



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No. 73/ALD/2021

*(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016,
read with Rule 6 of the Insolvency and Bankruptcy Rules, 2016.)*

IN THE MATTER OF:

M/s ARORA IRON & STEEL ROLLING MILLS PRIVATE LIMITED

Through it's Director Mr. Rajinder Pal Singh

Regd. Office: Near Phase VII, Focal Point,

Dharndari Khurd,

Ludhiana PB 141010

Email: raminder@arorairon.com

Phone: 0161-2677454

.... Operational Creditor / Applicant

Versus

M/s JKEW FORGINGS LIMITED

Through its Director

Regd. Office: Aggarwal Building,

The Mall, Kanpur, UP 208002

Email: jkewforgingsltd@gmail.com

Mobile: +91 9935028501

.... Corporate Debtor / Respondent

Order Pronounced On: 01.12.2025

Coram:

Mr. Praveen Gupta : *Member (Judicial)*

Mr. Ashish Verma : *Member (Technical)*

Appearances:

Dr. Rajanish Thukral with Dr. Surekha Thukral, Sg. Sidharth : *For the Operational Creditor*

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Thukral, Mrs. Arshnoor Khurana,
Sh. Rajan Thakur, Adv.

Sh. Yash Tandon, Adv.

: *For the Corporate Debtor*

ORDER

1. The present Application has been filed on 06.10.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “**the Code/IBC**”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**hereinafter referred as “the Rules**”) by M/s Arora & Iron Steel Rolling Mills Private Limited (hereinafter referred as “**Applicant/Operational Creditor/OC**”) to initiate the Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against M/s JKEW Forgings Limited (hereinafter referred as “**Respondent/Corporate Debtor/CD**”) due to its failure to pay the total outstanding operational debt of Rs. 1,06,76,044.80/- to the Operational Creditor, declaring the date of default as 23.07.2021.
2. The brief facts leading to the present application are that the Operational Creditor being engaged in the business of manufacturing alloy steel has been approached by the Corporate Debtor, engaged in manufacturing of machinery and equipment, for purchasing alloy steel from the Applicant Operational Creditor company against various purchase orders (PO) placed

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from time to time. The transactions between the parties were on a running account basis.

3. The Operational Creditor supplied goods from time to time under various invoices, which were duly received and acknowledged by the Corporate Debtor. As per the books of account regularly maintained by the Operational Creditor and duly got audited, an amount of Rs. 1,06,76,044.80 was outstanding as on 23.07.2021.
4. The record reflects that as on 05.03.2020, a sum of Rs. 1,57,92,811.40 was outstanding against the Corporate Debtor, with the last supply made under Invoice No. 12749/2019-20 dated 05.03.2020 for Rs. 22,975/-. Against the said dues, the Corporate Debtor made partial payments of Rs. 19,67,170.60 on 01.06.2020, Rs. 5,00,000/- on 17.07.2020, and Rs. 5,00,000/- on 27.08.2020 through RTGS, reducing the outstanding to Rs. 1,28,25,640.80.
5. In part discharge of the remaining amount, the Corporate Debtor issued three post-dated cheques bearing Nos. 120300 dated 30.08.2020 for Rs. 5,00,000/-, 867822 dated 29.10.2020 for Rs. 50,00,000/- and 867823 dated 10.11.2020 for Rs. 50,00,000/-, all drawn on State Bank of India. The Corporate Debtor also agreed to pay interest at 15% per annum on the outstanding dues. However, upon presentation of these cheques, they got dishonoured, and the Applicant filed complaints under Section 138 of the Negotiable Instruments Act, 1881, wherein summoning orders and

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warrants of arrest have been issued against the Corporate Debtor to secure presence of Corporate Debtor and persons in charge of its affairs.

6. Thereafter, the Corporate Debtor made an additional payment of Rs. 5,00,000/- on 03.11.2020 and Rs. 18,00,000/- on 23.07.2021 through RTGS, and an adjustment of Rs.4,69,522/- was allowed towards sales return. After these adjustments, the outstanding operational debt stood at Rs.1,06,76,044.80 out of 11 invoices for which payments are not made as on 23.07.2021, which is treated as the date of default. Details of such unpaid invoices are as given below:

STATEMENT OF OUTSTANDING INVOICES IN RESPECT OF M/S JKEW FORGINGS LIMITED

S.No.	Invoice No.	Date of invoice	Date of payment	Invoice Amount	Total Interest
1.	Previous outstanding	28.10.2019	31.05.2020 - 23.07.2021	42,71,038	5,25,022
2.	4255/2019-20	30.07.2019	23.07.2021	8,94,009	74,888
3.	4572/2019-20	07.08.2019	23.07.2021	13,25,518	2,28,354
4.	4888/2019-20	16.08.2019	-	9,76,875	3,13,537
5.	5133/2019-20	23.08.2019	-	13,79,945	4,38,936
6.	9666/2019-20	22.12.2019	-	14,51,925	3,89,633
7.	10411/2019-20	10.01.2020	-	11,61,970	3,027,49
8.	10847/2019-20	21.01.2020	-	11,62,628	2,97,665
9.	11429/2019-20	04.02.2020	-	8,98,812	2,24,949
10.	12056/2019-20	19.02.2020	-	9,68,438	2,36,405
11.	12748/2019-20	05.03.2020	-	12,78,678	3,04,255

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12.	12749/2019-20	05.03.2020	-	22,975	5,467
Total Outstanding Amount				1,06,760,44.80/-	

7. As per the Applicant Operational Creditor, the Respondent Corporate Debtor has also availed input tax credit (GST) on the goods supplied under the relevant invoices but has failed to make payment for 11 outstanding invoices despite repeated assurances. The Applicant submits that there has been no dispute regarding the quality or quantity of the goods supplied.
8. As submitted, despite repeated requests and reminders, the Corporate Debtor failed to discharge its liability towards above mentioned outstanding debt. Consequently, the Applicant issued a demand notice dated 10.09.2021 under Section 8 of the Code read with Rule 5(1)(a) of the Rules in the prescribed Form 3, which was duly served through both speed post as well as email on the same date.
9. Upon receipt of the demand notice dated 10.09.2021, the Corporate Debtor, vide its reply dated 20.09.2021, denied the correctness of the claim raised by the Operational Creditor and alleged that the amount of Rs. 1,06,76,044.80/- claimed was incorrect and based on concealment and misrepresentation of facts. The Corporate Debtor asserted that the actual outstanding amount was below Rs. 1 crore and, therefore, the application under the Insolvency and Bankruptcy Code, 2016 was not maintainable.

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10. It was contended by the Corporate Debtor that the figure of Rs. 1,06,76,044.80/- included an incorrect addition of interest amounting to Rs. 6,19,526/-, despite there being no agreement between the parties for payment of any interest. The Corporate Debtor further alleged that the Operational Creditor had failed to account for certain credit entries, namely:

- i.** Sale of scrap worth Rs. 1,99,293/- supplied under Invoice No. GST 137/20-21 dated 12.09.2020,
- ii.** Debit note No. 4 for Rs. 36,900/- raised towards freight paid against goods returned, and
- iii.** Debit note No. 7 for Rs. 76,734/- raised for rate difference.

11. It was submitted that after accounting for these amounts, the balance payable would be Rs. 97,43,592/-, which is below the threshold limit prescribed under the Code. The Corporate Debtor also alleged that the two cheques relied upon by the Operational Creditor were blank security cheques bearing Nos. 867822 and 867823, handed personally to the Applicant's marketing manager on 13.11.2019 and later misused after a lapse of one year by inserting dates and amounts of Rs. 50 lakhs each. It was claimed that the presentation of these cheques, after the limit in IBC had already been increased w.e.f. 23.03.2020 without any information to the Corporate Debtor. Hence, the Corporate Debtor denied the demand on account of the provisions of Section 10 of the Code.

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12. On the basis of the above, the Corporate Debtor disputed the demand in its entirety, contending that the claim was artificially escalated to cross the Rs. 1 crore threshold and, therefore, the alleged debt and default were denied.
13. As submitted by the Applicant, the Corporate Debtor, vide its reply dated 20.09.2021 to the demand notice, admitted the supplies as well as the outstanding amount, while attempting to create a spurious dispute by issuing false and fabricated debit notes with the intent to reduce the admitted claim below Rs. 1 crore and thereby evade the applicability of the Code. As per the Applicant, a perusal of the said reply indicates that the demand notice was duly served and acknowledged, the date of default i.e., 23.07.2021 was admitted, and there existed no pre-existing dispute with respect to the quality, quantity, or price of goods supplied and the Corporate Debtor has also admitted issuance and delivery of cheques amounting to Rs. 1,05,00,000/-, though later alleged that such cheques were issued blank.
14. As submitted by the Applicant, the allegation regarding return of rejected material worth Rs. 4,69,522/- and scrap worth Rs. 1,99,293/- has been denied by the Operational Creditor, who contends that the amount of Rs. 4,69,522/- was already adjusted in the statement of account attached to the notice, and the scrap claim is false and concocted. It is further contended that the debit notes relied upon by the Corporate Debtor are fabricated and

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unsigned, never accepted or accounted for by the Operational Creditor, and have been created only to bring down the outstanding amount below the statutory threshold.

15. The Operational Creditor submits that even after such wrongful deductions, the admitted payable amount stands at Rs.1,00,56,519/-, thereby satisfying the threshold limit prescribed under the Code.
16. As submitted, the Corporate Debtor has not produced any proof of pre-existing dispute, nor any record of pendency of suit or arbitration proceedings prior to the receipt of the demand notice as mandated under Section 8(2)(a) of the Code. No payment was made within ten days of receipt of the notice.
17. In view of the above, the Applicant has contended that the Corporate Debtor has failed to discharge its admitted liability of Rs.1,06,76,044.80 along with interest at 15% per annum despite due service of the demand notice and opportunity for payment, thereby committing default within the meaning of Section 3(12) of the Code and has also placed on record Affidavit u/s 9(3)(b) attached as Annexure-10 with the petition. Hence, the present Application was filed on 06.10.2021 seeking initiation of CIRP against the Corporate Debtor.
18. When the matter came up for hearing on 07.02.2022 the Corporate Debtor was proceeded ex parte for non-appearance v.o.d. 07.02.2022.

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Subsequently, M.A. No. 05/2022 was filed by the Corporate Debtor seeking recall of the said order, stating that the Director of the company and certain family members were suffering from COVID-19 during the relevant period. Considering the circumstances, the Bench deemed it appropriate to recall the ex parte order, and M.A. No. 05/2022 was disposed of vide order dated 11.05.2022.

19. Thereafter, vide order dated 04.07.2022, it was recorded that the parties had amicably settled the matter and had e-filed a settlement deed dated 11.05.2022. Accordingly, the petition was dismissed as withdrawn in view of the settlement.
20. Subsequently, I.A. No. 216/2023 was filed by the Operational Creditor seeking revival of the petition on the ground that the settlement with the Corporate Debtor had failed. In view of the submissions and the admitted failure of the settlement, I.A. No. 216/2023 was allowed and disposed of vide order dated 12.03.2024, thereby reviving the main petition.

REPLY ON BEHALF OF THE RESPONDENT / CORPORATE DEBTOR

21. The Respondent/Corporate Debtor filed its reply vide diary no. 1407 dated 22.07.2024, denying all the contentions raised by the Applicant/Operational Creditor, and pleaded that the present application is liable to be dismissed on the following grounds:

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- a. The Respondent submits that the business transactions between the parties were carried out through purchase orders, and payments were made against invoices raised by the Operational Creditor. It is contended that certain invoices fall within the period covered under Section 10A of the Insolvency and Bankruptcy Code, 2016, and therefore defaults relating to such invoices cannot be considered for initiation of CIRP.
- b. The Respondent points out that the present petition includes defaults for invoices dated between 30.07.2019 and 05.03.2020, whereas as per Section 10A of the Code, any default arising on or after 25.03.2020 till 25.03.2021 is barred. Accordingly, the invoices dated 21.01.2020, 04.02.2020, 19.02.2020, and 05.03.2020 (amounting to Rs. 43,31,531/-) fall under the suspension period and cannot be included in the claim amount, along with any interest thereon. It is contended that upon exclusion of such invoices, the total claim falls below the threshold limit of Rs. 1 crore prescribed under Section 4 of the Code, rendering the petition non-maintainable.
- c. The Respondent further submits that there was never any contract or agreement between the parties for payment of interest on delayed payments. The inclusion of Rs. 6,19,526/- towards interest is an attempt to inflate the claim amount to cross the statutory threshold. The Respondent argues that the Operational Creditor has not produced any document showing agreement on payment of interest, nor deducted TDS on such interest, which is mandatory under the Income Tax Act. Therefore, the demand of interest is baseless and must be excluded.

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- d.** It is submitted that in the Petition, the outstanding amount as on 05.03.2020 was Rs. 1,57,92,811/- however, as per the Corporate Debtor as on said date the amount was Rs. 1,57,29,782/- i.e. there was a disputed difference of Rs. 63,029/-.
- e.** The Respondent contends that even according to the Petitioner, payments amounting to Rs. 62,36,692/- were made between June 2020 and July 2021. Consequently, the outstanding amount, as on the date of filing, would be Rs. 95,56,119/-, which is below the threshold limit. It is alleged that the Petitioner has wrongly claimed Rs. 1,06,76,044/- without any explanation.
- f.** It is further submitted that a Settlement Agreement dated 11.05.2022 was executed between the parties, wherein the outstanding amount as on September 2021 was recorded as Rs. 96,80,185/-, below the threshold limit. The Corporate Debtor made further payments of Rs. 10 lakh on 08.10.2021, Rs. 20 lakh on 03.12.2021, and Rs. 15 lakh at the time of settlement, with additional payments thereafter totaling Rs. 20,88,558/-. Thus, as on date, only Rs. 31,32,837/- allegedly remains outstanding, demonstrating solvency of the Corporate Debtor and malafide prosecution by the Petitioner.
- g.** The Respondent submits that it duly complied with the terms of the Settlement Agreement and even forwarded four post-dated cheques along with a letter dated 14.05.2022, requesting the Petitioner to withdraw pending cases under Section 138 of the NI Act, as agreed. However, as the Petitioner failed to withdraw those cases, the Respondent issued instructions to stop payment of cheques via emails dated 08.07.2022 and 19.07.2022. The Respondent alleges that it was the Petitioner who breached the terms of the settlement.

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- h.** The Respondent also submits that a pre-existing dispute exists regarding the quality of goods supplied, as the materials were defective and rejected by the Corporate Debtor. Faulty material worth Rs. 4,69,522/- was returned to the Operational Creditor, and scrap worth Rs. 1,99,293/- was supplied under Invoice No. GST 137/20-21 dated 12.09.2020, which was not accounted for by the Petitioner. Debit notes amounting to Rs. 36,900/- (for freight), Rs. 76,734/- and Rs. 9,782/- (for rate differences) were also issued but not acknowledged by the Petitioner. It is contended that such disputes existed prior to issuance of the demand notice, thereby barring initiation of CIRP.
- i.** The Respondent further contends that the two blank security cheques were handed over to the Petitioner's marketing manager and a contemporaneous letter was issued by the Respondent confirming delivery of blank cheques to the Petitioner. It is alleged that the Petitioner fraudulently filled details of amounts and dates nearly a year later to misuse them as proof of debt.
- j.** The Respondent further asserts that the date of default has been incorrectly mentioned as 23.07.2021 in Form 5. It is argued that the default should be determined as per each invoice, and hence, the petition is defective. The Respondent therefore submits that the alleged debt is below the statutory threshold, barred under Section 10A, there were pre-existing disputes, consequently, it is submitted that the petition is liable to be dismissed.

22. Thereafter, the Respondent further filed a supplementary counter affidavit vide diary no. 1542 dated 11.08.2025 and stated as follows:

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- a.** The Respondents have reiterated that the business transactions between the parties were governed by purchase orders, wherein it was a consistent and agreed practice that payments were to be made within 60 days from the date of each invoice. This term was reflected in the purchase orders dated 28.06.2019 and 25.01.2019 and has been acknowledged by the Petitioner in its own pleadings, including the Section 9 application and the invoices placed on record. Accordingly, the date of default in respect of each invoice would be the 61st day from its date of issuance.
- b.** The Respondents assert that the Petitioner's attempt to calculate default without applying the agreed 60-day credit period is erroneous and intended to artificially bring the claim within limitation and threshold.
- c.** The Respondents have categorically denied the Petitioner's allegation that they claimed GST input credit on the alleged interest invoice dated 01.07.2021. It is stated that the Corporate Debtor never received any debit note for GST on such invoice and hence, in terms of Section 16(2) of the CGST Act, 2017 read with Rule 36 of the CGST Rules, 2017, was not eligible to claim any such input credit. The Respondents have further placed reliance on their GST returns for the periods July 2021, September 2021-March 2022, and April-November 2022, as well as a certificate from their Auditor confirming that no input tax credit was ever availed on the said invoice.
- d.** It is further submitted that the Petitioner's GSTR-2B for September 2021 shows payment date as 11.10.2021, subsequent to the issuance of demand notice dated 10.09.2021, thereby revealing that the

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Petitioner has unilaterally and belatedly attempted to modify its claim and improve its claim in a mala fide manner. The Respondents thus submit that the entire allegation regarding GST credit is erroneous and false.

- e. The Respondents have again emphasized that there was no agreement between the parties for charging any interest on delayed payments, and therefore, inclusion of such interest in the claim amount is wholly arbitrary. It is contended that the Petitioner, in its own pleadings, has taken contradictory stands regarding the rate and computation of interest, at places referring to 15%, elsewhere to 18%, and inconsistently mentioning different figures such as Rs. 6,19,526/-, Rs. 5,25,022/-, and Rs. 28,87,045/-. These contradictions, according to the Respondents, clearly establish that no agreed rate of interest ever existed and the Petitioner is merely inflating figures to cross the statutory threshold of Rs. 1 crore.
- f. The Respondents further state that the Petitioner has failed to provide any calculation chart or supporting explanation demonstrating how the alleged interest amount was computed. The deduction of interest entries in the Petitioner's ledger on 01.07.2021, prior to issuance of demand notice, is cited as evidence of a pre-existing dispute regarding the interest component. Hence, the alleged interest cannot be treated as part of the operational debt for the purposes of determining default under the Code.
- g. The Respondents also point out that in the Petitioner's supplementary affidavit, contradictory assertions have been made, on one hand stating that the entire interest amount was not included in the default as the petition was not a recovery case, and on the other

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hand calculating different interest amounts for the same period. These inconsistent statements, according to the Respondents, are only an after-thought and was never agreed.

- h.** In light of the above, the Respondents submit that the Petitioner's claim is based on erroneous computation, and invoices barred under Section 10A. Further, the calculation of interest for the first time being shown as Rs. 28,87,045/- is denied as wrongful calculation.

Rejoinder on behalf of the Applicant/Operational Creditor.

23. The Applicant/Operational Creditor filed rejoinder vide diary no. 1854 dated 13.09.2024 and stated as follows:

- a.** The Applicant has reaffirmed that the Corporate Debtor had been purchasing materials from the Operational Creditor but defaulted in payments. To evidence the same, three purchase orders (pages 79-81 of the petition) to show the dealings between the parties have been placed on record, though the said purchase orders are not the basis for supply of material covered under the unpaid invoices already placed on record.
- b.** The Applicant has vehemently denied the Respondent's contention that any unpaid invoices fall within the period covered under Section 10A of the IBC. It is submitted that the last invoice is dated 05.03.2020, whereas Section 10A commenced from 25.03.2020. The Applicant asserts that the default occurred on 23.07.2021, as per the settlement deed dated 11.05.2022, and therefore Section 10A is inapplicable.

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- c. The Applicant submits that the last payment was made on 23.07.2021 as the Corporate Debtor thereafter stopped making payments, compelling initiation of proceedings under Section 9.
- d. The contention of the Corporate Debtor regarding a 60-day credit period is denied. The Applicant submits that no document evidences any such agreed credit term and that the purchase orders were placed on record merely to establish a business relationship. The date of default, therefore, remains 23.07.2021, when the last payment was made.
- e. The Applicant contends that the account between the parties was a running account and the date of default depends on when payments ceased, not on the date of invoice. Hence, default arose when the Corporate Debtor stopped payments on 23.07.2021.
- f. The Applicant has denied the Respondent's assertion that the invoices dated 21.01.2020, 04.02.2020, 19.02.2020, and 05.03.2020 fall under the Section 10A period, reiterating that if the Respondent fails to prove the occurrence of default within the period of section 10A then the present petition is liable to be admitted.
- g. The allegation of inflated claims by including interest has been denied. The Applicant states that the interest has been charged in accordance with the terms printed on the invoices and endorsed in the settlement deed.
- h. As submitted by the Applicant, the Respondent's reliance on ***Rohit Motawat v. Madhu Sharma and Permali Wallace Pvt. Ltd. v. Narbada Forest Industries Pvt. Ltd.*** is distinguished as those cases

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dealt with petitions filed solely for recovery of interest, whereas here both principal and interest remain unpaid.

- i. The Applicant submits that on the date of filing of the petition the outstanding amount stood as Rs. 1,06,76,044.80 towards principal outstanding debt and over and above interest at the rate of 18% p.a. However, due to typographical error the rate of interest was mentioned as 15% per annum, but when read with the invoices placed on record, the applicable rate of interest is 18% p.a. from the date of invoices.
- j. The Applicant asserts that the total amount due, including interest, exceeds the threshold of Rs. 1 crore. Even if it is assumed that the principal amount of operational debt outstanding as of the date of filing is Rs. 95,56,119 (Rs. 95,56,119 principal + Rs. 6,19,526 interest = Rs. 1,01,75,645) even then the petition is liable to be admitted. The copy of ledger account of the respondent shows that as on date of default the amount in default was Rs. 96,80,185.60 whereas the Respondent in counter affidavit stated it as Rs. 95,56,190/-. Therefore, w.r.t. amount in default shown in ledger the outstanding amount will come to Rs. 1,03,70,711.60, which is well above the threshold limit.
- k. The Applicant submits that events subsequent to the filing of the petition are not to be looked into for the purpose of adjudication of this petition, relying upon *Priyal Kantilal Patel vs. IREP Credit Capital Pvt. Ltd. & Anr.*, Company Appeal (AT) (Insolvency) No. 1423 of 2022.
- l. The Applicant further contends that the Respondent's objections regarding complaint under Section 138 of the Negotiable Instrument

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Act, part payments, and related emails have already been adjudicated and rejected by the Hon'ble Bench while reviving the petition vide order dated 12.03.2024 in IA No. 216/2023, and are therefore barred by res judicata.

- m.** The Applicant denies the existence of any pre-existing dispute. The settlement deed itself reflects the amount payable by the Respondent, and the alleged disputes raised by the Respondent are afterthoughts.
- n.** The Applicant submits that the alleged rejected material worth Rs. 4,69,522/- was already adjusted in the books of accounts (page 77), and hence, any question of dispute over that amount does not survive.
- o.** The contention regarding an unadjusted amount of Rs. 1,99,293/- is denied as false and unsupported. The alleged document is unsigned by the Applicant and not referred to in the settlement deed.
- p.** The Applicant clarifies that the account between the parties was a running account and three cheques were issued by the Corporate Debtor - bearing Nos. 120300 dated 30.08.2020, 867822 dated 29.10.2020, and 867823 dated 10.11.2020. Allegations of the Respondent Corporate Debtor that blank cheques were issued as security are termed by the Applicant as baseless and manufactured, contending that had there been any misuse of blank cheques, the Respondent would not have come forward for settlement.
- q.** The Applicant asserts that Annexure CA-9 attached with the reply is manufactured and no record of service of any such letter is attached.

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r. It is finally reiterated that default occurred on 23.07.2021 when payments ceased and the total debt (including interest) exceeded Rs. 1 crore, and that there exists no pre-existing dispute or bar under Section 10A, therefore, the petition merits admission.

24. During the course of hearing on 07.07.2025, this Tribunal directed the Ld. Counsel representing the Applicant to file detailed calculation with respect to the interest charged on the total amount of invoices. In compliance thereof, the Applicant filed the calculations vide diary no. 2126 and 2129 dated 27.10.2025 and stated as follows:

“That in part IV, para (1-Page 17) & (2-Page 37) the amount in default has been mentioned as Rs. 1,06,76,044.80 plus interest 15% p.a. up to the date of payment, whereas the interest mentioned on invoices is agreed to be payable @18%. Since this is not a recovery case, the operational creditor has to demonstrate amount in default being more than the threshold limit, therefore the entire amount of interest was not included in the amount of default.

That the total interest on previous outstanding invoices has been calculated at Rs.5,25,022/- on which GST @18% of Rs.94,504/- was levied and accordingly invoice number ST/2021-22/18 dated 01/07/2021 was raised. This being a GST invoice, the CD was supposed to avail credit of the same in the online system, which it must have already availed.

That apart from the above, the total interest calculated @15% on the outstanding invoices up to 09.09.2021, i.e. up to a day before the date of the demand notice is calculated as Rs.28,87,045/-.

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That the calculation of interest is attached as Annexure A-20.....

ARORA IRON & STEEL ROLLING MILLS PVT LTD									
NEAR PHASE VII, FOCAL POINT, DHANDARI KHURD									
LUDHIANA, 141010									
Interest Calculation (Bills Outstanding)									
Account : JKEW FORGINGS LIMITED					From Date of each invoice to			10/5/2021	
Interest Rate :		15.00%							
S.No.	Invoice	Date	Amount	Due Date	Date of Payment	Amount	Balance	Days delay	Interest @15%
1	Previous Outstanding	10/28/2019	4,271,038	10/28/2019			4,271,038	216	379128
					5/31/2020	1967170.6	2,303,867	46	43553
					7/16/2020	500000	1,803,867	40	29653
					8/26/2020	500000	1,303,867	4	2143
					8/30/2020	500000	803,867	152	50212
					2/3/2021	-469522	334,345	148	20334
					6/30/2021				
					7/23/2021	500000	-165,655		0
TOTAL INTT OF PREVIOUS OUTSTANDING									525022
OUTSTANDING INVOICES AS PER PETITION									
2	4255/2019-20	7/30/2019	894,009	7/30/2019	7/23/2021	500000	228,354	798	74888
3	4572/2019-20	8/7/2019	1,325,518	8/7/2019			1,325,518	716	390029
					7/23/2021	800000	525,518	74	15982
4	4888/2019-20	8/16/2019	976,875	8/16/2019			976,875	781	313537
5	5133/2019-20	8/23/2019	1,379,945	8/23/2019			1,379,945	774	438936
6	9666/2019-20	12/22/2019	1,451,925	12/22/2019			1,451,925	653	389633
7	10411/2019-20	1/10/2020	1,161,970	1/10/2020			1,161,970	634	302749
8	10847/2019-20	1/21/2020	1,162,628	1/21/2020			1,162,628	623	297665
9	11429/2019-20	2/4/2020	898,812	2/4/2020			898,812	609	224949
10	12056/2019-20	2/19/2020	968,438	2/19/2020			968,438	594	236405
11	12748/2019-20	3/5/2020	1,278,678	3/5/2020			1,278,678	579	304255
12	12749/2019-20	3/5/2020	22,975	3/5/2020			22,975	579	5467
TOTAL OUTSTANDING			15,792,811						
13	Bank charges	11/2/2020	200	11/2/2020			200		
14	Bank Charges	11/12/2020	200	11/12/2020			200		
TOTAL OUTSTANDING									2994494
15	ST/2021-22/18	7/1/2021	619,526				619,526		0
							10,676,044		3519516

”

Written Submissions on behalf of the Applicant / Operational Creditor

25. The Applicant filed written submissions vide diary no. 2129 dated 27.10.2025 and stated that on every invoice the date of PO is mentioned and on none of the invoices the date of PO is 25.01.2019 or 28.06.2019, hence showing that these invoices were payable on the date in which these

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invoices were raised, in this regard the Petitioner relied on the judgment of NCLT Mumbai in *OM Industries vs. Birla Precision Technologies Ltd;* (2023) inclaw.in 397 NCLT. Further it has been submitted that even if 05.03.2020 is considered as the date of default being the date of last invoice, as no credit is applicable, the same will not impact this petition and the Corporate Debtor is maliciously trying to mislead by alleging that a credit period of 60 days is applicable and some of the invoices would be excludible.

Written Submissions on behalf of the Respondent / Corporate Debtor

26. The Respondent filed written submissions vide Diary No. 2140 dated 29.10.2025, stating that where no payment timeline is mentioned in an invoice, the default may be deemed to occur 30 days from its date of issuance, as held by the NCLT, Mumbai Bench, in *TLG India Private Limited vs. Puranik Builders Limited* [CP(IB)-764/MB/2022]. Further reliance was placed on *M/s Twenty First Century Wire Rods Ltd. vs. M/s Rohit and Company*, (2023) ibclaw.in 627 NCLT, to argue that a mere mention of an interest clause in invoices does not render it binding on the Corporate Debtor, and on *Shitanshu Bipin Vora vs. Shree Hari Yarns Pvt. Ltd.* [Company Appeal (AT) (Insolvency) No. 2204 of 2024], to contend that mere mention of interest in invoices, without a written contract

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between the parties, is insufficient to include the interest component for meeting the threshold limit.

FINDINGS AND ORDER

27. We have heard the arguments of the Learned Counsels appearing for both parties, Applicant/Operational Creditor and Respondent/Corporate Debtor and perused the pleadings, records, and exhibits/annexures marked thereto. Having heard the Learned Counsels appearing for the parties, and on perusal of the records, exhibits/annexures and after considering the arguments advanced by respective Learned Counsels, we find that the following issues are for consideration to be decided for admissibility or otherwise of this Application u/s 9 of the Code.

- a. Whether the Application filed is within the limitation
- b. Whether there is a Debt and Default
- c. Whether there is a Pre-Existing Dispute

a. LIMITATION

28. It has been observed that the date of default has been declared as 23.07.2021 in Part IV of the Petition and the present application under Section 9 of the Code has been filed on 06.10.2021. The last invoice on record is dated 05.03.2020; however, the Applicant has treated 23.07.2021 as the date of default since the ledger reflects a running account, showing

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that on this date, the Respondent made the last payment of Rs.18 lakhs, leaving the balance outstanding and from this date of last payment by the Corporate Debtor having acknowledged the debt arising out of the invoices issued by the Operational Creditor for supply of material, the present application has been filed on 06.01.2021, which is within three years of the date of acknowledgement of debt which is taken as date of default as well due to running ledger account being maintained by the Operational Creditor for invoices issued on supplying the material to the Corporate Debtor and payments received from it from time to time against those invoices. Therefore, as submitted by the Operational Creditor the present application has been filed well within the limitation period.

29. A dispute on date of default has been raised by the Corporate Debtor before us. The Respondent Corporate Debtor has relied on *Next Education India Pvt. Ltd. v. K12 Techno Services Pvt. Ltd.* (2023 ibclaw.in 39 SC) and *Laxmi Trading Corporation v. Hindustan Construction Company Ltd.* (2023 ibclaw.in 540 NCLT) to contend that each invoice should be treated separately for limitation purposes.
30. On considering the above judgments, we find that this argument that each invoice should be separately reckoned for limitation taking into account the credit period allowed by the Operational Creditor would depend upon the terms and conditions of payments as agreed between the Operational

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Creditor and the Corporate Debtor through some written agreement or purchase order or if any such credit period is mentioned on invoice itself. In this case, there are two purchase orders, one dated 25.01.2019 and another dated 28.06.2019, in which the credit period of 60 days has been provided but in subsequent purchase order dated 03.07.2019, no credit period has been mentioned. Therefore, we find that for the invoices issued after 03.07.2019, no credit period for making payment has been provided, and payment was required to be made immediately after date of issue of the invoice. All the eleven (11) outstanding invoices (one partly and 10 fully) are issued after 03.07.2019, and hence for these outstanding invoices, there is no credit period and they became due for payment on the date of invoice itself. In this regard, reference can be made to ***OM industries Vs. Birla Precision Technologies Ltd; 2023 ibclaw.in 397 NCLT*** wherein it was held as under:

“17. Having heard the Counsel for the Parties and after going through the record, we find that the Applicant issued 62 invoices during the period starting from 07.11.2020 to 30.07.2021. As per the invoices, there is no indication regarding the time span within which the amount of the invoice is to be paid. Therefore, the due date of each invoice can be treated as immediate.....”

31. Therefore, even after taking into account the case laws referred by the Corporate Debtor, date of default is taken for each invoice separately, we

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find that date of default for each invoice has occurred from 30.07.2019, date of issue of first invoice till 05.03.2020, the date of issue last invoice. However, we also find that the parties were maintaining a running account in form of a ledger account recording the invoices issued on supplying of material and payments made from time to time against these invoices. As the entries recorded in the ledger account reflect invoices issued from time to time on continuous supplies of materials and part-payments without specific adjustment towards any particular invoice, it demonstrates acknowledgement of accumulated debt arising out of invoices issued beyond the date when the debt became due for payment for each invoice. In light of the abovementioned judgment and considering that the transactions between the parties were in the nature of a running account and for the invoices issued from 21.01.2020 to 05.03.2020, taking a credit period of 60 days and for the invoices issued after 03.07.2019, taking no credit period and the payments were being made from time to time against the running balance till July 2021, we clearly find that the default even if considered to have occurred invoice wise on the date when it became due for payment, it was being paid thereafter also, acknowledging such debt and finally the default as occurred on 23.07.2021 when after making last payment, no further payment was made. Accordingly, the default having

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occurred on 23.07.2021, and the petition being filed on 06.10.2021, it is well within limitation period.

b. DEBT AND DEFAULT

- 32.** The outstanding debt on the basis of which this present application has been filed is mentioned in Part-IV of the Application as debt in default, which amounts to Rs. 1,06,76,044.80, which occurred on 23.07.2021 as discussed in earlier part of this order. The facts leading to the above debt and default are that the Operational Creditor has supplied alloy steel materials to the Corporate Debtor against multiple invoices raised since 14.12.2018 as per the ledger account attached with the application. This ledger account is not disputed by the Corporate Debtor in its reply. Out of these invoices, there are 11 invoices outstanding (one in part and ten in full) raised between 30.07.2019 to 05.03.2020. It is admitted fact that payments were being made from time to time in parts in a running account and some post-dated cheques were also issued by the Corporate Debtor to clear the outstanding debt, which were subsequently dishonored but these postdated cheques were claimed by the Corporate Debtor to have been issued by it for security purposes which was fraudulently presented to bank for encashment by filling up the amount.
- 33.** The Applicant has filed a detailed statement of account and an interest calculation sheet (Annexure A-20), reflecting computation of interest

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@15% per annum on delayed invoices. As per the said calculation, the total interest on previous outstanding invoices amounted to Rs. 5,25,022/-, and the total principal outstanding was shown as Rs. 1,06,76,044, which was derived after adjusting payments and credit notes allowed to the Corporate Debtor, including the sales return of Rs. 4,69,522/-.

34. For countering the above default amount claimed by the Operational Creditor, the first objection of the Corporate Debtor is by raising a contention of certain invoices falling within the period covered under section 10A, and thus the same cannot be considered to determine the threshold for admission of this Application.
35. In this regard, it is argued that the present petition has been filed claiming default of invoices from 30.07.2019 to 05.03.2020. Then, it is pointed out that payment for each invoice was to be made within 60 days from the date of invoice and as held in catena of judgments that the date of default is to be determined with reference to each invoice as we have already discussed in earlier part of this order. By referring to these facts of the case, the Corporate Debtor argued that in the present case, the default for the invoices dated 21.01.2020 (of Rs 11,62,628/-), dated 04.02.2020 (of Rs 8,98,812/-), dated 19.02.2020 (of Rs 9,68,438/-), dated 05.03.2020 (of Rs 12,78,678/-) and dated 05.03.2020 (of Rs 22,975/-) would fall under the suspension period between 25.03.2020 to 25.03.2021 as mentioned in the

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provision of section 10A providing that no application for initiation of corporate insolvency resolution process of a corporate debtor u/s 7 or 9 or 10 shall be filed, for any default arising between 25th March, 2020 and 25th March 2021, and therefore these invoices would be covered under section 10A of IBC, thus the same have to be excluded from the claim amount and even the alleged interest, if any, calculated on the same shall also stand excluded.

- 36.** It is also argued that that no Petition for the said amounts can ever be filed before the Hon'ble Tribunal as provided in first proviso to Section 10A. Therefore, it is vehemently argued by the Ld. Counsel for the Corporate Debtor that the amounts totaling to Rs. 43,31,531/- mentioned in these invoices shall not be taken into consideration to meet the Threshold limit (of Rs 1 Crore). In support of his argument, the case law of *Om Industries vs Birla Precision Technologies Ltd (2023) ibclaw.in 397 NCLT* is cited. Thus, it is submitted by the Corporate Debtor that if principal amount of Rs. 43,31,531/- along with the disputed interest if any charged on it is excluded from the claimed amount, it would clearly fall below the threshold limit of Rs. 1 crore as per section 4 of IBC and thus the present petition is liable to be dismissed.
- 37.** Countering the above arguments of the Corporate Debtor raised with respect to certain invoices falling within the time period covered by section

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10A, and hence not to be included in the default amount claimed in the present Application, the Operational Creditor submitted that the last invoice is dated 05.03.2020 whereas the period under section 10A commenced on 25.03.2020 and that reference to 60 days' credit is absolutely false and that as per the petition the date of default is 23.07.2021. It is further submitted that that the bar under section 10A is with respect to the default arising during the period 25.03.2020 to 24.03.2021 whereas in this case the default occurred on 23.07.2021 and therefore also there is no applicability of section 10A to this case. It is also pointed out that even in reply to section 8 notice dated 20.09.2021 already on record at page 150 of paper book the Application, no such plea was taken about the credit of 60 days or section 10A.

- 38.** As regards the invoice wise default, the Operational Creditor argued that the account between the parties was a running account, and in such cases the date of default does not depend upon the date of invoice so long as the buyer is regularly making the payment to the supplier and the account is a running account and the creditor is granting time to the debtor to make payments and the debtor is making payments in installments. In the present case the date of the last invoice is admittedly 05.03.2020 and the account was a running account, the Corporate Debtor was making payments in

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installments and the date of last installment i.e. 23.07.2021 is the date of default as thereafter the Corporate Debtor stopped making payments.

39. As regards the invoices dated 21.01.2020, 04.02.2020, 19.02.2020 and 05.03.2020 falling under the period covered by section 10A of IBC on the basis of on the basis of the claim being made by the Corporate Debtor of the credit period of 60 days was granted for making payment of invoices, the Ld. Counsel for the Corporate Debtor argued that no such any credit period was extended by the Applicant. He pointed out that such claim which is being made by the Corporate Debtor is on the basis of purchase orders issued by him which are annexed at page no 80 and 81 of the Application in which credit period of 60 is mentioned are dated 25.01.2019 and 28.06.2019. However, another purchase order dated 03.07.2019 was issued by the Corporate Debtor in which no credit period has been mentioned. All the 11 invoices (from dated 30.07.2019 to 05.03.2020) against which payments are outstanding, are issued subsequent to this purchase order. Therefore, no credit period of 60 days is applicable for these invoices and payment for these invoices has become due immediately on issuing of these invoices. Therefore, claim of the Corporate Debtor of the invoices the invoices dated 21.01.2020, 04.02.2020, 19.02.2020 and 05.03.2020 falling under the period covered by section 10A of IBC on the basis of the credit period of 60 days, is not correct.

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40. We have considered the arguments put forward by the parties in respect of the applicability of section 10A in the present case. It is undisputed fact that all the invoices were issued much before the date of starting of the time period of section 10A i.e. 25.03.2020 putting bar on initiation of insolvency proceeding. The last invoice was issued on 05.03.2020. Two issues were raised before us, first regarding date of default and second regarding whether date of default to be taken invoice wise. Both these issues have already been dealt by us in previous part of this order and we have already held that in cases where running account is being maintained by parties for recording the invoices issued on supply of material and payments being made are not invoice wise but being made from time to time in parts , the date of default is to be taken the date of last payment after which payments have stopped coming before filing of the Application under section 9 , which in the present case is 23.07.2021 and this date is much after the date of closing of Section 10 A i.e. 24.03.2021.

41. As far as the second issue of taking invoice wise default is concerned, we have already dealt with this issue and held in the previous part of the order that after the purchase order dated 03.07.2019, there is no credit period and the invoice issue from 30.07.2019 have become due for payment immediately. Therefore, we agree with the Applicant Operational Creditor that claim of the Corporate Debtor of the invoices dated 21.01.2020,

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04.02.2020, 19.02.2020 and 05.03.2020 falling under the period covered by section 10 A of IBC on the basis of the credit period of 60 days, is not correct, and hence we hold that none of the invoices claimed to be under default in Part IV would fall in the period barred under section 10A for filing of application for initiation of insolvency under section 9.

42. As far as the next issue of the interest amount included in the default amount is concerned, the Respondent's primary contention is that no agreement existed for charging interest and hence such amount cannot be added to meet the threshold under Section 4 of the Code. Regarding the interest component, the Respondent relied on *Gandhar Oil Refinery (India) Ltd. v. City Oil Pvt. Ltd. (2023) ibclaw.in 168 NCLT*, *M/s Twenty First Century Wire Rods Ltd. v. Rohit and Company (2023) ibclaw.in 627 NCLT*, *Rishabh Infra Vs. Sadbhav Engineering Ltd. (2024) ibclaw.in 707 NCLAT*, *Shitanshu Bipin Vora Vs Shree Hari Yarns Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 2204 of 2024* and *Descent Buildwell LLP v. Reliance Communications Infrastructure Ltd. and Ors. Company Appeal (AT) (Insolvency) No. 871 of 2025* to argue that mere mention of interest in invoices, without a written agreement or acknowledgment, does not make it binding on the Corporate Debtor to pay interest on the principal amount of outstanding Operational Debt. Thus it is submitted by the Corporate Debtor that the amount of Rs 6,19,526/-

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included in the claimed amount outstanding operational debt of Rs. 1,06,76,044.80 as shown in Part IV of Section 9 Application should be excluded from the claimed amount to meet the threshold limit.

43. Countering the above arguments of the Corporate Debtor, it is submitted by the Operational Creditor that interest has been charged in accordance with the commercial terms and conditions settled between the Corporate Debtor and the Operational Creditor these terms and conditions are clearly printed on the invoices as also endorsed in the settlement deed dated 11.05.2022, which the Corporate Debtor entered into with the Operational Creditor for paying of the outstanding dues during the pendency of the present Application. In this regard, clause 6 of the settlement deed dated 11.05.2022 has been referred wherein it is provided that

*"6. That the parties herein are ad idem that in case there is any default in complying with the terms and conditions of this settlement deed by "corporate debtor", "operational creditor" shall have **the right to adjust the amount paid as per para 3 above (pursuant to this settlement deed) towards interest on the outstanding amount and the fresh proceedings can be carried in NCLT.**"*

[Emphasis Supplied]

44. With respect to payment of interest if any, mentioned on invoices making the corporate debtor liable to make payment of the same after stipulated time, and for such amount to be included in determining the threshold limit,

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the Operational Creditor relied upon a judgment of Hon'ble NCLAT in case of *Mr. Prashat Agarwal vs. Vikash Parasrampuria, Sole Proprietor of Chiranjilal Yarns Trading, Company Appeal (AT) (Ins) No. 690 of 2022*. The relevant excerpts are reproduced below:

Since, interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for "right to payment" (Section 3(6) IBC) and therefore will form part of "debt" (Section 3(11) IBC).

(vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself.... Thus, the total debt outstanding of OC is above Rs. 1 crore as per requirement of Section 4 IBC....."

45. We have considered the arguments of both parties and also perused the records. As revealed from the records, we find that the transactions between the parties were on a running account basis and payments were not adjusted invoice-wise. The Respondent continued to place orders and make part-payments from time to time. Therefore, the outstanding liability, as reflected in the running account, constitutes a continuous and cumulative operational debt. The invoices placed on record clearly mention *"Interest @18% p.a. will be charged if the payment is not made with in the stipulated time."* Such stipulation for charging of interest made in the

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invoices is clear and specific and not found vague and such printed commercial terms on an invoice issued during the course of a business transaction for supplying of goods can be considered as binding when the receiving party i.e. Corporate Debtor in this case, accepts goods without protest and acts upon them. Though in the present case, there is no formal agreement in writing signed by both parties agreeing for charging of interest in case of delay in payment of invoice amount, such charging of interest by the Operational Creditor as per invoices raised mentioning for charging of interest @ 18% p.a. in case payment is not made within stipulated period is supported by another document which is a settlement deed dated 11.05.2022 entered into between the Operational Creditor and the Corporate Debtor for clearing of the outstanding debt as discussed in para 40 above, in which the Corporate Debtor has acknowledged in the Clause 6 about charging of such interest. Therefore, we agree with the Operational Creditor that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment as held in *Mr. Prashat Agarwal vs. Vikash Parasrampuriah (supra)* cited by the Operational Creditor. The case laws cited by the Corporate Debtor has not been found to be applicable on the facts of the present case as they are related to either admission of claim during CIR process or where the principal amount of the debt was paid and insolvency application was filed

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only in respect of the interest on such principal amount of the debt remaining outstanding or charging of stipulated interest mentioned on the invoice was found to be vague due to interest rate was not clear to be per annum or per month or when charging of such interest would start, and charging of such interest was not supported by any agreement or any other document signed after mutually agreed between both parties. In the present case, charging of interest is clearly mentioned in the invoices giving clear interest rate being “per annum” and to be charged if invoice amount is not paid within stipulated period which in the present case is immediately on issuance of the invoice as no credit period is provided as per purchase order dated 03.07.2019, and such charging of interest is also supported by a settlement agreement mutually agreed and signed by both parties as already has already been discussed in this order in foregoing paras.

- 46.** Additionally, the Corporate Debtor has also raised dispute on the principal amount of the Operational Debt claimed in Section 9 Application. By referring to settlement deed dated 11.05.2022, it has been contended that outstanding dues as per the Corporate Debtor was Rs. 96,80,185/- instead of Rs. 1,06,76,044.80 as claimed by the Operational Creditor in the Application filed under section 9. It is contended that the default amount will come below the threshold limit without adding any interest in the principal amount of outstanding dues as agreed in the settlement deed.

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47. A contention on not submitting the computation of interest added in outstanding amount has also been raised by the Corporate Debtor. In this regard, on our direction, an affidavit has been filed by the Operational Creditor on 21.07.2025 submitting that in part IV, para (1-Page 17) & (2-Page 37) the amount in default has been mentioned as Rs.1,06,76,044.80 plus interest 15% p.a. up to the date of payment, whereas the interest mentioned on invoices is agreed to be payable @18%. Since this is not a recovery case, the operational creditor has to demonstrate amount in default more than the threshold limit, therefore the entire amount of interest was not included in the amount of default. That the total interest on previous outstanding invoices has been calculated at Rs.5,25,022/- on which GST @18% of Rs. 94,504/- was levied and accordingly invoice number ST/2021-22/18 dated 01.07.2021 was raised. This being a GST invoice, the CD was supposed to avail credit of the same in the online system, which it must have already availed. That apart from the above, the total interest calculated @15% on the outstanding invoices up to 09.09.2021, i.e. up to a day before the date of the demand notice is calculated as Rs.28,87,045/-. Full computation of interest has also been provided in the affidavit.

48. The interest of Rs. 6,19,526/- included in the outstanding dues as on 31.07.2021, is computed till 01.07.2021 as shown in the running ledger

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account maintained in the books of the Operational Creditor. Maintenance of such running ledger account by the Operation Creditor for transactions done with the Corporate Debtor has not been disputed by the Corporate Debtor except charging of interest and its inclusion in the outstanding dues claimed in Section 9 Application, and then the outstanding principal amount as per the books of the Corporate Debtor as mentioned in the Settlement Deed has been mentioned to be Rs. 96,80,185/-. It is also submitted that, that the principal amount of operational debt outstanding as on the date of filing of the petition is Rs. 95,56,119/-.

- 49.** As regards inclusion of interest in the outstanding debt, we have already held that such interest on the facts and circumstances of the case is to be included in the outstanding debt as discussed in forgoing paras. The Corporate Debtor though did not agree with the amount of principal amount of debt to be as Rs. 95,56,119/- as claimed by the Corporate Debtor and maintained that outstanding debt is Rs. 1,06,76,044.80 (Principal Rs. 1,00,56,518 + interest Rs. 6,19,526) as shown in Part IV of Section 9 Application, it is alternatively argued that if the principal amount of debt is taken Rs. 95,56,119/-, even then the petition is liable to be admitted because after the interest of Rs. 6,19,526/- charged in the ledger account is added to the amount of Rs. 95,56,119/- of principal amount as agreed by the Corporate Debtor, the total amount outstanding would come to Rs.

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1,01,75,645/- which is well above the threshold limit of rupees one crore and merits admission of the present Application. To justify charging of this amount of interest, it is submitted that the Applicant has already raised an invoice of interest upon the Respondent by applying GST and the Respondent has also taken credit of GST. This invoice has been attached as Annexure-7 with the Application. We find force in the above argument of the Applicant that the outstanding debt in every circumstance is exceeding threshold of Rs. 1 crore after adding the interest which we have already held to be added to determine the outstanding default amount of debt.

50. In view of the facts and circumstances of the case as discussed above, we find that the requirement under Section 4 of the Code for the outstanding default amount of debt stands satisfied. As regards the quantum of interest, we are of the considered view that since this proceeding is not in the nature of a recovery action and the primary requirement under Section 9 of the Code is to establish that the amount in default, inclusive of the admitted principal and applicable interest, exceeds the prescribed threshold. The difference in rate of interest as indicated in the Application and invoices, therefore, does not materially affect the maintainability of the petition, particularly when the invoices on record substantiate the existence of a

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running liability well above the threshold limit even if the rate of interest is taken as 15% or 18%.

51. The Corporate Debtor also argued that subsequent to filing of the present application, further payments have been made, and now the outstanding debt has fallen much below the threshold limit. In this regard, it is submitted that further amounts were paid even thereafter, i.e., Rs 10 Lacs on 08.10.2021 and Rs 20 Lacs on 03.12.2021, leaving an amount of Rs 67,21,395/- when the settlement was arrived at, and then when the settlement was entered into further Rs 15 lacs were paid and thus schedule of payment of only remaining Rs 52,21,397/- was provided in the Settlement Agreement. That even thereafter, a further amount of Rs 20,88,558/- has been paid after 11.05.2022, which means that as on date the amount outstanding as per the Petitioner would be Rs 31,32,837/- which shows that the Corporate Debtor is solvent and the Petitioner is arbitrarily trying to prosecute the Corporate Debtor.

52. To counter above argument, the Operational Creditor argued that the events subsequent to the filing of the petition are not to be looked into for the purpose of adjudication of this petition. If the subsequent payments are to be considered, then the interest is also required to be calculated on the entire amount and as per the settlement deed, there is a provision that the entire amount paid would be adjusted against the interest. However, this

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Tribunal does not have jurisdiction to look into subsequent events and the Petition is required to be admitted if the amount is above the threshold limit and is complete in all respects. We are in agreement with the arguments raised by the Operational Creditor in this regard because subsequent payments made after the filing of a petition under Section 9 of the IBC cannot bring the amount below the threshold to prevent its admission. The threshold is determined on the date the application is filed, not at the time of its admission. This position of law has been answered by the Hon'ble NCLAT recently in a case law *Devika Resources Pvt. Ltd. v. MAA Manasha Devi Alloys Pvt. Ltd., (2025) ibclaw.in 354 NCLAT*, wherein the Hon'ble NCLAT after relying on certain judgments of Hon'ble Supreme Court has held as under:-

“14. There is no dispute that when the application under Section 9 was filed by the Appellant it had crossed the threshold of Rs. 1 Cr. because the amount at that time was Rs. 1,16,25,583/- as principal but during the pendency of the application, the Respondent deposited Rs. 20 lakh towards the outstanding dues because of which it reduced to less than Rs. 1 Cr.

*15. In the case of **Rajamundry Electric Supply Corporation Ltd. (Supra)** the Hon'ble Supreme Court has categorically held that the threshold has to be seen at the time of filing of the application and in this regard made the following observations:-*

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“Excluding the names of the 13 persons who are stated to be not members and the two who are stated to have signed twice, the number of members who had given consent to the institution of the application was 65. The number of members of the Company is stated to be 603. If, therefore, 65 members consented to the application in writing, that would be sufficient to satisfy the condition laid down in section 153-C, sub-clause (3)(a) (i). But it is argued that as 13 of the members who had consented to the filing of the application had, subsequent to its presentation, withdrawn their consent, it thereafter ceased to satisfy the requirements of the statute, and was no longer maintainable. We have no hesitation in rejecting this contention. The validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. In our opinion, the withdrawal of consent by 13 of the members, even if true, cannot affect either the right of the applicant to proceed with the application or the jurisdiction of the court to dispose of it on its own merits.”

16. In the case of Manish Kumar (Supra) the Hon’ble Supreme Court has observed as under:-

“THE POINT OF TIME TO COMPLY WITH THE THRESHHOLD REQUIREMENTS.

178. The question, then arises, as to the alleged lack of clarity about the point of time, at which the requirements of the impugned provisos,

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are to be met. Is it sufficient, if the required number of allottees join together and file an application under Section 7 and fulfil the requirements, at the time of presentation? Or, is it necessary that the application must conform the numerical strength, under the new proviso, even after filing of the application, and till the date, the application is admitted under Section 7(5)? There can be no doubt that the requirement of a threshold under the impugned proviso, in Section 7(1), must be fulfilled as on the date of the filing of the application. In this regard, we find support from an early judgment of this Court, which was rendered under Section 153- C of the Companies Act, 1913. Section 153-C is the predecessor to Sections 397 and 398 read with Section 399 of the Companies Act, 1956. Its most recent avatar is contained in Sections 241 and 242 of the Companies Act, 2013 read with Section 244. In fact, Section 399 (3) of the Companies Act, 1956, read as follows:

“399(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.”

179. In the decision of this Court in Rajahmundry Electric Supply Corporation Ltd. v. A. Nageshwara Rao and others 51, the provision in question, viz., Section 153-C of Companies Act, 1913 dealt with the power of the Court to Act, when the Company acts in a prejudicial manner or oppresses any part of its members. It, inter alia, provided that no application could be made by any member, in the case of a company having a share capital unless the member has obtained

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consent, in writing, of not less than one hundred in number of the members 51 AIR 1956 SC 213 of the company or not less than one-tenth in number of the members, whichever is less. There was also an alternate requirement, to which, resort could be made in regard to company, not having share capital. There was another mode of fulfilling the threshold requirement. In the facts of the said case, the number of the members of the company were 603. Sixty-five members consented to the application. The problem, however, arose as it was contended that 13 of the members who had consented, had, subsequent to the presentation of the application, withdrawn their consent.

181. In the matter of presentation of an application under Section 7, if the threshold requirement, under the impugned provisos, stands fulfilled, the requirement of the law must be treated as fulfilled.

The contention, relating to the ambiguity and consequent unworkability and the resultant arbitrariness, is clearly untenable and does not appeal to us. If an allottee is able to, in other words, satisfy the requirements, as on the date of the presentation, the requirement of the impugned law is fulfilled.”

17. In the case of ***Hyline Mediconz Pvt. Ltd.*** this Tribunal has held that: -

“11. The initiation date is thus the date on which financial creditor, corporate applicant or operational creditor makes an application to the Adjudicating Authority. Part II of the Code is applicable only when minimum amount of default of Rupees One Crore is fulfilled after 24.03.2020. Thus, right to initiate the CIRP after 24.03.2020 is only on the condition that minimum default is of Rupees One Crore. There

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is no right to initiate CIRP after 24.03.2020 when minimum default is not Rupees One Crore.

13. When we look into the scheme of the Code, provision of Section 4, 6, 7, 8, 9 and 10 indicate that the provisions which provides for initiation of Corporate Insolvency Resolution Process and Part II of the Code applied to matters relating to insolvency Resolution Process for Corporate Debtor, where minimum default is Rupees One Crore (as on 24.03.2020). Thus, Part II of the Code is applicable only when default is of Rupees One Crore or more. There is no right to initiate an application under Section 9 on 24.03.2020 or thereafter if the minimum default of Rupees One Crore is not fulfilled. Thus, crucial date to find out applicability of the threshold is the date when application to initiate CIRP is made. If we accept the submission of learned counsel for the Appellant that date of default or date of demand notice under Section 8 is to be taken and if default is less than Rupees One Crore which occurred prior to 24.03.2020 right should be given to the applicant to initiate the CIRP after 24.03.2020, it will be clearly contrary to the scheme of the Code as delineated by Section 4, 6, 7, 9 and 10. When the legislative scheme indicate that application for CIRP can be filed only after fulfilling the minimum threshold limit applicable w.e.f. 24.03.2020, no other interpretation of Section 4 can be given. When Section 4 empowers the Central Government to specify the minimum amount or higher value upto Rupees One Crore and power under Section 4 proviso has been exercised vide Notification dated 24.03.2020, the legislative intent is clear that threshold of Rupees One Lakh shall not apply henceforth i.e. 24.03.2020 and if

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initiation be made for an default, it should fulfil the minimum threshold of Rupees One Crore.

24. The Hon'ble Supreme Court further held that requirement of compliance with the threshold as introduced by second proviso to Section 7 has to be fulfilled as on the date of the filing of the application. In Para 178 following has been held: -

“178. The question, then arises, as to the alleged lack of clarity about the point of time, at which the requirements of the impugned provisos, are to be met. Is it sufficient, if the required number of allottees join together and file an application under Section 7 and fulfil the requirements, at the time of presentation? Or, is it necessary that the application must conform the numerical strength, under the new proviso, even after filing of the application, and till the date, the application is admitted under Section 7(5)? There can be no doubt that the requirement of a threshold under the impugned proviso, in Section 7(1), must be fulfilled as on the date of the filing of the application.”

25. The law laid down by the Hon'ble Supreme Court in the above case lend support to our conclusion that threshold of Rupees One Crore has to be fulfilled by an applicant under Section 9 on the date of filing of the application. The fact that default was committed prior to 24.03.2020 and notice under Section 8 was issued and served prior to 24.03.2020 are not determinative or material although they are condition precedent for initiating an application under Section 9. We have noticed the provision of Section 6 which provides that where any Corporate Debtor commits a default, a Financial Creditor, an

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Operational Creditor or the Corporate Debtor itself may initiate Corporate Insolvency Resolution Process in respect of such Corporate Debtor in the manner as provided under this Chapter. Thus, a default is a condition precedent. Part II of the Code becomes applicable only when default is Rupees One Crore or more w.e.f. 24.03.2020 and an Operational Creditor can initiate Corporate Insolvency Resolution Process against the Corporate Debtor after 24.03.2020 when default is more than Rupees One Crore. No application can be initiated after 24.03.2020 irrespective of the date of default if the threshold of Rupees One Crore is not fulfilled.”

18. It has been held in the aforesaid cases that the threshold has to be seen at the time of filing of the application and not at the time of the admission of the application.”

[Emphasis Supplied]

53. Thus, it is evident that in the present case under consideration, there is a valid debt more than the threshold limit of Rs. 1 crore on the date of default which remained unpaid to the extent of more than Rs. 1 crore even on the date of filing of the present application u/s 9, leading to a default on the part of the Corporate Debtor. Therefore, we are satisfied that there is a debt of more than Rs. 1 Crore and also a default has occurred on the part of the Respondent to pay this debt.

c. PRE-EXISTING DISPUTE

54. As regards there being any pre-existing dispute in respect of the claim made by the Operational Creditor as discussed above, we find that the

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record reveals that the only objections raised by the Corporate Debtor in reply to the demand notice dated 10.09.2021 pertain to the manner of calculation, inclusion of interest, and claims relating to certain credit notes, scrap and rejected goods. The Applicant has provided reconciliation to show that credit for returns of Rs. 4,69,522/- was duly given, and disclaimed the scrap and debit note claims as unsubstantiated and afterthoughts, not part of prior correspondence or any contemporaneous documentation.

55. Moreover, as per the law laid down by the Hon'ble Supreme Court in *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (2018) 1 SCC 353*, the dispute must be existing and not spurious or hypothetical, and the Corporate Debtor must show more than a mere assertion of dispute. The Respondent has sought to rely on alleged debit notes and contentions relating to rejected material and scrap value to claim that a pre-existing dispute existed prior to issuance of the Section 8 notice. However, the alleged debit notes were not supported by contemporaneous correspondence, acknowledgment, or accounting records, nor were they shown to have been accepted or countered by the Operational Creditor. Hence, the existence of a settlement deed which was not complied with, repeated acknowledgment of liability, issuance of cheques, and admitted defaults, together with lack of substantiation for the alleged credit notes

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and debit notes, collectively negate the existence of any real pre-existing dispute. No suit or arbitration prior to the demand notice is on record, nor is there any correspondence showing a running dispute as to quality, quantity or rate with respect to the claimed outstanding.

56. Further, regarding the credit period, we have carefully examined the Respondent's contention that the payment term between the parties was 60 days from the date of receipt of goods, as reflected in certain email communications dated 25.01.2019 and 28.06.2019 placing the purchase order, which are prior to the issuance of 11 invoices against which claim of default has been made. Before issuance of these 11 invoices starting from 30.07.2020, another purchase order dated 03.07.2019 was issued in which no credit period has been mentioned. All these details have already been discussed while dealing with limitation as well as the dispute on inclusion of interest in the default amount.

57. We have already discussed regarding our finding that the record shows that the payments were being made and adjusted on a running-account basis, without any written stipulation prescribing a fixed credit period. In such circumstances and taking into account the fact that in subsequent purchase order dated 03.07.2019, no credit period has been specified, therefore the plea of a uniform 60-day credit term remains unsubstantiated. The running account continues until July 2021, and no independent written contract has

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been furnished by the Corporate Debtor for the supposed credit period. The argument of blank security cheques is negated by the settlement deed admissions and serial payments made pursuant to default.

58. In light of the above, we find the so-called disputes raised by the Corporate Debtor as being only a frivolous, spurious and unsubstantiated raised only as afterthought as no correspondence in this regard has been found before issuing of notice under section 8 of the Code and hence, such disputes raised before us during the hearing of the case, which have been adequately dealt by us as discussed above in earlier paras of this order, cannot prevent the admission of the petition under section 9. Therefore, in our considered opinion, there is no pre-existing dispute as required under law.

59. After finding that in the present case, the present Application is filed within limitation period, there is debt more than the threshold limit of Rs. 1 crore on the date of default as well as on the date when the present application u/s 9 has been filed, there is a default in repayment of the said debt and there is no pre-existing dispute with respect to this debt, further, all other conditions for admission of application under Section 9(5)(i) of the Code 2016 against the Corporate Debtor, have also been found to be fulfilled, we find this application as being fit for admission under Section 9(5)(i) of the Code, 2016 for starting CIRP against the Corporate Debtor.

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60. We do not find any Insolvency Professional proposed by the Operational Creditor in the Application under section 9 proposed to be appointed as Interim Resolution Professional (hereinafter referred as “**IRP**”). Therefore, this Tribunal appoints Mr. Deepak Singh, having Registration No. IBBI/IPA-003/ICAI-N00447/2023-2024/14350 as IRP, having address at C-1302 AVJ Heights, Sector ZETA-1 Greater Noida, Near Sakipur Vilege, Gautam Buddha Nagar, Uttar Pradesh, 201306 and Email id: deepaksingh1965@gmail.com, Mobile no. 9953417334. The verification of the said IRP has been carried out by the Law Research Associate of this Tribunal, Ms. Akshita Singh, and it is found that there is no proceeding pending against the proposed IRP, and it is also found that this Insolvency professional holds valid authorization till 31.12.2026.

61. In view of our findings as discussed above, this application is admitted u/s 9 of the Code, 2016, under the following terms and conditions.

- i.** The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e., JKEW Forgings Limited is hereby admitted.
- ii.** We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

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- iii. This Adjudicating Authority hereby appoints Mr. Deepak Singh to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 24 above.
- iv. The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 has commenced from the date of this order prohibiting the following:
 - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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- 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.
- vi. Apart from the above prohibitions in respect of the corporate debtor, it is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- vii. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- viii. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.
- ix. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.
- x. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor and to constitute a Committee of Creditors (hereinafter referred as “COC”) and shall file a report certifying the constitution of the COC to this Tribunal on or before the expiry of

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thirty days from the date of his appointment, and shall convene the first meeting of the COC within seven days of filing the report of the constitution of the COC.

- xi.** The COC in its first meeting shall appoint a Resolution Professional (hereinafter referred as “**RP**”) as per the provision of section 22(2) and file an application before this Tribunal for confirmation of the appointment of the RP.
- xii.** The Suspended Board of Directors of the corporate debtor is directed to give to IRP/RP complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the IRP/RP all the information regarding maintaining the Backup and regarding service provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the service provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case, accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs.
- xiii.** The Statutory Auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI.

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- xiv.** The IRP/RP is directed to take custody and control of all the records of information relating to assets of the Corporate Debtor, its Books of Account in physical form or the computer systems storing the electronic records at the earliest in accordance with the provision of Regulation 3A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “CIRP Regulations, 2016”).
- xv.** The Operational Creditor shall also provide necessary assistance to IRP/RP in obtaining the necessary information about the Corporate Debtor as envisaged in Regulation 4(3) of the CIRP Regulations, 2016.
- xvi.** In case of any non-cooperation by the Suspended Board of Directors or the Statutory Auditors, IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for the retrieval of relevant information from the systems of the corporate debtor.
- xvii.** The IRP/RP may take the assistance of Digital Forensic Experts empaneled with this Bench/IBBI/MCA for this purpose.
- xviii.** The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances.
- xix.** The IRP/RP is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

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- xx.** The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities'/institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings.
- xxi.** The IRP/RP is directed to approach all the concerned Government Departments and authorities as discernible from the books of account of the Corporate Debtor requesting them to file claims if any amount is outstanding against the Corporate Debtor.
- xxii.** The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIR Proceedings as per law.
- xxiii.** The IRP/RP shall collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the Corporate Debtor.
- xxiv.** The IRP/RP is further directed to send regular progress reports to this Tribunal every month.
- xxv.** We direct the Operational Creditor to deposit a sum of Rs.1,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

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- 62.** A certified copy of the order shall be communicated to both the Applicant Operational Creditor and the Respondent Corporate Debtor. The learned counsel for the Applicant Operational Creditor shall deliver a certified copy of this order to the IRP forthwith. The Registry is also directed to send a certified copy of this order to the IRP at his e-mail address forthwith.
- 63.** List the **CP (IB) 73/ALD/2021** on 02.01.2026 for filing of the progress report/further proceedings.

-Sd-
(ASHISH VERMA)
Member (Technical)

-Sd-
(PRAVEEN GUPTA)
Member (Judicial)

Date: 01.12.2025