**NATIONAL COMPANY LAW TRIBUNAL**
**INDORE BENCH**
**COURT NO. 1**

ITEM No.204
**CP(IB)/20(MP)2025**

**Order under Section 9 IBC**

**IN THE MATTER OF:**

Hangzhou Sword Elevator Co. Ltd.Through Power of Attorney holder **........Applicant**
V/s **........Respondent**
Daulat Ram Engineering Services Pvt. Ltd

**Coram:**

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

**PRONOUNCEMENT OF ORDER**
**Delivered on 31/07/2026**

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

| | |
|---|---|
| **SD/-** | **SD/-** |
| **MAN MOHAN GUPTA** | **BRAJENDRA MANI TRIPATHI** |
| **MEMBER (TECHNICAL)** | **MEMBER (JUDICIAL)** |

Tomar

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**INDORE BENCH**

**COMPANY PETITION (IB) NO. 20 OF 2025**

*[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:**

**HANGZHOU SWORD ELEVATOR CO. LTD.**
No. 168, Hongda Road,
Yuhang Economic Development Zone,
Hangzhou City, Zhejiang, China
**Through Its Constituted Attorney**
Mr. Sahil Bhatia
S/o Mr. Krishan Bhatia
R/o C-206, Vikas Puri, New Delhi-110018
Mobile: +91-9810458541 **...Applicant/Operational Creditor**

**VERSUS**

**DAULAT RAM ENGINEERING SERVICES PVT. LTD.**
Having its Registered Office at:
Khasra No. 10/2 N.H. 12, Village Simrai, Raisen,
Mandideep, Madhya Pradesh - 464993
Email: info@daulatram.org ...**Respondent/Corporate Debtor**

**CORAM:**

**Hon'ble Shri Brajendra Mani Tripathi, Member (J)**

**Hon'ble Shri Man Mohan Gupta Member (T)**

**PRESENT:**

For the Applicant/Operational Creditor: Ms. Soumya Dharwa, Advocate,
For the Respondent/Corporate Debtor: Mr. Gaurav Mitra, Adv (Online)

## O R D E R

## Delivered on: 31.07.2026

1. This is an application filed by **Hangzhou Sword Elevator Co. Ltd. ("Operational Creditor")**, a company incorporated in the People's Republic of China (Business Registration No. 91330110689099900Y), through its constituted attorney Mr. Sahil Bhatia, under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, in Form 5, seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against ***Daulat Ram Engineering Services Pvt. Ltd.*** ("Corporate Debtor"), having its registered office at Khasra No. 10/2, N.H. 12, Village Simrai, Post Obedullahganj, District Raisen, Mandideep, Madhya Pradesh – 464993, for an alleged operational debt of USD 522,170.00, equivalent to Rs. 4,53,48,428.04 (at the exchange rate of 1 USD = Rs. 86.8461 as on 12.02.2025).

### FACTUAL BACKGROUND AS PLEADED IN THE APPLICATION

2. The Operational Creditor manufactures and supplies elevators and escalators. The Corporate Debtor undertakes engineering, supply and installation contracts for Indian Railways and approached the Operational Creditor to purchase escalators on credit.

3. Two contracts came to be executed: Contract No. SWD 70522-70542 dated 10.01.2017 and Contract No. SWD 70521 dated 16.03.2017 (Annexure D, Colly.), for supply of escalators to be installed at various Indian Railway stations.

4. Eleven invoices were raised between **15.03.2017 and 17.06.2017**, aggregating USD 1,030,300.00 (Annexure E, Colly.), and delivery was effected under twelve bills of lading dated between 19.03.2017 and 19.06.2017 (Annexure F, Colly.). The invoice-wise break-up is as follows:

| **S. No.** | **Invoice No.** | **Invoice Date** | **Amount (USD)** | **Bill of Lading (No. & Date)** | **Date of Default** |
|---|---|---|---|---|---|
| 1 | SWD 70523–70526 | 15.03.2017 | 178,000.00 | FC17KF00193 dated **19.03.2017** | 18.06.2017 |
| 2 | SWD 70534–70535, 70541 | 17.03.2017 | 144,500.00 | FC17KF00194 dated **22.03.2017** | 21.06.2017 |
| 3 | SWD 70522, 70527–70530 | 30.03.2017 | 240,800.00 | FC17KF00252 dated **02.04.2017** | 02.07.2017 |
| 4 | SWD 70538 | 31.03.2017 | 45,100.00 | FC17KF00253 dated **04.04.2017** | 04.07.2017 |
| 5 | SWD 70533, 70537 | 01.04.2017 | 93,300.00 | FC17KF00265 dated **05.04.2017** | 05.07.2017 |
| 6 | SWD 70531–70532 | 04.04.2017 | 91,400.00 | FC17KF00267 dated **08.04.2017** | 08.07.2017 |
| 7 | SWD 70539 | 07.04.2017 | 53,200.00 | FC17KF00268 dated **14.04.2017** | 14.07.2017 |
| 8 | SWD 70540 | 07.04.2017 | 46,500.00 | FC17KF00269 dated **11.04.2017** | 11.07.2017 |
| 9 | SWD 70542 | 07.04.2017 | 46,000.00 | FC17KF00270 dated **12.04.2017** | 12.07.2017 |
| 10 | SWD 70536 | 22.04.2017 | 46,500.00 | FC17KF00299 dated **28.04.2017** | 28.07.2017 |
| 11 | SWD 70521 | 17.06.2017 | 45,000.00 | PCNVS17060197 dated **19.06.2017** | 18.09.2017 |
| **Total** | | | **10,30,300.00** | | |

5. **Per Part IV of Form 5**, computing default at 90 days from the corresponding bill of lading as mentioned under Clause 2.2 of the Contract dated 10.01.2017, the earliest date of default is 18.06.2017 and the latest is 18.09.2017 (in respect of Invoice No. SWD 70521 dated 17.06.2017).

6. The Corporate Debtor paid an advance of USD 107,800.00 on execution of the Contracts, and thereafter released a further USD 400,330.00 in thirteen tranches between 17.10.2017 and 29.08.2019, as follows:

| **S. No.** | **Date** | **Amount (USD)** |
|---|---|---|
| 1 | 17-Oct-17 | 45,000.00 |
| 2 | 27-Dec-17 | 53,200.00 |
| 3 | 31-Jan-18 | 41,400.00 |
| 4 | 28-Mar-18 | 20,520.00 |
| 5 | 13-Jun-18 | 20,520.00 |
| 6 | 24-Aug-18 | 47,880.00 |
| 7 | 18-Sep-18 | 41,760.00 |
| 8 | 11-Dec-18 | 10,000.00 |
| 9 | 25-Jan-19 | 10,000.00 |
| 10 | 20-Feb-19 | 10,000.00 |
| 11 | 13-Mar-19 | 15,000.00 |
| 12 | 10-May-19 | 50,000.00 |
| 13 | 29-Aug-19 | 35,050.00 |
| **Total** | | **400,330.00** |

7. That, after adjustment of the advance and part-payments referred to above, a balance of **USD 522,170.00** ("the Operational Debt") remains outstanding.

8. The Operational Creditor relies on five e-mails from the Corporate Debtor dated **28.08.2017, 19.01.2018, 26.12.2020, 27.03.2021 and 02.06.2021 (Annexure G, Colly.)** as unqualified written acknowledgments of the outstanding dues.

9. A demand notice dated 24.02.2022 was issued under Section 8 of the Code in Form 3 (**Annexure H, Colly.),** delivered to the registered office of the Corporate Debtor on 26.02.2022 (DTDC) and 07.03.2022 (India Post). The Corporate Debtor replied on 09.03.2022.

10. No payment having followed, the Application was filed on 27.02.2025, whereby payment through the banking channel was made.

**PROCEDURAL HISTORY**

11. The Application was filed through the constituted attorney pursuant to a Power of Attorney dated 15.01.2024, read with an Extract of Minutes of the Board of Directors' meeting of the Operational Creditor dated 11.11.2024, authorising Mr. Pankaj Sachdeva and/or Mr. Sahil Bhatia and/or Mr. Samir Sethi to institute and pursue these proceedings.

12. At a preliminary hearing it was pointed out that the certified copy of the said Board Resolution bore only the company seal/chop and no wet signature. At the hearing on 08.08.2025, counsel for the Operational Creditor undertook to file a fresh Power of Attorney/authorisation.

13. The Operational Creditor filed an Affidavit in Support of Application affirmed on 03.09.2025, explaining that under the law of the People's Republic of China a company "chop" carries the same legal effect as a signature (material annexed as Annexure A, Colly.), and additionally placed on record, out of caution, a further certified copy of the same Board Resolution bearing the wet signature of the legal representative, Mr. Zhou Junliang, alongside the chop (Annexure B).

**Reply of Corporate Debtor:**

14. That it is humbly submitted that the Corporate Debtor approached the Operational Creditor for the supply of certain escalators. However, the nature and scope of the transaction, as well as the contractual obligations, are subject to serious and ongoing disputes which have been duly communicated to the Operational Creditor.

***Preliminary Objections:***

15. The Corporate Debtor contends the Operational Creditor failed to supply goods per the contractual standards, and that the escalators were rejected by Indian Railways for poor performance and sub-standard quality, with complaints repeatedly raised.

16. It contends the goods supplied to Railways were rejected, disputes were raised as to quality and workmanship, and the same issues were raised with the Operational Creditor, but no heed given. However, the Operational Creditor failed to perform their contractual obligations.

17. The parties entered into Contract Nos. SWD 70522–70542 dated 10.01.2017 and SWD 70521 dated 16.03.2017; the Corporate Debtor contends these were breached, the goods but were fraught with serious quality and performance deficiencies to which issues has been raised constantly to the Operational Creditor.

18. In terms of the said contracts, the Operational Creditor supplied certain escalators to the Corporate Debtor and raised invoices. It is categorically denied that the Operational Creditor fulfilled its obligations in accordance with the contract. The supplies were fraught with serious quality and performance deficiencies, and the Corporate Debtor duly raised objections from time to time. It is denied that the Corporate Debtor accepted delivery of the escalators without protest or demur. The Corporate Debtor repeatedly communicated its concerns and complaints regarding the defective nature of the escalators and the resultant financial and reputational losses suffered by it.

19. It is a matter of record that the Application was filed in February 2025 the last invoices being of 2017, the Corporate Debtor contends more than 8 years have elapsed and the claim is time-barred.

20. The Section 8 notice was sent on 24.02.2022, received 07.03.2022, and replied to on 09.03.2022, in which reply the Corporate Debtor contends a valid dispute was raised (Notice and Reply annexed as Annexure A2, Colly., pp. 42–114).

**A. Petition liable to be dismissed under Section 9(5)(ii)(d)**

21. That the Corporate Debtor herein, made an advance payment of USD 107,800 despite the contractual breaches and no remedies by the Operational Creditor and frequent complaints raised by the Corporate Debtor to which no heed paid by the Operational Creditor. Also,

payments were made between 2017 and 2019, totalling USD 400,330. Furthermore, the Corporate Debtor tried to reach out and communicate with the Operational Creditor regarding the ongoing issues, however all the communications resulted in present dispute and no remedies as shown by the Operational Creditor.

22. The Corporate Debtor contends no "Operational Debt" under Section 5(21) exists, for five reasons: (i) pre-existing disputes between the parties; (ii) breach of contract by the Operational Creditor; (iii) advance and complete payment already made for goods delivered; (iv) losses incurred by the Corporate Debtor; and (v) the Operational Creditor's failure to comply with its contractual obligations.

23. The Corporate Debtor contends it duly replied to the demand notice, raising all issues regarding the goods delivered.

24. The Operational Creditor is a Chinese firm/ Company and every consignment sent by the Operational Creditor is secured by way of an insurance cover by a Chinese Insurance Company. Furthermore, the goods supplied by the Corporate Debtor in 2017 was also secured through an Insurance Policy and the Operational Creditor have even availed the insurance facility and have recovered the amount from the insurance company as well. The operational creditor has committed fraud with this Hon'ble Tribunal by deliberately concealing this relevant fact.

**B. Petition barred by limitation**

25. The Corporate Debtor contends the date of default is arbitrarily stated as 15.03.2017 to 17.06.2017, per Clause 2.2 of the Contract dated 10.01.2017 (90 days from shipment), such that no cause of action arose.

26. Per Part IV of the Petition, the date of default is stated as 18.06.2017 to 18.09.2017; the Corporate Debtor contends this is a self-admission that the Petition is barred by limitation.

27. The Corporate Debtor contends the present dispute is a civil matter, not one for the IBC, and that Clause 14.1 of the Contract dated 10.01.2017 provides for resolution through arbitration.

28. That as per the provisions of the Limitation Act, 1963, the period of limitation of such defaults begins from the due and payable date of the last amount from the Corporate Debtor to Operational Creditor. Therefore, the limitation for the alleged default as per the Operational Creditor is in 2017, hence, the limitation for the repayment, if any, has ended in 2020. Furthermore, the demand notices were only issued in year 2022 by the Operational Creditor, i.e., after 2 years from the end of the limitation. The last invoice was issue on 18.09.2017, on perusal of the invoices relied upon by the Applicant, therefore, the limitation for filing present petition under Section 9 stoop lapsed on 18.09.2020. The false and frivolous Petition, as filed by the Applicant, is of the month of February 2025 and the right to sue for the alleged default amount occurred in 2017, i.e., after more than 8 years after the last date of default.

29. The Corporate Debtor relies on **B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019) 11 SCC 633**, for the proposition that limitation under Article 137 of the Limitation Act runs from the date of default.

30. The Corporate Debtor relies on **Jignesh Shah v. Union of India, (2019) 10 SCC 750**, for the same proposition, contending the Application, filed 24.02.2025, is over 8 years after the alleged default and grossly time-barred.

31. The Corporate Debtor relies on **Vashdeo R. Bhojwani v. Abhyudaya Co-operative Bank Ltd., (2019) 9 SCC 158**, which follows B.K. Educational Services on the same point.

**C. Gross failure of Operational Creditor in performing contractual obligations**

32. On 22.02.2016, the Corporate Debtor was appointed lead member of a consortium to execute an agreement with Indian Railways for elevators manufactured by the Operational Creditor (Power of Attorney annexed as Annexure A4, pp. 117–118).

33. That on 06.05.2016, Corporate Debtor issued 2 Purchase Orders to Operational Creditor with certain binding terms and conditions. Copies of 2 Purchase Orders dated 06.05.2016 issued by Corporate Debtor to Operational Creditor is annexed as ANNEXURE A5 @ 119-122 of the Reply.

34. That it is however submitted that the escalators were found to have manufacturing and mechanical defects, therefore the Respondent has to take necessary maintenance and rectification work on its own, incurring an expenditure of approximately Rs. 2,25,00,000/-. (Rupees Two Crores Twenty-Five Lakhs Only) which is remained recoverable from the Operational Creditor.

35. The Corporate Debtor contends the escalators developed manufacturing and mechanical defects, requiring rectification at its own cost of approximately Rs. 2,25,00,000/-.

36. The non-performance and unprofessional conduct led to the withholding and invocation of bank guarantees exceeding Rs. 1,00,00,000/- (Rupees One Crore Only) furnished by the Respondent to Indian Railways, which also refused to release the EMD and security deposits. Operational Creditor abandoned the contract midway and failed to renew the AMC, rendering the project infructuous and causing financial and reputational loss to the Corporate Debtor.

37. The Corporate Debtor contends various e-mails were exchanged in which it attempted to resolve the dispute over non-performance (annexed as Annexure A7, pp. 147–161).

**D. Defective for want of compliance with Regulation 2B of the CIRP Regulations**

38. The Corporate Debtor contends the Operational Creditor failed to furnish GSTR-1/GSTR-3B extracts and e-way bills as required under Regulation 2B, and that in the absence of such filing there is no record of transactions between the parties (Gazette Notification dated 14.06.2022 annexed as Annexure A8, pp. 162–164).

**E. Absence of default**

39. The Corporate Debtor contends the alleged default is unsubstantiated by any admission or confirmed liability, and that no "debt" under Section 3(11) is due and payable.

40. The Corporate Debtor contends the Operational Creditor itself defaulted in 2017 by failing to provide the agreed 36-month warranty and service, such that the amount claimed is not payable.

41. The Corporate Debtor relies on **Navin Madhavji Mehta v. Jaldhi Overseas Pte Ltd., Company Appeal (AT) (Insolvency) No. 792 of 2024**, for the proposition that once a debt is genuinely disputed, the question of default does not arise and Section 9 proceedings cannot be initiated at the Operational Creditor's instance.

**F. Demand notice incomplete and defective**

42. That the demand notice dated 24.02.2022 deliberately and malafidely issued upon Corporate Debtor without explaining the essentials of the Form 3 under Section 8 of IBC as required to which the Operational Creditor has failed to comply with. That as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, it is mandated by the provision of law that the Demand notice is required to be given in Form 3 and Form 4.

43. The Corporate Debtor relies on **Neeraj Jain, Director of Flipkart India Pvt. Ltd. v. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr., CA (AT) (Ins) No. 1354 of 2019**, for the proposition that a demand notice lacking such particulars is defective and void.

**G. Fraud and concealment**

44. The Corporate Debtor contends the Operational Creditor suppressed prior recovery through insurance from a China-based insurer, filing the Application with mala fide intent to secure unjust enrichment.

45. The Corporate Debtor relies on **Chengalvaraya Naidu v. Jagannath, AIR 1994 SC 853**, for the proposition that a judgment obtained by suppressing a vital document is a nullity, and that a litigant whose case is based on falsehood may be thrown out at any stage.

46. The Corporate Debtor relies on **Municipal Corporation of Delhi v. State of Delhi, (2005) 4 SCC 605**, to the same effect.

**H. Corporate Debtor is a solvent and profitable company**

47. The Corporate Debtor describes itself as a duly incorporated, solvent going concern executing multiple projects, and contends the Application is a mala fide recovery proceeding warranting dismissal with costs under Section 65.

48. The Corporate Debtor relies on **M/s Design Worx Infrastructure India Pvt. Ltd. v. Premier Restaurant Pvt. Ltd.**, for the proposition that insolvency proceedings cannot be used as a debt-recovery tool.

**I. Contrary to the object and scheme of the Code**

49. The Corporate Debtor contends the Code cannot substitute for recovery proceedings, and that the Application seeks recovery of disputed, non-payable dues.

50. The Corporate Debtor contends the Operational Creditor ought to be punished under Section 76 for non-disclosure of the pre-existing dispute and furnishing false information.

**J. No proof of agreement/invoice for the alleged 36-month service obligation**

51. The Corporate Debtor contends no agreement, contract, invoice, or document evidences the alleged 36-month guaranteed-service

obligation, such that mere averments in the Petition do not establish default.

52. The Corporate Debtor contends no further dues remain, and seeks dismissal with exemplary costs.

**K. Other judgments relied upon**

53. In further support of its case that a genuine pre-existing dispute bars admission and that the Code is not a substitute for debt recovery, the Corporate Debtor additionally relies on **Innoventive Industries Ltd. v. ICICI Bank, (2017) 1 SCC 407**; **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353**; **Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17**; **S.S. Engineers v. Hindustan Petroleum Corp. Ltd., (2022) 7 SCC 231**; **Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd., CA (AT) (Ins) No. 1138 of 2019**; **Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd., (2018) 2 SCC 674**; **Sudhi Sachdev v. APPL Industries Ltd.** (NCLAT, 2018); **Binani Industries Ltd. v. Bank of Baroda** (NCLAT, 2018); and **Uttam Galva Steel Ltd. v. DF Deutsche Forfait AG, 2018 SCC OnLine NCLAT 298**.

54. In view of the foregoing, the Corporate Debtor prays that the Petition be dismissed.

**<u>Rejoinder of Applicant:</u>**

55. The pleadings, documents and correspondence placed on record clearly establish the existence of an Operational Debt, default in payment thereof, and the absence of any genuine pre-existing dispute.

56. The Operational Creditor is a company engaged in the business of manufacture and supply of elevators and escalators. The Corporate Debtor approached the Operational Creditor for purchase of escalators on credit and entered into two contracts bearing nos. SWD 70522–70542 dated 10.01.2017 and SWD 70521 dated 16.03.2017. The contracts, invoices, shipping documents and bills of lading form part of

the record and remain undisputed documents evidencing supply of goods.

57. In terms of the said contracts, the Operational Creditor sold and supplied the “Escalators” to the Corporate Debtor under various invoices between March 2017 and June 2017, aggregating to USD 1,030,300.00. That the delivery was completed and the Corporate Debtor accepted the ‘Said Goods’ without any contemporaneous protest, rejection memo, or debit note.

58. That the Corporate Debtor upon much persuasion from the operational creditor made part-payments between 2017 and 2019, totalling to USD 400,330.00, thereby unequivocally acknowledging both the supply and its liability to pay. These Part payments were made in multiple tranches and admitting outstanding dues and seeking time for payment. That such conduct of the Corporate Debtor constitutes clear acknowledgment of debt under Section 19 of the Limitation Act, 1963.

59. That after adjustment of the part-payments, a balance sum of USD 522,170.00 remained outstanding towards the Operational Debt. That despite repeated followups, reminders and assurances, the Corporate Debtor failed to liquidate the admitted balance outstanding of USD 522,170.00. The default is therefore admitted in conduct and supported by documentary evidence.

60. The Operational Creditor issued a demand notice dated 24.02.2022 under Section 8 of the Code, duly served upon the Corporate Debtor. The Corporate Debtor’s reply dated 09.03.2022 to the demand notice did not raise any genuine dispute regarding quality or rejection of goods but only contained vague and afterthought allegations. That no technical report, inspection report, rejection note or correspondence from Indian Railways was annexed with the reply.

61. That the defence taken in the Reply of the Corporate Debtor that the escalators were defective and rejected by Indian Railways is a bald assertion unsupported by any primary document. That at no point during supply, installation or commissioning did the Corporate Debtor

issue a formal rejection rather continued part-payments and also issued several written acknowledgments of dues dated 28.08.2017, 26.12.2020, 27.03.2020, 27.03.2021 and 02.06.2021 which are wholly inconsistent with a case of defective or rejected goods are annexed as ANNEXURE G.

62. It is a settled law that a dispute must be real, substantial and pre-existing prior to the issuance of the Section 8 notice. ***In Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (Civil Appeal No.9405 of 2017),*** the Hon'ble Supreme Court held that the Adjudicating Authority must see whether there is a plausible contention requiring further investigation and not a patently feeble legal argument. In the present case, the Corporate Debtor has failed to produce any contemporaneous record of dispute prior to the demand notice. The alleged dispute is a mere afterthought.

63. The Corporate Debtor's own emails placed on record show repeated assurances of payment and requests for time. There is no whisper of rejection of goods in those communications. That such admissions destroy the plea of pre-existing dispute and clearly establish default. The objection of limitation raised by the Corporate Debtor is equally untenable. The last part-payments were made up to 29.08.2019 and written acknowledgments continued thereafter till 02.06.2021. That each such acknowledgment extends the limitation period under Section 18 of the Limitation Act. Further, the period from 15.03.2020 to 28.02.2022 stands excluded pursuant to the orders of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020. Hence, the present Application filed in February 2025 is well within limitation.

A table elaborating the extension of limitation is mentioned below:

| S. No. | Limitation event | Effect |
|---|---|---|
| 1 | Invoices fell due 17.06.2017 to 17.09.2017 | Original limitation window: 2017–2020 |
| 2 | Part-payments 17.10.2017 to 29.08.2019 | Fresh 3-year period under Section 19 begins 29.08.2019 → expires 29.08.2022 |

| | | |
|---|---|---|
| 3 | COVID-19 exclusion, 15.03.2020 to 28.02.2022 | Entire period excluded — adds approx. 1 year, 11.5 months |
| 4 | Acknowledgment (Section 18), 26.12.2020 | Fresh 3 years → 26.12.2023 (plus COVID exclusion) |
| 5 | **Acknowledgment (Section 18), 27.03.2021** | **Fresh 3 years → 27.03.2024 (plus COVID exclusion)** |
| 6 | Acknowledgment (Section 18), 02.06.2021 | Fresh 3 years → 02.06.2024 (plus COVID exclusion) |
| 7 | COVID exclusion ends 28.02.2022 | Limitation clock resumes running |
| 8 | Petition filed 24.02.2025 | Within limitation |

64. The Corporate Debtor's allegations regarding insurance recovery, alleged losses with Indian Railways, or internal consortium arrangements are wholly irrelevant to the Operational Creditor's claim for price of goods sold and delivered. These are independent transactions and cannot extinguish the Corporate Debtor's admitted contractual liability.

65. The objection regarding non-filing of GST returns is hyper-technical. The Operational Creditor is a foreign supplier and the transaction is an import of goods. Therefore, GST compliance in India does not determine the existence of Operational Debt under Section 5(21) of the Code. The IB Code requires proof of supply, debt and default, all of which stand established through contracts, invoices, shipping documents and admissions.

66. The contention that the demand notice was defective is also misconceived. The notice clearly specified the amount in default, invoices and dates, and was duly served. The Corporate Debtor in fact replied to it, thereby waiving any technical objection as to form. That the Corporate Debtor's repeated attempt to portray itself as a solvent, running company is legally irrelevant as solvency is not a defence to admission under Section 9 once operational debt and default are established.

67. The defence based on alleged arbitration clause is equally untenable. In Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (Civil Appeal

No.9405 of 2017), it was clarified that existence of an arbitration clause does not bar IBC proceedings unless a genuine dispute already exists. No such dispute existed here.

68. The conduct of the Corporate Debtor in making part-payments, issuing written acknowledgments, seeking time and never raising a formal rejection clearly shows admission of liability. The plea of dispute is a sham defence raised only after receipt of the statutory demand notice.

69. The Operational Creditor has placed on record complete documentary evidence of supply, delivery, part-payments and balance outstanding. The Corporate Debtor has failed to produce a single contemporaneous document evidencing rejection, return, debit note or quantified counterclaim.

70. That in **Swiss Ribbons Pvt. Ltd. v. Union of India (SLP (Civil) No. 28623 of 2018**), the Hon'ble Supreme Court emphasized that the Code balances interests of all stakeholders and must be triggered where default is real. The present case squarely falls within the framework of an undisputed operational debt and continuing default.

71. In view of the above facts, documents and settled law, it is evident that (i) an operational debt exists, (ii) the Corporate Debtor has committed default in payment, (iii) the Application is within limitation, and (iv) there is no genuine pre-existing dispute.

72. The defences raised are evasive, unsupported by record, and intended only to delay and defeat legitimate insolvency proceedings. That such conduct falls within the mischief of dilatory tactics repeatedly deprecated by the Hon'ble Supreme Court.

73. Accordingly, this Hon'ble Tribunal may be pleased to admit the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016, initiate Corporate Insolvency Resolution Process against the Corporate Debtor, and pass appropriate orders in the interest of justice.

**ANALYSIS AND FINDINGS**

74. Upon consideration of the pleadings, documents and rival submissions, the following issues arise for determination:

    i. Whether a "pre-existing dispute" within the meaning of Section 8(2)(a) subsists so as to disentitle admission?

    ii. Whether the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 is within limitation?

    iii. Whether Regulation 2B of the CIRP Regulations (GST returns/e-way bills) renders the Application defective?

**Issue 1: Whether a "pre-existing dispute" within the meaning of Section 8(2)(a) subsists so as to disentitle admission?**

75. At the outset, it is apposite to reiterate the settled legal position that the jurisdiction of the Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 can be invoked only in respect of an undisputed operational debt. Where a real and substantial dispute exists between the parties prior to issuance of the demand notice under Section 8 of the Code, the Adjudicating Authority is duty-bound to reject the application.

76. In the present case, we find that the Respondent - CD has brought on record material to demonstrate the existence of disputes between the parties well before the issuance of the demand notice by the Applicant-OC. The Corporate Debtor pleads that the escalators supplied were found defective by Indian Railways, resulting in remedial expenditure of about Rs. 2,25,00,000/- and invocation of bank guarantees exceeding Rs. 1,00,00,000/-. It relies on Railway correspondence (Annexure A6) and "a few" e-mail exchanges with the Operational Creditor (Annexure A7). The Operational Creditor denies this in entirety, contending that no inspection report, rejection memo, NCR, debit note, or warranty claim was ever produced or addressed to it; that the escalators were accepted, installed and used without protest; and that the defence is a fabricated afterthought raised only after the

Section 8 notice, intended to create a "moonshine defence". (Rejoinder, paras 7–10, 28–33).

77. Annexure A6 (pages 123–146 of the Reply), on which the Corporate Debtor relies to establish a pre-existing dispute, consists of letters from North Western Railway and West Central Railway addressed solely to the Corporate Debtor. Every one of these letters concerns Purchase Order No. 60.15.5001.1.72126 dated **28.04.2016** or No. 40.14.8028.1.41306 dated **24.11.2015** — a year or more before the two 2017 contracts executed between the Corporate Debtor and the Operational Creditor for the supply now in question. The letters complain of the Corporate Debtor's own failure to execute Annual Maintenance Contracts after warranty expiry (recorded as expiring 04.10.2019 and 07.04.2019), not of any manufacturing defect traceable to the Operational Creditor.

78. The Corporate Debtor has also pleaded that various e-mail exchanges took place between it and the Operational Creditor in which it raised non-performance of the contract, failure of warranty, and delay in supply. These e-mails, filed at **Annexure A7** (pages 147–161 of the Reply), read date-wise, are as follows:

| Date & Time | From → To | Subject | Key language on record |
|---|---|---|---|
| 24.10.2016, 6:22 PM | Sharad Sharma (CD) → Gao (OC) | Fwd: Fwd: Public Escalators for Indian Railway Stations | "packing of the escalator... not very appropriate... scratches on the escalators" — reporting Railways' inspection feedback at the Kota site |
| 25.10.2016, 07:15 | Gao (OC) → Sharma | Re: (same thread) | "unavoidable while welding, but do not affect the performance and outer appearance" and packing of steps done with zip tie and that only on one side |
| 25.10.2016, 4:54 PM | Sharma → Gao | Re: (same thread) | "these scratches have come during handling as it was not properly |

| | | | |
|---|---|---|---|
| | | | covered" and "Steps just tied with zip and packed instead they should be wrap and covered in corrugated paper" |
| 27.10.2016, 16:14 | Pulkit Sharma (CD) → Sword (OC) | Re: Escalator | "delay in shipping the escalators will be to your account… [will] delay the 10% advance payment for 23 escalators" |
| 27.10.2016 (same day, in reply) | Tommy Zhu (OC, Sales Director) → Sharma | Re: Escalator | "SWORD won't bear any cost for the cladding because it is out of the contract… don't argue with this point any more" |
| 06.02.2017, 5:30 PM | Sharma → Gao | Faulty relay | "We have received two faulty relays in the escalator in Jaipur… Kindly send us the immediate replacement" |
| 07.02.2017, 6:50 AM | Gao → Sharma | Re: Faulty relay | "2 relays are in process, will send you soon by express" |
| 07.02.2017 | Sharma→ Goa | Reply to above | "to mention as possible as minimum value in invoice for custom purpose |
| 15.06.2019 | Sharma → Gao | Unknown error | Reports a fault at Itarsi and asks the Operational Creditor's team for help in resolving it |

79. On a perusal of this correspondence, none of these fifteen pages uses the words "reject", "non-conforming", "return", or "terminate", nor otherwise records a formal dispute. Independently, the October 2016 e-mails predate both contracts (10.01.2017 and 16.03.2017) and cannot concern goods invoiced under them; and the February 2017 e-mails concern an escalator at "Jaipur" carrying invoice reference "SWD 16366" — a different series from the eleven invoices actually sued upon (SWD 70521–70542).

80. Applying Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353 (the dispute must be real, not "spurious, hypothetical

or illusory"), Issue 1 is answered against the Corporate Debtor. **There is no pre-existing dispute on this record.**

**Issue 2: Whether the Application is barred by limitation?**

81. The Corporate Debtor contends that since the invoices were raised and fell due in 2017, limitation under Article 137 of the Limitation Act expired in 2020. The Operational Creditor responds that this ignores Sections 18 and 19 of the Limitation Act: part-payments continued up to 29.08.2019 and written acknowledgments continued up to 02.06.2021, each resetting the limitation clock, and that the Supreme Court's COVID-19 exclusion order (15.03.2020 to 28.02.2022) extends the period further.

82. The Operational Creditor's own computation, as tabulated in the Rejoinder, is as follows:

| S.No. | Limitation event | Effect |
|---|---|---|
| 1 | Invoices fell due 17.06.2017 to 17.09.2017 | Original limitation window: 2017–2020 |
| 2 | Part-payments 17.10.2017 to 29.08.2019 | Fresh 3-year period under Section 19 begins 29.08.2019 → expires 29.08.2022 |
| 3 | COVID-19 exclusion, 15.03.2020 to 28.02.2022 | Entire period excluded — adds approx. 1 year, 11.5 months |
| 4 | Acknowledgment (Section 18), 26.12.2020 | Fresh 3 years → 26.12.2023 (plus COVID exclusion) |
| 5 | **Acknowledgment (Section 18), 27.03.2021** | **Fresh 3 years → 27.03.2024 (plus COVID exclusion)** |
| 6 | Acknowledgment (Section 18), 02.06.2021 | Fresh 3 years → 02.06.2024 (plus COVID exclusion) |
| 7 | COVID exclusion ends 28.02.2022 | Limitation clock resumes running |
| 8 | Petition filed 24.02.2025 | Within limitation |

83. Independently of this table, the acknowledgment e-mails themselves (Annexure G to the Application) read as follows:

| Date | From → To | Key language on record |
|---|---|---|
| 28.08.2017 | Pulkit Sharma (CD) → Liana Barooah, Unified Credit | "We shall pay you each and every single dollar we own you" — replying to Sinosure's e-mail |

| | | |
|---|---|---|
| | Solutions (for Sinosure) | recording a "non-payment of USD 922,500" |
| 19.01.2018 | Pulkit Sharma → Rajeev Dhamija (same agency) | "We are planning to repay the balance 9 Invoices… before 31st March 2018" |
| 26.12.2020 | Pulkit Sharma | "We shall be starting to make payments to SWORD from 15th January onwards" |
| 27.03.2021 | Dhamija → CD (26.03.2021); Sharma's reply (27.03.2021) | Dhamija recites "the balance amount of USD 522,170.00 still remains due"; Sharma does not dispute this, citing only an "AD code technicality" |
| 02.06.2021 | Forwarded PNB e-mail | Flags the 3-year RBI limit for import remittances — a banking/FEMA issue, not a quality dispute |

84. None of these five e-mails mentions a defect, quality issue, or Railway rejection; each attributes delay to the Corporate Debtor's own cash-flow position, Railways' payment cycles, the GST transition, COVID-19, or banking/RBI compliance.

85. Of these five e-mails, this Tribunal places specific reliance on the e-mail dated 27.03.2021 as the last valid and operative acknowledgment of liability for the purpose of Section 18 of the Limitation Act, 1963 and not on the e-mail dated 02.06.2021, for the following reasons.

86. The 02.06.2021 e-mail merely forwards a Punjab National Bank communication flagging an RBI/FEMA compliance issue (the three-year outer limit applicable to import remittances) and an invoice-number mismatch; it contains no words of the Corporate Debtor, addressed to the Operational Creditor, admitting a subsisting liability, and is accordingly not capable of constituting an acknowledgment under Section 18.

87. The e-mail dated 27.03.2021, by contrast, is a direct and substantive reply by Mr. Pulkit Sharma on behalf of the Corporate Debtor to a communication that recites the exact outstanding figures — USD 922,500 originally due, USD 400,330 paid, and USD 522,170 balance remaining. The Corporate Debtor does not dispute a single one of these

figures; it attributes the delay only to an “AD code technicality” in the banking channel and confirms that payment is under process. This Tribunal accordingly does not need to, and does not, place any reliance on the 02.06.2021 e-mail to sustain the Operational Creditor's case on limitation.

88. Treating 27.03.2021 as the last valid acknowledgment, the fresh three-year period under Section 18 would ordinarily expire on 27.03.2024. However, of this three-year span, the period from 27.03.2021 to 28.02.2022 — 338 days — falls within the Supreme Court's exclusion window directed in **In Re: Cognizance for Extension of Limitation** (15.03.2020 to 28.02.2022), and stands excluded from computation. Adding back these 338 excluded days to 27.03.2024 extends the outer limit for filing to 28.02.2025. The Application, filed 27.02.2025, is within this period.

89. Computed from the last date of default (18.09.2017) alone, limitation would ordinarily have expired on 18.09.2020. However, in the intervening period, the Corporate Debtor made part-payments up to 29.08.2019 and issued several e-mails acknowledging the liability, the last of which is dated 27.03.2021. For the reasons recorded at paragraphs above, it is this acknowledgment of 27.03.2021 that is considered for the purpose of computing limitation. On that basis, the Application, filed 27.02.2025, is within limitation.

**Issue 3: Whether Regulation 2B of the CIRP Regulations (GST returns/e-way bills) renders the Application defective**

90. The Corporate Debtor contends that Regulation 2B of the CIRP Regulations mandates the filing of GST returns and e-way bills with a Section 9 application, and that the Operational Creditor's failure to do so renders the Application defective (Reply, paras 34–35, 38).

91. The Operational Creditor responds that it is a foreign supplier located outside India, effecting imports into India pursuant to the 2017 supply contracts. Under the statutory scheme, IGST on the import of goods is levied at the point of importation on the importer, not on the foreign

exporter — see Section 5 of the IGST Act, 2017, read with Section 3(7) of the Customs Tariff Act, 1975, applied via Section 12 of the Customs Act, 1962. Correspondingly, the obligation to file Indian GST returns/e-way bills attaches to a registered person in India under Section 24 of the CGST Act and Rule 138 of the CGST Rules, 2017 — not to a non-resident foreign exporter unregistered in India for that supply.

92. On this footing, the Corporate Debtor, as importer of record, is the party on whom customs/IGST compliance falls at the time of filing the Bill of Entry; the foreign exporter has neither the locus nor the statutory obligation to file Indian GSTR-1/GSTR-3B or generate domestic e-way bills for post-clearance movement. Regulation 2B does not convert a compliance obligation that the law places on the importer into a condition precedent for the foreign exporter's Section 9 application.

93. The remaining grounds urged by the Corporate Debtor do not alter this conclusion. The Section 8 notice, though said to lack the particulars of Form 3, was admittedly delivered and answered on merits within time, and no prejudice from any formal deficiency has been shown; the arbitration clause at Clause 14.1 is no bar to Section 9 jurisdiction, which operates in rem and was never itself invoked by the Corporate Debtor; the allegation of a concealed Chinese insurance recovery is unsupported by any claim form, discharge voucher, or subrogation notice, the Corporate Debtor's claimed solvency does not defeat admission, default rather than balance-sheet solvency being the statutory trigger under Sections 3(12), 7 and 9; and the absence of a document evidencing the alleged 36-month warranty obligation has no bearing on the claim actually made, which rests on the unpaid balance of admittedly supplied invoices rather than on that warranty term.

94. Accordingly, none of Grounds B (arbitration), F (notice), G (fraud/Sections 65–76), H (solvency), or J (absence of debt/default) raised survive independent scrutiny.

95. In light of the foregoing analysis, the following conclusions emerge:

i) The correspondence relied upon by the Corporate Debtor at Annexures A6 and A7 does not disclose any dispute connected to the goods actually invoiced under the two 2017 contracts. The Railway correspondence (Annexure A6) concerns an earlier, distinct purchase order to which the Operational Creditor is a stranger, and the inter-party e-mails (Annexure A7) record only routine, resolved technical and warranty exchanges. No dispute was ever communicated to the Operational Creditor prior to the Section 8 notice, and the defence set up is accordingly a moonshine defence.

ii) The acknowledgment e-mails dated 28.08.2017, 19.01.2018, 26.12.2020, and 27.03.2021, read together with the part-payments made up to 29.08.2019, extend limitation under Sections 18 and 19 of the Limitation Act, 1963, further aided by the Supreme Court's COVID-19 exclusion order dated 10.01.2022. The Application, filed 27.02.2025, is within limitation.

iii) The unpaid consideration of USD 522,170.00 (Rs. 4,53,48,428.04) for escalators admittedly supplied, delivered, and part-paid for constitutes an "operational debt" within the meaning of Section 5(21) of the Code, and non-payment thereof constitutes a "default" within the meaning of Section 3(12).

iv) The objection founded on Regulation 2B of the CIRP Regulations does not survive, the obligation to furnish GST returns/e-way bills for this import transaction falling on the Corporate Debtor as importer, not on the Operational Creditor as a non-resident foreign exporter

v) Accordingly, **Company Petition (IB) No. 20 of 2025** is admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

96. We clarify that USD 522,170.00 (Rs. 4,53,48,428.04) is the amount found due and payable on the record before us; its exact quantification for purposes of the resolution process shall nonetheless be collated by the Interim Resolution Professional in accordance with the claims process under the Code.

97. As the Applicant has not proposed the name of any Interim Resolution Professional in the Application, we hereby appoint **Arvind Kumar Agrawal**, having IBBI Registration No. **IBBI/IPA-003/ICAI-N-00332/2022-2023/14220**, from the panel of Resolution Professionals maintained by the IBBI, as the Interim Resolution Professional of the Corporate Debtor. The e-mail address of the Interim Resolution Professional is aka.valuer@gmail.com and his AFA is valid up until 31-Dec-26.

## ORDER

98. The Respondent/Corporate Debtor — **Daulat Ram Engineering Services Pvt. Ltd**. is admitted into the Corporate Insolvency Resolution Process under Section 9(5) of the Code.

99. As a consequence, thereof, moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is declared, 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 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 the Corporate Debtor.

100. The moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process, or until this Adjudicating Authority approves a Resolution Plan under Section 31(1), or passes an order for liquidation under Section 33 of the Code, as the case may be.

101. The supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated, suspended or interrupted during the moratorium period, as per Sections 14(2) and 14(2A) of the Code.

102. We hereby appoint **Arvind Kumar Agrawal,** having IBBI Registration No. **IBBI/IPA-003/ICAI-N-00332/2022-2023/14220** as the Interim Resolution Professional of the Corporate Debtor. The e-mail address of the Interim Resolution Professional is aka.valuer@gmail.com and his AFA is valid up until 31-Dec-26.

103. The IRP shall perform all functions contemplated, inter alia, under Sections 17, 18, 20 and 21 of the Code. All personnel connected with the Corporate Debtor, its promoters, or any other person associated with its management, are under a legal obligation under Section 19 of the Code to extend assistance and cooperation to the IRP; where such assistance is not extended, the IRP is at liberty to apply to this Adjudicating Authority for appropriate orders.

104. This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for submission of claims under Section 15, read with Section 13(1)(b) of the Code.

105. The IRP is expected to take full charge of the Corporate Debtor's assets and documents without delay.

106. The IRP, or the Resolution Professional as the case may be, shall submit periodical reports to this Adjudicating Authority on the progress of the CIRP.

107. The IRP shall be under a duty to protect and preserve the value of the property of the Corporate Debtor and manage its operations as a going concern, to the extent possible, as part of the obligation under Section 20 of the Code.

108. The Operational Creditor is directed to pay an advance of Rs. 1 Lakh (one Lakh only) to the IRP within 7 days of this order, to meet the initial costs of CIRP (public announcement, inviting claims, etc.), until the Committee of Creditors decides on the IRP's fees/expenses.

109. The Registry is directed to communicate a copy of this order to the Operational Creditor, the Corporate Debtor, the IRP, and the concerned Registrar of Companies, upon completion of necessary formalities on the same day, and to upload the order on the website immediately upon pronouncement. The Registrar of Companies shall update the Master Data of the Corporate Debtor on the MCA portal to reflect admission of this Application and forward a compliance report to the Registrar, NCLT.

110. Accordingly, **Company Petition (IB) No. 20 of 2025 stands** admitted. A certified copy of this order may be issued, upon application and compliance with requisite formalities.

**SD/-** **SD/-**

**MAN MOHAN GUPTA**
**MEMBER (TECHNICAL)**

**BRAJENDRA MANI TRIPATHI**
**MEMBER (JUDICIAL)**

*Chandni – L.R.A*