



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**  
*[Through Physical hearing/VC Mode (Hybrid)]*

**CP (IB) No.17/BB/2023**  
**U/s. 9 of the IBC, 2016**  
**R/w Rule 6 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**M/s. G.K ISPAT PRIVATE LIMITED**

No.44 Brigade Business Suites, 5<sup>th</sup> Floor  
T Mariayappa Road, 2<sup>nd</sup> Block,  
Jayanagar, Bangalore- 5600011

... Operational Creditor

**Versus**

**M/s. VEERA VAHANA PRIVATE LIMITED**

Plot No. 16 to 19, Bommasandra,  
Jigani Link Road, Industrial Hennagara Post  
Anekal Taluk, Bangalore, Karnataka 560105

... Corporate Debtor

**Order delivered on: 26.03.2025**

**Coram:** Hon'ble Shri. K. Biswal, Member (Judicial)  
Hon'ble Shri. Ravichandran Ramasamy, Member (Technical)

**PRESENT:**

For the Petitioner: Shri C.K. Nandakumar, Sr. Counsel  
with Shri Anupam Agarwal  
For the Respondent: Shri Bhanumurthy J.S.

**ORDER**

1. The present petition was filed on 23.11.2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by **M/s. G.K ISPAT PRIVATE LIMITED** (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Professional Process ("CIRP") against **M/s. VEERA VAHANA PRIVATE LIMITED** (hereinafter referred as 'Corporate Debtor'/Respondent) on the ground that the Corporate Debtor



has committed a default for a total outstanding amount of Rs. 3,42,33,537 (Rupees Three Crore Forty Two Lakhs Thirty Three Thousand Five Hundred and Thirty Seven Only) The date of default mentioned in the Part IV of Form 5 is 30.06.2017 and in Part IV of Form No.5 filed with Petition, the following information is given:

<b>PART-IV</b>		
<b>Particulars of Operational Debt</b>		
1.	Total amount of Debt. Details of Transactions on account of which debt feel due.	Total outstanding amount due is Rs.3,42,33,537 (Rupees Three Crore Forty Two Lakhs Thirty Three Thousand Five Hundred and Thirty Seven Only  The Copies of the Purchase orders is at Annexure -A to the petition
2	Amount claimed to be in Default and date on which the Default occurred (Attach the workings for computation of amount and dates of Default in Tabular Form	Total outstanding amount due is Rs.3,42,33,537 (Rupees Three Crore Forty Two Lakhs Thirty Three Thousand Five Hundred and Thirty Seven Only)  The First default of payment occurred on 30.06.2017 and is still ongoing. Copies of the dishonoured Cheques is at Annexure-C, to this Petition.

2. It is also submitted that Affidavit U/s 9(3) (b) was placed as **Annexure II(K)** of this Petition, while Demand Notice under Section 8(1), Form 3 was attached as **Annexure I(A)** of the Petition.
3. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:-
  - (a) The Operational Creditor supplied iron and steel goods to the Corporate Debtor against various purchase orders issued between 20.01.2017 and 22.02.2019. The goods were duly delivered by the Operational Creditor on different dates and were received by the Corporate Debtor without any dispute regarding quality or quantity. During the aforesaid period, the Operational Creditor supplied goods worth ₹14,52,35,953/- (Rupees Fourteen Crores Fifty-Two Lakhs Thirty-Five Thousand Nine Hundred and Fifty-Three), inclusive of all financial charges calculated up to 30.08.2022. Despite repeated



follow-ups, the Corporate Debtor made only part payments towards the total invoice amount and finance charges.

- (b) Subsequently, the Corporate Debtor issued the following four cheques, all dated 11.08.2021 and drawn on Canara Bank, Cantonment Branch, Bangalore and all the cheques were dishonoured. Cheque Nos. 686565 and 686566 were returned with the remark **“FUNDS INSUFFICIENT”**, while Cheque Nos. 030806 and 030807 were returned with the remark **“ACCOUNT BLOCKED.”** The Operational Creditor has filed four complaints under Section 200 of the Code of Criminal Procedure, read with Sections 138 and 142 of the Negotiable Instruments Act, before the Chief Metropolitan Magistrate, Bengaluru, which are currently pending adjudication. Further as of 30.08.2022, the total outstanding principal amount payable by the Corporate Debtor stands at ₹3,42,33,537/- (Rupees Three Crore Forty-Two Lakh Thirty-Three Thousand Five Hundred and Thirty-Seven) and despite repeated reminders and e-mails, the Corporate Debtor failed to clear the outstanding amount.
- (c) The Operational Creditor served a Demand Notice under the Insolvency and Bankruptcy Code, 2016 on 29.09.2022 and the Demand Notice was duly served to the Corporate Debtor on 04.10.2022. The Corporate Debtor vide letter dated 11.10.2022 responded by denying all the allegations made by the Operational Creditor. In the said Demand notice, the Corporate Debtor had also stated that after accounting for all the payments, as per the books of accounts maintained by the Client, a sum of Rs.99,96,992 is only due as on 08/06/2022. Further, since the Corporate Debtor failed to make payment of the debt within 10 days, the Operational Creditor seeks to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.
4. On 03.07.2023, the Respondent filed its statement of objection, vide Diary No: 3512 and contended as under:-
- i. In the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC), the petitioner served notice on the respondent on 29.09.2022. The petitioner alleged that iron and steel



goods were supplied to the respondent against various purchase orders issued between 20.01.2017 and 22.02.2019 for a total amount of Rs. 14,52,35,953, inclusive of financial charges calculated till 30.08.2022. The petitioner admits that part payment of this amount has already been made by the Respondent.

- ii. The Petitioner further alleged that the respondent failed to clear the outstanding amount and the four cheques issued by the respondent on 11.08.2022 were dishonoured due to Insufficient Funds (Cheque Nos. 685555 and 686566) and "Account Blocked" (Cheque Nos. 030806 and 030807), for which proceedings under Section 200 of the Code of Criminal Procedure read with Sections 138 and 142 of the Negotiable Instruments Act are pending before the Chief Metropolitan Magistrate at Bengaluru. The petitioner claimed that the quantum of default amounts to Rs. 3,42,33,537 as of 30.08.2022
- iii. The Respondent submits that the application is not maintainable as the minimum default amount under Section 4(1) of the IBC is Rs. 1 Crore. As per the respondent's ledger records, the outstanding debt as on 08.06.2022 is Rs. 99,06,992, which is below the statutory threshold. The total value of procurements till 31.03.2020 was Rs. 58,053,883, against which payments of Rs. 48,073,427 have been made (as evidenced by Annexure II(d) of the petitioner's application). After accounting for TCS of Rs. 16,736, the pending amount is only Rs. 69,96,992. Therefore, the petitioner's claim of a higher outstanding amount is disputed.
- iv. Further, there exists a pre-existing dispute under Section 8(2) of the IBC, which bars the present application. The respondent had notified the petitioner of the disputed debt through a reply notice dated 11.10.2022. The petitioner's claim includes financial charges without specifying how interest was calculated, the rate of interest, or whether any document provides for such interest. Additionally, proceedings under Section 138 of the Negotiable Instruments Act are pending before the XXXIII Additional Chief Metropolitan Magistrate, Bengaluru, which constitutes a pre-existing dispute.



- v. The application is also barred by limitation since under Article 137 of the Limitation Act, the limitation period is three years from the date of first default. The petitioner has admitted that the date of first default is 30.06.2017, making the limitation period expire on 30.06.2020. However, the present application was filed only on 23.11.2022, rendering it time-barred. The default cannot be treated as a continuing wrong since the injury caused by the default does not continue beyond the initial act of default.
  - vi. The respondent submits that the application has been filed fraudulently and with malicious intent, violating Section 65 of the IBC. The respondent had made the part payments and issued four cheques dated 11.08.2021. Subsequently, six more cheques were issued between September 2021 and February 2022 with an understanding that the petitioner would return the earlier four cheques. In breach of this understanding, the petitioner presented the earlier cheques, leading to dishonour and the filing of this application. The petitioner's actions amount to a mere debt recovery attempt rather than a genuine insolvency resolution process.
  - vii. In light of the above, the respondent prays that this tribunal dismiss the petition as not maintainable, being barred by limitation and involving a pre-existing dispute. The respondent also seeks leave of the tribunal to file a supplementary affidavit or statement of objections if required.
5. Further, on 20.07.2023, the Respondent filed an additional statement of objection, vide Diary No: 01135 and contended as under:-
- (a) The Respondent reiterates that the proceedings initiated by the petitioner are mala fide and intended to harass the respondent. The petitioner had been supplying goods to the respondent since 2013, with regular payments being made until March 2020. The onset of the COVID-19 pandemic disrupted the business operations globally, including those of the respondent, resulting in delayed payments for the supplies, as evidenced by the petitioner's own statement. Despite the disruption, the respondent made payments amounting to Rs. 80 lakhs during the pandemic period.



- (b) Following a police complaint by the petitioner, a settlement meeting was held at the police station on 21.08.2021 between the Managing Director of the respondent and the petitioner's representative. It was agreed that dues of Rs. 1.70 Crores would be cleared in six monthly instalments, and the petitioner would return all previously issued cheques. In furtherance of this settlement, six cheques were issued on 05.09.2021 (evidenced by letter dated 05.09.2021, **Annexure A**). Despite receiving these cheques, the petitioner failed to return the old cheques.
- (c) The respondent remitted the first instalment of Rs. 30 lakhs on 27.09.2021 and informed the petitioner via email (**Annexure B**), requesting the return of the old cheques and the cheque for which payment has been made. Despite repeated requests, the petitioner failed to return the cheques. In an email dated 25.10.2021 (**Annexure C**), the respondent specifically informed the petitioner that failure to return the old cheques would prevent further payments.
- (d) Despite this, the petitioner presented the old cheques and filed a criminal complaint under the Negotiable Instruments Act on 08.10.2021—just six days after the first instalment payment and before the due date of the second instalment under the settlement. The breach of the settlement terms was brought to the notice of the police officer through a letter dated 14.02.2022 (**Annexure D**). The petitioner subsequently presented cheques dated 28.10.2021 and 29.11.2021 and filed additional criminal cases (No. 55167/2022) on 25.02.2022—months before initiating the present proceedings.
- (e) The petitioner deliberately suppressed material facts from this tribunal, including the settlement arrived at the police station, the submission of six additional cheques conditional on the return of old cheques, the failure to return the cheques despite repeated requests, and the filing of criminal complaints based on the old cheques. This demonstrates that there is a clear dispute between the parties regarding the payment terms.
- (f) The petitioner's claim includes financial charges amounting to Rs. 3,42,33,537, which were never agreed upon by the respondent. The



purchase orders issued by the respondent never provided for finance charges. The respondent's ledger statements show that goods were continuously supplied since 2013, with delays in payments (ranging from 60 to 120 days) occurring from time to time, but finance charges were never imposed until June 2017. Even after June 2017, the petitioner continued to supply goods, implying that no finance charges were expected.

- (g) Balance confirmation statements for the financial years 2018-19, 2019-20, and 2021-22 (**Annexure E**) were sent to the petitioner and did not reflect any finance charges. The petitioner did not contest these statements until 2021, which confirms the existence of a dispute regarding the inclusion of finance charges.
  - (h) Letters dated 05.09.2021 and 14.02.2022 confirm that the outstanding dues were only Rs. 1.70 Crores, not Rs. 3.46 Crores as claimed by the petitioner. Accordingly, the respondent issued six cheques for Rs. 1.70 Crores in line with the settlement terms. Therefore, there is a clear dispute regarding the outstanding debt amount.
  - (i) Further, the tabular worksheet at page 33 of the petitioner's application under Section 9 of IBC shows that if finance charges and TCS adjustments are excluded, the debt due would reduce to Rs. 99,96,992—below the statutory threshold of Rs. 1 Crore under Section 4 of IBC, 2016.
  - (j) In light of the above facts and the reasons stated in the first statement of objections dated 03.07.2023, the respondent submits that there is a pre-existing dispute under Section 8 of IBC and the outstanding debt is below the admissible threshold under Section 4 of IBC. Therefore, the present application is liable to be dismissed as not maintainable.
6. On 30.08.2023, the Petitioner filed a memo, vide Diary No:4517 and contended as under:
- (a) The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 for recovery of Rs. 3,42,33,537/- (Rupees Three Crores Forty-Two Lakhs Thirty-Three Thousand Five Hundred



and Thirty-Seven only) for iron and steel goods supplied to the Respondent against various purchase orders from 20.01.2017 to 22.02.2019. The outstanding amount, inclusive of the principal and subsequent interest, remained unpaid as on 30.08.2022.

- (b) The Petitioner submits that the default amount exceeds the threshold limit of Rs. 1 Crore under the proviso to Section 4(1) of IBC. The Respondent, in its reply notice dated 11.10.2022, admitted liability of Rs. 1,70,35,721/- by issuing six cheques on 05.09.2021 (details at Page No. 26 of the Petition) and all the 6 cheques were dishonoured. Further against this said liability, the Respondent made payments of Rs. 30,00,000/- through RTGS on 27.09.2021 (UTR No. CNRBR52021092769102105), Rs. 6,35,721/- on 08.06.2022 (UTR No. CNRBR52022060883994093), and Rs. 34,00,000/- on 08.06.2022 (UTR No. CNRHR52022060883994323) (details at Page No. 27 of the Petition). Thus, the Respondent has paid a total of Rs. 70,35,721 as against an admitted liability of Rs. 1,70,35,721/-, leaving an outstanding balance of Rs. 1 Crore as on 08.06.2022, which is reflected in the ledger account at Page No. 208 of the Petition.
- (c) As per the tax invoice, a monthly interest on delayed payments, which has been added to the default amount. Therefore, the present default exceeds Rs. 1 Crore at the time of filing this petition, making it admissible under Section 4(1) of IBC.
- (d) The present petition is not barred by limitation. The last sale was made on 23.01.2020 (Tax Invoice at Page No. 197). The Respondent made partial payments towards the principal and interest, and the last payment was made on 08.06.2022 (ledger at Page No. 206 to 208). The Petitioner issued a Form 3 Demand Notice on 29.09.2022 (Page No. 17), but the Respondent failed to clear the outstanding amount. The present petition was filed on 23.11.2022, well within the limitation period.
- (e) The Respondent has not produced any documentary evidence to establish a pre-existing dispute. The reply notice dated 11.10.2022 and other objections do not dispute the quantity or quality of the



supplied goods. Therefore, the supply of goods is undisputed. Regarding the cases under Section 138 of the Negotiable Instruments Act, 1881, the Hon'ble Supreme Court and NCLAT have held that cheque bounce cases are criminal offences and cannot be treated as a dispute under Section 8(2) of IBC.

(f) In light of the above facts and circumstances, the Petitioner prays that this Hon'ble Tribunal admits the present petition in the interest of justice and equity.

7. Further the Ld Counsel for the Petitioner vide Diary no. 3420 dated 14.06.2024 submitted a memo in compliance of order dated 21.05.2024 wherein they have enclosed a summary statement showing all the invoices, due dates, payments made, outstanding amounts, and interest calculations based on the invoice dates. The Petitioner relied on above to arrive at the amount of Default.
8. The Ld Counsel for the Respondent submitted a memo in compliance of order dated 01.10.2024 vide Diary no. 5826 dated 14.10.2024 wherein this Tribunal directed respondent to file a memo including the chart he relied upon during his submissions, giving details of the calculations regarding the threshold requirement and contended as under:-
  - (a) The Petitioner had filed a Form 3 Demand Notice and subsequently a Form 5 petition, claiming outstanding dues towards the supply of goods and interest on delayed payments. The Hon'ble Tribunal had directed the Petitioner to submit a statement showing the list of invoices relied upon to arrive at the total amount mentioned in Form 5. In compliance, the Petitioner, vide memo dated **13.06.2024**, filed a detailed statement showing the invoices, due dates, payments made, outstanding amounts, and interest calculations based on the invoice dates.
  - (b) Since the above statement submitted by the Petitioner did not contain totals for each column and also a comparison of payments as recorded in page 34-35 of the Petition was not available, during the course of arguments on **01.10.2024**, the Respondents submitted a statement showing details of invoices, details of payments reflected at page 34-35 of the petition but not reflected in the statement



submitted by the Petitioner, and a detailed reconciliation (based on the above statements) to establish that the dues are less than **₹1 Crore**.

(c) In this regard, the Hon'ble Tribunal vide order dated **01.10.2024**, directed the Respondent to file a memo including the chart which was relied upon during submissions, giving details of the calculations regarding the threshold requirement. In compliance with the above order, the following documents are placed for the kind consideration of the Hon'ble Tribunal:

- (i) Statement showing details of sales, payments made against the said sales, list of payments made and not considered by the petitioner in its statement dated **13.06.2024** as compared to payments mentioned at pages **34-35** of the petition.
- (ii) Statement of total payments made, as annexed by the petitioner in pages **34-35** of the petition, with totals.
- (iii) Chart explaining as to how the dues are less than the threshold of **Rs.1 Crore**.

(d) Further, the decision of the NCLAT in the case of ***Khushbu Dye Chem Private Ltd. vs. Chemical Suppliers India Pvt. Ltd. 2024 (8) TMI 406*** is relied upon, wherein it was held that:

- (i) Demand of interest for delayed payment based on unilateral mentioning of interest clause in the invoice cannot be termed as Operational Debt.
- (ii) Disputes regarding issuance and dishonouring of cheques constitute a pre-existing dispute.

(e) In light of the above facts and legal precedents, the Respondent submits that the actual outstanding amount, after accounting for all payments, is below the statutory threshold of **Rs. 1 Crore**. Further, the demand for interest is not maintainable as operational debt, and the dishonouring of cheques constitutes a pre-existing dispute. Therefore, the present petition is liable to be dismissed for failing to meet the threshold requirement under the IBC and also due to the existence of a pre-existing dispute.



9. The Learned Counsel for the Petitioner filed its written synopsis vide diary no. 1367 dated 01.03.2024 and written submission vide Diary No: 1222 dated 06.03.2025 and contended as under:
- (a) The present petition is filed by the Petitioner/Operational Creditor under **Section 9 of the IBC 2016**, seeking the initiation of the Corporate Insolvency Resolution Process (CIRP) against the Respondent/Corporate Debtor due to non-payment of outstanding dues amounting to **₹3,42,33,537** (inclusive of the principal amount and interest) as on **30.08.2022**. The Petitioner had supplied iron and steel goods to the Respondent based on various purchase orders issued between **20.01.2017 and 22.02.2019**. Despite several demands, the Respondent failed to clear the outstanding amount, which led to the issuance of a **Form 3 Demand Notice** on **29.09.2022**. The Respondent neither disputed the claim nor made the payment, prompting the filing of the present petition on **23.11.2022**.
- (b) **Default amount is more than 1 Crore-** The petition is liable to be admitted as the default amount exceeds the statutory threshold of **Rs 1 Crore** under **Section 4(1) of the IBC**. The Respondent acknowledged liability through the issuance of six post-dated cheques amounting to **₹1,70,35,721** on **05.09.2021** toward the outstanding debt, which were subsequently dishonoured. The issuance of these cheques constitutes an acknowledgment of debt. The Respondent made part payments amounting to **₹30,00,000** on **27.09.2021** through RTGS, **₹6,35,721** on **08.06.2022**, and **₹34,00,000** on **08.06.2022**, leaving an unpaid balance of **₹1 Crore** as on **08.06.2022**. Since the invoices stipulated interest at **2% per month** on delayed payments, the total claim includes both the principal and accrued interest, making the total outstanding debt well above the statutory limit.
- (c) **Petition is not barred by limitation-** The parties were engaged in a continuous business relationship from **2017 to 2020**. The last tax invoice was raised on **23.01.2020**. Part payments made by the Respondent till **08.06.2022** constitute an acknowledgment of debt under **Section 18 of the Limitation Act, 1963**, thereby extending



the limitation period. The Hon'ble Supreme Court in **B.K. Educational Services v. Parag Gupta, (2018) ibclaw.in 32 SC** held that acknowledgment of debt through part payments or issuance of post-dated cheques resets the limitation period. Therefore, considering the last part payment on **08.06.2022**, the present petition filed on **23.11.2022** is well within the statutory limitation period of three years.

- (d) That in the present case, by referring to the table in Para No. 2 above, the last date of payment was 08.06.2022 which was a part payment. And though the first default occurred on 30.06.2017, the default was in continuation as the Respondent used to make partial payments towards the Principal and Interest Amount till 08.06.2022, therefore the date of default to be taken into consideration is 08.06.2022. That if, by taking into consideration the last date of payment i.e., 08.06.2022 and the date of filing of the present Petition i.e., 23.11.2022, the present Petition is within the period of Limitation.
- (e) Further, the Respondent's failure to honour the cheques and subsequent failure to make payment despite receiving the demand notice satisfies the definition of "default" under **Section 3(12) of the IBC**. The Respondent's liability remains unpaid despite partial payments, thereby fulfilling the conditions for the initiation of CIRP. As per **Section 238A of the IBC**, the provisions of the Limitation Act, 1963 apply to proceedings under IBC. Since the last payment was made on **08.06.2022**, and the petition was filed within three years from this date, it is not barred by limitation.
- (f) **There is no pre-existing dispute between the parties.**- The Respondent has not raised any dispute regarding the quality or quantity of the goods supplied. The reply notice dated **11.10.2022** issued by the Respondent does not challenge the claim or the underlying transaction. The police complaint dated **14.02.2022** filed before the Banaswadi Police Station under Section is irrelevant under the IBC framework, as held in **Sudhi Sachdev v. APPL Industries Ltd., Company Appeal (AT) (Insolvency) 623 of 2018** in wherein the Hon'ble NCLAT vide Order dated 13.11.2018 had held that a police complaint does not constitute a pre-existing dispute under



**Section 8(2) of the IBC.** Further, this Hon'ble Tribunal relying upon the case of ***Sudhi Sachdev v. APPL Industries Ltd., Company Appeal (AT) (Insolvency) 623 of 2018*** in the case of ***M/s. G.K Ispat Private Limited Vs M/S. Best Golden Developers Private Limited in CP IB 18/BB/2023*** has held that cases filed under **Section 138 of the Negotiable Instruments Act** for cheque dishonour do not amount to a pre-existing dispute under IBC,

- (g) The present claim is maintainable under IBC as both the principal debt and interest on delayed payments form part of the operational debt. In ***Prashant Agarwal v. Vikas Parasrampuria, Company Appeal (AT) Ins No. 690/2022*** the Hon'ble NCLAT held that interest on delayed payment, if stipulated in the invoices, forms part of the "debt" under **Section 3(11) of the IBC**. Similarly, this Tribunal in para 5 of ***G.K Ispat Private Limited Vs M/S. Best Golden Developers Private Limited in CP IB 18/BB/2023*** relying on the judgment passed in ***Prashant Agarwal case (Supra)*** has held that

*"Hence this Tribunal is satisfied from these facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself.*

- (h) Further the Hon'ble NCLAT in ***Unigold System v. Fortune Spirit Limited, MANU/NL/0493/2021*** it reaffirmed that part payment or acknowledgment of debt extends the limitation period and the Hon'ble Supreme Court in ***Consolidated Construction Consortium Limited vs. Hitro Energy Solutions, 2022 SCC OnLine SC 142. referring to B.K. Educational Services (supra)*** held the following'

*"59. The respondent's submission that limitation commences from 7 November 2013 has to be rejected. In its application under Section 9, the appellant has mentioned this as the date on which the debt became due. However, as noted in B.K. Educational Services (supra), limitation does not commence when the debt becomes due but only when a default occurs. As noted earlier in the judgment, default is defined under Section 3(12) of the IBC as the non-payment of the debt by the corporate debtor when it has become due."*

- (i) The facts clearly establish that (i) the default amount exceeds Rs.1 Crore, (ii) the petition is within the limitation period, and (iii) there is no pre-existing dispute. The Respondent's failure to honour admitted



liability through cheque dishonour and non-payment after the demand notice supports the initiation of CIRP. In light of the above facts, legal provisions, and judicial precedents, the Petitioner prays that the Hon'ble Tribunal admit the present petition and initiate CIRP against the Respondent in the interest of justice and equity.

10. The Learned Counsel for the Respondent has filed its summary of arguments vide Diary No: 943 dated 20.02.2025 and stated as under:

- (a) **Amount due towards supply of goods is less than 1 Crore**- Amount due towards supply of goods is only Rs. 99,80,256 since page 8 of the memo filed by Respondent on 14.10.2024 clearly shows that the amount of due towards supply of goods is less than Rs.1 Crore; Hence CIRP cannot be initiated.
- (b) **Demand is barred by limitation** - Demand is barred by limitation based on the date of default mentioned in the application. Debts only to the extent of the goods supplied has been acknowledged and not for the whole amount as stated to be due by the Creditor.
- (c) **Non payment on account of breach of settlement agreement, CIRP cannot be initiated.** - In the present case also the Creditor has not adhered to the conditions of settlement scheme, resulting in non payment.
- (d) **Pre-existing dispute** - Operational creditor contends that the due for supply of goods is Rs. 3.42 Crores but on the contrary the operational creditor himself in his statement of due accepts that the due as on 5.9.2021 was Rs. 1.70 Crores. Similarly, the reply filed by the respondent to the notice also contends that the due as on that day was much lesser than the amount claimed in notice Statement of dues as directed to be filed by this Hon'ble Tribunal to the operational creditor also shows that the due towards goods is 1 Crore as on the date. Further page 6 of the memo filed on 14.10.2024 also states that payments made by the respondent has not been properly accounted by the petitioner.
- (e) **Interest / finance charges added are not includable as there is no agreement or consensus ad idem on charging of interest.** - Interest charged and added to the value of goods does not have any basis even though invoice provides for interest and failure of payment immediately



on receipt of goods. The purchase order placed by the Respondent states that payment terms are 60 days and also no interest element is mentioned. Further, Interest is added to the dues and the basis of computation is not supplied, even after this Hon'ble Tribunal directed vide daily order dated 1.10.2024 wherein the applicant was specifically directed to file such a statement. Further, the entire claim is based on statement enclosed to the petition and the said statement is neither a ledger statement, nor the interest charge (debit/credit notes) are supplied to the Respondent. The said credit or debits notes are not even enclosed to the subject petition Further, Operational creditor has not brought on record, Ledger statements, charges have been accounted for in the books of account and reflection in the financial statements before this Hon'ble Tribunal.

(f) **Interest on delayed payment cannot be considered as operational debt in the absence of prior contract-**

Claim of interest merely on the basis of invoice is not sustainable. In the present case, there is no prior agreement between parties for payment of interest on delayed remittances. Further, Purchase order provides for payment in 60 days where as in the invoice payment is mentioned as immediate. Prior to 2017, though payment is made between-60 to 90 days, no interest is demanded.

11. We have pursued the records available and also heard Learned Counsels based on which we observe the following:-
12. The Petition has been filed on 23/11/2022. The date of Default mentioned in Form No. 5 is 30.06.2017, and a part payment done was by the Corporate Debtor on 08.06.2022. Such part payment amounts to an acknowledgment of debt in view of the judgement dated 04.08.2021 of the Hon'ble Apex Court in the case of ***Dena Bank Vs. C. Shivakumar Reddy and Anr. in Civil Appeal No.1650 of 2020***. Since this Petition has been filed on 23.11.2022, therefore, it is within the period of Limitation.
13. Further, contention of the Respondent herein is regarding the pre-existing dispute. For this purpose, the Respondent herein has relied on the case filed by the Applicant under Section 138 of the Negotiable



Instruments Act, the fact that Amount due towards supply of goods is less than 1 Crore, Interest / finance charges added are not includable as there is no agreement or consensus ad idem on charging of interest and Interest on delayed payment cannot be considered as operational debt in the absence of prior contract.

14. The case filed by the Operational Creditor U/s.138 of the Negotiable Instrument Act, 1881 for bouncing of cheque before the Hon'ble Chief Metropolitan Magistrate does not amount to any pre-existing dispute as held by the Hon'ble NCLAT vide Order dated 13.11.2018. in the matter of ***Sudhi Sachdev Vs. APPL Industries Ltd, in the Company Appeal (AT) (Insolvency) 623 of 2018.***
15. With regard to whether default amount is above Rs. 1 Crore, the Respondent in its reply to demand notice at Annexure-I(B) at Page No. 24 to 28 of the Petition, had admitted to have handed over 6 cheques on 05.09.2021 towards the outstanding liability of Rs. 1,70,35,721/- (Rupees One Crore Seventy Lakhs Thirty-Five Thousand Seven Hundred and Twenty-One only) in total which were dishonoured, The issuance of the said 6 cheques itself implies the acknowledgement of the debt/liability of Rs. 1,70,35,721/- (Rupees One Crore Seventy Lakhs Thirty-Five Thousand Seven Hundred and Twenty-One only) payable by the Respondent to the Petitioner. Further since the Respondent has paid Rs. 70,35,721 to the Petitioner and same is admitted by the Respondent, in its Reply to the Demand Notice, Thus the pending Liability as on date of filing of Petition is Rs,1,00,000. Thus the total amount due as on 08.06.2022 is as under:-

<b>Particulars</b>	<b>Amount</b>
Post-dated cheques issued on 05.09.2021 and the same was dishonoured	Rs. 1,70,35,721/- (admitted liability by the Respondent)
Actual amount paid from 27.09.2021 to 08.06.2022	Rs. 70,35,721/- (actual amount Paid)
<b>Total amount due as on 08.06.2022</b>	<b>Rs. 1,00,00,000/- (total amount due)</b>

16. We have carefully considered the aforesaid contentions raised by the Counsel for the Corporate Debtor with regard to existence of a dispute between the parties and are of the considered view that the Corporate Debtor has failed to make out a case of pre-existing dispute. In this



regard, it is worth mentioning that at no point of time after demand notice was sent to the Corporate Debtor; the Corporate Debtor had questioned the quality of goods. It is further pertinent to point out that the Corporate Debtor reply to Demand Notice vide letter dated 11.10.2022 states that the Corporate Debtor acknowledged its liability to pay the amount of Rs. Rs. 1,70,35,721 by issuing Post-dated cheques dated 05.09.2021. which was dishonoured, Moreover Rs. 70,35,721 was paid by the Respondent to the Petitioner, which has been stated by the Respondent in its reply to the Demand notice. This further corroborates that fact that the defence raised in the reply is an afterthought.

17. In the given circumstances, in our considered view, the plea of pre-existing dispute between the parties is nothing but a moon shine defence and is liable to be rejected. Thus from the above discussion, it becomes amply clear that the Petitioner has been able to establish the existence of operational debt and its default having been committed by the Corporate Debtor and non existence of any pre-existing dispute between the parties.
18. Accordingly, this adjudicating authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Corporate Debtor. Therefore, the instant Company Petition bearing **CP (IB) No. 17/BB/2023 is admitted** against the Corporate Debtor:- **M/s. VEERA VAHANA PRIVATE LIMITED** and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14 of the Code, the following prohibitions are imposed, which must be followed by all and sundry:
  - a. The institution of suits or continuation of pending suits or proceedings against the Project of Corporate Debtor including execution of any judgment, decree or order in
  - b. any court of law, tribunal, arbitration panel or other authority;
  - c. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;



- d. 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;
  - e. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
  - f. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
  - g. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
  - h. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 IBC, 2016 as the case may be;
19. In Part-III of Form No.5, No name of the Interim Resolution Professional is proposed.
20. Therefore, this bench appoints **Mr. Madhugiri Venkatarayappa Sudarshan**, having Registration No. **IBBI/IPA-002/IP-N00561/2017-2018/11707**, having registered address:- UTSAV #984/13, 8th Main, Girinagar II Phase, Bangalore, Karnataka, 560085, Contact No. 9620300691 and e-mail: [sudarshan.mv@outlook.com](mailto:sudarshan.mv@outlook.com) as the Interim Resolution Professional to carry the functions as mentioned under the IBC, 2016. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15, 17, 18, 19, 20 and 21 of the IBC, 2016. The IRP shall file his written consent within one week from the date of receipt of this order.



21. The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
22. The Interim Resolution Professional shall after collation of all the claims received against **M/s. Veera Vahana Private Limited** and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal 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 for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every Month.
23. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

**-Sd-**  
**RAVICHANDRAN RAMASAMY)**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**(K.BISWAL)**  
**MEMBER (JUDICIAL)**