NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P3.

C.P. (IB)/683(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **25.08.2026**

NAME OF THE PARTIES: **Deceuninck Profiles India Private Limited**

Vs

Chiniwalas Pvt Ltd

Under Section 9 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//VM//

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.683/MB/2025

[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:

DECEUNINCK PROFILES INDIA PRIVATE LIMITED
[CIN: U36999TN2017FTC118611]
Building 09, Casa Grande Distripark Satharai,
Village, Thiruvallur Taluk,
Chennai – 631203, Tamil Nadu.

…Operational Creditor/Applicant

V/s

CHINIWALAS PVT. LTD.
[CIN: U51909MH1993PTC070638]
S. No.104/6, N B Patil Marg,
Tiny Indus Estate Pisoli Road,
Kondhwa,
Pune - 411048, Maharashtra.

...Corporate Debtor

Pronounced: 25.08.2026

CORAM:
HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Ms. Vidhi Suthar a/w Adv. Mr. Sushil Kumar i/b Kumar Legal Research LLP

Corporate Debtor: Adv. Mr. Jack Thalakottur

ORDER

[PER: BENCH]

1. BACKGROUND

1.1 This is an Application bearing C.P.(IB) No.683/MB/2025 filed on 27.12.2025 by Deceuninck Profiles India Private Limited, the Applicant (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") through Mr. Darshan Hassan Subramanya – Manager and Authorized Signatory of the Applicant authorised *vide* Board Resolution dated 05.12.2024 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Chiniwalas Pvt Ltd, the Corporate Debtor (CD)**.**

1.2 The Applicant is a private sector enterprise, engaged in the business of manufacturing and supply of PVC window and door profiles in the country. The Corporate Guarantor (the CD herein) is a sister concern of Oriel Windows Pvt Ltd. (Principal Borrower), as the directors of Oriel Windows are linked to the Chiniwala family.

1.3 The Applicant has proposed the name of Mrs. Megha Agrawal to act as an IRP. The Applicant has attached Form 2 of the IRP thereby stating that no disciplinary proceedings are pending against the IRP. The Applicant has also attached AFA in Form B of the IRP having validity till 31.12.2025. On perusal on the IBBI website, it is noticed that the AFA of the IRP is valid up till 30.06.2027.

1.4 The Applicant has relied on the following documents:

i. Copy of master data of the Operational Creditor and Corporate Debtor extracted from MCA website

ii. Copies of the Tax Invoices.

iii. Copy of the Demand Notice dated 22.01.2022.

iv. Copy of the Order dated 25.08.2023 passed by the Ld. Adjudicating Authority admitting the Corporate Debtor into CIRP.

v. Copy of Consent Terms dated 08.03.2024

vi. Copies of the 13 post-dated cheques issued by the Corporate Debtor

vii. Copy of the Deed of Corporate Guarantee dated 08.03.2024

viii. Copy of the Order dated 02.09.2024 passed by the Ld. Adjudicating Authority

ix. Copy of certain invoices

x. Copy of the e-mails dated 11.06.2024 and 13.06.2024.

xi. Copy of the e-mail dated 29.06.2024 sent by the Advocates for the Operational Creditor to the Oriel Windows Private Limited.

xii. Copy of e-mail dated 14.07.2024 sent by Mr. Ebrahim Chiniwala and its reply e-mail dated 15.07.2024 sent by the Operational Creditor

xiii. Copy of the bank memo along with the dishonoured cheques.

xiv. Copies of emails/letter dated 07.08.2024 and 17.09.2024, offering the Corporate Debtor and Corporate Guarantor the chance to make the payment.

xv. Copy of Letter dated 10.10.2024 invoking the Corporate Guarantee and email dated 14.10.2024.

xvi. Copy of the demand notice dated 18.11.2024.

xvii. Copy of the postal receipt, along with the tracking report of consignment No. EM785371216IN.

xviii. Copy of the e-mail dated 20.11.2024 sent by the Advocates for the Operational Creditor to the Corporate Debtor.

xix. Copy of Ledger Account of the Oriel Windows Private Limited, Original Corporate Debtor in the Books of Operational Creditor

xx. Copy of the interest computation

xxi. Copy of Audited financials of the Corporate Debtor/Guarantor for FY 2022-2023 and FY 2023- 2024

xxii. Copy of Form 2

xxiii. Copy of Record of Default from NeSL i.e Form “D”

xxiv. Affidavit under Section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016

2. <u>AVERMENTS OF THE APPLICANT</u>

2.1 This matter was listed on 08.09.2025. The Applicant sought liberty to amend Form-5 qua the date of default. The same was allowed. In compliance of the said order, the Applicant filed an Additional Affidavit dated 17.09.2025 along with amended Form-5. The facts as per the amended Form-5 are as follows:

2.2 As per Part -IV of the Application the amount claimed to be in default by the Applicant is Rs. 3,07,92,388/- (Three Crore Seven Lakhs Ninety-Two Thousand Three Hundred and Eighty-Eight Rupees) along with the interest at the rate of 18% per annum till the date of realisation, which is due and payable by the CD to the Applicant. The detailed break-up of the outstanding amount is as below:

Sr No	Particulars	Amount
1.	Principal amount	Rs.1,76,37,688/-
2	Interest @18% Pa as on 15.10.2024	Rs. 1,23,74,700/-
3.	Chartered Accountants' fees	Rs.6,10,000/-
4.	Resolution Professional's Legal Costs and expenses	Rs.1,70,000/-
	Total Outstanding Debt	**Rs.3,07,92,388/-**

2.3 The debt (first instalment in terms of Consent Terms dated 08.03.2024) was due on 28.04.2024, where after the default has taken place on 19.07.2024 when the cheques issued by the Oriel Windows Private Ltd were dishonoured citing reason "insufficient funds".

2.4 The Corporate Guarantor/Debtor herein being Chiniwala, has unequivocally undertaken to repay the dues on behalf of Oriel Windows Private Limited. As such, upon default by Oriel Windows Private Limited and invocation of the guarantee against Chiniwala Pvt. Ltd. and its consequent failure to honour the terms of the Deeds of Corporate Guarantee, it metamorphoses into the CD and steps into its shoes. As such, the present application is being filed seeking to admit the Corporate Debtor i.e. Chiniwala into CIRP.

2.5 Oriel Windows Private Limited., is the Original Corporate Debtor and is a private sector enterprise, engaged in the business of manufacturing of UPVC windows and doors in the country. The Corporate Debtor herein i.e. Corporate Guarantor namely Chiniwala Pvt Ltd is a sister concern of Oriel Windows Pvt Ltd., as the directors of Oriel Windows are linked to the Chiniwala family.

2.6 The Applicant and Oriel Windows Private Limited had entered into a Channel Partner Agreement. The Applicant made routine supplies of UPVC profiles to Oriel Windows Private Limited under the orders placed by the CD as per the requirements of the business at specific mutually agreed rates.

2.7 It is submitted that till date no issues or disputes have been raised by the Oriel Windows Private Limited with respect to the quality or quantity of the goods supplied. Further, the Applicant would raise tax invoices from time to time upon the Oriel Windows Private Limited, which were duly accepted by them without any demurer. The Applicant had supplied goods and raised tax invoices to the tune of Rs. 2,27,04,893.29/-

2.8 However, despite timely supply of goods and materials, to the satisfaction of the Oriel Windows Private Limited, the Oriel Windows Private Limited failed to make payments on time and sought various extensions on one ground or the other. The same were only acceded to by the Applicant in good faith and with the object to maintain cordial business relations. However, the Oriel Windows Private Limited failed to honour the terms of payment.

2.9 Subsequently, in the year 2020, the Oriel Windows Private Limited, in order to make part payments towards the outstanding amounts, issued a Cheque dated 08.08.2020 bearing No.062660 for a sum of Rs. 17,00,000/- in favour of the Applicant, however the same was dishonoured.

2.10 In order to resolve the said issues, the Oriel Windows Private Limited proposed to repay its debt in instalments and issued post-dated cheques in favour of the Applicant. Further, as security it proposed to mortgage an asset of the Oriel Windows Private Limited to the Applicant and accordingly a Memorandum of Understanding ("MOU") dated 31.07.2021 was executed between the parties. However, the Oriel Windows

Private Limited failed to adhere to the terms and conditions of the MOU as it neither created the mortgage in favour of the Applicant nor repaid the debts. The Applicant deposited the Cheque dated 30.11.2021 bearing No. 78069 for a sum of Rs.50,00,000/-, however the same was dishonoured on 05.01.2022 citing reason "insufficient funds".

2.11 As such, the Applicant was constrained to issue Demand Notice dated 22.01.2022 (served through e-mail on 24.01.2022 and through post on 27.01.2022) under Section 8 of the Code raising a claim of Rs.2,25,99,284/- along with interest at the rate of 18% p.a. Despite receipt of the Demand Notice dated 22.01.2022, the Oriel Windows Private Limited neither responded to the same nor repaid its dues.

2.12 Consequently, an application under Section 9 of the Code came to be instituted by the Applicant against the Principal Debtor (i.e., Oriel Windows Pvt. Ltd.) being CP (IB) No. 404 of 2022. Till the Principal Debtor was admitted into the CIRP, it did not participate in any of the hearings, resulting in being proceeded *ex-parte*. In result thereof, the Application under Section 9 of the Code came to be allowed and the Corporate Debtor was admitted into CIRP by the Ld. Adjudicating Authority, Mumbai *vide* Order dated 25.08.2023 and Mr. Umesh Balaram Sonkar was appointed as the Interim Resolution Professional.

2.13 Subsequently, the Committee of Creditors ("CoC") was constituted and in the first meeting of the CoC, the suspended board of directors of the Oriel Windows Private Limited participated and informed that deliberations and negotiations were going on with the Operational Creditor to settle the dispute.

2.14 Pursuant to the efforts, the parties were able to arrive at an amicable settlement which came to be recorded as Consent Terms dated 08.03.2024. Further, the Oriel Windows Private Limited made a payment of Rs.50,00,000/- prior to entering into the settlement.

2.15 In terms of the same, the Oriel Windows Private Limited agreed to repay the sum of Rs.1,76,37,688/- in 13 instalments commencing from 28.04.2024. Apart from the debt due, the Oriel Windows Private Limited further agreed to pay a sum of Rs. 6,10,000/- towards amounts paid by the Operational Creditor to the Chartered Accountant and a sum of Rs.1,70,000/- towards legal expenses. Accordingly, the Oriel Windows Private Limited issued 13 post-dated cheques for clearing the dues.

2.16 Further, the Directors of the Oriel Windows Private Limited namely, Mr. Taher Hatim Chiniwala (Personal Guarantor) and Mr. Ebrahim Taher Chiniwala executed Deeds of Guarantee dated 08.03.2024 whereby both, in their capacities as Directors as well as in their personal capacity, have agreed to be held jointly, severally and unconditionally liable to pay sums under the Consent Terms dated 08.03.2024 in case the Oriel Windows Private Limited fails to honour the terms therein.

2.17 It was agreed that upon execution of the Consent Terms, the Applicant was to move an application under Section 12A of the Code seeking withdrawal of the proceedings and the CIRP. However, it is imperative to mention that Clause 19 of the Consent Terms provided that in case of breach of the terms thereof, the Operational Creditor would be at the liberty to seek restoration of the company petition before the Ld. Adjudicating Authority.

2.18 The relevant clauses of the Consent Terms dated 08.03.2024 (where the Corporate Debtor is Oriel Windows Private Limited) is reproduced below for ready reference:

> *"Clause 10. The Corporate Debtor admits and accepts their liability to make payment of Rs.1,75,99,284/- (Rupees One Crore Seventy Five Lakhs Ninety Nine Thousand Two Hundred and Eighty Four Only) out of Rs.2,25,99,284/- to the Operational Creditor towards the discharge of their liability with as agreed under the Consent Terms executed between the Operational Creditor and Corporate Debtor in Company Petition (IB) No. 404 of 2022.*

Clause 13. Agreed that the Corporate Debtor do pay to the Operational Creditor a sum of Rs.1,75,99,284/- (Rupees One Crore Seventy Five Lakhs Ninety Nine Thousand Two Hundred and Eighty Four Only) in the following manner... ... On or before execution and signing of the Consent Terms by the Parties, the Corporate Debtor has issued to Operational Creditor following post-dated cheques with Corporate & Personal Guarantee that these cheques will be duly honoured by the Corporate Debtor's bank upon its presentation.....

Clause 16. Mr. Taher Hatim Chiniwala and Mr. Ebrahim Taher Chiniwala (hereinafter referred to collectively as "Personal Guarantors" or "FOURTH PARTY") in their capacity of the Directors of the Corporate Debtor as well as in personal capacity, assure jointly, severally and unconditionally to be held liable to pay the First Party in case of any default of payment by the Corporate Debtor on due dates as agreed herein.

Clause 17 M/s Chiniwala Pvt. Ltd. (hereinafter referred to as "Corporate Guarantor") whose Director is also Mr. Taher Hatim Chiniwala herein agrees and assures to indemnify jointly and severally and unconditionally to be liable to pay the First Party in case of any default of payment by the Corporate Debtor on due dates as agreed herein. In the event of non-payment, the corporate guarantor shall ensure the full payment by making the due payment on behalf of the Corporate Debtor thus, being to be liable for payment of the outstanding amount to the First Party.

Clause 19. It is agreed that failure to pay any one of the instalments on the due date by Cheques as above, shall amount to breach and failure on the part of the Corporate Debtor to pay its liability as per this Consent Terms and consequently the concession granted to pay the admitted liability by instalment shall cease automatically and the Operational Creditor (First Party) shall be entitled to forthwith proceed with this Company Petition and will also be free to take any other appropriate legal proceedings against the Corporate Debtor, Corporate Guarantor and, Personal Guarantor; including restoration of the above captioned Company Petition in the National Company Law Tribunal. Similarly, in view of the execution of these Consent Terms and unless the Corporate Debtor fails in making the payment on time, the Operational Creditor (First Party) shall not be entitled to take out any other proceedings of any nature whatsoever, against the Corporate Debtor. In the event of any breach of the present consent terms, the First Party has every

> *right to recover the outstanding amount from the guarantors (personal and corporate) as well as the Corporate Debtor collectively."*

2.19 As such, upon execution of the Consent Terms dated 08.03.2024, an application under Section 12A of the Code was preferred for withdrawal of the proceedings and the CIRP. The Ld. Adjudicating Authority while noting the settlement arrived at between the parties *vide* Order dated 02.09.2023 permitted the withdrawal of the proceedings and consequently, the Oriel Windows Private Limited was released from the rigours of CIRP.

2.20 In light of the directions of the Ld. Adjudicating Authority passed in Order dated 25.08.2023 which stated that supply of essential goods and services to the Oriel Windows Private Limited were not to be terminated, the Applicant continued to supply goods to the Oriel Windows Private Limited. As such, certain invoices for the said time period were also raised. The details of the invoices vis-a-vis materials supplied and amounts outstanding are as below:

Sr No.	Invoice No	Date of Invoice	Invoice Amount
1	2018/188 (P)	21/03/2019	293285.09
2	2019/247	08/05/2019	52,244.50
3	2019/266	27/05/2019	2,69,624
4	2019/267	27/05/2019	2,18,628
5	2019/339	29/07/2019	14,286
6	2019/346	31/07/2019	5,48,844
7	2019/347	31/07/2019	10,75,150
8	2019/363	14/08/2019	2,464
9	2019/452	22/10/2019	51,014
10	2019/539	21/12/2019	7,42,348
11	2019/570	11/02/2020	15,79,692
12	2020/662	13/06/2020	14,84,189
13	2020/663	13/06/2020	1,36,594
14	2020/664	13/06/2020	2,44,440
15	2020/665	14/06/2020	68,001
16	2020/696	21/07/2020	18,46,415
17	2020/697	21/07/2020	1,23,655
18	2020/698	21/07/2020	2,265
19	2020/714	30/07/2020	64,236
20	2020/746	16/09/2020	3,38,859
21	2020/798	22/10/2020	1,239
22	2020/800	29/10/2020	5,76,852
23	2020/812	11/11/2020	4,90,557
24	2020/813	11/11/2020	27,034
25	2020/841	10/12/2020	19,511
26	2020/905	30/01/2021	7,93,563
27	2020/916	16/02/2021	2,485
28	2020/937	08/03/2021	452
29	2020/941	10/03/2021	2,54,443
30	2020/956	23/03/2021	8,68,039
31	2020/957	23/03/2021	99,573
32	2021/1008	28/05/2021	16,81,196
33	2021/1078	31/07/2021	15,92,973
34	2021/1111	03/09/2021	3,60,287
35	2021/1210	04/12/2021	5,59,812
36	2022/1282	24/01/2022	6,43,408
37	2022/1297	04/02/2022	46,750
38	2022/1751	09/01/2023	723295
TOTAL			**1,78,97,703**
Part payment Received			**2,60,015**
Total Outstanding			**1,76,37,688**

2.21 It is submitted that certain part payments were received by the Applicant during this period and the total outstanding as on date is Rs.1,76,37,688/-. It is submitted that the settlement arrived at between the parties covers the said amounts as well, i.e., the outstanding dues pertaining to supply made in the year 2023 during the CIRP. When the first instalment became due to the Applicant, the Applicant, through its Advocates, sent an intimation email on 11.06.2024, at 04:51 PM, notifying that the first installment in terms of the settlement arrived at was due and the cheques would be deposited while requesting the Oriel Windows Private Limited to maintain sufficient funds before 15.07.2024. However, in response, Mr. Ebrahim Chiniwala, via e-mail dated

13.06.2024, stated that they were in the process of introducing a new investor on board and would provide a revised timeline for the deposit of all cheques.

2.22 The Advocates for the Applicant, once again via e-mail dated 29.06.2024, at 01:40 PM, sent a reminder, further, requested a predetermined schedule for the deposit of cheques for each installment.

2.23 On 14.07.2024, Mr. Ebrahim Chiniwala on behalf of CD requested the Applicant to hold the deposit of the cheques, once again assuring that revised cheques would be issued shortly. However, on 15.07.2024, the authorized representative of the Applicant informed via e-mail that four cheques had already become due, two of which were payable to the Applicant and the remaining two to a sister concern.

2.24 Suspecting foul play on the part of the Oriel Windows Private Limited, the Applicant was constrained to deposit the cheques, however, the same were dishonoured citing reason as “insufficient funds”, resulting in default and breach of Consent Terms.

2.25 Thereafter, the Applicant provided several opportunities and extended ample time to the Oriel Windows Private Limited as well as the Corporate Debtor/Guarantor to rectify the situation by releasing the overdue payments. However, despite these opportunities, they failed to comply with the agreed conditions of Consent Terms and Personal Guarantee.

2.26 Lastly, the Applicant, through its letter dated 10.10.2024, invoked the Corporate Guarantee Deed dated 08.03.2024 and demanded the outstanding amount. The said letter was sent via email on 14.10.2024 as well as through RPAD, with tracking consignment No. EK558384930IN, and was delivered on 18.10.2024. However, the Corporate Debtor/Guarantor, despite being served, has failed to respond to the Letter dated 10.10.2024 and has not made any payments till date.

2.27 The Applicant, being constrained, issued a Demand Notice upon Corporate Debtor/Guarantor on 18.11.2024 via Indian Speed Post having tracking consignment No. EM785371216IN, to the address mentioned in the Corporate Deed, located at his office address at S. No. 104/6, Tiny Indus Estate, Pisoli Road, Kondhwa, Pune-411048, which was successfully delivered on 22.11.2024. The Advocates for the Applicant, sent the Demand Notice dated 18.11.2024 to Corporate Debtor *via* email dated 20.11.2024, at 10:20 P.M.

2.28 Despite receiving the Demand Notice, the Corporate Debtor/Guarantor has failed to make payment of the outstanding debt. Therefore, the Applicant filed this Application for the total outstanding debt of Rs.3,07,92,388/- along with further interest at the rate of 18% p.a. till realisation wherein Rs.1,76,37,688/- is towards the Principal Amount, Rs.1,23,74,700/- (Rupees One Crore Twenty Three Lakhs Seventy Four Thousand Six Hundred and Eighty Eight Only) is towards interest @18% p.a. as on 15.10.2024, Rs.6,10,000/- towards the amounts of Chartered Accountants fees and the outstanding legal costs and expenses of Rs.1,70,000/- owed to the Resolution Professional. As such, the Corporate Guarantor namely Chiniwalas Pvt Ltd. is liable to be proceeded under Section 9 of the Code. The relevant clauses of the Deed of Corporate Guarantee dated 08.03.2024 is being reproduced herein for ready reference:

> *"Clause 1(i) I, guarantee to the Operational Creditor punctual performance by the Corporate debtor of all the Corporate Debtor's obligations under the Consent Terms and that in the event of the Corporate Debtor's failing to pay any amount in terms of the Consent Terms i.e. Rs. 1,75,99,284/- (Rupees One Crore Seventy Five Lakhs Ninety Nine Thousand Two Hundred Eighty Eight Four Only), the Corporate Guarantor shall, on first demand by the Operational Creditor (such notice to be conclusive proof of the default) and without any demur, contest or delay, pay to the Operational Creditor the total dues payable by Corporate Debtor to Operational Creditor, and in addition*

thereto shall also pay all interest, additional interests), delayed payment charges, costs, charges, expenses and other amounts that may become due and payable by the Corporate Debtor to the Operational Creditor under the Consent Terms or any part thereof and which are not paid , by the Corporate Debtor.

"Clause 1 (iv) I, accept and acknowledges that the obligations hereunder are jointly and several and independent of the obligations of the Corporate Debtor and a separate action or actions may be brought against — the Personal Guarantor alone or jointly with the Corporate Debtor."

Clause 2. The Corporate Guarantor hereby understands and agrees that this guarantee is a continuing guarantee and shall extend/ cover/ secure the due payment by Corporate Debtor in terms of the Consent Terms. The Personal Guarantor hereby irrevocably and unconditionally agrees that this Deed shall extend to the ultimate balance of sums payable by the Corporate Debtor under the Consent Terms."

2.29 This matter was heard and reserved on 26.02.2026. Further, on perusal of the Application, it was found that the date of default was not mentioned in Part-IV of the Application, however, it was only mentioned in the Additional Affidavit dated 17.09.2025 as "17.10.2025". Hence, this matter was listed on 19.03.2026, for clarification qua the date of default. The Tribunal directed the Applicant to amend Form-5 and file an Additional Affidavit. In compliance, the Applicant filed Additional Affidavit dated 07.04.2026 attaching the amended Form-5 qua the date of default.

2.30 The date of default therein is stated as 17.10.2024.

2.31 It is submitted that *vide* email dated 14.10.2024, the Corporate Guarantee was invoked and a demand was raised for the entire outstanding amount. In terms of Clause 1(ii) of the Corporate Guarantee Deed dated 08.03.2024, the Guarantor was obligated to make payment within 3 days.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 The CD filed Affidavit-in-Reply dated 27.10.2025 affirmed by Mr. Taher Hatim Chiniwala, Director of the CD.

3.2 The CD in its Reply states that the Consent Terms dated 08.03.2024 executed on behalf of the Corporate Debtor (i.e. Oriel Windows Private Limited) during the CIRP period, has been executed wholly without any authority and as such is an invalid and illegal document. That the 13 post-dated cheques issued on behalf of the Corporate Debtor, during the CIRP period, totalling to Rs. 1,82,47,688/-, issued and handed over on 08.03.2024 is also without any authority.

3.3 The Corporate Guarantee is void ab initio and/or voidable at option of the Corporate Guarantor, being pursuant to an invalid and illegal Consent Terms entered on behalf of the Corporate Debtor, during the CIRP period.

3.4 No consideration is provided to the Corporator Guarantor for such Corporate Guarantee due to the invalidation of the Consent Terms dated 08.03.2024 on behalf of the Corporate Debtor being entered into without any authority and as such an agreement without consideration, rendering the Corporate Guarantee void ab initio and/or voidable at option of the Corporate Guarantor.

3.5 The consent terms and associated agreements including the Corporate guarantee are void, having been obtained by the use of threat of continued illegal criminal and civil action and entered without the free will of both the Guarantors and the Corporate Debtor.

3.6 The non-withdrawal of the criminal complaint even after the payment of Rs. 50,00,000/-, made in good faith to the Applicant, being a breach of the essential condition of the agreement between the parties, additionally rendered the consent terms and Corporate Guarantees to be void, invalidated and unenforceable.

3.7 The Applicant has rescinded the consent terms by its own action and is void and unenforceable. The Corporate Guarantee is not duly stamped as per the provisions of Maharashtra Stamp Duty Act.

3.8 The alleged notice of Invocation of Guarantee mentions amounts beyond the Corporate Guarantee and hence, was rejected and not accepted and cannot be termed an invocation of the Corporate Guarantee provided.

3.9 The application claims an amount of Rs. 3,07,92,388/- when the Corporate Guarantee referred to in this application is for a specific amount of Rs.1,75,99,284/- against certain invoices of the Corporate Debtor. Therefore, the application of the Operational Creditor is defective and needs to be rejected

3.10 The application includes invoices pertaining to the 10A period, and further, on account of Liquidated Damages that have been retained and unpaid due to the delay of the supply or material by the Operational Creditor is required to be deducted from the outstanding amount. Thus, on excluding the Invoice within the 10A period and Liquidated Damages from the outstanding amount, the debt in default would be well below the pecuniary jurisdiction of this Tribunal and hence the application is required to be rejected.

3.11 The CD *vide* affidavit dated 07.04.2026, replied to the Additional Affidavit dated 07.04.2026 filed by the Applicant.

3.12 The CD raises objections to the granting of a further opportunity at this belated stage to the Applicant to make corrections to the application after it has been heard and reserved for orders. Such a repeated opportunity at such a belated stage is not envisaged and is against the objectives of the Insolvency and Bankruptcy Code, 2016.

3.13 The CD relied on the judgment of Hon'ble Supreme Court in Civil Appeal No. 8247 of 2022 in the matter of *Anjani Technoplast Limited vs. Shubh Gautam* in regard to the use of the IBC as a recovery mechanism and is relevant for adjudication of the matter at hand.

4. REJOINDER OF THE APPLICANT

4.1 The Applicant filed rejoinder *vide* Affidavit dated 12.11.2025.

4.2 It is submitted that the alleged oral agreement between Mr. Anil Tiwari and Mr. Ebrahim Chiniwala for withdrawal of Complaint S.T.C. No. 6013 of 2022 before the Hon'ble FTC-V, Metropolitan Magistrate, Saidapet, Chennai, is specifically denied as false, misleading, and baseless. No such understanding or agreement was ever entered into by the Applicant.

4.3 The parties entered into Consent Terms. Mr. Ebrahim and Mr. Taher also executed a Personal Guarantee, and a Corporate Guarantee was furnished by Chiniwala Pvt. Ltd. in favour of Deceuninck Profiles India Pvt. Ltd. and Ege Profile Ticaret ve Sanayi A.S. However, it is specifically denied that these were created under the diktat or influence of the Applicant group. The CD entered into the said settlement of its own free will and independent decision.

4.4 The Consent Terms were duly honoured by withdrawing CP (IB) No. 404/2022, i.e., the CIRP proceedings initiated against Oriel Windows Private Limited. It is further clarified that there was never any agreement or obligation on the part of the Applicant to withdraw the criminal case, and therefore, refusal to do so cannot be construed as rescission or breach of the Consent Terms.

4.5 The communications exchanged between the parties clearly demonstrate that the terms were discussed over time and mutually agreed upon. The execution of the Consent Terms was a conscious and voluntary act intended to amicably resolve disputes, and therefore, any assertion that they were signed without free will is misconceived and denied in entirety.

4.6 It is admitted that an amount of Rs.50,00,000/- was paid purely as a mark of bona fide intent to amicably resolve the dispute, and the said payment was not made towards or conditional upon the withdrawal of the criminal proceedings.

4.7 It is submitted that the criminal proceedings are independent of and distinct from the present insolvency proceedings, and their disclosure was neither material nor mandatory for the adjudication of the present matter. The initiation of the criminal case was based on distinct causes of action arising from dishonour of cheques and fraudulent conduct, which are separate from the debt claimed.

4.8 The amount claimed by the Operational Creditor is duly supported by invoices, statements of accounts, and other records, all of which were acknowledged by the Corporate Debtor from time to time.

4.9 It is submitted that during the course of settlement discussions, it was voluntarily agreed by the Corporate Debtor that a sum of Rs.6,10,000/- towards auditors' expenses and Rs. 1,70,000/- towards RP's Fees would be borne by the Corporate Debtor.

4.10 The allegation that most of the payments fall within the 10A period, it is submitted that the obligation of the Corporate Guarantor arises under the Guarantee executed pursuant to the Consent Terms entered into between the Corporate Debtor and the Operational Creditor. The liability of the Corporate Guarantor crystallised only upon the invocation of the Guarantee, which undisputedly occurred after the expiry of the 10A period.

WRITTEN SUMBISSION OFAPPLICANT AND CD

4.11 The written submissions of the Applicant and CD are similar to their pleadings as mentioned above, hence, same are not reiterated for the sake of brevity.

5. ANALYSIS AND FINDINGS

5.1 We have heard the Ld. Counsels for the Applicant and the CD and have perused the records as placed before us. Our findings in the matter are as under: -

5.2 It is necessary to determine whether the present Application satisfies the statutory requirements of Section 9 of the Code. In a petition under Section 9, the Adjudicating Authority is required to examine, inter alia, whether there exists an operational debt, whether the same has become due and payable and remains unpaid, whether the amount of default meets the statutory threshold, whether a valid demand notice under Section 8 has been served, whether the Application is complete in terms of Section 9(2) and Section 9(3), and whether any notice of dispute or record of dispute existed prior to the issuance of the demand notice.

5.3 In the present case, the underlying transaction is not in dispute. The Applicant had supplied UPVC profiles to Oriel Windows Private Limited (original Corporate Debtor) pursuant to the Channel Partner Agreement and invoices were raised from time to time. The Applicant has placed on record the invoices and ledger evidencing the outstanding dues. The material on record further shows that the original Corporate Debtor was subjected to CIRP pursuant to an earlier Section 9 Application filed by the Applicant *vide* order dated 25.08.2023 and that the said proceedings culminated in Consent Terms dated 08.03.2024. The present Application is arising from non-compliance and breach of the obligations arising from the Deed of Corporate Guarantee dated 08.03.2024 and Consent Terms dated 08.03.2024.

5.4 Significantly, the Consent Terms record an unequivocal admission of liability by Oriel Windows Private Limited. Clause 10 thereof records the liability of the Corporate Debtor towards the Applicant, while Clause 13 provides for payment through post-dated cheques. More importantly, Clause 17 expressly records that M/s Chiniwala Pvt. Ltd., the Corporate Debtor herein, agreed and assured to indemnify the Applicant and to be jointly, severally and unconditionally liable in the event of default by the Corporate Debtor. Clause 19 further expressly preserved the right of the Applicant to proceed against the Corporate Debtor, Corporate Guarantor and Personal Guarantors upon breach of the Consent Terms.

5.5 The Corporate Guarantee Deed dated 08.03.2024 is, therefore, not a mere collateral assertion made by the Applicant. It is a specific contractual undertaking executed in favour of the Applicant. The guarantee is stated to be continuing and the liability thereunder is expressly made independent and jointly and severally enforceable. The relevant clauses being clause no. 13,17 and 19 of the Corporate Guarantee provide that upon failure of the Corporate Debtor to pay the amounts due under the Consent Terms, the Corporate Guarantor would, upon demand, pay the dues together with interest, costs and expenses. The CD failed to discharge the debt. The Applicant sent a demand notice invoking the guarantee on the CD vide letters 10.10.2024(vide letter) and 14.10.2024(vide email). The factum of existence of guarantee and its invocation is never denied by the CD herein. As such the guarantee stands invoked.

5.6 The contention of the CD that there was no consideration for the Corporate Guarantee and, therefore, the same is void. In the present case, the Corporate Guarantee was executed contemporaneously with the Consent Terms under which the Applicant agreed to accept repayment of the admitted liability by instalments and, pursuant thereto, the CIRP proceedings against Oriel Windows Private Limited were withdrawn under Section 12A. Thus, the arrangement under which the Applicant agreed to receive the admitted debt by instalments and forbear further proceedings constituted sufficient consideration for the guarantee. The Corporate Guarantor cannot, after having expressly undertaken the liability, contend that the guarantee was without consideration. We rely on Section 126 of Contracts Act which is reproduced here under:

> ***"Section 126: "Contract of guarantee", "surety", "principal debtor" and "creditor".***
> ***126***. *A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written."*

5.7 The Corporate Debtor has contended that the Consent Terms dated 08.03.2024 and the post-dated cheques issued by Oriel Windows Private Limited during the CIRP were unauthorised and illegal. It is also contended that consequently the Corporate Guarantee is void. We find that the said contention does not constitute a valid defence to the present Application. The Consent Terms were not an undisclosed private arrangement between the parties. The settlement was brought before the Adjudicating Authority, Mumbai which is recorded in the order dated 02.09.2024 and was acted upon by the parties. Pursuant thereto, the earlier CIRP proceedings were withdrawn under Section 12A of the Code. The Applicant has specifically pleaded that the settlement was honoured to the extent of withdrawal of CP (IB) No.404/2022 and that the present proceedings arose only upon subsequent breach of the agreed payment obligations. The Corporate Debtor has also failed to demonstrate that any competent forum has declared the Consent Terms or the Corporate Guarantee void.

5.8 The Applicant has specifically denied the alleged oral understanding regarding withdrawal of the criminal complaint and has stated that no such obligation formed part of the Consent Terms.

5.9 The record shows that the first instalment under the Consent Terms became due on 28.04.2024. The post-dated cheques issued towards the instalments were subsequently dishonoured on account of insufficient funds. The Applicant thereafter invoked the Corporate Guarantee vide letter dated 10.10.2024, which was served upon the Corporate Guarantor. The Applicant has stated that the guarantee was invoked through email dated 14.10.2024 and, in terms of the guarantee, payment was required to be made within three days. The amended Form-5 records the date of default as 17.10.2024.

5.10 The date of default of 17.10.2024 is therefore relatable to the failure of the Corporate Guarantor to discharge its liability upon invocation of the guarantee. The default is consequently subsequent to the breach of the Consent Terms and the invocation of the guarantee and is a distinct default attributable to the present Corporate Debtor.

5.11 The Corporate Debtor has objected to the Applicant being granted an opportunity to amend Form-5 at a belated stage, particularly after the matter had been heard and reserved for orders. The date of default is a material fact which the Adjudicating Authority is required to ascertain for determining limitation and maintainability. In the present case, the Tribunal itself noticed that although the date of default had been stated in the Additional Affidavit, the same had inadvertently not been incorporated in Part-IV of Form-5. The Applicant was accordingly directed to file an amended Form-5 and an Additional Affidavit, which directions were duly complied with. The Corporate Debtor was given an opportunity to respond to the amended Form-5 and has, in fact, filed its response. The objection is therefore technical in nature and cannot defeat the substantive claim, particularly when the correct date of default is now clearly available on record.

5.12 Section 8 of the Code mandates issuance of a demand notice before initiation of proceedings under Section 9. In the present case, the Applicant issued the Demand Notice dated 18.11.2024 to the Corporate Guarantor at the address mentioned in the Corporate Guarantee. The same was delivered on 22.11.2024 and was also transmitted by email on 20.11.2024. Despite service, no payment was made by the Corporate Debtor. The statutory requirement of service of demand notice is therefore satisfied.

5.13 The Corporate Debtor has contended that certain invoices relate to the period covered by Section 10A of the Code and that liquidated damages are also required to be deducted, which according to it would bring the debt below the statutory threshold. The present Application is not founded upon the original date on which the invoices were allegedly defaulted during the Section 10A period. The Applicant's present cause of action against the Corporate Guarantor arises from the subsequent breach of the Consent Terms and, more particularly, from the failure of the Corporate Guarantor to discharge its independent contractual liability upon invocation of the Corporate Guarantee on 14.10.2024.

5.14 The Corporate Debtor has attempted to raise disputes concerning the validity of the Consent Terms, void Guarantee Agreement, the 10A period and the quantum of the claim. However, the record does not disclose any contemporaneous dispute concerning the quality or quantity of goods supplied. On the contrary, the Applicant has placed on record the invoices and the subsequent Consent Terms under which liability was expressly admitted and payment was agreed to be made by instalments.

5.15 The subsequent conduct of the parties is also material. The Corporate Debtor sought extensions and communicated that it was in the process of introducing a new investor and would provide a revised timeline for payment. It thereafter requested the Applicant to hold the cheques. The cheques were ultimately deposited and dishonoured for insufficiency of funds.

5.16 The Corporate Debtor has contended that the Corporate Guarantee was limited to Rs.1,75,99,284/- whereas the Applicant has claimed Rs.3,07,92,388/-, and therefore the Application is defective. The guarantee does not merely secure the principal amount. Clause 1(i), as reproduced in the Application, extends the liability to interest, additional interest, delayed payment charges, costs, charges, expenses and other amounts payable by the Corporate Debtor under the Consent Terms. The guarantee is also stated to be continuing in nature.

5.17 The Corporate Debtor has further contended that the Corporate Guarantee is insufficiently stamped under the Maharashtra Stamp Act. Hon'ble NCLAT in ***Hiren Meghji Bharani Vs. Shankheshwar Properties Pvt. Ltd. & Anr.,*** *[(2023) ibclaw.in 822 NCLAT]* has clearly held that the non-stamping of documents does not render CIRP application filed to be non-maintainable when there exists other material on record to prove existence of default in the payment of debt. Taking into consideration the above judgment and the records as placed before us by the Applicant, the contention of the CD is said to be unsustainable.

5.18 The CD has argued that the present proceedings have been initiated as a recovery mechanism and not for insolvency resolution and has relied on the judgment of Hon'ble Supreme Court in Civil Appeal No. 8247 of 2022 in the matter of *Anjani Technoplast Limited vs. Shubh Gautam*. The Hon'ble Court therein has recorded the following:

"18. The central question before us is not whether the respondent is owed money by the appellant. That may well be the case. The question is whether, in the facts and circumstances of this case, the initiation and continuation of the Corporate Insolvency Resolution Process under the IBC is justified and whether the respondent can seamlessly resort to the insolvency process as a substitute for the execution of a Civil Court decree. In other words, an alternative execution process is a recovery mechanism.

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31……………. <u>The question of whether, in each case, the invocation of the IBC amounts to misuse of the process or to the use of the Code as a recovery mechanism remains a question to be examined on the facts</u>."

5.19 In our view, the said judgment is not in support of the CD as the Hon'ble Court has emphasised that the recovery mechanism remains a question depending the facts of every case and in the present case the Applicant has no decree for execution and that the original CD had defaulted in making payment of the debts and hence, the Corporate Guarantee came to be invoked by the Applicant.

5.20 We rely on the judgment of Hon'ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited* (2018) 1 SCC 353 and subsequent decisions have consistently held that where an operational debt and default are established and no genuine pre-existing dispute exists, initiation of proceedings under Section 9 is maintainable.

5.21 The Applicant has placed on record the NeSL record of default in Form D. The status of the default is "deemed to be authenticated" and it shows a default amount of Rs. 3,07,92,388/-.

5.22 The Applicant has mentioned date of default as 17.10.2024 i.e. 3 days from invocation of the guarantee dated 14.10.2024 The Applicant has filed the Application on 27.12.2025, which is within the limitation period.

5.23 Thus, in view of the above findings, it is clear that the Applicant has placed on record the necessary evidences and materials to demonstrate the existence of the operational debt exceeding the minimum threshold of Rs.1 Crore prescribed under Section 4 of the Code due and payable by the CD as well as the default in payment thereof by the CD. The Applicant has served the Demand Notice upon the CD, and that the CD has failed to establish the existence of any pre-existing dispute. The Application is complete as all the relevant documents have been attached by the Applicant along with the Application.

5.24 This Tribunal appoints Mrs. Megha Agrawal having registration no. IBBI/IPA-001/IP-P-01456/2018 -2019/12272 to act as the Interim Resolution Professional (IRP) having AFA valid till 30.06.2027.

5.25 We find that all pre-requisites of Section 9 of the Code are fulfilled and, accordingly, we are satisfied that the instant Application is fit for admission under Section 9 of the Code. The Applicant has attached all the documents as required and therefore the Application is complete.

5.26 We make it clear that at this stage we have not crystalized the amount as claimed in this Application, the same is left to be collated by the IRP.

ORDER

In view of the aforesaid findings, Application bearing C.P.(IB) No.683/MB/2025 filed under Section 9 of the Code by Deceuninck Profiles India Private Limited, the Applicant, for initiating CIRP in respect of **Chiniwalas Private Limited**, the Corporate Debtor is hereby **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below: -

I. We prohibit-

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 possession of the Corporate Debtor.

II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mrs. Megha Agrawal** a registered Insolvency Professional having Registration Number **IBBI/IPA-001/IP-P-01456/2018 -**

2019/12272 and e-mail address ip.meghaagrawal@gmail.com having valid Authorisation for Assignment up to 30.06.2027 as the IRP to carry out the functions under the Code.

VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.

VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.

VIII. That the IRP/IP shall submit to this Tribunal quarterly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Applicant is directed to deposit a sum of Rs.3,00,000/- (Rupees Three Lakh) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Applicant on priority upon the funds available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

XI. The IRP is directed to issue notice of admission upon all the statutory authorities of the Corporate Debtor without fail within a period of 7 days from the date of this order.

XII. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

XIII. The Registry is directed to immediately communicate this Order to the Applicant, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.

XIV. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

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