IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

CP(IBC) /17/KOB/2026

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)

Date of filing: 13.07.2026.
Order delivered on:30.07.2026

In the matter of:

M/S. Soura Natural Energy Solutions India Pvt. Ltd.

MEMO OF PARTIES:

Raychem RPG Pvt. Ltd.
RPG House, 463,
Dr. A.B Road, Worli,
Mumbai, Maharashtra - 400 030.
... Petitioner/Operational Creditor

Versus

***Soura Natural Energy Solutions India Pvt. Ltd*.**
X/126 G, 1st Floor, SNDP Building, NH Junction,
Chirangara, Koratty Chalakudy, Thrissur,
Kerala - 680308 P.O.
... Respondent/Corporate Debtor

Coram:

HON'BLE MEMBER (JUDICIAL)	**:**	**SHRI. VINAY GOEL**
HON'BLE MEMBER (TECHNICAL)	**:**	**SHRI RAVICHANDRAN RAMASAMY**

Appearances:

For the Applicant/RP : Mr. Yohaan Limitwalla, Advocate

For the Respondent : Mr. Ebin Mathew, Advocate

ORDER

1. This Petition has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'Code') by M/s. Raychem RPG Pvt. Ltd. (hereinafter referred to as the 'Operational Creditor'/'Petitioner') for initiation of Corporate Insolvency Resolution Process against M/s. Soura Natural Energy Solutions India Pvt. Ltd. (hereinafter referred as the 'Corporate Debtor'/'Respondent') for alleged default in repayment of Operational Debt of Rs. 4,22,57,922/- (Rupees Four Crores Twenty Two Lakhs Fifty Seven Thousand Nine Hundred and Twenty Two).

2. **The Brief Facts of the case are as follows:**

a) The Operational Creditor, Raychem RPG Pvt. Ltd., is engaged in the business of manufacture, sale, supply and distribution of products and services for the power, oil and gas industries. The Corporate Debtor, Soura Natural Energy Solutions Pvt. Ltd., had approached the Operational Creditor for the supply of various goods, including solar panels and solar inverters, on a credit basis during the period from April, 2018 to May, 2019. Pursuant to such supplies, invoices were raised by the Operational Creditor. It is the case of the Operational Creditor that the Corporate Debtor failed to make payment of the amounts due under the invoices, resulting in an operational debt.

b) Aggrieved by the default, the Operational Creditor had earlier filed an application under Section 9 of the Code, being CP(IB)/23/KOB/2021, seeking initiation of CIRP against the Corporate Debtor for a sum of Rs.4,42,72,038.61/- (inclusive of interest). The said application was admitted by this Adjudicating Authority vide order dated 07.01.2022 and an Interim Resolution Professional was appointed.

c) Subsequently, the parties entered into a Settlement Deed dated 02.02.2022, whereby the Corporate Debtor acknowledged its liability and agreed to repay the outstanding amount of Rs. 4,43,12,565/- in monthly instalments of Rs. 10,00,000/- payable on or before the 10th day of every month commencing from 01.03.2022 until full repayment. In view of the said settlement, this Adjudicating Authority, vide order dated 11.03.2022, permitted withdrawal of CP(IB)/23/KOB/2021 and directed both parties to strictly adhere to the terms of the Settlement Deed.

d) According to the Operational Creditor, the Corporate Debtor failed to comply with the terms of the Settlement Deed and the order dated 11.03.2022. It is stated that the Corporate Debtor made payments aggregating only Rs.1,18,00,000/-, that too in an irregular manner, leaving a substantial balance outstanding. Consequently, the Operational Creditor issued a notice dated 07.09.2023 demanding payment of the balance amount of Rs. 3,24,72,038/- together with interest. The Corporate Debtor, by reply dated 03.10.2023, sought further time of four to five months for repayment, citing various reasons for its inability to comply with the settlement terms.

e) As the outstanding dues remained unpaid, the Operational Creditor issued a demand notice dated 16.08.2024 in Form 3 under Section 8 of the Code calling upon the Corporate Debtor to pay the unpaid operational debt within the statutory period. The said notice was duly served upon the Corporate Debtor. However, no reply disputing the debt or raising any pre-existing dispute was received from the Corporate Debtor. The Operational Creditor has also filed the affidavit under Section 9(3)(b) of the Code affirming that no notice of dispute has been received.

f) It is the case of the Operational Creditor that the Corporate Debtor has committed default in payment of an undisputed operational debt and has also failed to honour the terms of the Settlement Deed which formed the basis for withdrawal of the earlier CIRP proceedings. The Operational Creditor has quantified the amount in default at Rs. 4,22,57,922/- as on 31.10.2024, comprising a principal amount of Rs. 3,66,12,565/- and interest of Rs. 56,45,357/- calculated at the rate of 12% per annum from 20.07.2023 to 31.10.2024. It is further submitted that 20.07.2023, being the date on which the Corporate Debtor made its last payment under the settlement, constitutes the date of default. On these averments, the Operational Creditor has prayed for admission of the present application and initiation of CIRP against the Corporate Debtor under Section 9 of the Code.

3. **The Respondent/Corporate Debtor filed its reply affidavit stating the following: -**

a) The Corporate Debtor has filed its reply opposing the maintainability of the present application under Section 9 of the Code. It is contended that the application is not maintainable either in law or on facts and has been filed by suppressing material facts. It is submitted that the Operational Creditor had earlier filed a similar Company Petition, which came to be rejected by the Registry for non-curing of defects, and the Rule 63 Appeal preferred therefrom was dismissed by this Adjudicating Authority vide order dated 21.01.2026 with costs of ₹50,000/- for misuse of the process of this Adjudicating Authority.

b) The Corporate Debtor further submitted that the present proceedings have been initiated only as a means of recovery of money and not for resolution of insolvency, which is impermissible under Section 9 of the Code. While admitting the earlier proceedings in CP(IB)/23/KOB/2021, the Settlement Deed dated 02.02.2022 and the withdrawal order dated 11.03.2022, it is contended that no liberty was granted by this Adjudicating Authority to revive or re-initiate CIRP upon breach of the settlement.

c) It is further contended that the alleged default and the amount claimed are seriously disputed and that the present application is barred by limitation. According to the Corporate Debtor, the alleged default dates back to May, 2022, and the subsequent part payments do not extend the period of limitation in the absence of a written acknowledgment.

d) The Respondent also submitted that it could not adhere to the terms of the Settlement Deed due to substantial amounts allegedly remaining payable to the Corporate Debtor by the Kerala State Electricity Board, in respect of which proceedings are pending before the Hon'ble High Court of Kerala. It is further stated that the Corporate Debtor is unable to recollect receipt of the demand notice dated 16.08.2024 or issuance of any reply thereto, as the alleged incident pertains to nearly two years prior. On the aforesaid grounds, the Corporate Debtor has prayed for dismissal of the Company Petition with exemplary costs.

4. **The Petitioner/Operational Creditor filed its rejoinder stating the following: -**

a) The Operational Creditor has filed a rejoinder denying the averments in the Counter Affidavit and contending that the defence raised by the Corporate Debtor is devoid of merit and does not disclose any pre-existing dispute within the meaning of Section 5(6) of the Code. It is submitted that the existence of the operational debt, occurrence of default, service of the demand notice under Section 8, and the absence of any reply thereto are undisputed, and therefore all the requirements under Section 9 of the Code stand satisfied.

b) With regard to the objection on maintainability, the Operational Creditor submitted that the Corporate Debtor has suppressed the fact that the order dated 21.01.2026 passed in Rule 63 Appeal/01/KOB/2026, relied upon by the Corporate Debtor, was set aside by the Hon'ble NCLAT, Chennai Bench in Company Appeal (AT) (CH) (Ins.) No. 180/2026 by order dated 10.06.2026. Pursuant thereto, the defects were cured and the present Company Petition was duly re-filed and numbered. It is, therefore, contended that the maintainability objection is misconceived.

c) The Operational Creditor further submitted that the present proceedings are not in the nature of a recovery action but have been initiated upon the occurrence of default in respect of an undisputed operational debt. It is also contended that the withdrawal of the earlier Company Petition pursuant to the Settlement Deed does not preclude the filing of a fresh petition upon breach of the settlement, particularly when Clause 9 of the Settlement Deed expressly reserves the Operational Creditor's right to initiate proceedings under the Code in the event of default.

d) As regards limitation, the Operational Creditor contends that the Corporate Debtor's reply dated 03.10.2023 constitutes an acknowledgment of liability under Section 18 of the Limitation Act, 1963, and that the last payment made on 20.07.2023 also extends the period of limitation under Section 19 of the Limitation Act. Accordingly, it is submitted that the present application is well within the prescribed period of limitation.

e) The Operational Creditor further submitted that the Corporate Debtor's plea regarding its inability to make payment on account of amounts allegedly due from the Kerala State Electricity Board is not a valid defence under the Code. It is also asserted that the demand notice dated 16.08.2024 was duly served upon the Corporate Debtor on 21.08.2024, as evidenced by the postal records, and that the Corporate Debtor failed to issue any reply raising a dispute.

f) Lastly, it is contended that there was no pre-existing dispute between the parties, no proceedings challenging the operational debt were pending at the relevant time, the Settlement Deed and subsequent part payments unequivocally acknowledge the liability, and even the Counter Affidavit does not dispute the supply of goods or the debt. On the aforesaid grounds, the Operational Creditor has prayed for admission of the present application under Section 9 of the Code.

Analysis & Findings: -

5. We have heard both sides and have also gone through the pleadings, documents on record, and the written submissions.

6. This is a case where, in its reply, the respondent raised various grounds to challenge the maintainability of the petition. However, surprisingly enough, the respondent has not raised any objection qua the nature of the debt or the maintainability of the Section 9 petition. Further, it is not the case of the respondent that there exists any pre-existing dispute. The respondent has primarily agitated the issue of laches and delay in filing the present Section 9 petition after withdrawal of the earlier petition. The respondent has further contended that this Adjudicating Authority has already decided one appeal filed by the petitioner under Rule 63 of the NCLT Rules, 2016. As such, the present petition is stated to be a misuse of the process of law. It is further contended that, at the time of withdrawal of the earlier petition, no liberty was granted by this Adjudicating Authority to revive or re-initiate CIRP upon

breach of the settlement. As such, the present petition is stated to be not maintainable. The respondent has also taken the defence of limitation on the ground that, from the date of default, the present Section 9 petition is barred by limitation. Lastly, the respondent has pleaded hardship owing to certain disputes with the Kerala State Electricity Board and its inability to comply with the earlier settlement.

7. Having considered the submissions of both parties, we are of the opinion that the hardship pleaded on behalf of the respondent, citing its issues with KSEB, would not constitute a valid or legal ground to ward off its liability to pay the debt due to the petitioner to resist this insolvency petition, nor can it be treated as a valid defence to avoid such liability.

8. Upon consideration of the pleadings, submissions advanced by the learned counsel appearing for the parties, and the material available on record, the following issues arise for consideration:

    i. Whether the present Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 is maintainable in view of the earlier withdrawal of CP(IB)/23/KOB/2021 pursuant to the Settlement Deed dated 02.02.2022 and the absence of an express liberty to revive or initiate fresh CIRP proceedings?

    ii. Whether the present Petition is barred by limitation, or whether the part payments made by the Corporate Debtor and the acknowledgement of liability contained in its reply dated 03.10.2023 extend the period of limitation under Sections 18 and 19 of the Limitation Act, 1963?

    iii. What is the effect of the order passed in Rule 63 Appeal/01/KOB/2026 on the maintainability and adjudication of the present proceedings?

9. The earlier petition was filed on 27.04.2021, and after initiation of CIRP, the parties entered into a settlement, which was reduced into writing vide Memorandum of Settlement dated 02.02.2022. Ultimately, vide order dated 11.03.2022, this Adjudicating Authority allowed the withdrawal of the petition. As per the settlement, the respondent agreed to repay the dues of the petitioner on the following schedule: -

   a) *The amount due has been fixed has been fixed at Rs.4,43,12,565/-being the principal of Rs.3,12,22,210/- and interest @ 12% calculated to Rs.1,30,90,355/- (Instead of interest @24% claimed by the applicant as per the terms of payment);*
   b) *The Corporate Debtor has paid an amount of Rs.11,00,000/- towards the dues outstanding as per the petition, before the date of order of this Tribunal admitting the Insolvency Petition;*
   c) *Rs. 30,00,000/- has been paid to the applicant on behalf of the Corporate Debtor upfront on executing the settlement terms;*
   d) *Corporate Debtor would pay an amount of Rs. 10,00,000/- per month starting from 1st March 2022, until the entire amount of Rs. 4,43,12,565/- is paid.*

10. The Respondent made the following payments in a phased manner, as disclosed by the Petitioner: -

DEBTORS LEDGERS DETAILS

Customer Name	Receipt Number	Receipt Date	Transaction Type	Description	Tran Cr Amt
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBH21259323419	16-09-2021	REC	HDFC Bank - Mum	100000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52021113016996200	30-11-2021	REC	HDFC Bank - Mum	1000000
SOURA NATURAL ENERGY SOLUTIONS INDI	282413139	31-01-2022	REC	HDFC Bank - Mum	3000000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022031010284365	29-03-2022	REC	HDFC Bank - Mum	1000000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022040811354148	25-04-2022	REC	HDFC Bank - Mum	500000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022041111405444	25-04-2022	REC	HDFC Bank - Mum	300000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022041211445872	25-04-2022	REC	HDFC Bank - Mum	200000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022051012435219	10-05-2022	REC	HDFC Bank - Mum	400000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022052412907636	24-05-2022	REC	HDFC Bank - Mum	300000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBH22153264025	02-06-2022	REC	HDFC Bank - Mum	150000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBH22157289690	06-06-2022	REC	HDFC Bank - Mum	150000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022070614282326	06-07-2022	REC	HDFC Bank - Mum	200000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022071114420686	11-07-2022	REC	HDFC Bank - Mum	200000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022071214459418	12-07-2022	REC	HDFC Bank - Mum	200000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBH22194548013	13-07-2022	REC	HDFC Bank - Mum	100000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBH22195889592	14-07-2022	REC	HDFC Bank - Mum	100000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBH22201389427	20-07-2022	REC	HDFC Bank - Mum	100000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022090316060210	03-09-2022	REC	HDFC Bank - Mum	1100000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52022111118255137	11-11-2022	REC	HDFC Bank - Mum	1000000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52023012110717123	21-01-2023	REC	HDFC Bank - Mum	500000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52023012310777959	23-01-2023	REC	HDFC Bank - Mum	500000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52023032212867824	22-03-2023	REC	HDFC Bank - Mum	500000
SOURA NATURAL ENERGY SOLUTIONS INDI	PUNBR52023072017099942	20-07-2023	REC	HDFC Bank - Mum	200000
				Total	**11800000**

11. For the purpose of computation of limitation, the last payment made towards the outstanding debt constitutes a valid acknowledgement of liability. A part payment made towards the debt falls within the ambit of acknowledgement under the law. During the course of arguments, the learned Counsel for the Respondent contended that the default had occurred upon the breach of the settlement agreement entered into in August 2022, and, therefore, the period of limitation ought to be computed from the date of such default.

12. Having considered the said submissions, this Adjudicating Authority finds no merit in the contention so raised. It is an admitted fact that, subsequent to August 2022, the Respondent made part payments on 03.09.2022, 11.11.2022, 21.01.2023, 23.01.2023, 22.03.2023, and 20.07.2023. Further, during the intervening period, as noticed hereinafter, the Respondent sought an extension of four to five months for repayment of the outstanding dues under the settlement, citing financial difficulties arising on account of issues with KSEB. Such successive part payments, coupled with the requests for extension of time, clearly constitute acknowledgements of liability and give rise to a fresh period of limitation. Accordingly, the contention of the Respondent that limitation commenced in August 2022 is devoid of merit.

13. Further, in its reply dated 03.10.2023, the Respondent sought some more time, which would also fall within the ambit of Section 18 of the Limitation Act, 1963. The relevant portion of the reply dated 03.10.2023, issued by the Corporate Debtor to the Operational Creditor, is reproduced as under: -

> 7. *Our Client further states that, Our Client bonafide believe that the amounts which are currently pending at the end of KSEB will be released soon in view of the Contempt Petition filed. Our Client undertakes to clear the payments which are outstanding as on date as per the settlement memo and thereafter, the regular payment will also be released as agreed in the settlement memo. Therefore, the apprehension and the allegation of Your Client that Our Client never had the intention since the inception to clear the outstanding dues as*

per the settlement memo, etc. are of without any basis and considering the above facts, we request you to instruct Your Client not to initiate any unnecessary litigation in this regard.

8. ***Our Client further undertakes that, they may need a maximum of four to five months to get the final disposal of the current proceedings pending before the High Court and to get the amounts cleared from KSEB and also to settle the amount outstanding to Your Client as on date as per the settlement memo.*** *In the event KSEB releases the payment earlier, Our Client undertakes to give priority to payment due to Your Client and the pending amounts will be cleared at the earliest.*

14. We place reliance on the judgment of Hon'ble Supreme Court of India in ***Dena Bank v. C. Shivakumar Reddy and Anr.,*** **(2021) ibclaw.in 69 SC**, wherein it was held as under:

> *142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.*

15. In view of the aforesaid acknowledgement of liability and the undertaking contained in the reply dated 03.10.2023, the period of limitation stood extended in terms of Section 18 of the Limitation Act, 1963. The Hon'ble Supreme Court in *Dena Bank v. C. Shivakumar Reddy & Anr., (2021) ibclaw.in 69 SC*, has categorically held that an acknowledgement of debt made before the expiry of the prescribed period of limitation gives rise to a fresh period of limitation of three years from the date of such acknowledgement. Since the Corporate Debtor unequivocally acknowledged its liability and sought further time to discharge the outstanding dues by its reply dated 03.10.2023, the present Petition, filed on 13.07.2026 after curing the defects, is well within the period of limitation. Further, the order passed under Rule 63, and the findings recorded therein have already been set aside by the Hon'ble NCLAT. In any event, the said order having been passed on the administrative side cannot

curtail or defeat the substantive right of the Operational Creditor to seek adjudication of its claim on the judicial side.

16. The respondent has taken a defence about the maintainability of this Section 9 Petition in the light of earlier settlement and also on the ground that no liberty was granted to the petitioner to revive or file a fresh petition as per the order dated 17.03.2022.

17. The petitioner has annexed the Settlement Deed dated 02.02.2022 as Annexure A5 to the petition. The terms and conditions of the said Settlement Deed are reproduced hereunder: -

> 1. *The Corporate Debtor had paid an amount of INR 11,00,000 (One Lakh only) to the Operational Creditor (INR 1,00.000 on 16.09.2021 & INR 10,00,000 Lakh on 30.11.2021) which shall be adjusted towards the claim of the operational creditor. The balance outstanding as on the date of signing this settlement agreement, as per the order of NCLT is INR 3,12,22,210.52 plus an interest of Rs. 1,30,90,355/-thus total amount of Rs.4,43,12,565/-. As per contract between the parties Corporate Debtor is liable to pay interest at 24% p. a. from the due date. However, considering the request of Corporate Debtor, Operational Creditor has agreed to waive half of the interest rate and therefore Corporate Debtor is now liable to make payment of interest at 12% p. a. on the principal amount from it became due.*
> 2. *The Corporate Debtor shall pay an amount of INR 30,00,000 (Thirty Lacs) to the Operational Creditor on or before 30.01.2022.*
> 3. *Starting from 1st March 2022, the Corporate Debtor shall pay an amount of INR 10 Lakh on or before 10th of every month to the Operational Creditor towards the balance outstanding amount of Rs.4,43, 12,565/-.*
> 4. *In the event of delay in payment of any instalment from Corporate Debtor, Operational Creditor shall be entitled to charge an interest at @12% p. a. on the delayed payment.*
> 5. *On receipt of INR 30,00,000 (Thirty Lacs) from the Corporate Debtor, as per point No. 2 above, the Operational Creditor shall take immediate steps to inform the IRP about the settlement agreement and shall take such other steps as may be required to report the settlement and for withdrawal of the insolvency proceedings before the NCLT.*
> 6. *On receipt of the entire principal amount from the Corporate Debtor, the Corporate Debtor shall be discharged of all its liabilities in respect of the invoices which has subject matter of present insolvency proceedings.*
> 7. *The corporate Debtor shall pay an amount of INR 2 Lakh (2,00,000) to the IRP which is the fees payable by the Operational Creditor to the IRP as per*

the NCLT Order dated 07.01.2022 within 5 days from the date of signing this settlement agreement.

8. *This Deed shall be validly binding upon Corporate Debtor their representatives, directors, assignees, transferee and legal heirs.*
9. ***In the event of breach of any of the provision of this deed by the Corporate Debtor including its directors, officers who are responsible for day to day affairs of the company and its business of Corporate Debtor as on date of the settlement deed, Operational Creditor shall be entitled to initiate civil/criminal proceeding including cheating, criminal breach of trust or any other similar offence defined in Indian Penal Code or Any other criminal law for time being in force in India and/or proceeding under Insolvency and Bankruptcy Code 2016 against Corporate Debtor at the sole risk of Corporate Debtor as to entire costs and consequences thereof. Under such circumstances of any legal action by Operational Creditor against Corporate Debtor, Corporate Debtor shall not have/raise any objection under the reason of limitation. Action initiated by Operational Creditors shall not be considered barred by limitation**.*

18. So, Clause 9 of the Settlement Deed stipulates the future course of action in the event of any default or failure on the part of the respondent to comply with the terms of the settlement, including the right of the Operational Creditor to initiate civil or criminal proceedings, as well as proceedings under the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, by entering into the said Settlement Deed, the Corporate Debtor expressly waived its right to raise any objection on the ground of limitation.

19. We further place reliance on the order of the Hon'ble NCLAT in Pooja Finlease Ltd. v. Auto Needs (India) Pvt. Ltd. & Anr., (2022) ibclaw.in 764 NCLAT, wherein it is held as under:

> *7. The Consent Terms in Clause 8 as has been extracted above clearly entitle the Financial Creditor to revive the Section 7 petition in event any default of the terms of the Consent Terms. Further, the order dated 05.02.2020 cannot be read as an order by which Consent Terms has not been taken on record when by the said order application filed alongwith the consent terms under Rule 11 of NCLT rules, 2016 was taken on record and was allowed. When the application was allowed in terms of the consent terms, Clause 8 itself shall be treated to be part of the order which shall entitle the Financial Creditor to revive the petition in the event of any default.*
>
> *8. Judgment of this Tribunal which has been relied by the Respondent in 'Krishna Garg and Anr. vs. Pioneer Fabricators Pvt. Ltd.' was a case where neither settlement terms*

were filed nor the same were brought on the record. The facts in the present case are distinguishable from the above case as Consent Terms were filed and also were taken on record by the Adjudicating Authority. When the Adjudicating Authority allowed the application filed, the Consent Terms were also taken record and the Financial Creditor was fully entitled to seek revival of the Section 7 petition in event of default of consent terms.

9. We, thus, allow this Appeal and set aside the impugned order dated 10.11.2021 and revive the Section 7 petition i.e. C.P. (IB) No. 2340 of 2019 which nay be heard by the Adjudicating Authority in accordance with law.

20. Thus, Clause 9 of the Settlement Deed unequivocally reserves the right of the Operational Creditor to initiate proceedings under the Insolvency and Bankruptcy Code, 2016 in the event of any breach of the terms of the settlement by the Corporate Debtor. The said Settlement Deed formed the very basis on which this Adjudicating Authority, vide order dated 11.03.2022, permitted withdrawal of the earlier Company Petition. Consequently, the terms of the Settlement Deed, including Clause 9, became an integral part of the order permitting withdrawal and govern the rights and obligations of the parties. The Hon'ble NCLAT in *Pooja Finlease Ltd. v. Auto Needs (India) Pvt. Ltd. & Anr., (2022) ibclaw.in 764 NCLAT*, has categorically held that where a petition is withdrawn on the basis of consent terms which expressly reserve the creditor's right to initiate proceedings upon breach, such consent terms form part of the order of withdrawal and remain enforceable upon default. Therefore, the respondent cannot now contend that the present proceedings are not maintainable in the absence of an express liberty granted by this Adjudicating Authority in the order dated 11.03.2022. As far as the liberty granted vide order dated 11.03.2022 to the Punjab National Bank can be viewed from a different angle, as PNB was not a party to the original Section 9 proceedings and, as such, PNB reserved its right to initiate CIRP upon commission of default. Whereas, the parties to the Section 9 petition entered into a written settlement, and their rights would be governed by the

settlement so arrived at between the parties, which shall prevail qua the individual rights and obligations of the parties to that settlement. In the said settlement itself, the respondent expressly acknowledged the right of the petitioner to revive proceedings under the Insolvency and Bankruptcy Code, 2016. Accordingly, the defence taken by the respondent is not tenable.

21. Having consciously agreed under Clause 9 that, upon breach of the Settlement Deed, the Operational Creditor would be entitled to initiate proceedings under the Insolvency and Bankruptcy Code, the respondent is estopped from taking a contrary stand.

22. The respondent cannot be permitted to contend that the petitioner is using the present proceedings merely as a recovery mechanism. Once the respondent failed to fulfil the obligations undertaken in the settlement, on the basis of which the petitioner had withdrawn the earlier petition after initiation of CIRP, the petitioner became entitled to avail the remedies available in law. If this Adjudicating Authority were to entertain such a defence, it would tarnish the very scheme of the IBC and discourage genuine litigants from entering into compromise settlements.

23. We have considered the submissions. The original petition was filed on account of default in repayment of operational debt, and in the present petition, the respondent has failed to dispute either the genuineness or the nature of the said debt. Therefore, we find no reason to reopen this issue, particularly when this Bench has already adjudicated in favour of the petitioner regarding the nature of the debt. The respondent itself entered into the Settlement Deed with the petitioner and is bound by the terms thereof, including Clause 9, as discussed *supra.*

24. The Respondent has relied upon the order of this Adjudicating Authority dated 25.05.2026 in CP(IBC)/05/KOB/2026, wherein a petition under Section 9 of the Insolvency and Bankruptcy Code was dismissed by invoking Section 62 of the Indian Contract Act, 1872, holding that the settlement between the parties amounted to a novation of the contract and that the original cause of action ceased to survive. However, the fact remains that the scope and ambit of the adjudication in the said matter stood on an entirely different footing, and the facts of the present case are materially distinguishable. Therefore, it would not be appropriate to apply the ratio laid down in the said decision to the facts of the present case.

25. This Adjudicating Authority fully agrees with the contention of the Respondent that the Insolvency and Bankruptcy Code cannot be invoked as a recovery mechanism. However, it is equally evident that the earlier insolvency proceedings were initiated and subsequently withdrawn at the instance of the Respondent. The Respondent had agreed to repay the admitted amount within a stipulated period, and there was no alteration in the original terms and conditions governing the transaction, except with regard to the mode and timeline of repayment. The Respondent having failed to honour the settlement terms, the revival of the Operational Creditor's rights, as expressly contemplated under the settlement agreement, to initiate insolvency proceedings cannot be defeated on technical objections by contending that the Code is being used merely as a recovery mechanism.

26. It is well settled that every case must be decided on its own peculiar facts and circumstances, and no straightjacket formula can be applied to arrive at a uniform conclusion. The Respondent is estopped, by its own conduct, from raising such technical objections. The settlement agreement executed

between the parties neither conferred any new rights nor altered the original liability or created fresh obligations. It was entered into solely to facilitate repayment of the existing dues. Consequently, the judgment relied upon by the Respondent in Permali Wallace Pvt. Ltd. v. Narbada Forest Industries Pvt. Ltd. is distinguishable on facts and is, therefore, inapplicable to the present case. The *ratio decidendi* of the said judgment does not govern the controversy involved in the present proceedings.

27. The Respondent has further placed reliance upon the judgment of the Hon'ble NCLAT, Principal Bench, New Delhi, in Maldar Barrels Pvt. Ltd. v. Pearson Drums & Barrels Pvt. Ltd., Company Appeal (AT) (Ins.) No. 872 of 2020. However, the said decision is clearly distinguishable on facts. In the said case, the Corporate Debtor had admittedly paid the entire settlement amount in full and final satisfaction of the settlement agreement, but owing to delay in repayment as per the settlement agreement, the Operational Creditor invoked the original terms, and it was in those peculiar facts that the Hon'ble NCLAT held that the clause providing for reinstatement or fresh initiation of CIRP was not triggered. The Hon'ble NCLAT also expressly observed that the question as to whether Section 62 of the Indian Contract Act, 1872 would apply so as to constitute a novation of the contract was not relevant for adjudication in that appeal. In the present case, however, the Corporate Debtor has admittedly failed to honour the Settlement Deed and a substantial amount continues to remain outstanding. Further, Clause 9 of the Settlement Deed expressly reserves the right of the Operational Creditor to initiate proceedings under the Insolvency and Bankruptcy Code, 2016 upon breach of the settlement. Therefore, the ratio of the aforesaid judgment has no application to the facts of the present case.

28. At the stage of admission of an application under Section 9 of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority is required to satisfy itself that an operational debt is due and payable, that default has occurred, that the demand notice under Section 8 has been duly served, and that no pre-existing dispute exists between the parties. In the present case, the Operational Creditor has successfully established the existence of the operational debt and the occurrence of default. The liability of the Corporate Debtor stands acknowledged under the Settlement Deed dated 02.02.2022 as well as in its subsequent reply dated 03.10.2023 seeking further time to discharge the outstanding dues. The demand notice issued under Section 8 of the Code was duly served, and no notice of dispute was received from the Corporate Debtor. The Petition has been filed within the prescribed period of limitation, the amount in default exceeds the threshold prescribed under Section 4 of the Code, and the application is otherwise complete in all respects. Accordingly, this Adjudicating Authority is satisfied that the requirements of Section 9 of the Code stand fulfilled and finds it a fit case to admit the Petition and initiate the Corporate Insolvency Resolution Process against the Corporate Debtor in accordance with law.

29. This Adjudicating Authority finds no legal impediment to the admission of the application under Section 9. Accordingly, CP(IBC)/17/KOB/2026 is allowed with the following directions:

    A. The Petition bearing no. CP(IBC)/17/KOB/2026 filed under section 9 of the Insolvency and Bankruptcy Code 2016 for initiation of the Corporate Insolvency Resolution Process is **ADMITTED.**

B. We declare a moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code 2016. The necessary consequences of imposing the moratorium shall follow.

C. The Operational Creditor has not proposed the name of the Interim Resolution Professional. Section 9 of the Insolvency and Bankruptcy Code 2016 does not make it mandatory for the Operational Creditor to propose the name of the Interim Resolution Professional. Therefore, this Adjudicating Authority appoints **Mr. C J Davis, Insolvency Professional, having Registration No. IBBI/IPA-003/ICAI-N-00343/2021-2022/13660**, having address at **House No 23/1223, Chandy House, Golden gate, Rareeram Road, Anchangady, East Fort, Behind Selex Mall, Thrissur, Kerala,680005**, **Email: davistheip@gmail.com**, from the panel prepared in accordance with the "Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2025" issued by the Insolvency and Bankruptcy Board of India, as the **Interim Resolution Professional (IRP).** Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and a Registration Certificate within 48 hours of receipt of this order. The designated IRP shall perform all his functions as contemplated under the Code and must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code.

D. In pursuance of Section 13(2) of the Insolvency and Bankruptcy Code 2016, we direct the IRP to make a public announcement immediately about the admission of this application under Section

9 of the Code. The expression immediately means within three days from the date of appointment as clarified by the explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. During the CIRP period, the management of the Corporate Debtor shall vest in the Interim Resolution Professional (IRP)/Resolution Professional (RP), as the case may be, in terms of Section 17 of the Code. The Powers of the Board of Directors of the Corporate Debtor shall stand suspended and be exercised by the IRP/RP. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order.

E. The IRP is expected to take full charge of the Corporate Debtor's assets and documents without any delay whatsoever. He is also free to take police assistance, and this Adjudicating Authority hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

F. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority a periodical report with regard to the progress of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

G. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).

H. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt of a copy of this Order.

30. The present Company Petition bearing No. **CP(IBC)/17/KOB/2026** is **admitted** accordingly.

31. The Registry is hereby directed to send e-mail copies of this order forthwith to all the parties and their counsel for information and to take necessary steps.

32. Let the certified copy of this order be issued upon compliance with the requisite formalities.

33. File be consigned to records.

Sd /-	**Sd /-**
RAVICHANDRAN RAMASAMY	**VINAY GOEL**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Signed on this the 30th day of July, 2026.

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