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ORDER SHEET OF THE HEARING ON 10th DECEMBER 2025

CP(IB)/24/GB/2025

Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha

In the Matter of	MechFab Engineering Industries Pvt. Ltd. Vs Bholenath Traders Private Limited
Under Section	U/s 9 of IBC, 2016

Appearances (via video conferencing/physically)

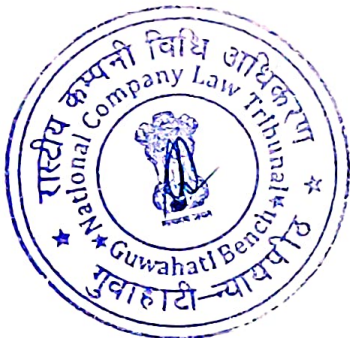
For Petitioner (s) : Mr. B. Sharma, Adv.

For Respondent (s) : Mr. N. Goenka, Adv.
: Ms. S. Agarwal, Adv. (Proxy)

ORDER

Order pronounced in open court *vide* separate sheets.

s/d
Rammurti Kushawaha
Member (Judicial)



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CP (IB) No. 24/GB/2025

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

In the matter of:

M/S MECHIFAB ENGINEERING INDUSTRIES PRIVATE LIMITED, [CIN No. U34300AS1996PTC004795], having Office at Industrial Area, Bamunimaidan, Guwahati – 781021, Assam, India;

...Petitioner/Operational Creditor

-Versus-

M/S BHOLENATH TRADERS PRIVATE LIMITED, [CIN No. U51109AS2007PTC011053], having Office at 76, M.S. Road, Athgaon, Guwahati – 781001, Assam, India;

... Respondent/Corporate Debtor

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Appearances (through video conferencing):

For the Petitioner : Mr. B. Sharma, Ms. P. Agarwala (Adv.s)

For the Respondent : Mr. M. Sahewalla, (Adv.)



Order pronounced on: 10.12.2025

Sld

JUDGMENT

1. The present Application has been filed by the Operational Creditor- M/s MechFab Engineering Industries Private Limited, under section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") with respect to the Corporate Debtor- M/s Bholenath Traders Private Limited. The total operational debt due and in default is Rs. 1,59,73,192/- (Rupees One Crore Fifty-Nine Lakhs Seventy-Three Thousand One Hundred Ninety-Two Only), which arose from the construction of two PEB warehouses and one RCC warehouse executed under work orders dated 22.12.2021 and 31.12.2021.
2. Brief facts as stated by the Petitioner are as follows:
 - 2.1 The Petitioner/Operational Creditor submitted that there exists a valid and subsisting operational debt within the meaning of Section 5(21) of the Code, owed by the Corporate Debtor to the Operational Creditor to the tune of Rs. 1,59,73,192/- (Rupees One Crore Fifty-Nine Lakhs Seventy-Three Thousand One Hundred Ninety-Two only), being the unpaid principal amount towards construction of warehouses executed under work orders dated 22.12.2021 and 31.12.2021. Copy of the work orders are annexed as *Annexure-P3*, at pages- 39-49 of the petition.
 - 2.2 The Petitioner further submitted that the Operational Creditor has duly executed and completed all contractual obligations to the satisfaction of the Corporate Debtor, as evidenced by approved drawings, Completion Certificate dated 26.03.2025, Structural Stability Certificate dated 30.04.2024, and handing over of the warehouses in December 2024. The Corporate Debtor is in possession and is currently in commercial enjoyment of the warehouses by leasing them to third parties. Copies of the said certificates are annexed as *Annexure-P5* and *Annexure-P6* of the petition, respectively.

S/d



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- 2.3 The Petitioner contends that the Corporate Debtor has made part-payments of Rs. 20,00,000/- on 18.04.2025 and 30.05.2025, thereby acknowledging its liability towards the Operational Creditor. The ledger statement shared by the Corporate Debtor, which also reflects deduction of TDS on the invoices raised, constitutes a further admission of debt in terms of law. The Operational Creditor discharged its statutory obligation by paying GST at the rate of 18% on the bills issued to the Corporate Debtor. The said invoices were neither disputed nor objected to by the Corporate Debtor within the stipulated period of 30 days, as required under law. On the contrary, the Corporate Debtor accepted the invoices and availed input tax credit of the GST component, thereby deriving commercial benefit from the same. Such conduct clearly establishes acknowledgment and acceptance of the liability by the Corporate Debtor, leaving no scope for any bona fide dispute.
- 2.4 Despite repeated reminders, including the written communication dated 27.06.2025 and subsequent email dated 10.07.2025 enclosing the MSME Udyam Registration Certificate, the Corporate Debtor has failed and neglected to clear the outstanding dues. The debt fell due in December 2024, and default continues till date.
- 2.5 Subsequently, the Operational Creditor issued a Demand Notice in Form 3 under Section 8 of the Code on 19.08.2025, wherein the **date of default** is mentioned as 31.05.2025, annexed as *Annexure-P14* of the petition. The subsequent reply by the Corporate Debtor dated 26.08.2025 (*Annexure-P15*) raising allegations of construction defects and denying liability is characterized as a sham defense and mala fide.
- 2.6 The contemporaneous WhatsApp communication exchanged between the parties allegedly demonstrates the Corporate Debtor's acknowledgment of the debt and liability prior to raising afterthought allegations, citing financial problems for delayed payment.
- 2.7 The Petitioner emphasizes that the Corporate Debtor remained silent regarding any substantial defect before taking possession in December 2024

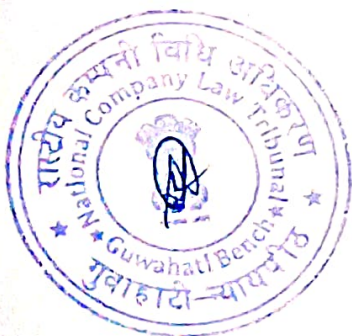


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and for a significant period thereafter, until the Applicant demanded payment.

- 2.8 The Operational Creditor is a registered MSME unit under the MSMED Act, 2006. As per Section 15 of the said Act, payments to MSME units cannot be withheld beyond 45 days, and under Section 16, interest becomes payable on delayed payments. The Corporate Debtor's conduct is a direct violation of these statutory provisions.
3. On the other hand the Respondent/Corporate Debtor *vide* its reply and written submissions contends that:
- 3.1 The Corporate Debtor contends that the present petition is not maintainable as a substantial and pre-existing dispute exists regarding the defective, delayed, and unprofessional performance of the contractual obligations. The Corporate Debtor asserts that the application is speculative, harassing, and an abuse of the Tribunal's process for recovering disputed money.
- 3.2 The Corporate Debtor claims that it made substantial payments aggregating to Rs. 3,12,52,608/- out of the total invoice raised amounting to Rs. 4,72,23,600/-, leaving a balance of Rs. 1,59,70,992/- which was withheld due to defects. Additionally, an amount of approximately Rs. 2,55,00,000/- from Mechfab Infrastructural Projects (a sister concern of the Operational Creditor) was also paid.
- 3.3 The Corporate Debtor repeatedly notified the Applicant of serious defects in construction from as early as May 2024 onwards via WhatsApp and email. Defects included continuous leakage from roofing sheets and AC ducts, seepage and dampness in walls, structural cracks, rusting of steel members, and an incident where the main door collapsed, creating a serious safety risk.
- 3.4 It is submitted that the Corporate Debtor took physical possession of the constructed warehouses in December 2024 and subsequently leased the premises out to third parties like DAMCO India Pvt. Ltd. and APM Terminals India Pvt. Ltd., stipulating a monthly rent of Rs.19,32,000/- for



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the period 15.05.2025 to 14.05.2026. The possession of the warehouses was taken under compulsion due to commercial exigencies, not as acceptance of completion or waiver of liability. In addition to that, the alleged Completion Certificate dated 26.03.2025 and Structural Stability Certificate dated 30.04.2024 are deemed fabricated, self-serving documents, issued unilaterally and without considering the actual ground reality.

- 3.5 The Respondent contends that reliance on part payments and TDS deduction is wholly misconceived, as these are statutory compliances (Income Tax Act, 1961) and do not constitute admission of liability or waive the right to object to the defective work.
- 3.6 The Respondent further argues that the MSMED Act, 2006 provisions are inapplicable, as the underlying contract primarily pertained to constructional activities (erection of warehouses and ancillary civil works) and not merely the supply of goods or simple services.
- 3.7 The Corporate Debtor submitted that the applicant has intentionally suppressed the legal notice dated 28.08.2025 sent by the Respondent, which detailed the defective work and denied the claim, filed only two weeks prior to the Section 9 petition.
- 3.8 In addition to that, Respondent contended that the Operational Creditor has failed to comply with the mandatory requirement under Section 9(3)(b) of the Code, having not filed the requisite affidavit. Accordingly, the present Section 9 application is liable to be dismissed for non-compliance with Section 9(3)(b) of the Code. Reliance is placed on *M/s Wellcome Steel vs. Kavish International Trading Pvt. Ltd., NCLT Mumbai*, which was decided on 12.04.2023.
- 3.9 Also, it is argued that the demand notice is defective, incomplete, and non-compliant with the statutory mandate, as as it is not issued in the prescribed Form 3, is unsupported by requisite documents, and has been issued by Mr. Bikash Sharma, Advocate, without any authorisation to issue a notice under Section 8 on behalf of the Operational Creditor.



Findings and Analysis

4. Heard the learned Counsel for the Operational Creditor/Petitioner as well as learned Counsel for the Corporate Debtor/Respondent and perused the records.
5. The present petition has been filed by the Operational Creditor under Section 9 of the Code, seeking initiation of CIRP against the Corporate Debtor due to default in payment of operational debt. The Adjudicating Authority notes that the existence of an operational debt of Rs. 1,59,73,192/- and the fact of default (debt due since December 2024) are clearly established. The key determination is whether the objections raised by the Corporate Debtor constitute a genuine, pre-existing dispute under Section 8(2)(a) of the Code, as interpreted by the Supreme Court in *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*.
6. The debt is admitted to the extent that invoices totaling Rs. 1,79,73,192/- were raised. The Corporate Debtor acknowledged substantial payments were made (Rs. 3,12,52,608/- against total invoices of Rs. 4,72,23,600/-), leaving a balance amount claimed to be Rs. 1,59,70,992/- (or Rs. 1,59,73,192/- as per the Applicant). The Adjudicating Authority finds that the minimum threshold under the Code has been satisfied.
7. The Demand Notice was served on 19.08.2025. In the facts of the case, the **date of default** is mentioned as **31.05.2025**, annexed as *Annexure-P14* of the petition. The Corporate Debtor relied heavily on internal communications and defects raised via email and WhatsApp (some dating back to May 2024). However, the overall conduct of the Corporate Debtor contradicts the assertion that the entire debt was genuinely disputed.
8. It is clear from the records that the Corporate Debtor not only made part payments of Rs. 20,00,000/- in April and May 2025 (months after the alleged completion and after some defects were supposedly noted in May 2024), but also deducted TDS and claimed GST input credit on the invoices. This statutory compliance and voluntary part payment strongly supports the Petitioner's contention that the liability was acknowledged and subsisting.
9. *Per contra*, the Corporate Debtor took physical possession of the constructed warehouses in December 2024 and subsequently leased the premises out to third



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parties like DAMCO India Pvt. Ltd. and APM Terminals India Pvt. Ltd., stipulating a monthly rent of Rs.19,32,000/- for the period 15.05.2025 to 14.05.2026, stands placed on record as *Annexure R-4 at page 68* of Respondent's reply. If the warehouses were suffering from major structural flaws, continuous leakage, and safety risks (such as the main door collapse claimed), the subsequent commercial exploitation and leasing out of the 80,000 sq. ft. of constructed area undermines the claim that the entire work was substandard or unusable for its intended commercial purpose. The Corporate Debtor enjoyed full use of the premises for months without formal protest or issuing a notice of defect.

10. The defects raised (e.g., ventilation, zebra crossing, minor wall cracks/leakage) appear to relate to post-completion snags or minor items, representing a small percentage of the total work, and do not justify withholding the entire balance amount of Rs. 1.59 Crore. The Corporate Debtor's attempt to expand the dispute to justify retaining the full balance due to insignificant issues is deemed contradictory and mala fide.
11. The Corporate Debtor's detailed denial was formalized in its reply dated 26.08.2025 after receiving the demand notice dated 19.08.2025, and their previous letter dated 17.07.2025 alleging deficiencies came only after the Operational Creditor issued a written demand letter on 27.06.2025. This timeline suggests the full-fledged quality dispute was contrived after the default was highlighted, lending credibility to the Operational Creditor's assertion that it is a "moonshine defense" raised solely to extract payment delays.
12. Based on the cumulative facts, particularly the acceptance of work by making post-handover payments and utilizing GST Input Tax Credit, coupled with the continuous commercial exploitation of the premises by the Corporate Debtor, the Adjudicating Authority concludes that the purported dispute over quality defects raised post-demand is not genuine, real, or pre-existing in the eyes of law, but merely an effort to circumvent payment obligations, consistent with the principles established in *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited (2018) 1 SCC 353*. The default is therefore willful, deliberate, and continuing in nature.



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13. Additionally, the objection regarding non-filing of the affidavit under Section 9(3)(b) of the Code is misconceived. As held by the Hon'ble Supreme Court in *Macquarie Bank Limited vs. Shilpi Cable Tech. Ltd.* (2017), the requirement under Section 9(3)(b) is not mandatory in cases where the Corporate Debtor has filed its reply within ten days of receipt of the demand notice. In the present matter, the demand notice was issued on 19.08.2025, and the Respondent submitted its reply on 26.08.2025, well within the statutory ten-day period. Therefore, the ground raised by the Corporate Debtor is unsustainable.
14. Also, the allegation of an invalid Section 8 notice is devoid of merit. The record clearly demonstrates that the demand notice was issued in the prescribed Form 3 (*Annexure P14, pages 102-107* of the petition), duly accompanied by all requisite supporting documents. Furthermore, Mr. Bikash Sharma, Advocate, was authorised to issue the notice, his Vakalatnama having been filed with the petition (at *page 121*), thereby conferring the necessary authority upon him. Accordingly, the objections raised by the Corporate Debtor stand rejected.
15. In view of the above, the Tribunal holds that the Petitioner, M/s MechFab Engineering Industries Private Limited, has duly established the existence of an operational debt and the Corporate Debtor, M/s Bholenath Traders Private Limited, has defaulted in its payment obligations. The Respondent has failed to establish any genuine pre-existing dispute under Section 9(5)(ii)(d) of the Code. The defenses raised appear to be afterthoughts, inconsistent with prior admissions and undertakings. As the petition is complete, and both debt and default stand established with no credible dispute shown, the Company Petition is maintainable and liable to be **admitted**.

ORDER

16. For the aforesaid reasons, the above Company Petition- CP (IB) No.24/GB/2025 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Bholenath Traders Private Limited, under Section 9 of the Code, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016, with the following orders:

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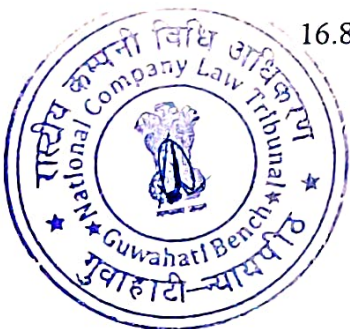


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- 16.1 The Application filed by M/S MechFab Engineering Industries Private Limited under Section 9 of the Code is admitted.
- 16.2 The Corporate Insolvency Resolution Process (CIRP) is hereby initiated against M/S Bholenath Traders Private Limited (Corporate Debtor).
- 16.3 As per Section 14 of the Code, a moratorium is hereby imposed on the Corporate Debtor with immediate effect, prohibiting, inter alia, the institution or continuation of suits or proceedings against the Corporate Debtor, and the transfer or disposal of the Corporate Debtor's assets. The moratorium shall remain in force as prescribed under the Code.
- 16.4 **Appointment of Interim Resolution Professional (IRP):** The Operational Creditor has proposed the name of Mr. Sandeep Khaitan to serve as the Interim Resolution Professional (IRP) in the petition. This Bench hereby appoints **Sandeep Khaitan**, bearing Registration No: IBBI/IPA-001/IP-P-00532/2017-2018/10957, having address at 2nd floor, Sanmati Plaza, G.S. Road, ABC, Guwahati-781005, Assam, email id- khaitansandeep@gmail.com, as the Interim Resolution Professional to carry out the functions as mentioned under the Code.
- 16.5 The Operational Creditor shall deposit an amount of Rs.1,25,000/- (Rupees One Lakh Twenty-Five Thousand Only) towards the initial CIRP costs immediately by way of a Demand Draft drawn in favour of the IRP appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee.
- 16.6 The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- 16.7 The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- 16.8 The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution

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- process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.
- 16.9 The public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
- 16.10 During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
17. Registry shall send a copy of this order to the Registrar of Companies, Guwahati, for updating the Master Data of the Corporate Debtor.
18. Accordingly, with the above observations and directions, CP (IB) No. 24/GB/2025 is **admitted**.
19. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
20. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
21. File be consigned to records.

S/d

Rammurti Kushawaha
Member (Judicial)

Signed this on 10th day of December, 2025

Nabanita S. [LRA]



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