

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.102
C.P.(IB)/157(AHM)2025

Proceedings under Section 9 IBC

IN THE MATTER OF:

Mitsu Chem Plast Limited
V/s
Cypet Technologies India Pvt. Ltd

.....Applicant

.....Respondent

Order delivered on: 10/09/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sanjeev Sharma, Hon'ble Member(T)

PRESENT:

For the Applicant / OC : Ms. Prachiti Shah, Advocate
For the Respondent / CD : Mr. Kedar Dave, & Mr. Haresh Mataliya, Advocates

ORDER
(Hybrid Mode)

This case was listed on 03.09.2025 for pronouncement of the order.

However, on the joint requests of the Ld. Counsel for the applicant/OC and respondent/CD, the pronouncement was deferred for today, as they apprised that some draft settlement agreement has been shared.

Today, when the matter was again taken up for pronouncement, no proof of any settlement between the parties has been placed before us either by the applicant/OC or by the respondent/CD.

Further, Ld. Counsel for the respondent/CD states that some IA has been filed in the Registry only yesterday, i.e., on 09.09.2025. We are not inclined to defer the pronouncement.

Accordingly, the order is pronounced in the open court, vide separate sheet.

S/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

S/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-I, AHMEDABAD**

CP (IB) No.157/9/AHM/2025

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of: **Cypet Technologies India Private Limited**

Mitsu Chem Plast Limited

(CIN: L25111MH1988PLC048925)
Registered office at Gala Complex,
329, Din Dayal Upadhyay Road,
Mulund West, Mumbai, 400080,
Maharashtra, India.

...Applicant/Operational Creditor

VERSUS

Cypet Technologies India Private Limited

(CIN: U29100GJ2016FTC094683)
Registered office at 34-A,
Akshar Industrial Park,
Opp. Zydus Cadila,
Sarkhej Bavla Highway, Changodar,
Ahmedabad, Sanand, Gujarat, India, 382213.

...Respondent/Corporate Debtor

Order Pronounced On: 10.09.2025

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant/OC : Ms. Prachiti Shah Advocate.

For the Respondent/CD : Mr. Kedar Dave Advocate.

ORDER (Per Bench)

1. This Petition is filed on 03.04.2025 by the Applicant- Mitsu Chem Plast Limited (hereinafter referred to as 'Operational Creditor') against the Respondent- Cypet Technologies India Private Limited (hereinafter referred to as 'Corporate Debtor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "IB (AAA) Rules, 2016") for initiation of Corporate Insolvency Resolution Process (CIRP), to appoint Interim Resolution Professional (hereinafter referred to as "IRP") and declare the moratorium for having defaulted in payment of the outstanding operational debt of **Rs.1,97,32,750/-**. The date of default is stated to be 26.07.2024.
2. On Perusal of Part-I of the Form-5 reveals that the Operational Creditor - Mitsu Chem Plast Limited is a listed company incorporated on 23.09.1988 under the Companies

Act, 1956, with Corporate Identification Number - L25111MH1988PLC048925, has its registered office at Gala Complex, 329, Din Dayal Upadhyay Road, Mulund West, Mumbai, 400080, Maharashtra, India. This Petition is filed through its Managing Director Mr. Manish Dedhia who has been authorised by Board Resolution dated 09.08.2024, which is annexed with the Petition as Annexure-B.

3. On perusal of Part-II of the Form-5 reveals that the Corporate Debtor is one Cypet Technologies India Private Limited having CIN No. U29100GJ2016FTC094683 a private limited company incorporated on 13.12.2016 under the Companies Act, 2013. The Corporate Debtor is having registered office at 34-A, Akshar Industrial Park, Opp. Zydus Cadila, Sarkhej Bavla Highway, Changodar, Ahmedabad, Sanand, Gujarat, India, 382213, with an authorized share capital of Rs.11,00,000/- and paid-up share capital of Rs.10,05,700/-, as per the Master Data available on the website of the Ministry of Corporate Affairs, which is annexed with the Petition as Annexure-A.

4. On perusal of Part-III of the Form-5 reveals that the Operational Creditor has not proposed the name of any IRP under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP).
5. On perusal of Part-IV of the Form-5 reveals that total operational debt as claimed by the Operational Creditor is Rs.1,97,32,750/-, arising from the supply of goods/services, specifically advance payments for undelivered machines, to the Corporate Debtor. The date of default is stated to be 26.07.2024.
6. On Perusal of Part-IV & Part-V of Form-5 reveals that the Operational Creditor has placed the facts through this Petition in the following manner:-
 - (i) The Operational Creditor is engaged in the business of inter-alia manufacturing, exporting and trading of Quality-assured collections of HDPE bottles, packaging bottles, HDPE drums, caps, closures etc.
 - (ii) The Corporate Debtor is a manufacturer of innovative single stage injection stretch blow-moulding systems that transform PET resin directly into finished PET

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Containers, such as bottles, jar, jerrycans, kegs and drums etc.

- (iii) The Operational Creditor intended to purchase two machines from the Corporate Debtor. Operational Creditor issued Sales Quotation dated 19.07.2022 to Corporate Debtor with reference number 101SQU220000121. This quotation outlined the terms for supplying two machines, setting the payment terms: 10% advance, 40% after drawing approval, and 50% before shipment, forming the initial basis for the transaction and subsequent agreement.
- (iv) Operational Creditor issued Purchase Order dated 05.08.2022 to Corporate Debtor with order number PO2223U3/31062 for Rs. 9.32 crores, later reduced to Rs. 7.90 crores after a discount. This order confirmed the intent to purchase the machines, triggering the obligation for payment and delivery as per the agreed terms.
- (v) Operational Creditor issued proforma invoice dated 05.08.2022 to Corporate Debtor for Rs. 79,00,000 as 10% advance. This invoice documented the initial payment requirement, which was adjusted after negotiations, reflecting the evolving commercial understanding between the parties.

- (vi) Operational Creditor made payment of Rs. 39,48,550 on 06.08.2022 to Corporate Debtor as revised 10% advance for both machines. This payment, evidenced by bank statement, initiated the financial commitment, creating an operational debt upon failure to deliver.
- (vii) Operational Creditor and Corporate Debtor executed Machine Purchase Agreement dated 14.12.2022 fixing delivery timelines of 31.05.2023 for the first machine and 30.06.2023 for the second. This agreement detailed the terms of delivery, payment schedule, and penalties, binding both parties legally and serving as the core document for claiming default.
- (viii) Subsequently, the Operational Creditor paid Rs.1.57 crores (40% of the cost of the second machine) in two instalments on 24.01.2023 and 25.01.2023. Corporate Debtor issued email dated 25.01.2023 to Operational Creditor acknowledging receipt of Rs. 1,57,84,200 as 40% down-payment for the second machine. This acknowledgment confirms the payments made, strengthening the claim of admitted liability by the corporate debtor.
- (ix) However, delays occurred and on 22.05.2023 the Corporate Debtor stated that the first machine would only be ready around 15.07.2023 and gave no timeline for the second. Operational Creditor issued a reminder email dated 23.08.2023 to Corporate Debtor seeking

clarification on delivery timelines as the Corporate Debtor failed to deliver as agreed, instead making repeated assurances. This communication highlights the Operational Creditor's efforts to resolve delays amicably before escalating to legal action.

- (x) Corporate Debtor responded on 25.08.2023 to the email dated 23.08.2023, providing updates on the delivery. This response indicates ongoing dialogue but fails to commit to specific dates, contributing to the accumulation of default.
- (xi) Representative of Corporate Debtor issued email dated 29.11.2023 to Operational Creditor updating on the second machine's delivery expected by 27.12.2023. This email sets an expectation that was not met, forming part of the evidence for breach of agreement.
- (xii) Representative of Corporate Debtor issued email dated 15.02.2024 to Operational Creditor stating delivery by 27.02.2024. This further delay in notification underscores the corporate debtor's repeated failure to adhere to timelines, justifying the claim of default.
- (xiii) Operational Creditor issued email dated 26.07.2024 to Corporate Debtor demanding refund of the advance for the second machine. This demand marks the date of default, as it formalizes the refusal to deliver and the request for repayment.

- (xiv) Corporate Debtor issued email dated 23.09.2024 along with a balance confirmation statement to the Operational Creditor admitting the liability of Rs. 1,97,32,750. This confirmation serves as an admission of debt, eliminating any dispute regarding the amount owed.
- (xv) Operational Creditor issued a statutory demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 dated 28.10.2024 to Corporate Debtor by email and registered post. This notice complies with statutory requirements, giving the corporate debtor 10 days to pay or dispute, which was not done.
- (xvi) Corporate Debtor issued email dated 29.10.2024 to Operational Creditor acknowledging the demand notice but seeking time to sell machines for repayment. This response admits the debt but does not constitute payment or valid dispute, triggering the right to file the petition.
- (xvii) The Operational Creditor has filed **Form-D** being record of debt and default issued by National E-Governance Services Limited ("**NeSL**") in which date of default is recorded as 26.07.2024 with status "**Deemed to be Authenticated**". Operational Creditor generated Record of Default Form D from NeSL. This record provides independent verification of the default, as

required under IBC regulations for operational creditors.

- (xviii) The amount of default is Rs. 1,97,32,750 as aggregate principal, with date of default 26.07.2024. This amount represents the unpaid advance, calculated from payments made and admitted by the corporate debtor.
- (xix) The petition includes affidavit under Section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016. This affidavit certifies no notice of dispute was received, fulfilling a mandatory requirement for admissibility.
- (xx) The Operational Creditor submitted that since the Corporate Debtor defaulted in payment of the operational debt of Rs. 1,97,32,750/-. Hence, the present petition is filed for the initiation of CIRP against the Corporate Debtor
7. The Applicant Operational Creditor has filed an additional affidavit on 22.04.2025 vide inward dairy no D 2544 to demonstrate the proof of disbursement of the total amount qua the first machine purchased from the Corporate Debtor as well as qua the part payment made for the 2nd machine. The same is taken on record vide order dated 30.04.2025.

8. The Applicant Operational Creditor has filed additional affidavit on 04.06.2025 vide inward dairy no D 3267 qua the correspondence that took place with the Respondent/CD where before the issuance of the statutory demand notice, qua the demand of the Operational Debt involved in the present case. The same is taken on record vide order dated 06.06.2025.
9. The Operational Creditor has relied upon the following documents, which are as under:-
- (a) Copy of the Master Data of Corporate Debtor, which is annexed with the Petition as Annexure-A.
 - (b) Board Resolution dated 09.08.2024, which is annexed with the Petition as Annexure-B.
 - (c) Sales Quotation dated 19.07.2022, which is annexed with the Petition as Annexure-C.
 - (d) Purchase Order dated 05.08.2022, which is annexed with the Petition as Annexure-D.
 - (e) Proforma invoice dated 05.08.2022, which is annexed with the Petition as Annexure-E.
 - (f) Bank statement evidencing payment dated 06.08.2022, which is annexed with the Petition as Annexure-F.
 - (g) Machine Purchase Agreement dated 14.12.2022, which is annexed with the Petition as Annexure-G.
 - (h) Email dated 25.01.2023, which is annexed with the Petition as Annexure-H.

- (i) Reminder email dated 23.08.2023, Response email dated 25.08.2023, which is annexed with the Petition as Annexure-I Colly.
- (j) Email dated 29.11.2023, which is annexed with the Petition as Annexure-J.
- (k) Email dated 15.02.2024, which is annexed with the Petition as Annexure-K.
- (l) Email dated 26.07.2024, which is annexed with the Petition as Annexure-L.
- (m) Email dated 23.09.2024 with balance confirmation statement, which is annexed with the Petition as Annexure-M.
- (n) Demand notice dated 28.10.2024, which is annexed with the Petition as Annexure-N.
- (o) Email dated 29.10.2024, which is annexed with the Petition as Annexure-O.
- (p) Record of Default Form D from NeSL, which is annexed with the Petition as Annexure-P.
- (q) Form 1A dated 27.03.2025, which is annexed with the Petition as Annexure-Q.
- (r) Affidavit under Section 9(3)(b), which is annexed with the Petition.

10. That on issuance of the notice in the Petition, the Corporate Debtor appeared and filed its reply on 10.07.2025, vide Inward Diary No. D4637 denying various averments made in the Petition. The Corporate Debtor inter-alia contended that

the present Petition U/s 9 of IBC, 2016 is not maintainable as the alleged debt claimed by the Operational Creditor does not fall within the purview of '**operational debt**'. Moreover, the Operational Creditor does not fall within the definition of '**Operational Creditor**' and the alleged claim which is sought to be made cannot be considered as an operational debt within the provision of the Code.

11. The Respondent/Corporate Debtor has placed the facts through the reply in its defence in the following manner:-

- (i) That, in the year 2022, the Managing Director/s of the Applicant herein have approached to the Managing Director/s of Respondent Company herein for making two machines being '10L and 20L stackable and 17L PET-in-Box containers with integrated handles' for their business activity purpose.
- (ii) That, Applicant herein having requirement of the special types of the machine are not readily available in the stocks of the Respondent Company. Requirement of the Machines of the Applicant is very unique, specific and of high technicality for which the Respondent Company was required to work on the specifications as given by the Applicant.

- (iii) Further, for the purpose of manufacturing both the machines, the Respondent Company has to study the technicalities listed by the Applicant and engage highly technical employees for manufacturing both the machines, as well as to place special order for purchasing the raw material, components, special spare parts, etc.
- (iv) For acquiring necessary materials, the Respondent Company also needs to pay to their suppliers. Applicant herein ready and willing to pay said value of raw material, etc. as advance payment towards making machines. Respondent herein has made both the Machines as per requirement of the Applicant.
- (v) The 1st Machine was installed at the factory of the Applicant in the month of December, 2023 and 2nd Machine is also ready and at the premises of the Respondent Company. Hence, Applicant herein itself has an obligation to pay full amount to the Respondent herein and in fact, Respondent herein is Corporate Creditor and Applicant herein is Operational Debtor.
- (vi) That the application filed by the Applicant is not at all legal and valid and that the same has been filed by them with an ulterior motive which needs to be quashed and set aside in the interest of justice.

- (vii) That, none of the contentions narrated by the Applicant are true and correct and that they have misrepresented as well as suppressed material facts from the knowledge of this Tribunal.
- (viii) That, the Applicant has termed themselves to be the "Operational Creditor" in the matter. However, we contest the same based on the fact that there is no kind of any operational debt owed to the Applicant by the Respondent. Further, the Applicant would have been rightly termed as an Operational Creditor if the liability on the part of the Respondent arose from a commercial transaction based on operations which is not so in the present case.
- (ix) That, the Applicant, has suppressed the factual aspect that as per the Machine Purchase Agreement dated 14th December, 2022; the issue of "Dispute Resolution". has been discussed at point no. 15 (Page No.5 of the Agreement OR page no. 51 of the set of documents) wherein at paragraph no. 15.1; it has been clearly mentioned that in case of any claims, dispute and/or difference arising out of or relating to the Agreement arose; the same shall be resolved amicably by the parties and that in case of a failure to the same; the aggrieved party may initiate the dispute resolution process by appointing a sole arbitrator as mutually decided and that such an arbitration process shall be

governed as per the provisions as contained under The Arbitration & Conciliation Act, 1996. None of the said terms and conditions has been adhered with by the applicant; thereby causing a default in adhering with the terms of the Machine Purchase Agreement. The said aspect has been conveniently bypassed by the applicant.

- (x) That again; if the Machine Purchase Agreement dated 14.12.2022 is perused: the same suffers from insufficient payment of stamp duty based on the Stamp Duty rates prevailing in Gujarat with effect from 05.08.2020. In other words; the Machine Purchase Agreement dated 14.12.2022; Which has been placed on the record of the matter by the applicant cannot be admitted and/or permitted as an evidence based on insufficient payment of stamp duty unless and until the said defect is rectified by the applicant. This Tribunal too shall be precluded from entertaining any kind of an averment on the part of the Applicant in contrary to the same.
- (xi) That, we respectfully submit that, the details filed by the applicant with regards to the email communications; suffer from the defect as mandated under Section 65B of The Indian Evidence Act, 1872; wherein the Certificate has to be attached referred to as "Section 65B Certificate" verifying the authenticity of the

electronic record confirming that the communications were generated by a computer system in a manner that satisfies the condition as mentioned under that Section; failing which none of the said email communications can be treated as an admissible evidence over which this Tribunal is estopped from either considering and/or perusing the same. The said Section has now also been covered under Section 63(4) of Bhartiya Sakshya Adhiniyam, 2023; wherein it has been made mandatory on the part of the party wishing to bring on record any such e-documentation to provide a Certificate signed by the person in charge of the computer system before the Courts of the land without which the same is not admissible under any set of circumstances.

- (xii) That, It is submitted that; on several occasions; an allegation has been placed by the applicant; that there was an inordinate delay on the part of the Respondent in performing their part of the manufacturing procedure on time based on which the delivery schedules were not met with by the Respondent because of which they faced difficulties. The said aspect is totally false, incorrect and fabricated. The true and correct position of the matter is that; time and again; the applicant had demanded changes and/or alterations in the molds of the machine to be manufactured for them; against which the extended time-lines were communicated to the Applicant by the Respondent and that the applicant

has unconditionally accepted to the same. Any and/or all the documentary evidences pertaining to the same shall be brought on the record of the matter by the Respondent in an elaborate reply and shall be relied upon at the time of hearing of the matter.

- (xiii) That, the most relevant aspect of the matter which has been suppressed by the Applicant is that they are already in settlement talks with the Respondent for the sale of the 1st machine; the proceeds of which shall be handed over to the applicant. The Applicant is also aware about the parties with whom the Respondent is in talks in order to get the deal successful and that the details of the same have also been shared over to the applicant by the Respondent. Thus, it is clear that on one hand the applicant is trying to enter into a settlement for recovering his amounts and on the other hand the Applicant has issued a Legal Notice dated 30.12.2024 to the Respondent which has been replied by the Respondent vide a Reply dated 30.06.2025 and the same has been sent by speed-post AD to the applicant; which has been received by them as on 02.07.2025 at 15:34:34 hours. Thus, it is clear that the applicant is blowing hot and cold over the issue and is merely resorting to arm twisting tactics as against the Respondent. It would not be incorrect on Director the part of the Respondent in stating that the Applicant is misusing the Tribunal by resorting by filing the present

application and on the other hand is already entering into settlement procedure with the Respondent and is thus wasting the precious time of the this Tribunal and playing with the pious sentiments of the this Tribunal; and for the said reasons; none of the contentions of the Applicant be believed and that the application filed by the applicant be dismissed and set aside in the interest of justice for which we, the Respondents shall remain obliged.

12. Thereafter, a rejoinder has been filed by the applicant on 28.07.2025, vide inward diary No.D-5015. The relevant portion of the rejoinder is reproduced as under:

- i. The present Petition filed by the Applicant is legal and valid and has been filed duly complying with the provisions of the Code. In fact, it is the Respondent's conduct which is unwarranted, arbitrary and high-handed. After having failed to supply the 2nd Machine on account of its own delays and unsatisfactory results, the Respondent till date, has been unable to discharge its payment obligations towards the Applicant despite duly admitting its liability on multiple occasions including (but not limited to) vide emails dated 29th October 2024 and 2nd January 2025. There exists a clear debt and default, and the present Petition filed by the Applicant is within the parameters of the Code.

- ii. The Applicant deny the contents no. 4 of the said Reply in toto. On the contrary, it is the Respondent who is seeking to mislead this Tribunal by contending that the Applicant is liable to pay for the 2nd Machine which is not the case as it was mutually agreed that the Respondent would refund the advance paid for the 2nd Machine.
- iii. The Applicant stated that the debt claimed by the Applicant in the present Petition qualifies as an 'operational debt' within the meaning of Section 5(21) of the Code. It is now trite law that the debt arising out of advance payment for supply of goods or services is an operational debt under the Code. In the present case, the Respondent failed to supply the 2nd Machine on account of its own delays, and unsatisfactory results resulted in the Applicant rightfully demanding a refund of the 50% advance paid for the 2nd Machine, a demand that was unequivocally acknowledged and accepted by the Respondent. However, despite such agreement, the Respondent has till date failed to refund the advance to the Applicant and has wilfully defaulted in refunding the said amount. There exists clear evidence of debt and default and the present Petition filed by the Applicant meets the criteria laid down under section 9 of the Code.
- iv. With respect to paragraph nos. 6 to 8 of the said Reply, applicant denies the contents thereof in toto. Applicant

repeated, reiterated, and adopted the contents of the preceding paragraphs and the same are not being repeated herein for the sake of brevity.

- v. With respect to paragraph no. 9 of the said Reply, applicant denies the contents thereof in toto. Applicant stated that the changes suggested and/or alterations in the moulds of the machine were proposed solely to ensure that the final products manufactured by the machines conformed to the required specifications. However, despite incorporating these suggested modifications, the Respondent failed to deliver the machines within the stipulated timelines. On 15th February 2024, the Respondent informed the Applicant that it would be able to deliver the 2nd Machine by 27th February 2024 (Annexure K, Pg. 62-63 of the Petition). However, the same was not delivered by the Respondent. The inordinate delay in the delivery of the machines by the Respondent was causing tremendous losses to the Applicant. Consequently, on 31st May 2024, it was mutually acknowledged and agreed upon between the parties inter alia that the Respondent would refund the advance payment made towards the 2nd Machine. The contents of the present Petition and the Additional Affidavit dated 17th May 2025 are reiterated and adopted and the same are not being repeated herein for the sake of brevity.

vi. With respect to paragraph no. 10 of the said Reply, Applicant denies the allegation that the Applicant has suppressed settlement discussions with the Respondent regarding the sale of the 1st Machine. Stated that the present Petition filed by the Applicant pertains to the 2nd Machine and is entirely unconnected with the 1st Machine. Even the transactions that pertain to the 1st Machine and the 2nd Machine are unconnected and independent transactions. The Respondent has been resorting to dilatory tactics and is trying to use settlement as a shield to evade its liability. Although the parties were engaged in talks to settle the Applicant's dues, the Respondent did not follow through on its promise to pay the outstanding dues towards the 2nd Machine as a result of which the talks fell through much before the present Petition was filed. In any event, settlement talks, by themselves do not affect the rights of parties to initiate proceedings before this Tribunal for sums which are due and payable, and the liability is acknowledged. The Respondent is not engaged in any settlement talks with the Applicant and is trying to mislead the Hon'ble Tribunal to obstruct the adjudication of the present Petition. Pertinently, the Respondent in the said Reply has not commented on the admitted claim due and payable relating to the 2nd Machine which clearly demonstrates that the Respondent is deliberately avoiding any reference to its liabilities towards the 2nd Machine. The Respondent's

silence on the main issue of refund of the advance paid for the 2nd Machine, despite its prior acknowledgement reinforces the Applicant's case of an admitted default.

- vii. With respect to paragraph no. 11 of the said Reply, Applicant stated that the Respondent was duly served with a copy of the Section 9 Petition on 27th March 2025 at the time of filing this petition before this Tribunal. Further, after the issuance of the notice dated 6th June 2025 by this Tribunal, all the pleadings filed in the captioned matter were duly served upon the Respondent on 13th June 2025. In view thereof, the Respondent ought to have filed a detailed reply. On 4th July 2025, the Executive Director of the Respondent appeared before the Tribunal and sought time from the Tribunal to file a reply to the present Petition. Despite the same, till date, the Respondent till date has failed to file a detailed reply. This conduct clearly evidences the Respondent's intent to delay the proceedings before this Tribunal. Having raised vague allegations and legally untenable objections in the said Reply which have no basis in law, and having directly and indirectly acknowledged its payment obligations towards the Applicant in respect of the 2nd Machine in the said Reply, the Respondent is now estopped from filing any further reply and/or from recanting its position vis-a-vis its liability to refund the monies paid by the Applicant towards the 2nd Machine. Without prejudice to the aforesaid, the Applicant reserves its right to file a

detailed rejoinder in the event this Tribunal permits the Respondent to belatedly place any further reply on record.

13. The Operational Creditor also filed written submissions on 18.08.2025. The Summary of the same is as under: -

- i. The submissions detail the sequence of events starting with the Machine Purchase Agreement dated 14.12.2022 for two PET preform injection molding machines, with a total consideration of Rs. 7,90,00,000, Rs. 3,95,00,000 per machine, and a delivery timeline of 30.06.2023. The agreement specified payment terms of 10% upon signing, 40% upon the supplier approving designs or modifications, and 50% upon the purchaser approving the sample or machine prior to dispatch.
- ii. The Operational Creditor paid Rs. 7,90,00,000 for both machines, with the petition focusing on the second machine, for which 50% of the consideration, Rs. 1,97,32,750, was paid through payments of Rs. 39,48,550 on 06.08.2022 (10% advance) and Rs. 1,57,84,200 on 25.01.2023 (40% payment, excluding TDS).
- iii. The Corporate Debtor issued prepayment invoices dated 27.12.2022 for both 10% and 40% payments for both machines. The Corporate Debtor failed to deliver the second machine by 30.06.2023, with revised timelines

communicated on 29.11.2023 (delivery by 03.01.2024) and 15.02.2024 (delivery by 27.02.2024), citing technical lapses and failure to meet specifications as detailed in an email dated 06.03.2024, which highlighted ongoing issues with the machine.

- iv. Due to persistent non-delivery and non-conformance, a meeting on 31.05.2024 between the parties resulted in a mutual agreement that the Corporate Debtor would refund the advance for the second machine, with the Corporate Debtor undertaking to provide the refund. An email dated 09.07.2024 from the Corporate Debtor discussed attempts to sell the second machine to third parties, and the Operational Creditor's response on 26.07.2024 demanded the refund, marking the date of default. The Corporate Debtor issued a balance confirmation statement on 25.09.2024, admitting the debt of Rs. 1,97,32,750, followed by a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, issued by the Operational Creditor on 28.10.2024.
- v. The Corporate Debtor's reply to the demand notice on 29.10.2024 acknowledged the debt and sought time for payment without raising any dispute. A meeting in December 2024 further discussed the refund, and an email dated 02.01.2025 from the Corporate Debtor reiterated its liability to refund the advance for the

second machine. The Operational Creditor asserts that the debt is admitted and undisputed, evidenced by the balance confirmation and subsequent communications, with the Corporate Debtor's failure to refund constituting a clear default under the Insolvency and Bankruptcy Code, 2016.

- vi. The Corporate Debtor's reply filed on 10.07.2025 raised objections, including non-adherence to the arbitration clause in the agreement dated 14.12.2022, insufficient stamp duty under Gujarat stamp laws, non-compliance with Section 65B of the Indian Evidence Act, 1872, for email evidence, the claim that the debt is not operational, and alleged suppression of settlement talks regarding the first machine. The Operational Creditor rebuts these in the written submissions, arguing that the arbitration clause does not bar Section 9 proceedings, as established in *Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund* (2021) 6 SCC 436, since the debt and default are clear and no arbitral proceedings were initiated.
- vii. The Operational Creditor further contends that insufficient stamp duty does not affect maintainability under Section 9, as the tribunal's jurisdiction is summary and focused on default, not stamp duty compliance, per *Innoventive Industries Ltd. v. ICICI Bank* (2018) 1 SCC 407.

- viii. The objection on Section 65B be dismissed, as strict evidence rules do not apply in summary proceedings under the Insolvency and Bankruptcy Code, 2016, per *Swiss Ribbons Pvt. Ltd. v. Union of India* (2019) 4 SCC 17, and the emails are corroborated by other evidence. The debt is operational, arising from advance payments for goods, with a nexus to the supply, as per *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (2019) 8 SCC 416.
- ix. The Operational Creditor asserts no suppression of facts, as the petition pertains solely to the second machine, independent of the first, and settlement talks do not bar proceedings for an admitted debt. The written submissions conclude that the operational debt of Rs. 1,97,32,750, with default from 26.07.2024, is undisputed, exceeds the threshold under Section 4, and meets all requirements under Sections 8 and 9, supported by the demand notice, affidavit of no dispute, and record of default from NeSL, warranting admission of the petition and initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
- 14.** The Corporate Debtor did not file written submissions as directed by the order dated 25.07.2025, despite an opportunity, and sought an adjournment for appeal to

NCLAT, which was declined as the matter was fixed for arguments.

15. We have heard the arguments of Ld. Counsel for the Applicant/Operational Creditor as well as Ld. Counsel for the Respondent/Corporate Debtor and perused the material available on record.
16. The primary issue before this Adjudicating Authority for consideration in this petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, is to determine if the Operational Creditor has established the existence of an operational debt as per Section 5(21); occurrence of default in payment of the operational debt exceeding Rs. 1,00,00,000 as per Section 4 of the Insolvency and Bankruptcy Code, 2016; service of a valid demand notice under Section 8 of the IBC, 2016 and absence of any pre-existing dispute regarding the debt based on the facts presented in the petition, additional affidavits, rejoinder, reply, and written submissions, along with the documents and case laws relied upon by both parties.

- 17.** The facts and the material on record, show that the Operational Creditor and Corporate Debtor entered into a Machine Purchase Agreement dated 14.12.2022 for supply of two PET preform injection moulding machines at a total consideration of Rs. 7,90,00,000, with Rs. 3,95,00,000 for each machine, with delivery timelines stipulated as 31.05.2023 for the first machine and 30.06.2023 for the second machine. The payment terms required 10% advance upon signing, 40% upon approval of designs/modifications, and 50% upon approval of the sample/machine prior to dispatch.
- 18.** The petition pertains specifically to the second machine, for which the Operational Creditor paid 50 percent for the second machine, Rs. 1,97,32,750 excluding TDS deducted as per applicable law, through Rs. 39,48,550 on 06.08.2022 as 10 percent and Rs. 1,57,84,200 on 25.01.2023 as 40 percent, as evidenced by bank statements, invoices, and acknowledgment email dated 25.01.2023 from the Corporate Debtor. The Corporate Debtor acknowledged receipt of these payments via email dated 25.01.2023 and issued a balance

confirmation statement dated 23.09.2024 admitting the liability of Rs. 1,97,32,750.

- 19.** However, the Corporate Debtor did not deliver the second machine either by 30.06.2023, or after repeated extensions of delivery timelines/revised timelines communicated by the Corporate Debtor on 29.11.2023 (revised to 03.01.2024) and 15.02.2024 (revised to 27.02.2024), and an email dated 06.03.2024 highlighting technical issues, the second machine was not delivered due to non-conformance with specifications. This led to a mutual agreement during a meeting on 31.05.2024 that the Corporate Debtor would refund the advance for the second machine.
- 20.** The Corporate Debtor's email dated 09.07.2024 mentioned selling the machine to third parties, the Operational Creditor demanded refund on 26.07.2024 as date of default, the Corporate Debtor issued balance confirmation on 23.09.2024 admitting Rs. 1,97,32,750, demand notice dated 28.10.2024 was served, response dated 29.10.2024 admitted debt and sought time, meeting in December 2024 discussed refund, and email dated 02.01.2025 admitted liability.

- 21.** The additional affidavit dated 17.04.2025 filed on 22.04.2025 vide inward dairy no. D 2544, provided proof of disbursements, including bank statements, request letters to Citi Bank, payment details with UTR numbers, and acknowledgments, confirming payments for the second machine and full payment for the first machine, isolating the default to the second machine.
- 22.** The additional affidavit dated 18.05.2025 filed on 04.06.2025 vide inward dairy no. D 3267, placed correspondence showing non-delivery due to non-conformance, rejection by the Operational Creditor, acceptance by the Corporate Debtor, agreement to refund at the 31.05.2024 meeting, and subsequent admissions, with no dispute raised.
- 23.** The reply of the Corporate Debtor contended that the debt is not operational, the Petitioner is not an operational creditor, requirement of machines was unique requiring special work, both machines were made, first installed in December 2023, second ready, so Operational Creditor owes balance, petition has ulterior motive, facts suppressed, arbitration clause not followed, agreement insufficiently stamped, emails lack

Section 65B certificate, delays due to changes by Operational Creditor, and settlement talks for first machine suppressed.

24. The rejoinder denied the respondent's reply allegations, reaffirmed petition and affidavits, stated defences are frivolous, arbitration clause does not bar Section 9 petition as per settled law, insufficient stamp duty does not affect maintainability in summary jurisdiction, Section 65B not strictly applicable in IBC proceedings, debt is operational from advance for goods, changes were to meet specifications but delivery failed, petition pertains to second machine independent of first, settlement talks failed and do not bar proceedings for admitted debt.

25. The written submissions of the Operational Creditor restated the sequence, payments, non-delivery, admissions, rebutted objections citing *Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund (2021) 6 SCC 436* for arbitration not barring Section 9, *Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407* for summary jurisdiction not scrutinizing stamp duty, *Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17* for evidence rules not strict, *Pioneer Urban Land and*

Infrastructure Ltd. v. Union of India (2019) 8 SCC 416 for operational debt nexus, no suppression as petition specific to second machine.

26. The Corporate Debtor did not file written submissions as directed by order dated 25.07.2025, despite opportunity, and sought adjournment for appeal to NCLAT, which was declined as matter fixed for arguments.
27. The reasoning starts with examining if the debt is operational under Section 5(21) of the Insolvency and Bankruptcy Code, 2016, as claimed in respect of the provision of goods or services. The advance for machines has a direct nexus with the supply of goods; failure to deliver crystallizes a refund as operational debt, as per ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416***, where debts from transactions for goods qualify if linked to operations. Further, the Supreme Court in ***Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd., (2022) ibclaw.in 09 SC*** also held that a debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as

an operational debt and limitation does not commence when the debt becomes due but only when a default occurs.

28. The Corporate Debtor's contention that it is creditor as machines ready and balance due is not supported, as evidence shows non-delivery of the second machine due to non-conformance, mutual agreement to refund, multiple admissions of liability, no counter-claim filed, and focus on the second machine only. The default is established from 26.07.2024 demand, unpaid admitted amount Rs. 1,97,32,750 exceeding Rs. 1,00,00,000 threshold under Section 4, with Record of Default from **NeSL** with status of authentication as "**Deemed to be authenticated**", affidavit no dispute received.

29. The existence of an arbitration clause in the Machine Purchase Agreement does not bar proceedings under Section 9 of the IBC, 2016, as the IBC is a self-contained code overriding other dispute resolution mechanisms when debt and default are established, per **Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund (2021) 6 SCC 436**.

The arbitration clause existence does not bar Section 9 if

debt and default clear, no pre-existing dispute, no arbitration invoked, IBC in rem prevails over contractual mechanisms.

30. The allegation of insufficient stamp duty on the agreement under the Gujarat stamp laws does not affect the maintainability of the petition as the existence of debt and default is corroborated by other independent evidence/documents like emails, balance confirmation and bank statements. This aligns with NCLAT in ***Hiren Meghji Bharani Vs Shankheshwar Properties Pvt. Ltd. and Anr., (2023) ibclaw.in 822 NCLAT*** where stamping defects were held curable but do not bar initiation if other evidence proves default.
31. The objection regarding non-compliance with Section 65B of the Indian Evidence Act, 1872 for email communications is untenable in summary proceedings under the IBC, 2016, where strict evidentiary rules do not apply, per ***Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17***. The emails are corroborated by other documents, including the balance confirmation/acknowledgments and bank

statements. Further, the Corporate debtor exchanged them, and the authenticity was not challenged substantively.

32. There is no suppression of material facts regarding settlement talks for the first machine, as the petition is confined to the independent transaction concerning the second machine. Settlement discussions for the first machine do not preclude admission where the debt is admitted and unpaid.
33. The defences lack merit, appear to delay, no pre-existing dispute notified within 10 days under Section 8(2), multiple admissions eliminate dispute, as per ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353***, where spurious defences not considered if debt admitted.
34. Therefore, the defences are frivolous, moonshine, and appear to be dilatory tactics to evade liability. The Corporate Debtor's admissions in the balance confirmation dated 23.09.2024, response to the demand notice, and subsequent emails establish an undisputed debt and default. No pre-existing dispute exists, as required under Section 9(5)(ii)(d) of the IBC, 2016. The petition is supported by the affidavit

under Section 9(3)(b) certifying no notice of dispute, Record of Default from NeSL, and compliance with procedural requirements.

35. Hence, in our view, the present Petition is complete in terms of Section 9 of the Code. The Operational Creditor is entitled to claim its dues, establishing the operational debt and default in payment of the Operational Debt beyond doubt. The outstanding Operational Debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the three years of limitation from the date of default under Article 137 of the Limitation Act, 1963, as held in ***B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates, (2018) ibclaw.in 32 SC.*** Accordingly, the Petition filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

36. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under: -

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- (i) The Respondent/Corporate Debtor - **Cypet Technologies India Private Limited** is **admitted** in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence thereof, a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
- a. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
 - c. *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
 - d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor. The moratorium does not apply to transactions notified by the Central Government, as per Section 14(3)(a) of the IB Code, 2016.*

- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the Corporate Debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) Since the Operational Creditor has not proposed the name of any IRP. Therefore, from the IBBI Panel List valid w.e.f. 01.07.2025 to 31.12.2025, we appoint **Mr. Mukesh Laddha** having Registration No. IBBI/IPA-001/IP-P-02712/2022-2023/14155, having address: Office NO-311, 3rd. Floor, Pratik Mall, Koba-Gandhinagar Highway, Near Swaminaryan Dham, Gandhinagar, Gujarat, 382421 (**e-mail: mukeshladdha@rediffmail.com**) **Mobile No. 77989 85876** under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder. He shall submit his consent Form-2 along-

with Form-B and Registration Certificate within three days.

- (vi) The IRP so appointed shall make a public announcement (e.g., newspapers, websites) under Regulation 6(2) of IBBI Regulations, 2016, of the initiation of the Corporate Insolvency Resolution Process and call for submissions of claims under section 15 within three days of appointment as per Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its promoters, or any other person associated with the management of the Corporate Debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the Corporate Debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (viii) The IRP is expected to take full charge of the Corporate Debtor's assets and documents without any delay whatsoever within seven days of this order. He is also

free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor company' and manage the operations of the Corporate Debtor company as a going concern as a part of the obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority a periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.5,00,000/- (Rupees Five Lakh Only)** in advance exclusive of applicable taxes, within 7 days from the date of this order to meet the initial costs of the CIRP, including issuing public notice and inviting claims, as per Regulation 33(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This amount shall be adjustable against the IRP's fees and expenses as approved by the Committee of Creditors (CoC) under Regulation 33(3), with any excess refundable to the Operational Creditor or shortfall recoverable from the Corporate Debtor's estate as CIRP costs.

- (xii) The Registry is directed to communicate this order to the Operational Creditor, Corporate Debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days, and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update the Corporate Debtor's Master Data on the MCA portal to reflect its status as 'under Corporate Insolvency Resolution Process' within 7 working days of receiving this order and submit a compliance report to the Registrar, NCLT, within 14 working days.
- (xiii) The public announcement under Regulation 6(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall be published in at least one English (national edition) and one vernacular newspaper with wide circulation in the state of the Corporate Debtor's registered office (Gujarat) and on the Corporate Debtor's website, if any, as per Form A of the said Regulations.
- (xiv) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

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37. Accordingly, this Petition being **CP(IB)/157/9/AHM/2025** is hereby **admitted**. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)