

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT – V

C.P. (I.B.) No. 348/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

ESDA Software Solution Limited

Through its authorized representative

Mr. Rajesh Jagannath Gaikar

R/o- Plot No. B-24 & 25, NICE Industrial Area,
M.I.D.C., Satpur, Nashik- 422007.

...Petitioner/Operational Creditor

Vs

Rigved Technologies Private Limited

R/o- 408, Rupa Solitaire Park, Plot No. A-1,
Millennium Business Park, Sector 1, Mahape, Navi
Mumbai, Maharashtra- 400701.

... Respondent/Corporate Debtor

Order Dated: 03.06.2025

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

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Appearances:

For the Petitioner : Siddharth B. Verma, Adv.
For the Respondent : Chinmay S. Athalye, Adv.

ORDER

Per: Reeta Kohli, Member (Judicial)

1. This Company Petition is filed by **ESDA Software Solution Limited** (hereinafter referred as “**the Petitioner/Operational Creditor**”) seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) of **Rigved Technologies Private Limited** (hereinafter called “**Corporate Debtor**”) under 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 an Operational Debt of **Rs. 2,78,88,969/-**.

2. Brief facts and submission of the Operational Creditor

- I. It is submitted that in the year 2019, the Corporate Debtor was awarded a project by the Securities and Exchange Board of India (SEBI) to provide an Annual Maintenance Contract (AMC) for the Integrated Market Surveillance System (IMSS), the Data Warehouse, and the Business Intelligence System (DWBIS) project (hereinafter referred to as ‘the said project’) for a period of

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three years, i.e. from July, 2019 to July, 2022.

- II. Thereafter, the Corporate Debtor approached to the Petitioner for purchase and supply of various Software related AMC services to SEBI for the said project. Subsequently, based on the assurance given by the Corporate Debtor that it would issue the necessary purchase order in the Petitioner's name, a confirmation letter dated 24.07.2019 was issued by the Petitioner to SEBI, confirming its intention to provide various AMC services to SEBI on behalf of the Corporate Debtor.
- III. It is submitted that on 09.08.2019 the Corporate Debtor issued two different purchase order to the Petitioner vide Purchase order *Ref. No. RVM/2019-20/018 & Ref. No. RVM/2019-20/019*. It was also assured by the Corporate Debtor that rest of the purchase orders covering rest of the services will be issued on subsequent dates.
- IV. The Petitioner also supplied additional service including of *Trend Micro, DSC, Symantec licenses* as requested by the Corporate Debtor. The consumption of these additional services by the Corporate Debtor was acknowledged in the notice replies dated 12.02.2021 and 29.11.2023. As per the payment terms outlined in the purchase orders, the Petitioner generated invoices from time to time, which were to be paid by the Corporate Debtor within 15 days after receipt of payment from SEBI. However, the Corporate

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Debtor has failed to make the payments despite repeated acknowledgments of the debt and promises to pay.

- V. Subsequently, the Petitioner issued demand notice dated 05.11.2020 to the Corporate Debtor for seeking payment of the due amount. In response, the Corporate Debtor replied to the demand notice on 12.02.2021, acknowledging its liability to pay the Petitioner and assuring that it would release the proportionate sum once received from the end customer, i.e., SEBI.
- VI. Consequently, the Corporate Debtor's project with SEBI was completed in July 2022, and the Corporate Debtor has received the entire outstanding amount from SEBI, including payments related to the services rendered by the Petitioner on behalf of the Corporate Debtor. However, the Corporate Debtor has wilfully avoided making the payment, despite repeated follow-ups.
- VII. It is submitted that as on September 2023, the Corporate Debtor is in a default for a sum of Rs. 1,44,74,496/- (Rupees One Crore Forty-Four Lakhs Seventy- Four Thousand Four Hundred and Ninety-Six Only) being the principal amount along with an amount of Rs. 1,34,14,472/- (Rupees One Crore Thirty-Four Lakhs Fourteen Thousand Four Hundred and Seventy-Two Only) towards the interest applicable on the principal amount, total amount being Rs. 2,78,88,969/- (Rupees Two Crore Seventy-Eight

Lakhs Eighty-Eight Thousand Nine Hundred and Sixty-Nine Only).

VIII. Further it is submitted that the Petitioner issued a statutory demand notice dated 08.11.2023 under section 8 of the Code. Despite receipt of the notice, the Corporate Debtor did not pay the admitted debt and instead sent a false and frivolous reply on 29.11.2023 refusing to pay the dues. Additionally, it is submitted that the Petitioner provided services as per the purchase order issued by the Corporate Debtor. In contrast, the Corporate Debtor alleged that a total of 11 different components were not supplied by the Petitioner. However, the Corporate Debtor wilfully avoided disclosing that no purchase order had ever been issued by the Respondent for those components.

IX. It is also submitted that the Corporate Debtor never disputed the invoices until it received the first demand notice, also the Petitioner issued a statutory demand notice dated 08.11.2023 under section 8 of the Code. The Corporate Debtor never raised any communication, email, notice or any dispute before any court of law during the said period. The Petitioner also relied on the law laid down by the Hon'ble NCLAT in the matter of *Deepak Modi v/s Shalfeyo Industries (Company Appeal) (AT) (Insolvency) No. 1019 of 2022*.

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3. Submission of the Corporate Debtor

- I. At the outset, the Corporate Debtor denied all contentions made by the Operational Creditor and further stated that the Operational Creditor has frivolously sought to initiate CIRP against the Corporate Debtor despite the pre-existing dispute between the parties and the present Petition is based on false and misconceived facts and is liable to be dismissed.
- II. The Corporate Debtor states that pursuant to the agreement dated 14.01.2020 between SEBI and the Corporate Debtor, SEBI appointed the Corporate Debtor to provide an Annual Maintenance Contract (AMC) for the Integrated Market Surveillance System (IMSS), the Data Warehouse, and the Business Intelligence System (DWBIS). However, the Corporate Debtor was seeking a subcontractor to provide these services to SEBI on its behalf.
- III. At such time, *Mr. Ranjit Maitrani* who was working as VP- sales with the Petitioner, approached the Corporate Debtor to work as a subcontractor for providing the service to the SEBI. It was agreed between the Petitioner and the Corporate Debtor that the Corporate Debtor would appoint the Petitioner as a subcontractor under Clause 3.9 of the said agreement, and the Petitioner would provide back-to-back services to SEBI in accordance with the terms of the said agreement.

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- IV. The Petitioner was under the obligation to provide 14 OEMs to the SEBI on behalf of the Corporate Debtor. The Petitioner herein had written a letter to SEBI dated 24.07.2019 wherein the said commitment was confirmed by the Petitioner. Copy of the said letter is annexed as Annexure- B with the Reply of the Corporate Debtor.
- V. It is submitted that the Petitioner initially procured 5 out of the required 14 OEMs. However, the Petitioner failed to secure the remaining OEMs and has completely defaulted on its contractual obligations. Furthermore, the Petitioner did not make the requisite payment to SAS towards the SAS AMC service. Notably, the cheque dated 10.10.2019, issued by the Petitioner to *SAS Institute India Pvt. Ltd.* for an amount of ₹1,67,70,631/- (Rupees One Crore Sixty-Seven Lakhs Seventy Thousand Six Hundred Thirty-One Only), was got bounced. A copy of the aforementioned cheque is annexed as Annexure-C to the Reply.
- VI. Subsequently, due to non-payment and the dishonouring of the cheque issued by the Petitioner, the SAS services at SEBI as required under the said agreement were immediately discontinued, despite multiple requests and follow-ups by the Corporate Debtor. The Petitioner completely failed to take the necessary steps and as a result, SEBI instructed the Corporate Debtor to immediately

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remove the Petitioner as a subcontractor from the project and under the agreement.

- VII. Consequently, the Corporate Debtor arranged all the remaining OEMs for SEBI. The necessary funds were secured by the Corporate Debtor through various loans, as the Corporate Debtor had to urgently arrange a substantial sum of money. This led to a loss due to interest payments on these loans, which was solely attributable to the conduct of the Petitioner.
- VIII. Further, the Petitioner sent a legal notice dated 05.11.2020 demanding payment for the fees related to the 5 OEMs initially arranged by them. However, this was not a demand notice under Section 8 of the Code, but merely a simple legal notice. In response, the Corporate Debtor replied to the said legal notice on 12.02.2021, formally raising a dispute. Additionally, the Corporate Debtor filed a counterclaim against the Petitioner for ₹52,54,410/- (Rupees Fifty-Two Lakhs Fifty-Four Thousand Four Hundred and Ten Only) to cover the projected financial loss for a period of 3 years.
- IX. The Corporate Debtor also expressed willingness to pay a proportionate amount upon receipt of the same from SEBI and after adjusting the counterclaim amount, subject to a mutual agreement between the parties. However, the Petitioner did not

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respond to this. Subsequently, the Petitioner issued a demand notice dated 20.11.2023 under Section 8 of the Code. In response, the Corporate Debtor issued a reply notice dated 30.11.2023, duly addressing the demand notice.

- X. Vide point no. 12 of the reply notice of the Corporate Debtor dated 30.11.2023, it was categorically written to the Petitioner that-

"With reference to Point no. 2 on Page No. 3 of your notice my Client states that my Clients have already disputed the demand made by your client with reference to the issue at hand. The same was duly conveyed to your client by way of reply notice of my Client dated 12/02/2021 to your Client's legal notice dated 5/11/2020. My Client states that when it is a matter of record that my Client has duly disputed the claim of your Client in the issue at hand and therefore it is highly inappropriate on the part of your Client to attempt the misuse of provisions given in the Insolvency and Bankruptcy Code and Rules made there under".

- XI. It is submitted that the counterclaim raised by the Corporate Debtor was made three years prior to the date of the Demand Notice dated 20.11.2023 under Section 8 of the Code issued by the Petitioner. Therefore, it is evident that there is a pre-existing dispute regarding the issue at hand, which renders the instant Petition non-maintainable. The Corporate Debtor also relies on the

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judgment of the Hon'ble Supreme Court in *S.S. Engineers v. Hindustan Petroleum Corporation Ltd. & Ors.* (Civil Appeal No. 4583 of 2022).

4. Findings

- I. We have heard the Ld. Counsels for the parties and perused the documents available on the record with their able assistance.
- II. In the present matter, the contention raised by the Corporate Debtor is that the present Petition is not maintainable as the same is hit by a bar under Section 9 (5) (ii) (d) of the Code. There is pre-existing dispute on record with respect to the issue at hand for 3 years before the date of demand notice under Section 8 of the Code.
- III. At this juncture, it is important to recapitulate the statutory provisions related to an application under Section 9 of the Code. Section 8 of the Code requires the operational creditor, upon the occurrence of a default, to deliver a demand notice for the unpaid operational debt. Section 8(2) provides that the Corporate Debtor, within ten days of receiving the demand notice, must notify the operational creditor of the existence of any dispute. For ease of reference, Section 8 of the Code is reproduced as follows:

"Section 8: Insolvency resolution by operational creditor: - (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice

demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the [payment] of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. —For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding 2[payment] of the operational debt in respect of which the default has occurred.”

- IV. Under Section 9(1) of the Code, if the Operational Creditor does not receive payment from the Corporate Debtor or notice of a dispute under Sub-section (2) of Section 8, it may file an Application under Section 9(1) of the Code.

Section 9(1) of the Code is reproduced hereunder:

“Section 9: Application for initiation of corporate insolvency resolution process by operational creditor.- (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.”

Section 9(5)(ii) is as follows:

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“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—

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(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days(i) of the date of receipt of such notice from the adjudicating Authority.”

- V. Therefore, to initiate CIRP in the present matter these conditions have to be satisfied. At this juncture it is also important to quote the judgment relied by the Corporate Debtor of the Hon’ble Supreme Court in *M/s S.S. Engineers & Ors. vs. Hindustan Petroleum Corporation Limited & Ors.* 2022 SCC OnLine SC 1385, which reads as follows:

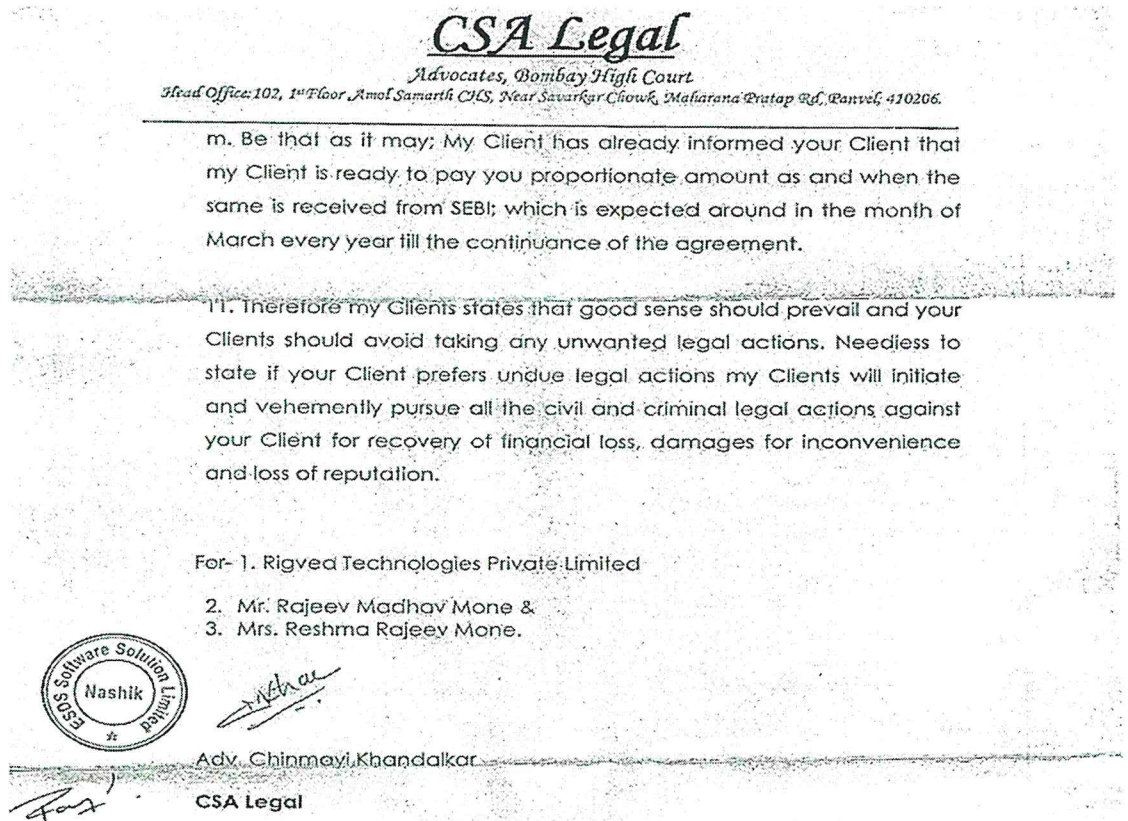
“32. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if

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the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed."

VI. The contention raised by the Corporate Debtor in the present matter is that there is pre-existing dispute on records. However, the Corporate Debtor vide letter dated 12.02.2021 has admitted its liability. The relevant extract of the letter is as under: -



According to the above letter, the Corporate Debtor admitted the unpaid dues and assured repayment after receipt of same from end customer- SEBI. This acknowledgment is a critical element, as it directly contradicts the claim of a pre-existing dispute. Also, it contradicts with the counter claimed raised by the Corporate Debtor which was made three years prior to the date of demand notice. However, the defense taken by the Corporate Debtor must

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be plausible, and while not examining it on merits, it must not appear as a moonshine defense.

VII. Hence, the admission of liability by the Corporate Debtor implies that there is no bona fide dispute regarding the debt or the default in payment. The Corporate Debtor's own letter acknowledges the obligation to pay, further undermining any claims of a legitimate dispute over the debt. The letter can be interpreted as a **clear admission** of the debt, as it specifies that the payment is due and only dependent on the receipt of funds from SEBI.

VIII. The present Petition reveals that the Corporate Debtor issued two different purchase order to the Petitioner *vide* Purchase Order Ref. No. RVM/2019-20/018 & Ref. No. RVM/2019-20/019. As per the payment terms mentioned in Purchase Orders, the Petitioner generated invoices from time to time which were to be paid by the Corporate Debtor within 15 days. However, the Corporate Debtor failed to pay the same. The non-payment of the invoices for services supplied by the Petitioner are as follows-

<i>Sr. No.</i>	<i>Invoice No.</i>	<i>Date of Invoice</i>	<i>Tax Invoice Amount (Basic + GST)</i>
1	E60578	31.10.2019	Rs. 83,27,460/-
2	E60580	31.10.2019	Rs. 55,83,642/-
3	78749	03.03.2021	Rs. 5,63,395/-
<i>Total</i>			Rs. 1,44,74,496/-

Subsequently, the Corporate Debtor is in a default for a sum of Rs.

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1,44,74,496/- (Rupees One Crore Forty-Four Lakhs Seventy- Four Thousand Four Hundred and Ninety-Six Only) being the principal amount along with an amount of Rs. 1,34,14,472/- (Rupees One Crore Thirty-Four Lakhs Fourteen Thousand Four Hundred and Seventy-Two Only) towards the interest applicable on the principal amount. However, there is no agreement between the parties regarding the interest part on record. Also, the invoices raised by the Petitioner does not mentions about the interest. This, implies that the interest claimed by the Petitioner does not form part of claimed operational debt.

- IX. After considering and perusing the facts and circumstances of the present case, we are of the considered view that the Petitioner has been able to establish that there is an existence of “**operational debt**” which was due & payable and there is a “**default**” committed by the Corporate Debtor. The Respondent vide letter dated 12.02.2021 has admitted its liability without disputing the debt and the Petition is filed on 03.01.2024 (online) therefore, the Petition is well with in the period of Limitation.
- X. This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
- XI. The Operational Creditor has not proposed the Resolution Professional in Part III of the Company Petition.

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XII. Accordingly, the above Company Petition is '**admitted**' with the following:

- a. The above Company Petition No. C.P. (I.B.) No. 348/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Rigved Technologies Private Limited.
- b. Mr. Rajkumar Feru Gupta, having registration No. IBBI/IPA-001/IP-P-02103/2020-2021/13247, having email Id- rf.gupta86@gmail.com, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 1,00,000/- (Rupees One Lakh Only) 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.
- d. 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,

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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.

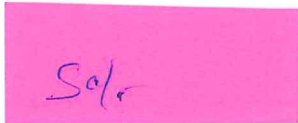
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. 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.

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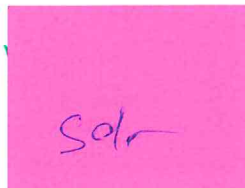
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- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended 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.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, CP 348 of 2024 is **admitted**.



Madhu Sinha
Hon'ble Member (Technical)



Reeta Kohli
Hon'ble Member (Judicial)