under Section 9 of the Insolvency



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and Bankruptcy Code, 2016 has been filed before this Hon'ble Tribunal. The debt remains undisputed and is duly acknowledged by the Corporate Debtor through partial payments and TDS deductions, thereby qualifying as operational debt under the provisions of the Insolvency and Bankruptcy Code, 2016.

10. Hence, the Petitioner prays for the initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and seeks appropriate relief from this Hon'ble Tribunal.
11. Hence this Petition.

#### **FACTS AND SUBMISSIONS OF THE CORPORATE DEBTOR-**

12. The Respondent categorically denies all averments made in the petition. Any failure or omission to expressly deny any averment shall not be construed as an admission thereof. Nothing shall be deemed admitted by the Respondent unless expressly admitted herein. The Corporate Debtor had filed their Affidavit in Reply ("**Reply**") has denied each and every statement, contention and allegation made by the Petitioner.
13. The Respondent and Petitioner had entered into a business arrangement under a Memorandum of Understanding (MOU) dated 29th May 2018, governing the supply of materials and execution of construction work.
14. The Corporate Debtor submits The Operational Creditor filed an application under *Section 9* of the *Insolvency and Bankruptcy Code*, alleging that it supplied steel forgings to the Corporate Debtor (the Respondent) based on purchase orders issued between December 2021 and April 2022, and that the Corporate Debtor failed to make payments despite the Operational Creditor fulfilling its obligations.
15. The Respondent states that the essential terms and conditions of the POs executed between the parties are as follows:



Sr. No	Clause No.	Particular	Terms and Conditions
1.	5	Delivery Clause	All forgings were required within 3 weeks from the date of PO placement.
2.	6	Liquidated Damages (LD) Clause	LD applicable after the due date of delivery at 0.5% per week, up to a maximum of 5% of the total PO value.
3.	8	Inspection by Client (HPCL)	Inspection of materials to be conducted by the client.
4.	11	Guarantee Clause	Materials and workmanship guaranteed for a minimum of 24 months from receipt at Umbergaon or 24 months from commissioning, whichever is earlier. Any batch found defective would be rejected, and the Respondent reserves the right to claim the total cost, including interest, from the Operational Creditor.
5.	11	Arbitration Clause	Any disputes arising out of the POs shall be subject to the jurisdiction of Mumbai.
6.	3	Compliance Clause	Materials must comply with ASME Sec II, TPS, and EIL specifications, and such compliance must be reflected in the Material Test Certificate (MTC).

**16.** The Corporate Debtor submits that the Between December 2021 and June 2022, the Operational Creditor and Respondent entered into several purchase orders to service the end customer, Indian Oil Corporation Limited ("IOCL") and other clients, as follows:

Sr. No.	Date	Purchase Order particulars	PO amount including GST	Default Amount
1.	08.12.2021	Forgings- GEF/PO/326/21-22	Rs. 5,86,03,983/-	Rs. 1,21,34,449/-
2.	22.12.2021	Forgings- GEF/PO/341/21-22	Rs. 7,434/-	NIL



3.	04.04.2022	Forgings- GEF/PO/004/22-23	Rs. 19,47,003/-	Rs. 97,350/-
4.	04.04.2022	Forgings- GEF/PO/005/22-23	Rs. 2,08,23,394/-	Rs. 87,86,708/-
5.	10.06.2022	Tube sheet- GEF/PO/079/22-23	Rs. 4,83,800/-	Rs. 4,83,800/-
6.	09.06.2022	Forgings- GEF/PO/053/22-23	Rs. 21,35,799/-	Rs. 1,06,790/-

5. The Corporate Debtor submits the essential terms of the Purchase Orders included: a) Delivery Clause: All forgings required within 3 weeks from the date of placement of PO. b) Liquidated Damages Clause: LD shall be applicable after the due date of delivery @0.5% per week to a maximum of 5% of the total PO value. c) Inspection Clause: Inspection by client (HPCL). d) Guarantee Clause: All supplied raw material and workmanship should be guaranteed for a minimum of 24 months from the date of receipt of material at Umbergaon or 24 months from commissioning, whichever is earlier. If any material is found to have manufacturing defects, then the whole lot of the specific Heat No. will be rejected, with the Respondent reserving the right to claim the total cost including interest rates. e) Arbitration Clause: In case of any dispute arising out of this order, it is subject to Mumbai jurisdiction only. f) General Note: All material should be supplied in accordance with the mandatory requirements of ASME Sec II, specifications, and the Respondent's TPS and EIL specification, which should be mentioned in MTC.
6. The Corporate Debtor states The Respondent has penalized the Operational Creditor for delay and defective goods supplied to the end-user/customer.
7. The Corporate Debtor submits that The Corporate Debtor has made the following payments to the Operational Creditor:

Sr.No	Date	Amounts paid
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1.	26.04.2022	Rs. 1,06,330/-
2.	27.04.2022	Rs. 7,434/-
3.	17.05.2022	Rs. 40,59,687/-
4.	08.06.2022	Rs. 60,19,207/-
5.	12.07.2022	Rs. 51,00,209/-
	<b>Total</b>	<b>Rs. 1,52,92,867/-</b>

8. The Respondent submits that on 08.12.2021, it emailed the Operational Creditor, attaching the purchase orders, and indicating that revised TPS and drawings would be provided within 4-5 days. The Respondent states that on 14.12.2021, the Operational Creditor provided contact details of their concerned person for deliverables.
9. The Respondent further submits that on 23.12.2021, it approved the forging as per the Quality Assurance Plan (QAP). The Respondent states that on 22.07.2022, the Operational Creditor acknowledged a meeting held the previous day at its office, providing details on the status of low alloy steel forgings. The correspondence revealed ongoing delays in the delivery of forging switch and the Respondent's mounting frustration due to non-receipt of forgings
10. The Respondent states that on 21.11.2022, the end user/customer informed it of defects discovered in the materials, indicating that the supplied materials were unacceptable due to numerous defects. The Respondent submits that on 06.01.2022, it requested an email acknowledgment for all forging sketches and an item-wise production schedule from the Operational Creditor.
11. The Respondent states that on 09.01.2023, it informed the end user/customer of a planned site visit for final ultrasonic testing along with the forging manufacturer, noting that the inspection outcome would be binding on both the Respondent and the end user/customer. The Respondent further submits that on 19.01.2022 and 20.01.2022, there was correspondence regarding non-standard forging sketches and revised sizes.



- 12.** The Respondent states that on 30.03.2022, it requested acknowledgment of an amended purchase order. The Respondent submits that on 09.07.2022, it reminded the Operational Creditor about deliveries that were due five months earlier and requested inspection details and photographs of all forgings before 16.07.2022.
- 13.** The Respondent states that between July 2022 and December 2022, multiple communications took place between the Respondent, the Operational Creditor, and the end user/customer regarding:

  - a) Inspection of materials
  - b) Discovery of defects in the supplied material.
  - c) Delays in delivery of pending items
  - d) Requests for dispatch details
  - e) Financial implications of delays
- 14.** The Respondent submits that on 25.01.2023, the end user/customer informed it that the tube sheet supplied by the Respondent and the Operational Creditor was unacceptable. The inspection carried out jointly by representatives of the Operational Creditor, the Respondent, and IOCL found that the supplied material was defective, with defects constituting deviations from the QAP and applicable code.
- 15.** The Respondent states that on 19.01.2023, the Operational Creditor informed it about their quality check personnel's scheduled site visit and requested payment for projects for which material had already been supplied, acknowledging delays in deliverables from their end.
- 16.** The Respondent further submits that on 11.03.2023, it referred to a "consequences sheet" provided to the Operational Creditor during a meeting on 02.03.2023, stating that payment would be released once the Operational Creditor confirmed this sheet.
- 17.** The Respondent further submits that on 11.03.2023, it referred to a "consequences sheet" provided to the Operational Creditor during a meeting on 02.03.2023, stating that payment would be released once the Operational Creditor confirmed this sheet.



- 18.** The Respondent states that on 23.03.2023, the Operational Creditor acknowledged multiple meetings to discuss outstanding issues and requested early payment, citing its MSME status and the substantial impact of the outstanding amount on its supply chain and business performance.
- 19.** The Respondent submits that on 18.05.2023, it reiterated that it had provided a detailed calculation of consequences and would clear outstanding amounts after the Operational Creditor's consideration of this sheet, inviting the Operational Creditor to discuss and resolve the issue.
- 20.** The Respondent states that on 26.06.2023, the Operational Creditor requested the immediate release of outstanding amounts totaling Rs. 6,13,53,270/-.
- 21.** The Respondent submits that on 28.06.2023, it emphasized the Operational Creditor's failure to execute purchase orders properly and outlined the financial consequences of delays, requesting the Operational Creditor's acceptance of these consequences before releasing any balance payment.
- 22.** The Respondent states that on 20.10.2023, the Operational Creditor initiated pre-mediation proceedings before the District Legal Services Authority, Civil Court, Surajpur, District Gautam Budh Nagar, Delhi. The mediation ended as the Respondent did not participate.
- 23.** The Respondent further submits that the Operational Creditor has alleged that the Respondent signed a document admitting an outstanding amount of Rs. 1,00,00,000/-. The Respondent categorically denies this assertion, stating that no such admission was made and that the Operational Creditor is attempting to misrepresent facts to prejudice the tribunal against the Respondent.
- 24.** The Respondent denies defaulting on payments to the Operational Creditor and disputes the validity of specific invoices related to defective goods and delayed deliveries. The Respondent contends that:



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- i. The disputed invoices pertain to non-compliant goods and services and are not payable.
  - ii. Pre-existing disputes existed before the demand notice, as evidenced by invoices and email correspondence.
  - iii. Counterclaims for damages due to defective goods and delays offset any alleged outstanding debt.
  - iv. Payment was conditional on satisfactory delivery and quality, which the Operational Creditor failed to meet.
  - v. The Operational Creditor improperly reduced its claim from Rs. 6,13,53,270.70 to Rs. 3,97,44,173.70, contradicting its prior demands.
  - vi. The Tribunal lacks jurisdiction over counterclaims, and the existence of a pre-dispute warrants rejection of the CIRP application under Section 9.
  - vii. Delivery records, rejection notices, and expert reports establish defects and non-compliance with purchase orders.
  - viii. HPCL's rejection of tube sheets further substantiates the dispute over quality.
  - ix. Delays and incomplete deliveries caused financial and reputational losses to the Respondent.
  - x. The Operational Creditor unilaterally altered specifications without consent, leading to project disruptions.
  - xi. Continuous correspondence evidences ongoing disputes over quality, quantity, and damages. The Respondent denies liability for Rs. 3,97,44,173.70, as the claim is disputed and does not constitute an admitted debt.

## **FINDINGS**

**25.** After careful consideration of the submissions made by both parties, the documentary evidence placed on record, and the applicable legal provisions and precedents, this Tribunal determine that the primary issue for determination is whether there exists a "dispute" in terms



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of *Section 5(6)* of the Code regarding the operational debt claimed by the Operational Creditor, which would render the application inadmissible under *Section 9(5)(ii)(d)* of the Code.

- 26.** It is not in dispute that the Corporate Debtor issued multiple purchase orders to the Operational Creditor for the supply of various categories of steel forgings, and the Operational Creditor supplied goods pursuant to these purchase orders.
- 27.** Further, it deserves to be taken note of that the Corporate Debtor issued multiple purchase orders to the Operational Creditor for the supply of various categories of steel forgings, and goods were supplied in pursuance of the said purchase orders. The Corporate Debtor acknowledges having made partial payments amounting to Rs. 1,52,92,867/-, thereby confirming the existence of a business relationship.
- 28.** However, the Corporate Debtor disputes the quantum of the outstanding claim on the grounds of defective supplies and delays in delivery, contending that penalties and liquidated damages are applicable as per the purchase orders. To substantiate this, the Corporate Debtor has placed on record documentary evidence indicating the existence of disputes regarding the quality of goods supplied and delays in delivery, which predate the issuance of the demand notice under Section 8 of the Code on 15.03.2023.
- 29.** With regard to the quality of goods, the following communications are particularly relevant:
- a) Communication dated 21.11.2022 from the end-user/customer informing the Corporate Debtor of defects discovered in the materials supplied by the Operational Creditor.
  - b) Communication dated 25.01.2023 from the end-user/customer specifically stating that the tube sheet supplied was unacceptable, with defects constituting deviations from the Quality Assurance Plan (QAP) and applicable code.



**30.** With regard to delays in delivery, the following communications are noteworthy:

a) Email dated 09.07.2022 wherein the Corporate Debtor reminded the Operational Creditor about deliveries that were due five months earlier.

b) Communication dated 19.01.2023 wherein the Operational Creditor itself acknowledged delays in deliverables from their end.


**31.** Additionally, the Corporate Debtor has also produced evidence of a "consequences sheet" shared with the Operational Creditor during a meeting on 02.03.2023, detailing the financial implications of the delays and defects, which the Operational Creditor was required to accept before any further payments could be made.

**32.** These communications clearly establish that there were ongoing disputes between the parties regarding the quality of goods and delays in delivery, which directly impact the quantum of the operational debt claimed by the Operational Creditor.

**33.** Section 5(6) of the Code defines "dispute" to include disputes relating to "the quality of goods or service" and "the existence of the amount of debt." The disputes raised by the Corporate Debtor in the present case squarely fall within this definition.

**34.** The Hon'ble Supreme Court, in the landmark case of *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* [(2018) 1 SCC 353], has extensively dealt with the interpretation of the term "dispute" under Section 5(6) of the Code. The Court observed:

*"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational*



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*creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense 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."*

**35.** In the present case, the disputes raised by the Corporate Debtor regarding the quality of goods and delays in delivery are supported by documentary evidence, including communications with the end-user/customer and acknowledgments by the Operational Creditor itself. These disputes cannot be characterized as spurious, hypothetical, or illusory.

**36.** Similarly, in *K. Kishan v. Vijay Nirman Company Pvt. Ltd.* [(2018) 17 SCC 662], the Supreme Court further elaborated:

*"21. It is important to notice that Section 8(2) of the IBC speaks of existence of a dispute. If read with the definition of "dispute" under Section 5(6), what emerges is that a "dispute" must exist before the receipt of the demand notice or invoice, as the case may be. The definition of "dispute" set out in Section 5(6) is inclusive and not exhaustive. The use of the word "includes"*

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*enlarges the scope of the definition. Therefore, even if the dispute does not fall within the three sub-clauses of Section 5(6), a dispute falling within the meaning of the word "dispute" in Section 8(2) must be determined."*

- 37.** In the present case, the disputes regarding quality and delays clearly existed before the issuance of the demand notice on 15.03.2023, as evidenced by the communications dated 21.11.2022, 25.01.2023, and the "consequences sheet" shared on 02.03.2023.
- 38.** The Corporate Debtor has also brought to the attention of this Tribunal that the Purchase Orders contain an Arbitration Clause, which states: *"Any disputes arising out of the POs shall be subject to the jurisdiction of Mumbai."* The Corporate Debtor contends that by virtue of this clause, any dispute between the parties should be adjudicated through arbitration rather than through proceedings under the *Insolvency and Bankruptcy Code*.
- 39.** In this regard, it is pertinent to refer to the judgment of the Hon'ble Supreme Court in *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (2018) 1 SCC 353*, wherein the Court, while referring to its earlier decision in *Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd. & Ors. (2011) 5 SCC 532*, observed:

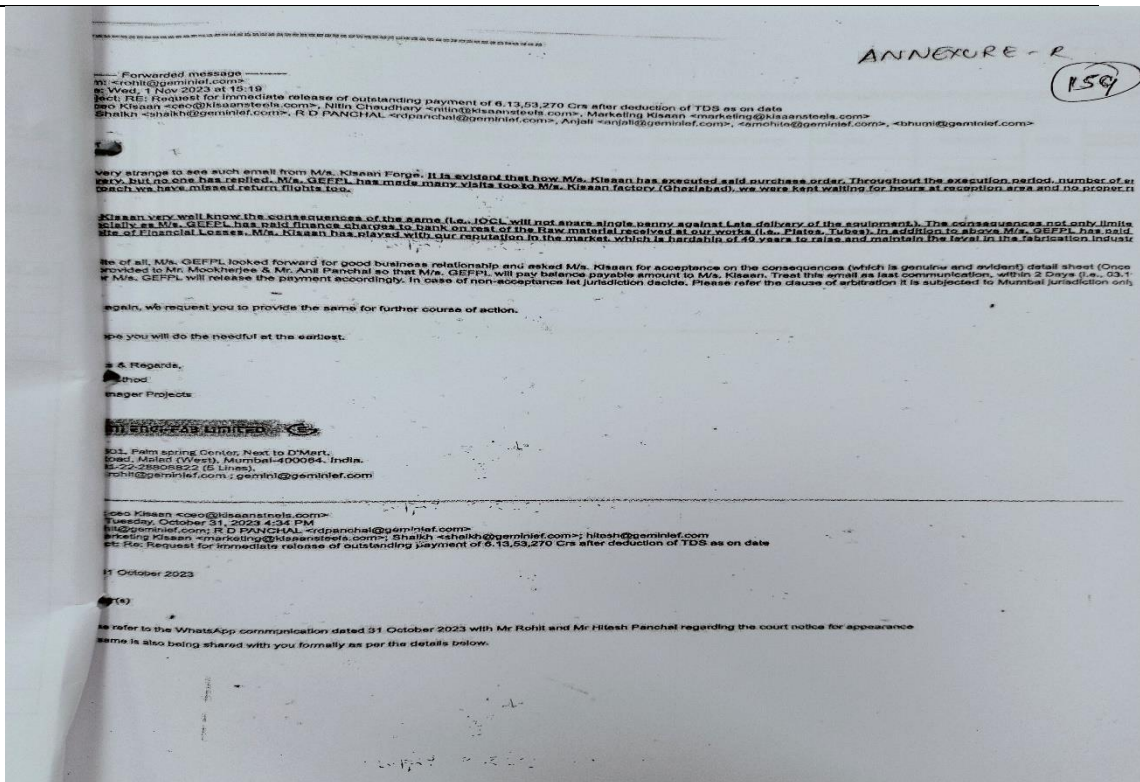
*"The Supreme Court held that the Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain*



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*categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora, may by necessary implication stand excluded from the purview of private fora. Consequently, where the dispute is in arbitrable, the court where a suit is pending will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes."*

- 40.** The Hon'ble Supreme Court in *Mobilox Innovations* case further clarified that insolvency proceedings are not purely contractual in nature but involve a larger public interest element, and therefore, the mere existence of an arbitration clause would not by itself render an application under the Code inadmissible. What is relevant is whether there exists a genuine dispute as defined under *Section 5(6)* of the *Code*.
- 41.** However, it is pertinent to note that the Operational Creditor, in IA 2257 of 2024, has placed on record an email dated 01.11.2023 issued by the Corporate Debtor to the Operational Creditor. In this email, the Corporate Debtor categorically states that payment would be made and, in case of default, the Operational Creditor may proceed with arbitration proceedings. Significantly, this email does not mention any pre-existing dispute regarding the quality of goods or delays in delivery.



42. The absence of reference to any disputes in the said email raises a serious doubt as to the Corporate Debtor's claim of pre-existing disputes. In our considered view, the Corporate Debtor cannot approbate and reprobate at the same time and the admission of debt is clear. This Tribunal, therefore, finds that the Corporate Debtor has failed to demonstrate a genuine dispute as contemplated under Section 5(6) of the Code. Consequently, the application under Section 9 of the Code is maintainable, notwithstanding the arbitration clause in the Purchase Orders.
43. It is noted that as per the daily order dated 30.08.2024, the Corporate Debtor had submitted a settlement offer to the Operational Creditor, and this Tribunal had granted time to the Operational Creditor to consider the same. However, the settlement terms proposed by the Corporate Debtor were found unacceptable. The counsel for the Operational Creditor further submitted that the Operational Creditor



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wishes to proceed with the present application under Section 9 of the Code.

- 44.** In view of the above submission and based on the findings recorded in paragraphs 25 to 42 above, this Tribunal is satisfied that:
- a) The application under Section 9 of the Code is complete in all respects as required by law;
  - b) There is no payment of the unpaid operational debt;
  - c) The Corporate Debtor has failed to demonstrate the existence of a genuine dispute regarding the operational debt.
- 45.** Based on the facts, evidence, and legal precedents discussed above, the following conclusions are drawn that the Petitioner has successfully established the existence of an operational debt that was due and payable, and the Corporate Debtor has committed a default in its repayment. The Corporate Debtor, in its response to the email dated 01.11.2023, has acknowledged the outstanding liability, thereby extending the limitation period under Section 18 of the Limitation Act, 1963. Consequently, the petition is well within the period of limitation and is maintainable under Section 9 of the Insolvency and Bankruptcy Code, 2016.
- 46.** This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
- 47.** The Operational Creditor has proposed the Resolution Professional in Part III of the Company Petition. The Resolution Professional (RP) proposed by the Petitioner has an Authorisation for Assignment (AFA) valid only until 30.06.2025. Considering the same, the Bench is of the view that it would be appropriate to appoint a new Interim Resolution Professional (IRP) from the panel of Insolvency Professionals maintained by the Insolvency and Bankruptcy Board of India (IBBI).
- 48.** Accordingly, the above Company Petition is 176 of 2024 with the following:



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- a. The above Company Petition No.176/IBC/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Gemini Engi-Feb Pvt. Ltd** and Mr. Pankaj Govindlal Khadloya, having registration NO. IBBI/IPA-001/IP-P-02485/2021-2022/13810, having email Id- pkhadloya@gmail.com, having address 202 Vishnu Sadashiv Apartment ,1754 Sadashiv Peth ,Near Udayan Mangal Karyalay Opp Scout Ground ,Pune, Maharashtra ,411030, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- b. The Operational Creditor shall deposit an amount of Rs. **2 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- c. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



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- d. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- e. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- f. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- g. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- h. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- i. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- j. Accordingly, CP 176 of 2024 is **Admitted**.

Sd/-

**Madhu Sinha**  
**Member (Technical)**

/Priyanka/

Sd/-

**Reeta Kohli**  
**Member (Judicial)**