



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1.

C.P. (IB)/390(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **14.11.2025**

NAME OF THE PARTIES: **Tremco CPG (India) Private Limited**

Vs.

Brite Proofings Private Limited

Under Section 9 of the IBC.

ORDER

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

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI

CP (IB) No. 390/MB/2025

*[Under Section 9 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

Tremco CPG (India) Private Limited

[CIN No. U74999TN2010PTC076466]

Registered Office: Ganesh Towers, Door No. B1,
I Floor, I Avenue, Ashok Nagar, Chennai- 600 083.

...Operational Creditor/(OC)

Vs.

Brite Proofings Private Limited

[CIN: U26933MH1997PTC106948]

Registered Office: 107-110, Raikar Chambers,
Shankeshwar Parshwanath Marg, Deonar,
Mumbai- 400 088.

...Corporate Debtor/(CD)

Pronounced On: 14.11.2025.

CORAM:

SHRI NILESH SHARMA, MEMBER (JUDICIAL).

SHRI SAMEER KAKAR, MEMBER (TECHNICAL).

Hearing: Hybrid.

Appearances:

Operational Creditor: Adv. Mr. Shyam Kapadia i/b Adv. Mr. Arjun Makuny
a/w Adv. Mr. Ayush Tainawala.

Corporate Debtor: Adv. Mr. Rohit Gupta i/b Vijeet Trivedi i/b Ganesh & Co.

ORDER**[PER: BENCH]****1. BACKGROUND**

1.1 This Company Petition No. C.P. (IB) 390/MB/2025 (Application) was filed on 03.12.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('AA Rules') by Tremco CPG (India) Private Limited, the Operational Creditor (OC), for initiating Corporate Insolvency Resolution Process (CIRP) of Brite Proofings Private Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs. 18,74,53,201.59/- (Rupees Eighteen Crores Seventy-Four Lakhs Fifty-Three Thousand Two Hundred One and Fifty-Nine Paise only).

1.3 As stated in Part IV of the application, the statement of default indicates the dates of default, in respect of each unpaid invoice, which is attached as Annexure I with the application. The first date of default as per statement of default is 29.12.2022 and last date of default is 18.01.2024.

2. CASE OF THE OC:

2.1 The Operational Creditor is a private limited company and engaged in the business of manufacturing construction related products including but not limited to chemical products, seamless industrial and commercial resin flooring solutions, waterproofing systems, roofing with insulation, glazing solutions, systems for joints and durable sealants, admixtures, passive fire protection

products, repair solutions, fibres as well as other specialist construction products coatings.

2.2 In the year 2010, the Corporate Debtor approached the Operational Creditor for the purpose of procuring flooring and construction product materials ("Goods"). Based on the representations, warranties, and undertakings provided by the Corporate Debtor, the Operational Creditor agreed to supply the said Goods.

2.3 Accordingly, the Operational Creditor supplied the Goods in accordance with the material particulars and specifications provided by the Corporate Debtor. At this juncture, it is pertinent to note that the Goods supplied by the Operational Creditor were duly received and accepted by the Corporate Debtor without any demur or protest whatsoever. Copies of the To-Pay Bills evidencing the supply of Goods to the Corporate Debtor are annexed as Annexure E with the application.

2.4 It is submitted that the Operational Creditor raised invoices at periodic intervals in respect of the Goods supplied to the Corporate Debtor. It is pertinent to note that the said invoices, raised from time to time, were duly accepted by the Corporate Debtor without any demur or protest whatsoever.

2.5 It is further submitted that the Corporate Debtor had initially been prompt in discharging its payment obligations towards the invoices raised by the Operational Creditor. A copy of the Ledger Statement maintained by the Operational Creditor, evidencing the payments previously made by the Corporate Debtor against the said invoices, is annexed as Annexure F with the application.

2.6 It is pertinent to note that the account of the Corporate Debtor was maintained as a running account. Accordingly, the ad hoc payments received from the Corporate Debtor from time to time were appropriated on a first-in, first-out (FIFO) basis against the outstanding invoices. The statement of payments indicating the treatment of ad-hoc payments on a First in-First out basis qua the unpaid invoices is annexed as Annexure G with the application.

2.7 However, the Corporate Debtor defaulted in servicing its payment obligations towards the invoices raised during the period from September 2022 to October 2023. Consequently, the Operational Creditor was constrained to discontinue the supply of materials to the Corporate Debtor with effect from November 2023.

2.8 It is pertinent to note that the Corporate Debtor has admitted the debt due and payable to the Operational Creditor. A printout of the email correspondence exchanged between the Operational Creditor and the Corporate Debtor, evidencing the unconditional and unambiguous acknowledgement of liability by the Corporate Debtor, is annexed as Annexure J with the application. Furthermore, a printout of the Ledger Statement maintained by the Corporate Debtor as part of its Books of Accounts, which also evidences the unconditional and unambiguous acknowledgement of liability, is annexed as Annexure K. Therefore, the liability of the Corporate Debtor was unequivocally admitted by the Corporate Debtor on several occasions and Corporate Debtor also promised to service its repayment obligations.

2.9 Notwithstanding the aforesaid, the Corporate Debtor wilfully failed and neglected to discharge its repayment obligations. Consequently, as no further payments were forthcoming from the Corporate Debtor, the Operational

Creditor was constrained to issue a Demand Notice dated 04.09.2024 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

2.10 However, despite due receipt of the aforesaid Demand Notice, the Corporate Debtor wilfully failed and omitted to honour its repayment obligations in respect of the outstanding amount lawfully due and payable to the Operational Creditor.

2.11 It is pertinent to state that the Corporate Debtor had made an ad-hoc payment of INR 25,00,000/- (Rupees Twenty-Five Lakhs only) on 30th September 2024 towards part satisfaction of the debt due and payable to the Operational Creditor.

2.12 The aforesaid ad-hoc payment of INR 25,00,000/- was made by the Corporate Debtor subsequent to the receipt of the Demand Notice, which clearly evidences the unequivocal and conscious admission of debt by the Corporate Debtor.

2.13 Subsequently, the Corporate Debtor, through its Advocates, caused the issuance of a Reply Notice dated 07th October 2024, raising frivolous, illusory, and untenable contentions, with the apparent intent to evade its legitimate repayment obligations and to create a false defence.

2.14 At this juncture, it is pertinent to mention that the aforesaid Reply Notice dated 07th October 2024 was issued by the Corporate Debtor subsequent to the ad-hoc payment of INR 25,00,000/- (Rupees Twenty-Five Lakhs only) made on 30th September 2024. The said sequence of events clearly demonstrates the mala fides of the Corporate Debtor and establishes that there existed no bona fide pre-existing dispute in respect of the operational debt in default.

2.15 From the foregoing facts and circumstances, it clearly emerges that the Corporate Debtor has failed and neglected to liquidate the debt in default,

notwithstanding the multiple opportunities extended by the Operational Creditor to enable repayment of the outstanding dues.

2.16 It is further imperative to note that the Corporate Debtor had, prior to default, been duly servicing its payment obligations without any protest or reservation. The last part-payment made by the Corporate Debtor was an amount of INR 25,00,000/- (Rupees Twenty-Five Lakhs only) on 30th September 2024. Hence, the debt presently due and payable constitutes an admitted and acknowledged liability on the part of the Corporate Debtor.

2.17 Furthermore, the facts and circumstances on record unequivocally demonstrate that the Corporate Debtor lacks any valid or bona fide defence, and that no genuine pre-existing dispute subsists between the parties.

2.18 The Applicant has attached the following documents with the Application:

- I. Copy of affidavit on behalf of the Operational Creditor in compliance of 9(3)(b) of the Code.
- II. Copy of written communication by the proposed IRP along with AFA.
- III. Copy of Board Resolution.
- IV. Copy of Master Data of the Operational Creditor.
- V. Copy of Master Data of the Corporate Debtor.
- VI. Copy of Pan details of the Operational Creditor.
- VII. Copies of To-Pay Bills.
- VIII. Copy of the Ledger Statement maintained by the Operational Creditor.
- IX. Copy of statement of payments prepared by the Operational Creditor.
- X. Copies of the Unpaid Invoices.
- XI. Copy of statement of default prepared by the Operational Creditor.
- XII. Copy of email correspondences between the parties.

- XIII. Printout of the Ledger Statement maintained by the Corporate Debtor.
- XIV. A copy of the Demand Notice dated 04.09.2024.
- XV. A copy of Reply Notice dated 07.10.2024.
- XVI. Copy of bank account statement of the Operational Creditor.
- XVII. Copy of record of default in Form C.

2.19 Applicant has relied upon the following judgements:

- 1) Bijay Pratap v. Unimax International dated 15.06.2020 in Company Appeal (AT) (Ins) No. 1273 of 2019 order passed by Hon'ble NCLAT, New Delhi.
- 2) Profile Interiors v. Praxis Home Retail dated 04.08.2020 in CP (IB) No. 3018/2019 order passed by Hon'ble NCLT, Mumbai Bench.
- 3) Harpreet Singh v. Eatigo India dated 18.11.2019 in Company Appeal (AT) (Ins) 1150/2019 order passed by Hon'ble NCLAT, New Delhi.
- 4) Propertree Real Estate v. Unibera Developers dated 12.11.2021 in CP (IB) No. 868/2018 order passed by Hon'ble NCLAT, New Delhi.
- 5) Navalmar UK v. Navalmar Shipping dated 29.05.2020 in CP (IB) No. 324/2019 order passed by Hon'ble NCLT, Bangalore.
- 6) Nandamuri Meenalatha v. Quality Steel dated 04.07.2023 in Company Appeal (AT) (Ins) 11/2023 order passed Hon'ble NCLAT Chennai.
- 7) Philips India Ltd. v. Goodwill Hospital dated 31.05.2017 in Company Appeal (AT) (Ins) No. 14/2017 and 15/2017 order passed by Hon'ble NCLAT, New Delhi.
- 8) Raj Krishna Construction v. Newara Solutions dated 08.01.2025 in Company Appeal (AT) (Ins) No. 83/2024 order passed by Hon'ble NCLAT, New Delhi.
- 9) Mobilox Innovations v. Kirusa Software

10) Tek Travels v. Altius Travels dated 19.04.2021 in Company Appeal (AT) (Ins) No. 172/2020 order passed by Hon'ble NCLAT, New Delhi.

11) Ganesh Ramkisan v. Panchtatwa Milk Industries dated 19.03.2025 in CP (IB) No. 6/2025 order passed by Hon'ble NCLT, Mumbai Bench.

3. REPLY BY THE CORPORATE DEBTOR:

3.1 Reply Affidavit dated 02.05.2025 was filed and affirmed by Mrs. Jyothsana Ramnath, the Director of the Corporate Debtor. The contents of the aforesaid Affidavit are summarised hereinbelow:

3.2 The instant Petition has been signed and filed by Mr. Roshan Jeyakumar, the Constituted Attorney of the Operational Creditor, authorised under a Specific Power of Attorney dated 24th January 2024 ("PoA") (annexed at page no. 32 of the application). The said PoA demonstrates that the authority vested in the Constituted Attorney is restricted to the territorial jurisdiction of the State of Tamil Nadu.

3.3 It is respectfully submitted that, for a body corporate to be duly authorised to maintain a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), there must exist a clear and specific authority empowering it to initiate and pursue a Corporate Insolvency Resolution Process ("CIRP"). It is trite law that a petition filed under Section 7 or Section 9 of the IBC is not in the nature of a recovery proceeding. The Specific Power of Attorney reveals that there is no authority conferred upon the Constituted Attorney to institute any legal proceedings before the National Company Law Tribunal or to initiate a CIRP against any Corporate Debtor situated outside the territorial jurisdiction

of the State of Tamil Nadu. Therefore, the present Petition is liable to be dismissed on this ground alone.

3.4 The Corporate Debtor respectfully submits that the purported Demand Notice issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("IBC") (annexed at page no. 408, Volume IV) is ex facie defective, having been signed by the same Constituted Attorney, Mr. Roshan Jeyakumar, whose authority under the Specific Power of Attorney is limited to the State of Tamil Nadu. Accordingly, the said Demand Notice is invalid and bad in law. It is submitted that a valid Demand Notice under Section 8 is the very foundation for invoking Section 9 of the IBC. In the absence of such a valid notice, the present Petition is defective and liable to be dismissed at the threshold.

3.5 The Corporate Debtor respectfully submits that, in terms of Section 8 of the Insolvency and Bankruptcy Code, 2016 ("IBC") read with the applicable rules and regulations, a demand notice issued thereunder must mandatorily annex all invoices forming the basis of the claim. In the absence of such annexures, the notice is rendered defective and non-compliant with the mandatory requirements of Section 8 of the IBC.

3.6 It is submitted that the Applicant has failed to attach the Record of Default (Form D) issued by the NeSL and therefore did not comply with the Regulation 20 (1A) of the IBBI (Information Utilities) Regulations, 2017 inserted vide Notification No. IBBI/2022 23/GN/REG085 dated 14.06.2022. The Regulation 20(1A) of the IBBI (Information Utilities) Regulations, 2017 reads as follows:

"20. Acceptance and receipt of information.

[(1A) Before filing an application to initiate the corporate insolvency resolution process under section 7 or 9, as the case may be, the creditor shall file the

information of default, with the information utility and the information utility shall process the information for the purpose of issuing record of default in accordance with regulation 21.]”

3.7 In this regard, it is pertinent to note that this Tribunal, vide Office Order dated 03.04.2023, has directed all stakeholders to comply with the aforesaid regulations and to mandatorily produce the record of default from the Information Utility (NeSL Certificate) while filing an application under Sections 7 or 9 of the IBC.


3.8 Therefore, filing of Form D issued by the NeSL/ Information Utility has been mandatory for filing an application under Sections 7 and 9 of the Code. The Applicant has failed to furnish necessary NeSL certificate and in this regard the application deserves to be rejected.

3.9 The Application fails to disclose any specific and clear date of default. Instead, the Petitioner has made vague and misleading assertions regarding the date of default and has annexed a table (as Exhibit-I at page no. 390, Volume III) reflecting 196 different dates of default. There is no basis whatsoever for the alleged dates, which are also inconsistent with the Petitioner's own Demand Notice. The Corporate Debtor submits that such discrepancies have been deliberately created to mislead this Tribunal.

3.10 It is further submitted that there is pre-existing dispute between the parties.


These disputes can be categorised in the following manner:

- I. There exist bona fide disputes with respect to the quality of goods supplied by the Operational Creditor. Such disputes were consistently raised from time to time, as evidenced by the email dated 11th November 2022 addressed by the Corporate Debtor to the Operational



Creditor, wherein it was categorically stated that due to manufacturing defects in the materials supplied, the Corporate Debtor suffered business losses. A copy of the said email dated 11th November 2022 is annexed as Annexure “A.”

- II. As a matter of fact, owing to the aforesaid quality issues, the Corporate Debtor suffered non-payment from its own customers. This fact was duly brought to the notice of the Operational Creditor through the issuance of a Debit Note amounting to INR 4.9 Crores. The Corporate Debtor, vide multiple emails dated 29th March 2023, 17th January 2024, and 12th February 2024, clearly enumerated the project-wise material quality deficiencies forming the basis of the said Debit Note. The Operational Creditor has, in fact, admitted the said Debit Note and consequently adjusted its own purported outstanding amount—contrary to the claim raised in the present Petition—and communicated the same to the Corporate Debtor vide its email dated 9th August 2024. Copies of the aforesaid emails are annexed as Annexure “B” (Colly) to the reply.
- III. The Operational Creditor’s account reflects ‘phantom’ invoices aggregating to approximately INR 3.8 Crores, which appear as their opening balance without any justification. The Corporate Debtor has consistently disputed these entries. The Debit Note not only evidences amounts payable by the Operational Creditor to the Corporate Debtor but also substantiates that such issuance arose from genuine quality issues in the materials supplied. Accordingly, in view of the existence of a bona fide dispute regarding the quality of goods, the present Application is not maintainable.

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- IV. There exists a bona fide dispute regarding the final outstanding amount due to pending reconciliation, as evidenced by the Corporate Debtor's emails dated 22nd June 2023, 27th December 2023, 12th February 2024, 1st August 2024, 13th August 2024, and other correspondences. In particular, the Debit Note for INR 4.9 Crores remains to be reconciled and adjusted. The Section 8 Demand Notice and the present Petition have been filed without accounting for the said Debit Note. Consequently, even the purported outstanding amount is disputed. Copies of the emails are annexed as Annexure "C" (Colly) to the reply.
- V. The dispute regarding the pending final reconciliation and the quantum of the purported outstanding amount constitutes a valid and subsisting dispute. Accordingly, the present Application is liable to be dismissed on this ground as well.
- VI. There also exists a dispute arising from frivolous litigation threats initiated by the Operational Creditor against the Corporate Debtor. By Notice dated 29th May 2024, the Operational Creditor alleged that the Corporate Debtor was engaging in business with 'Vebro Polymers India Pvt. Ltd.'—a competitor against whom the Operational Creditor had obtained an ad-interim injunction regarding trade secrets and customer solicitation—and sought to restrict the Corporate Debtor's operations. The Corporate Debtor replied vide its letter dated 31st July 2024. Copies of the Notice and reply are annexed as Annexure D and Annexure E, respectively.
- VII. The constant threat of litigation and the Notices issued thereunder constitute a bona fide dispute between the parties. It is a settled legal

position that a dispute need not be confined to the specific transaction in question; it may arise from other circumstances preventing payment or pending reconciliation. The Corporate Debtor has requested the Operational Creditor to withdraw such litigations and provide an undertaking against future claims. On this ground as well, the withholding of payments is justified, and the present matter cannot form the subject of an application under Section 9 of the IBC.

VIII. Ongoing Settlement Between the Parties: The Parties were engaged in discussions to arrive at an amicable resolution of the disputes, including reconciliation of accounts, credit for losses caused to the Corporate Debtor (as reflected in the Debit Note), and assurances against initiating litigation as per the Notices issued in May and July 2024. In this context, all amounts remained subject to reconciliation, and the Parties sought to enter into formal Settlement Terms. The Operational Creditor shared a draft Settlement Agreement with the Corporate Debtor vide its email dated 1st August 2024, acknowledging that the settlement was subject to account reconciliation. Copies of the said email and draft Settlement Agreement are annexed as Annexure F (Colly).

IX. It was further agreed that, pending reconciliation and resolution of disputes, the Corporate Debtor would demonstrate its bona fide by making ad-hoc payments of INR 25 Lakhs per month. Such payments have been made for several months without prejudice and cannot be construed as payment towards crystallized debt. Despite this understanding, the Operational Creditor has filed the present Petition, thereby breaching the ongoing settlement discussions. It was also

communicated to the Corporate Debtor that the management of the Indian entity required approvals from its holding company in Ohio, USA, which caused delays in resolution.

- X. In these circumstances pending reconciliation, ongoing disputes, and the breach of settlement understanding the present Application is not maintainable under Section 9 of the IBC. Further, the issuance of the Demand Notice itself is defective, and therefore the Petition is liable to be dismissed at the threshold.

3.11 Corporate Debtor has relied upon the following judgements:

- I. Mobilox Innovations (P) Ltd. V. Kirusa Software dated 21.09.2017 (P) Ltd., (2018) 1 SCC 353
- II. Palogix Infrastructure (P) Ltd. V. ICICI Bank Ltd., dated 20.09.2017 in SCC Online NCLAT 266
- III. Rajratan Babulal Agarwal v. Solartex India (P) Ltd., dated 13.10.2022 (2023) 1 SCC 115
- IV. Mr. Sanjay Kumar v. Gannon Dunkerley & Co Ltd & Anr., dated 30.05.2024 in C.A. (AT) (Ins) No. 1212 of 2023
- V. S.S. Engineers v. Hindustan Petroleum Corporation Ltd and Others dated 15.07.2022 in Civil Appeal No. 4583 of 2022 passed by Hon'ble Supreme Court.
- VI. East India Udyog Ltd. V. SPML Infra Ltd., dated 23.03.2023 in Company Appeal (AT) (Insolvency) No. 256 of 2023 order passed by Hon'ble NCLAT

- VII. Power2SME (P) Ltd. V. PSR Aqua & Engineers dated 22.03.2022 in Company Appeal (AT) (Insolvency) No. 827 of 2021 order passed by Hon'ble NCLAT, New Delhi.
- VIII. Shree Durga Iron & Steel Co. Ltd. V. Rawalwasia Textile Industries (P) Ltd., dated 26.05.2023 in Company Appeal (AT) (Insolvency) No. 1343 of 2022 order passed by Hon'ble NCLAT, New Delhi.
- IX. Om Prakash v. Wipro Enterprises (P) Ltd and Anothers dated 04.05.2023 Company Appeal (AT) (Insolvency) No. 31 of 2023 & I.A. No. 207 of 2023 order passed by Hon'ble NCLAT, New Delhi.
- X. Bhawani Prasad Mishra v. Armaco Infralinks Pvt. Ltd. & Anr. Dated 25.04.2025 CA (AT) (Insolvency) No. 557 of 2025 order passed by Hon'ble NCLAT, New Delhi.

4. Rejoinder by the Applicant

4.1 Vide order dated 22.04.2025, 7 days' time was given to the applicant to file rejoinder. Order dated 27.05.2025 records that a further period of 10 days were given to applicant to file rejoinder subject to payment of cost of Rs. 50,000/- to Prime Minister National Relief Fund. The Applicant never paid the cost and chose not to file any rejoinder. Taking the statement of the Counsel for the Applicant on record, the right of the Applicant to file rejoinder was forfeited vide order dated 18.06.2025.

5. ANALYSIS AND FINDINGS

5.1 We have perused all the documents; pleadings of the Applicant and Respondent and Written Submissions of the CD as were placed before us and have heard both the sides.

5.2 The Operational Creditor has filed the present application asserting that an operational debt amounting to Rs. 18,74,53,201.59/- is due and payable by the Corporate Debtor.

5.3 The first date of default is recorded as 29.12.2022 and last date of default as 18.01.2024 in the statement of default.

5.4 The undisputed facts are summarized below :-

5.4.1 Both the sides had business dealing with each other since long.

5.4.2 Applicant has supplied goods to the Respondent.

5.4.3 Respondent has made part payments to the Applicant for the goods supplied.

5.5 The disputed questions in the present applications are as under :-

5.5.1 The demand notice is invalid as it was signed by a constituted attorney allegedly lacking territorial authority;

5.5.2 There are pre-existing dispute concerning quality of material supplied;

5.5.3 Reconciliation of accounts is pending;

5.5.4 The Operational Creditor has failed to provide record of Default (Form D) with the Information Utility (NeSL);

5.5.5 Absence of invoices in the Demand Notice;

5.5.6 Settlement discussions are ongoing.

Authority

5.6 It is the contention of the CD that the demand notice dated 04.09.2024 and the institution of the present petition lacks due authority.

5.7 As to the Authority, respondent contends that the Specific Power of Attorney dated 24.01.2024 authorising Mr. Roshan Jeyakumar limits his authority to the

Territorial jurisdiction of Tamil Nadu and therefore he could not have issued the Demand Notice or filed the present application before this Bench.

5.8 The Power of Attorney is appended at page no. 32 of the application. Clause no. 1 and 2 limit the territorial jurisdiction of the power of attorney to the State of Tamil Nadu. Applicant through its written submissions has drawn our attention to page no. 36 of the application which is a Board Resolution dated 23.10.2024 Resolution No. 2 passed by the Board of Directors authorizes Mr. Jeyakumar to make representations for and on behalf of the Operational Creditor before any court or Tribunal in India. It is seen that the said resolution was proposed as a circular resolution and the applicant counsel at the hearing confirmed that indeed the said resolution was passed with requisite majority.

Having considered the power of attorney and Board Resolution dated 23.10.2024 which is forming part of the present application, we are of the view that the objections as to the authority as raised by the Respondent cannot be sustained. Hence in our view objections on these counts are devoid of merit.

Pre-Existing Dispute

5.9 The Corporate Debtor has sought to rely on certain email correspondences and a debit note of ₹4.9 Crores, alleging that the goods supplied by the Operational Creditor were defective and resulted in non-payment from its customers.

5.10 The Applicant has replied to the contention of the CD in its written submission stating that the CD has claimed that certain disputes existed with respect to the quality of the Goods supplied by the Applicant. In support of this claim, the CD has relied on certain emails, none of which provide any materials in support of the alleged quality issues.

5.11 These email raises certain general grievances that are entirely unrelated to the debts and defaults that form the subject matter of the present application. This is evident from the title of the email itself- “time to revisit the business policies and work ethics.”

5.12 The issues addressed in these emails do not relate to any specific invoices or supplies of Goods by the Applicant. Instead, the CD only makes a passing reference to alleged manufacturing and quality defects in the goods, without any specifies as to what goods were faulty or what the nature of the fault was.

5.13 In any event, much after this email, the CD has admitted its outstanding dues, far in excess of INR 1 Cr.

5.14 On a careful examination, we find that the emails sent by the CD in respect of pre-existing dispute claiming that the quality of the goods are in bad condition for such claim the CD has not placed any lab report, evidence of defective quality of goods and alleged quality issues were raised only after the invoices were accepted and substantial part-payments were made without demur. The debit note relied upon is unilaterally raised by the Corporate Debtor and there is no material on record to show that the Operational Creditor accepted the same as valid adjustment against its claim. Mere issuance of debit notes or raising of reconciliation issues at a later stage does not establish a “pre-existing dispute” within the meaning of Section 8(2)(a) of the Code.

5.15 We rely on a judgement of Hon’ble Supreme Court in the matter of Mobilox Innovations Private Limited vs. Kirusa Software Private Limited in Civil Appeal No. 9405 of 2017, wherein it is held that:

“56. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible

contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defence is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterising the defence as vague got up and motivated to evade liability.”

5.16 The materials placed by the Corporate Debtor do not demonstrate that any such plausible dispute existed prior to the issuance of the Section 8 Notice. On the contrary, the Corporate Debtor’s part-payment of ₹25,00,000/- after receipt of the Demand Notice constitutes a clear acknowledgment of debt. Accordingly, the contention regarding pre-existing dispute appears moonshine.

Reconciliation of Accounts

5.17 The CD has contended that disputes exist with respect to the final outstanding amount on account of a pending reconciliation between the parties and purported “phantom invoices” and unexplained opening balance of Rs. 3.8 Cr. on Applicant’s ledgers is baseless.

5.18 The Applicant in its written submission states that its entire ledger with respect to transaction with the CD from February 2010 to September 2024 is annexed as Ex F with the Application. The ledger is split across various cities and time periods. An index to the ledger statements, showing the closing and opening balances of each statement, is annexed as Annexure 2 with the Application. A perusal of the same shows that the opening balance of Rs. 3.8 Cr. for the Mumbai ledger starting on 01.04.2015 is fully supported by the prior ledgers for Mumbai. Furthermore, the entire outstanding amount of Rs. 18.75 Cr. as

claimed in the present Application is fully supported by the entire ledger of the OC dating back to the initiation of business between the parties.

5.19 The CD has also relied on its emails dated 22.06.2023, 27.06.2023, 13.08.2024 to contend that certain reconciliations were pending between the parties. This claim is not borne out from the documents relied on and said emails do not contain any references to disputed entries.

5.20 As per CD's own admission in its email dated 13.08.2024, even after adjusting for the alleged claims for the CD, the outstanding amount is Rs. 15.16 Cr. which is more than the statutory threshold under Section 4 of the IBC. Further, in various subsequent emails, CD has admitted and confirmed an outstanding of Rs. 15.95 Cr. towards the Applicant until 06.09.2024 and the CD has also admitted an undisputed debt that is more than 1 Cr. Ascertaining the exact quantum of outstanding debt falls within the domain of the Resolution Professional during collation and verification of claims.

5.21 In view of the above, it is evident that the Corporate Debtor has admitted the existence of an outstanding operational debt exceeding the minimum threshold under Section 4 of the IBC. Therefore, the contention of the CD regarding alleged pending reconciliation of accounts is devoid of merit.

Absence of invoices in the demand notice

5.22 The Corporate Debtor raised a contention that in absence of invoices forming the basis of claim in the demand notice is defective and non-complaint with the mandatory requirements of Section 8 of the IBC.

5.23 The Applicant has attached invoices with the demand notice which has been annexed in the application Pg No.413. The invoices has been sent to the

Corporate Debtor along with the demand notice, therefore, the contention regarding the absence of invoices is factually incorrect.

Record of default with Information Utility

5.24 The Corporate Debtor has contended that the Operational Creditor has not filed the Record of Default (Form D) issued by NeSL, which is mandatory under Regulation 20(1A) of the IBBI (Information Utilities) Regulations, 2017.

5.25 In Hon'ble Supreme Court's judgement in **Vijay Kumar Singhania vs. Bank of Baroda (2024) ibclaw.in 197 SC** it was held that *"the filing a record of default with an information utility (IU) like NeSL is not mandatory for initiating proceedings under Section 9 of the IBC. This means that creditors can rely on other forms of evidence to prove default when filing such applications."*


5.26 However, we have noted that the Applicant has filed Form D issued by NESL along with the written submissions and copy of the same was submitted to the opposite side. A perusal of the same reflects that the authentication status of the default is "deemed to be authenticated". This objection therefore holds no water.

Dispute arising from frivolous litigation

5.27 The Corporate Debtor has contended that there is also a dispute arising from frivolous litigation threats initiated by the OC against the CD vide notice dated 29.05.2024.

5.28 The dispute raised by the CD regarding the dispute vide the said notice. We are of the view that while examining an application under Section 9 of the Code, the Adjudicating Authority will have to determine:

- i. Whether there is an 'operational debt' as defined exceeding the threshold limit under Section 4 of the Code;

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- ii. Whether the documentary evidence furnished with the Application shows that the aforesaid debt is due and payable and has not yet been paid; and
 - iii. Whether there is existence of a dispute between the parties or the record of pendency of a suit or arbitration proceeding filed before the receipt of the Demand Notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is found to be lacking, the application would have to be rejected [Mobilox Innovations Private Limited (supra)]. It is also a settled proposition of law that an application under Section 9 of the Code has to be mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) are satisfied.

5.29 The said notice is with respect to the supply of products to the other Company which is not related with the unpaid operational debt. Therefore, the contention raised by the CD is nothing but a moonshine defence.

Settlement

5.30 The Corporate Debtor has contended that the parties were in discussions for a possible settlement and that draft settlement terms were exchanged. It is also claimed that monthly ad-hoc payments of ₹25 Lakhs were made under this understanding.

5.31 It is seen that there were settlement talks between the parties and it indicates admission of liability and Furthermore, payments made “without prejudice” cannot erase the underlying default. The record shows continuous default since December 2022 and no concluded settlement extinguishing the liability has been placed before this Tribunal. Therefore, this defence is untenable.

5.32 The Operational Creditor has produced comprehensive documentary evidence including invoices, statement of account, and ledger extracts showing outstanding dues of ₹18,74,53,201.59/-. The Corporate Debtor has failed to produce any substantive material disproving the same or showing existence of a genuine dispute prior to the issuance of the Section 8 Notice.

5.33 We find that the reliance placed by the CD on various judgements are irrelevant as follows:

5.34 In the judgement of Palogix Infrastructure (P) Ltd. V. ICICI Bank Ltd., dated 20.09.2017 in SCC Online NCLAT 266 it was held:

“31. For determination of question relating to Power of Attorney, as raised in this appeal, it is desirable to refer Section 2 of Power of Attorney Act, 1882 which read as follows:

“2. Execution under Power-of-Attorney: The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof. This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.”

.....

45. In view of reasons as recorded above, while we hold that a ‘Power of Attorney Holder’ is not empowered to file application under section 7 of the ‘I&B Code’, we further hold that an authorised person has power to do so.

46. For the reasons aforesaid, we find no ground to interfere with the impugned order(s). All the appeals are dismissed, the order of admission of application under section 7 is affirmed. However, in the facts and circumstances of the case, there shall be no order as to cost.”

5.35 In the present case, a Board Resolution dated 23.10.2024 passed by the Board of Directors authorizes Mr. Jeyakumar to make representations for and on behalf of the Operational Creditor before any court or Tribunal in India. It is seen that the said resolution was proposed as a circular resolution and the applicant counsel at the hearing confirmed that indeed the said resolution was passed with requisite majority.

5.36 Having considered the power of attorney and Board Resolution dated 23.10.2024 which give right to Mr. JeyaKumar to act as an authorised person on behalf of the OC to file an application. The above-mentioned judgement is, therefore, irrelevant.

5.37 In the judgement of Hon'ble Supreme Court in the matter of Rajratan Babulal Agarwal v. Solartex India (P) Ltd., dated 13.10.2022 (2023) 1 SCC 115 wherein it is held that:

“78. As far as the contention that no debit note was raised in respect of supplied of goods and that the accounts may not bear out the case of the appellant about the alleged loss, as a result of the use of the goods in question, we feel that while they may indeed have lent assurance to the case of the corporate debtor, their absence may not clinchingly rule out the existence of a “pre-existing dispute” under the IBC.

5.38 In this present case, the CD in respect of pre-existing dispute claiming that the quality of the goods are in bad condition for such claim the CD has not placed

any lab report, evidence of defective quality of goods and alleged quality issues were raised only after the invoices were accepted and substantial part-payments were made without demur. The debit note relied upon is unilaterally raised by the Corporate Debtor and there is no material on record to show that the Operational Creditor accepted the same as valid adjustment against its claim. Mere issuance of debit notes or raising of reconciliation issues at a later stage does not establish a "pre-existing dispute" within the meaning of Section 8(2)(a) of the Code. Therefore, the judgement placed by the CD is irrelevant.

5.39 We also hold that other judgements cited by the Corporate Debtor are of no help to the case of the Corporate Debtor as it has failed to establish a pre-existing dispute and that the Applicant has been able to establish the existence of debt and default, meeting the threshold for admission of a Corporate Debtor into CIRP.

5.40 Based on the documents filed, pleadings, and arguments advanced, this Adjudicating Authority is satisfied that:

- I. The Operational Creditor has established the existence of an operational debt exceeding the threshold of Rs. 1 Crore;
- II. There is a default in payment of such debt;
- III. A valid demand notice under Section 8 was issued;
- IV. No pre-existing dispute is found that would bar admission under Section 9.
- V. Application is complete as the required information has been attached along with the Application.

VI. There is no disciplinary proceeding pending against the IRP proposed by the Applicant.


5.41 Accordingly, the Company Petition No. C.P. (IB) 390/MB/2025 deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.


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


5.43 Further, Mr. Rishabh Sethi having registration no. **IBBI/IPA-001/IP-P-02842/2023-2024/14377** is proposed as Interim Resolution Professional of the Corporate Debtor by the Applicant in its Application to conduct Insolvency Resolution Process as mentioned under Insolvency and Bankruptcy Code, 2016. The consent of the proposed IRP in Form 2 has been attached along with the Application. The email address of the Interim Resolution Professional is ip.rishabhsethi@gmail.com and his AFA is valid till 30.06.2026.

ORDER

- i. In view of the above, the Respondent/Corporate Debtor- **Brite Proofings Private Limited** [CIN: U26933MH1997PTC106948], is admitted into the Corporate Insolvency Resolution Process under Section 9(5) of the Code.
- ii. As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:

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- 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;
 - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
 - e. The provisions of sub-section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to the Corporate Debtor.
- iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

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- iv. It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- v. We hereby appoint **Mr. Rishabh Sethi**, a registered Insolvency Professional having (Email: ip.rishabhsethi@gmail.com registration no. **IBBI/IPA-001/IP-P-02842/2023-2024/14377**, as the IRP of the Corporate Debtor.
- vi. The IRP shall perform all his functions as contemplated, inter-alia, under Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoters or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- vii. This Adjudicating Authority directs the IRP to make a public announcement for the initiation of CIRP and call for the submission of claims under Section 15, as required by section 13(1)(b) of the IBC, 2016.
- viii. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever.

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- ix. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- x. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern, to the extent possible, as a part of obligation imposed by Section 20 of the IBC, 2016.
- xi. The Operational Creditor is directed to pay an advance of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) to the IRP within a period of 7 days from the date of this order **to meet the cost of CIRP** arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- xii. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities on the same day and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specifically mentioning regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.
- xiii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

Xiv. Accordingly, CP (IB)/390(MB)2025 stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

Sd/-

**NILESH SHARMA
MEMBER (JUDICIAL)**

//C.Sarkar, LRA//