NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH-COURT-1

CP (IB) No.27/CHD/HRY/2023

[An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016]

In the matter of:

SHREE LAXMI STEEL

A Proprietorship concern
Having its registered address at:
506 Marvel Building (X-18),
2nd Lane, Shastri Nagar,
Andheri (W), Mumbai- 400053
Pan No- AAFCR5271E ......**Applicant/Operational Creditor**

Versus

RCC INFRA VENTURES LIMITED

CIN: U45400HR2011PLC048807
Having its registered address at:
14 Ground Floor, Vipul Agora, MG
Road, Gurgaon, Haryana- 122002 ......**Respondent/Corporate Debtor**

Order Pronounced on: 06.11.2025

Coram: HON'BLE SH. KHETRABASI BISWAL, MEMBER (JUDICIAL)

HON'BLE SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

Appearance:

For Petitioner : Mr. Farhad Kohli, Advocate

For Respondent : Mr. Anand Chhibbar, Senior Counsel with
Mr. Karan Kaushal, Advocate

Per: SH. KHETRABASI BISWAL, MEMBER (JUDICIAL)

SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

JUDGMENT

This Petition has been filed on 23.12.2022 by ***Shree Laxmi Steel*** (hereinafter referred to as the **"Operational Creditor"**) under Section 9 of the *Insolvency and Bankruptcy Code, 2016* ("the Code") for initiation of *Corporate Insolvency Resolution Process* ("CIRP") against ***R.C.C. Infraventures Limited*** (hereinafter referred to as the **"Corporate Debtor"**). The Operational Creditor has claimed a total default amount of ₹2,39,89,076/- (comprising Principal Amount of ₹1,40,34,171/- and Interest Amount of ₹99,54,905/-). The date of default as stated by the Operational Creditor in Part IV is 14.09.2020, arising from unpaid invoices raised between 15.01.2019 and 09.05.2019 in respect of supply of construction materials to the Corporate Debtor.

2. The averments made by the applicant in its petition and presented/argued by the learned counsel for the applicant are summarized hereunder:

(i) It is submitted that the Operational Creditor is a proprietorship concern engaged in the business of trading in cement, construction steel, and other construction-related materials. The Corporate Debtor is a public limited company engaged in the business of executing civil construction projects for the Military Engineering Services.

(ii) It is further submitted that in or around the year 2019, the Corporate Debtor approached the Operational Creditor for the purchase of construction materials and supplies. Pursuant thereto, various purchase orders were placed by the Corporate Debtor upon the Operational Creditor from time to time. Copies of the said purchase orders have been annexed with the petition as *Annexure-B*. The Operational Creditor duly supplied the materials in accordance with the said purchase orders.

(iii) The Operational Creditor regularly raised invoices against the materials supplied to the Corporate Debtor. Copies of such invoices have been placed on record as *Annexure-C*. As per the terms of the invoices, payment was required to be made within 45 days of the due date, and in case of delay, interest at the rate of 24% per annum was agreed to be charged.

(iv) The Corporate Debtor defaulted in making timely payments against the said invoices. Consequently, the Operational Creditor issued several debit notes from time to time reflecting the interest accrued on delayed payments. However, despite the issuance of such debit notes, no payment was received. Copies of the debit notes have been annexed as *Annexure-D*.

(v) It is submitted that due to the failure of the Corporate Debtor to make payment of the invoices and the accrued interest, the total outstanding amount payable by the Corporate Debtor stands at ₹1,40,34,171/- (Rupees One Crore Forty Lakh Thirty-Four Thousand One Hundred and Seventy-One Only) towards principal amount, and ₹99,54,905/- (Rupees Ninety-Nine Lakh Fifty-Four Thousand Nine Hundred and Five Only) towards interest calculated at the rate of 24% per annum up to 30th November, 2022.

(vi) The Corporate Debtor, vide email dated 14th September, 2020, forwarded the balance confirmation and ledger accounts of the Operational Creditor, thereby acknowledging the outstanding liability. The said email and attachments have been annexed with the petition as *Annexure-E*.

(vii) Despite such acknowledgment of liability, the Corporate Debtor has failed to clear the outstanding dues. The Applicant has filed a certificate issued by its Chartered Accountant certifying that the book debts, invoices, and bank statements annexed with the petition are true and correct extracts from the records maintained by the Operational Creditor. The said certificate is annexed as *Annexure-F*.

(viii) Lastly, it is submitted that in view of the continued default, the Operational Creditor issued a demand notice dated 10th January, 2022 under Section 8 of the Insolvency and Bankruptcy Code, 2016, calling upon the Corporate Debtor to make payment of (a) ₹1,40,34,171/- towards principal amount and (b) ₹99,54,905/- towards interest as on 30th November, 2022. However, despite receipt of the said notice, the Corporate Debtor neither replied to the same nor made payment of the outstanding dues. The copy of the demand notice is annexed as *Annexure-G*.

3. In this context, defence placed by the respondent in its reply dated 12.03.2024 and submission made thereon and as presented/argued by the learned counsel for the respondent are summarized as under:

(i) It is submitted that the Operational Creditor has claimed an amount of ₹2,39,89,076/- towards alleged supply of steel to the Corporate Debtor pursuant to certain purchase orders said to have been executed by one Mr.

Devendra Malik, Authorized Signatory. The Corporate Debtor, however, expressly reserves its right to dispute the said claim on merits.

(ii) It is further submitted that the Corporate Debtor had earlier filed I.A. No. 72/CH/2024 under Rule 11 of the NCLT Rules, 2016 seeking dismissal of the present petition on the ground that the same is barred by limitation. However, vide order dated 11.01.2024, this Adjudicating Authority dismissed the said I.A. with the observation that reply to the main petition be filed.

(iii) The present petition is ex facie barred by limitation. The Operational Creditor, at page 4, Part IV of the petition, has mentioned the date of default as 14.09.2020, whereas at page 9, it has been stated to be as per the invoices annexed as *Annexure-C*. A perusal of the last invoice dated 09.05.2019 reveals that the payment was due by 10.06.2019, and hence, the default, if any, occurred on 11.06.2019. Therefore, the petition filed on 21.12.2022 is clearly beyond the prescribed period of three years as contemplated under Section 238A of the Insolvency and Bankruptcy Code, 2016 read with Article 137 of the Limitation Act, 1963.

(iv) Further submitted that it is a settled proposition of law that it is the duty of the Court or Tribunal to examine the issue of limitation *suo motu* even if such a plea is not raised by the opposite party. Reliance in this regard is placed upon the judgments in ***Maqbool Ahmad v. Pratap Narain Singh*** **AIR 1935 PC 85;** ***Manindra Land & Building Corporation v. Bhut Nath Banerjee*** **AIR 1964 SC 1336**; and other binding precedents.

(v) In ***B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates* (2019) 11 SCC 633**, the Hon'ble Supreme Court held that the right to sue accrues when default occurs, and if the default is more than three years prior to the filing of the petition, the same is barred by limitation. Since the default in the present case occurred on 11.06.2019, the petition ought to have been filed by 11.06.2022. The filing on 21.12.2022, without any application under Section 5 of the Limitation Act, renders the petition hopelessly time-barred. Reliance is also placed upon ***Ragho Singh v. Mohan Singh* (2001) 9 SCC 717**, wherein it was held that in the absence of an application seeking condonation of delay, the adjudicating authority has no jurisdiction to entertain such a petition.

(vi) The Operational Creditor has sought to rely upon an email dated 14.09.2020 (Annexure-E) forwarding a ledger statement to claim that limitation stands extended. Such reliance, however, is wholly misconceived and unsustainable in law. Firstly, the said email was merely referred to for the purpose of alleging acknowledgment of debt and not for establishing the date of default. Secondly, the said email was sent by one Mr. Vijay Bansal, who had ceased to be an employee of the Corporate Debtor in 2018 and was never authorized to correspond with the Operational Creditor. It is submitted that all authorized dealings and correspondence were exclusively conducted through Mr. Devendra Malik, duly appointed Authorized Signatory of the Corporate Debtor. Hence, Vijay Bansal cannot, by any stretch of imagination, be considered a "duly authorized agent" under

Section 18(2)(a) of the Limitation Act, 1963. Thirdly, the email in question does not contain any express or implied acknowledgment of debt but merely forwards ledger entries, which by themselves cannot constitute acknowledgment of liability. Reliance in this regard is placed upon the decision of the Hon'ble NCLAT in ***V. Padmakumar v. SASF*** **(Company Appeal (AT) (Insolvency) No. 57 of 2020)**, wherein it was held that balance sheets or books of account cannot be treated as acknowledgment of debt under Section 18 of the Limitation Act.

(vii) The Operational Creditor has neither explained how the petition is within limitation nor filed any application seeking condonation of delay. Reliance is placed upon ***Rajendra Narottam Sheth v. Chandra Prakash Jain*** **(Civil Appeal No. 4222 of 2020)**, wherein the Hon'ble Supreme Court held that the burden lies upon the Operational Creditor to establish that the petition is within limitation, which burden has not been discharged in the present case.

(viii) Since the issue of limitation goes to the root of jurisdiction, the same must be decided at the threshold before proceeding further in the matter. Reliance is placed upon ***Ujjam Bai v. State of U.P. AIR 1962 SC 1621***. It is further submitted that in ***V.M. Salgaocar & Bros. v. Board of Trustees of Port of Mormugao*** **(2005) 4 SCC 613 and** ***Manindra Land & Building Corporation*** **(supra)**, it has been reiterated that Section 3 of the Limitation Act mandates dismissal of any suit or application filed beyond limitation even if limitation is not raised as a defence.

(ix) Lastly, it is submitted that the petition has been filed with distorted facts, misleading averments, and incomplete information, with a mala fide intent to drag the Corporate Debtor into frivolous litigation and unwarranted insolvency proceedings under the Code.

4. In response to the averments made by the Respondent in its reply, the Applicant–Operational Creditor has filed a rejoinder dated 22.04.2024. The submissions made therein and as advanced by the learned counsel for the Applicant are summarized as under:

(i) It is submitted that I.A. No. 72/2024, referred to in the Respondent's reply, has already been dismissed by this Tribunal vide order dated 11.01.2024. It is further submitted that the Corporate Debtor preferred an appeal before the Hon'ble NCLAT in ***Company Appeal (AT) (Insolvency) No. 424 of 2024*** **along with *I.A. No. 1437 of 2024*** challenging the said order. However, the Hon'ble NCLAT was pleased to dismiss the said appeal vide order dated 26.02.2024. It is denied that the Applicant has made any false or misleading averments before this Tribunal. On the contrary, it is the Corporate Debtor who is attempting to mislead this Tribunal by making false and frivolous allegations. The Applicant submits that it relies upon the true and correct interpretation of Section 238A of the Insolvency and Bankruptcy Code, 2016 read with Article 137 of the Limitation Act, 1963, and it is vehemently denied that the present petition is barred by limitation.

(ii) The Corporate Debtor, vide email dated 14.09.2020 (Annexure-E Colly), forwarded a balance confirmation to the Applicant, thereby clearly acknowledging its liability. The ledger accounts shared therein categorically reflect the payments outstanding and payable. It is further submitted that vide another email dated 04.02.2020 addressed to the Applicant, the Corporate Debtor once again acknowledged its liability towards the Applicant. The Applicant relies upon Section 18 of the Limitation Act, 1963, to contend that such acknowledgment duly extends the period of limitation.

(iii) The contention raised by the Corporate Debtor that the said email was sent by one Mr. Vijay Bansal, who had allegedly ceased to be an employee, the Applicant submits that it had no reason to doubt or question the authority of the said individual. In accordance with the *Doctrine of Indoor Management*, the Applicant, being an external party, is entitled to presume that internal formalities and authorizations within the Corporate Debtor are duly complied with. The Corporate Debtor is put to strict proof regarding the alleged cessation of employment of Mr. Vijay Bansal. It is pertinent to note that *Annexure-E Colly* itself records that Mr. Vijay Bansal was associated with the Finance and Taxation Department of the Corporate Debtor. The Applicant submits that the frivolous contentions of the Corporate Debtor cannot defeat a valid claim based on acknowledgment of debt made in the ordinary course of business.

(iv) The Applicant craves leave to rely upon and refer to judicial precedents, including ***Maqbool Ahmad v. Pratap Narain Singh*** **(AIR 1935 PC 85)**; ***Manindra Land & Building Corporation v. Bhut Nath Banerjee*** **(AIR 1964 SC 1336)**; ***B.K. Educational Services (P) Ltd. v. Parag Gupta &***

Associates **((2019) 11 SCC 633)**; ***Ragho Singh v. Mohan Singh*** **((2001) 9 SCC 717)**; ***V. Padmakumar v. SASF*** **(Company Appeal (AT) (Insolvency) No. 57 of 2020)**; ***Rajendra Narottam Sheth v. Chandra Prakash Jain*** **(Civil Appeal No. 4222/2020)**; ***Ujjam Bai v. State of U.P.*** **(AIR 1962 SC 1621)**; ***Manindra Land & Building Corporation v. Bhut Nath Banerjee*** **(AIR 1964 SC 1336)**; and ***V.M. Salgaocar & Bros. v. Board of Trustees of Port of Mormugao*** **(2005) 4 SCC 613**). The Applicant has also annexed a copy of the email dated 04.02.2020 as *Exhibit T*.

(v) The present application is well within limitation in view of the orders passed by the Hon'ble Supreme Court in ***Miscellaneous Application No. 21 of 2022*** **in** ***Miscellaneous Application No. 665 of 2021*** **in** ***Suo Motu Writ Petition (C) No. 3 of 2020*** **(*In Re: Cognizance for Extension of Limitation*)**, whereby the period from 15.03.2020 to 28.02.2022 was directed to be excluded for the purpose of computation of limitation in view of the COVID-19 pandemic.

(vi) The last invoice (No. 14) was raised by the Operational Creditor upon the Corporate Debtor on 09.05.2019, and as per the agreed terms of payment of 30 days, the date of default is reckoned as 08.06.2019. Accordingly, the initial period of limitation would have expired on 08.06.2022. However, the period from 15.03.2020 to 28.02.2022 stands excluded in computation of limitation in view of Paragraph No. 5 of the Hon'ble Supreme Court's order dated 10.01.2022 passed in ***Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ***

Petition (C) No. 3 of 2020 **–** *In Re: Cognizance for Extension of Limitation.* Thus, the total time between 08.06.2019 (date of default) and 15.03.2020 is 9 months 8 days, and the balance limitation available thereafter is 2 years 3 months 22 days, making the extended period of limitation valid up to 04.04.2023. The captioned Company Petition, C.P. (IB) No. 27/Chd/Hry/2023, was filed on 21.12.2022 and registered on 07.02.2023, well within the extended period of limitation.

5. The Respondent–Corporate Debtor has filed an Additional Affidavit dated 29.05.2025, in continuation of its earlier Reply, wherein the following submissions have been made:

(i) It is contended that the averments made by the Operational Creditor in the rejoinder are false, misleading, and baseless, save and except those matters which are a matter of record. It is submitted that the Respondent is a reputed construction company established in the year 1983, having executed more than 400 major EPC projects for organizations such as MES, NHAI, Airport Authority, and other public agencies, and enjoys a strong record of timely execution. It is further stated that several hangar construction projects have been executed by its sister concern, RCC Eco Build Systems Ltd., which is an approved vendor of the Ministry of Defence for PEB structures.

(ii) The Respondent was executing works under MBZ–RCC (JV) for the Mumbai Metro Project, a critical public infrastructure work involving stringent completion timelines. For the purpose of the said project, the Operational

Creditor had approached the Respondent for the supply of steel materials. It was made clear to the Operational Creditor that timely delivery and adherence to quality standards were of the essence of the contract. Purchase Orders were accordingly issued to the Operational Creditor, expressly stipulating terms regarding prompt delivery, rejection of sub-standard material at the supplier's cost, and the mandatory furnishing of test certificates with each consignment. The Respondent contends that the Operational Creditor failed to comply with these essential contractual conditions, neither furnishing proof of delivery nor providing the requisite test certificates.

(iii) The purchase orders cumulatively covered only 358 MT of material valued at approximately ₹1.90 crore. However, the Operational Creditor has erroneously claimed to have supplied 1300 MT valued at around ₹7 crore, alleging that such excess supplies were made pursuant to oral requests, which is specifically denied. The Respondent further points out inconsistencies in the Operational Creditor's own pleadings, as the claimed outstanding amount varies across documents ₹1.40 crore in Part IV of the petition, ₹1.73 crore in the statement of account, and ₹1.37 crore in invoices thereby demonstrating contradictions and inflation in the alleged claim.

(iv) It is further pleaded that, in reality, only 261 MT of material worth ₹1.37 crore was actually delivered in accordance with the invoices, and large quantities of the material supplied were rejected at site due to sub-standard quality. Despite such rejection, the Operational Creditor has wrongfully included those amounts in its claim. A comparative statement showing discrepancies between purchase orders, invoices, and claimed quantities has been annexed with the affidavit. It is alleged that the Operational Creditor has deliberately raised inflated and untenable claims to secure undue benefit.

(v) The defaults and lapses on part of the Operational Creditor in timely delivery and supply of defective material caused grave prejudice to the Respondent, including termination of its contract with MMRDA, resulting in heavy financial and reputational loss. Instead of rectifying its defaults, the Operational Creditor issued inflated invoices and later sent a demand notice dated 10.01.2022, which, according to the Respondent, was never served at the correct address. It is alleged that although all previous communications were made via email, the said demand notice was deliberately not sent through email to prevent an effective response. The Respondent, therefore, asserts that the invocation of proceedings under Section 9 of the Code is mala fide and amounts to abuse of the process of law in the face of clear pre-existing disputes regarding quality, delay, and quantum of supplies.

(vi) It is further submitted that insolvency proceedings cannot be invoked as a substitute for recovery proceedings where genuine disputes exist between the parties. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Transmission Corporation of Andhra Pradesh Ltd. v. Equipment Conductors & Cables Ltd.*** **((2019) 1 SCC 697)**, to emphasize that only undisputed operational debt can form the basis of a Section 9 application. The Respondent accordingly contends that the present petition is not maintainable, being barred by pre-existing disputes.

(vii) The application is barred by limitation. Referring to Section 238A of the IBC read with Article 137 of the Limitation Act, and the judgment of the Hon'ble Supreme Court in ***B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*** **((2019) 11 SCC 633)**, it is argued that the limitation period for filing a petition under Section 9 is three years from the date of default. Since the last invoice was dated 16.01.2019 and payment was due within 45 days, the default date would be 01.04.2019. The present petition, filed in 2023, is thus stated to be time-barred. The Respondent further relies on ***Rajendra Narottam Sheth v. Chandra Prakash Jain*** **(Civil Appeal No. 4222/2020)** to contend that the burden of proving the petition to be within limitation rests upon the Operational Creditor, which burden has not been discharged. It is argued that the suo moto extension of limitation granted by the Hon'ble Supreme Court in COVID-19 matters does not assist the Operational Creditor.

(viii) Lastly submitted that the alleged debt is wholly disputed, inflated, and based on defective and rejected supplies. The Respondent disputes the claim for interest at 24% per annum, stating that no such term was ever agreed upon and, even otherwise, such a rate would be penal in nature and unenforceable under Section 74 of the Indian Contract Act, 1872. The Respondent further denies the authenticity of the balance confirmation documents and the email dated 14.09.2020 relied upon by the Operational

Creditor, on the ground that the same were not issued by any authorised representative. It is reiterated that the said email was allegedly sent by one Mr. Vijay Bansal, who had ceased to be an employee of the Respondent in January 2020 and was never an authorised signatory. It is accordingly prayed that the present petition be dismissed as misconceived, time-barred, and an abuse of the process of law, with exemplary costs.

6. The Applicant–Operational Creditor thereafter filed its Short Written Submissions dated 13.05.2025, reiterating the facts and grounds stated in the Application and the Rejoinder, and further clarifying its position on the issues of limitation and existence of operational debt. The Respondent–Corporate Debtor also filed its Short Written Submissions dated 24.09.2025, traversing the contentions raised by the Applicant and relying upon the pleadings made in its Reply and Additional Affidavit, maintaining that the present Petition is barred by limitation and is not maintainable owing to pre-existing disputes.

7. After hearing the submissions advanced by the learned counsel for both parties and carefully perusing the material placed on record, this Adjudicating Authority observes that the Section 9 Petition has been filed by the Sole Proprietorship firm.

8. Though the term “Sole proprietorship” is not mentioned in the definition of Person as defined under Section 3(23) of IBC, 2016, which at first instance gives an impression that the Sole Proprietorship firm cannot file Section 9 Petition. The

definition of Section person as defined under Section 3(23) of IBC, 2016 reads as under :-

> *"(23) "person" includes - (a) an individual;*
>
> *(b) a Hindu Undivided Family;*
>
> *(c) a company;*
>
> *(d) a trust;*
>
> *(e) a partnership;*
>
> *(f) a limited liability partnership; and*
>
> *(g) any other entity established under a statute, and includes a person resident outside*

9. However, the Hon'ble NCLAT in **Neeta Saha, Member of Suspended Vs Mr. Ram Niwas Gupta & Anr, Company Appeal(AT) (Insolvency) No. 321 of 2020** has observed the following

> *"13. The Adjudicating Authority in paragraph-11 of the Impugned observed as under:*
>
> > *.....*
> >
> > *"11. The Corporate Debtor in its reply filed on 25.11.2019 has raised objection with regard to the maintainability of the present Petition on the ground that the Petition has been filed by Sole Proprietorship Firm, which is not a legal entity and is not covered under the definition of Person, under Section 3(23) of the IBC, 2016. The Petitioner, in response, has filed an Amended Memo of Parties on 22.01.2020 for curing this technical defect. The same is taken on record."*
> >
> > *...*
>
> *14. Even the judgment shows the name of Respondent No. 1 as the Operational Creditor in his personal name. The Adjudicating Authority in*

effect has allowed the defects to be cured. The objection on this count does not survive. We also note that Section 2 of IBC provides that the provisions of the Code apply, inter alia, to "proprietorship firms". Further the definition of "person" in Section 3(23) of IBC an inclusive definition.

10. The aforesaid circumstances indicate that the appropriate course of action for the Applicant would have been to amend the Memo of Parties. Nevertheless, this Adjudicating Authority, in terms of the proviso to Section 9(5)(ii), is empowered to allow rectification of any curable defect within seven days. Since the defect in question is curable and does not affect the merits of the case, and as the matter has already been heard on merits, before directing the Applicant to cure the defect at this stage, we consider it appropriate to first examine whether the Application satisfies all the parameters required for admission.

11. From perusal of the Part IV of the Application the explicit date of Default relied by the Applicant at Page 4 of the Application is 14.09.2020. To rely on this date of default, the Applicant has contended that on 14.09.2020 the Applicant sent an email and forwarded a balance confirmation to the Applicant, thereby clearly acknowledging its liability.

12. Other than this the Applicant in Part IV has also indicated that date of default is stipulated in invoices, however when we see the invoices we see no date when debt is payable. Therefore we have no option but to rely on the date of 14.09.2020 as "Date of Default". Further, **Hon'ble NCLAT in Royal Construction Vs Gannon Dunkerley & Company Limited, Company Appeal (AT) (Insolvency) No. 393 of 2025** dated 01.04.2025 has observed the following:-

> *"14. The contention of the Appellant that the Adjudicating Authority should have modified the date of default after examining the records is an absurd proposition. If the date of default required any change or modification, the onus was on the Appellant to have sought leave of the Adjudicating Authority to file an amendment application. To expect the Adjudicating Authority to have amended the date of default without any amendment application or specific pleading made for such a modification would tantamount to the Adjudicating Authority exceeding its jurisdiction which cannot be countenanced."*

13. Other than the date of default mentioned as 14.09.2020, no Amendment Application has been filed, nor has any leave of this Adjudicating Authority been obtained to modify or rely upon any other specific date of default. Furthermore, as held by the Hon'ble NCLAT, this Adjudicating Authority does not have the power to alter or substitute the date of default on its own.

14. The Respondent, in its Written Submissions, has objected that the date of default i.e., 14.09.2020, falls within the ambit of the Section 10A period, during which no application under Section 9 could have been filed. We find merit in the said objection and are constrained to agree with the Respondent that the alleged date of default falls squarely within the period covered under Section 10A.

15. Further, upon perusal of the Purchase Order placed at Page 31 of the Application, it is observed that Clause 15 thereof stipulates the requirement of a Test Certificate. The relevant portion of Clause 15 reads as under:

> ***"15. Test Certificate:*** *Agency shall furnish Test Certificate for the material supplied at site along with every consignment."*

16. The Applicant has neither produced the requisite Test Certificate nor made any reference to it in the pleadings. In the absence of such compliance, it cannot be conclusively held that the Applicant fulfilled its obligations under the Purchase Order or that a definite default was committed by the Corporate Debtor. Hence, we are not inclined to admit the Application.

17. In view of the fact that the date of default relied upon by the Applicant falls within the ambit of Section 10A, and further that the Applicant has failed to establish compliance with its contractual obligations, **the Application i.e**. **CP (IB) No.27/CHD/HRY/2023 stands dismissed.**

18. However, nothing stated herein shall be construed as an expression of opinion on the merits of the matter before any other forum. This order shall not preclude the Applicant from seeking remedies, if so advised, under any other law applicable to the facts and circumstances of the case. The parties are at liberty to approach the Civil Court/Arbitration or any other competent forum to explore such remedies as may be available in law.

-Sd-	**-Sd-**
SHISHIR AGARWAL	**KHETRABASI BISWAL**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

November 06, 2025

Japneet