



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-2

C.P. (IB)/387(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **14.07.2025**

NAME OF THE PARTIES:

Joys Steel Impex

Through Its Propreitor Mr. Tejal Shah

Vs.

Pentech Metals 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)

//AS//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/387/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]*

M/S. JOYS STEEL IMPEX

THROUGH ITS PROPRIETOR

MR. TEJAL SHAH

[Identification No.: AAOPS7992R]

7/5 Vrindavan Society, N.S. I Mankikar Marg

Sion, Mumbai – 400022.

...Operational Creditor

V/s

PENTECH METALS LIMITED

[CIN No.: U51909MH2014PLC258618]

Office No. 507, 5th Floor,

The Summit Business Bay

Andheri, A.K. Road, Gondavali, Opp. Cinemax

Andheri, Mumbai – 400093.

...Corporate Debtor

Pronounced: 14.07.2025

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Gaurav Jalendra

For Respondent: Adv. Shourya Kackar



ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This C.P. (IB) No. 387 of 2025 (Application) was filed on 14.02.2025 by M/S. Joys Steel Impex Through Its Proprietor Mr. Tejal Shah, the Operational Creditor (OC) having Identification No.: AAOPS7992R, 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, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Pentech Metals Limited, the Corporate Debtor (CD), having CIN No.: U51909MH2014PLC258618.

1.2 As per Part IV of the Application, the amount claimed to be in default is Rs.31,79,49,187.54/- (Thirty-One Crores and Seventy-Nine Lakhs Forty-Nine Thousand One Hundred and Eighty-Seven Rupees and Fifty-Four Paise), which includes principal amount of Rs.17,75,35,653/- and interest at 18% p.a. amounting to Rs.14,04,13,534.54/- as on 31.03.2024. The date of default mentioned is 05.09.2019.

1.3 The Applicant has proposed one Ms. Dipti Narayan Mundra, having Registration No. as IBBI/IPA-001/IP-P-02845/2023-2024/14366, to act as the Interim Resolution Professional (IRP).

2. CONTENTIONS OF APPLICANT (OC)

2.1 The Applicant and the CD are in the business of trading in iron and steel.



- 2.2 In 2019, the CD approached the Applicant for the supply of HR Coils. The Applicant duly supplied the HR Coils, which the CD accepted without any objections regarding the quality of the goods.
- 2.3 The Applicant raised 14 invoices against the supplies made to the CD in the year 2019, which remain unpaid to date.
- 2.4 The Applicant has regularly followed up with the CD for payment and has also offered assistance as needed. The Applicant issued letters demanding payment on 25.12.2021, 03.02.2021, and 28.11.2022. Despite these communications, the CD failed to clear the dues.
- 2.5 On 05.12.2022, the CD acknowledged receipt of the Applicant's letters and requested time to clear the dues, citing financial distress.
- 2.6 Due to the CD's continued default, the Applicant issued a Demand Notice under Section 8 of the IBC, 2016 on 26.06.2024. The CD has neither responded to the said Demand Notice nor made any payment to date.
- 2.7 The Applicant states that the ledger of the CD in the Applicant's books provides that Rs.17,75,35,653/- is due and payable by the CD as on 31.03.2020.
- 2.8 The Hon'ble Supreme Court of India, in Suo Motu Writ Petition (C) No. 3 of 2020, excluded the period from 15.03.2020 to 28.02.2022 for the purpose of limitation due to the COVID-19 pandemic, *vide* its order dated 10.01.2022 (Misc. Application No. 21 of 2022). Further, the CD acknowledged the debt on 05.12.2022, thereby extending the limitation period under Section 18 of the Limitation Act, 1963. The Applicant, hence, argues that the Application is within the limitation period. A table showing Limitation as made on Page 12 of the Application is reproduced below:



PARTICULARS	DAYS
Date of default	05.09.2019
Exclusion computation of the limitation granted by the Supreme Court in Suo Moto Writ Petition (C) No. 3 of 2020	15.03.2020 to 28.02.2022
Acknowledgment of debt by the CD	05.12.2022
Limitation expires on	05.12.2022 + 3 Years 05.12.2025

2.9 The Applicant has attached the following supporting documents along with the Application and Additional Affidavit dated 01.04.2025:

- a) Copies of the Delivery Challans evidencing delivery of Goods to the CD.
- b) Copies of the Invoices raised by the Applicant from 06.08.2019 till 23.12.2019
- c) A copy of the letter dated 25.12.2021, 03.02.2021, and 28.11.2022 issued by the Applicant seeking payment of the Outstanding Debt.
- d) A copy of the Letter dated 05.12.2022 issued by the CD acknowledging the outstanding debt.
- e) A copy of the demand notice dated 26.06.2024 alongwith its postal receipt and tracking report
- f) A copy of the Ledger of the CD in the books of the Applicant.
- g) A copy of the Working Computation of the outstanding dues.



- h) A copy of the Applicant's Bank's Letter dated 02.02.2022 stating that no payment has been received from CD in bank accounts of the Applicant during 01.04.2020 till 01.02.2022.
- i) Record of Default in Form-D.
- j) GST returns for August,2019, September,2019, and October,2019 showing supplies made by the Applicant to the CD.
- k) Delivery challan for Invoice No. 186 dated 23.10.2019
- l) A copy of the written communication by the proposed IRP in Form 2.

3. CONTENTIONS OF CD

- 3.1 The CD filed its Affidavit-in-Reply dated 24.04.2025, affirmed by one Mr. Kunal Gandhi, who is stated to be a Director and an authorised representative of the CD pursuant to a Board Resolution dated 18.04.2025.
- 3.2 The CD argues that this Application is an attempt to recover money rather than a *bona fide* attempt to resolve insolvency.
- 3.3 The CD states that the limitation period for initiating CIRP in respect of the alleged default dated 05.09.2019 expired on 04.09.2022 and that its letter dated 05.12.2022 does not amount to an acknowledgment of debt under Sections 18 or 19 of the Limitation Act, but a disclosure of temporary setbacks faced due to the prevailing economic environment.
- 3.4 The CD claims to have paid Rs.16,79,74,557/- towards certain invoices but was unable to pay the remaining amount due to financial challenges brought on by the COVID-19 crisis and broader market conditions, especially impacting sectors like iron and steel.



3.5 The CD is exploring financial restructuring options and alternate funding sources to overcome these difficulties and resume full operations. The CD has maintained transparency with the Applicant and made efforts to resolve the issue without resorting to insolvency.

3.6 The CD proposes referring the matter to mediation for an amicable resolution, considering the IBC's focus on resolution over liquidation.

4. **WRITTEN SUBMISSIONS (OC)**

4.1 The Applicant reiterates and reaffirms the submissions made in the Application and during the course of proceedings, and respectfully submits that the present Application is maintainable under Section 9 of the IBC.

4.2 It is submitted that the object of IBC is to facilitate insolvency resolution and value maximization of assets, not merely recovery. The Applicant states that in approaching this Tribunal, it is merely exercising its statutory right under Section 9 of the IBC. The allegation that the present Application constitutes an abuse of process is devoid of merit and liable to be rejected.

4.3 The CD's plea that the claim is barred by limitation is incorrect. The underlying transactions give rise to an operational debt as defined under Section 5(21) of the IBC. Further, the CD has issued a written communication dated 05.12.2022, which unequivocally acknowledges the liability, thereby constituting an acknowledgment of debt within the meaning of Section 18 of the Limitation Act, 1963. Consequently, the limitation period stands extended. In addition, the Hon'ble Supreme Court, *vide* Order in the *Suo Moto Writ Petition (supra)*, has been pleased to exclude the period commencing from 15.03.2020 till 28.02.2022 for the purposes of computing



limitation, which further supports the maintainability of the present proceedings.

4.4 The CD's suggestion that the matter be referred to mediation is misplaced and contrary to the statutory framework of the IBC. Once the occurrence of default is established, the Adjudicating Authority has no discretion to introduce extraneous mechanisms such as mediation in a proceeding under Section 9 of the IBC. The continued defaults on part of the CD, despite repeated opportunities, indicate financial distress and a lack of intent or capacity to resolve the dues amicably. In such circumstances, initiation of the CIRP is not only appropriate but necessary to safeguard the interests of the creditors and the integrity of the insolvency framework.

5. WRITTEN SUBMISSIONS (CD)

5.1 The CD has been honouring its obligations and has also made a payment of Rs.16,79,47,557/- against several invoices raised by the Applicant. However, the CD was not able to make payment of certain invoices due to the financial hardships arising from the COVID-19 pandemic.

5.2 It is submitted that the alleged date of default as claimed by the Applicant was 05.09.2019. Pursuant to the provisions of the IBC and Section 137 of the Limitation Act, 1963, any application filed under Section 9 seeking initiation of the CIRP must be instituted within a period of 3 years from the date of default. The said limitation period to initiate CIRP against the CD has already lapsed on 04.09.2022.

5.3 The CD argues that its communication dated 05.12.2022 cannot be construed as a blanket acknowledgement of debt within the ambit of the Limitation Act,



1963, to extend the limitation period. It is a well-settled law that the provisions of IBC cannot be invoked to revive time-barred claims, as the IBC is not a mechanism for recovery of outstanding dues but a tool for resolution of debts that are legally enforceable and within the limitation.

6. **ANALYSIS AND FINDINGS**

- 6.1 We have perused the documents as placed before us and heard both the Ld. Counsels for the Applicant and the CD.
- 6.2 The present Application under Section 9 of the IBC, 2016 has been challenged by the CD on various grounds, including maintainability, limitation, and the nature of the alleged default.
- 6.3 The CD's primary contention is that the application is not maintainable as it is a disguised attempt to recover money and not a *bona fide* effort to resolve insolvency. This argument, however, misconstrues the scheme and intent of the IBC. The Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* [(2018) 1 SCC 353] made it amply clear that what is required under Section 9 is the existence of an operational debt, a default in its payment, and the absence of a pre-existing dispute. The CD does not dispute the supplies made by the Applicant or raise any quality-related objections. In fact, the CD has acknowledged the receipt of goods and made part payments amounting to Rs.16,79,47,557/-. Therefore, the relationship between the parties, the issuance and non-payment of invoices, and the continuous communication seeking payment clearly establishes that an operational debt exists and that default has occurred. The mere fact that the Applicant seeks to initiate insolvency resolution process against the CD for



recovery of its dues through the statutory route provided under the IBC does not render the application a misuse of process.

6.4 The CD's challenge on limitation grounds is also unfounded. The Applicant has demonstrated that the date of default is 05.09.2019, and that the limitation period, though ordinarily expiring on 04.09.2022, stands extended in view of the Hon'ble Supreme Court's *suo moto* extension of limitation due to the COVID-19 pandemic. In *Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (C) No. 3 of 2020*, the Hon'ble Court excluded the period from 15.03.2020 to 28.02.2022 from limitation computations. This exclusion alone pushes the expiry of limitation well into 2024. In addition to this, the CD issued a written communication dated 05.12.2022 acknowledging financial distress and the outstanding liability, thereby triggering Section 18 of the Limitation Act, 1963, and commencing a fresh three-year limitation period from that date. The law is well-settled that an acknowledgment of liability, even conditional or accompanied by an expression of financial difficulty, suffices to extend limitation. Any written communication that refers to a liability and shows an intent to repay, even in the future, is sufficient to invoke Section 18. Hence, the CD's argument that the communication dated 05.12.2022 does not qualify as acknowledgment is legally untenable.

6.5 The CD also attempts to justify its default by citing payment of a substantial portion of the invoices and alleging financial hardship caused by the COVID-19 crisis and market volatility. However, partial payments, while mitigating to some extent, do not absolve the debtor from the responsibility to pay the full amount due. In fact, the partial payment itself supports the Applicant's



case by acknowledging the underlying liability. The remaining unpaid sum, as reflected in the Applicant's ledger and not denied by the CD, constitutes the operational debt in default. Acknowledgment of part of a debt implies acknowledgment of the whole unless the remainder is explicitly denied, which is not the case here.

6.6 The CD's suggestion to refer the matter to mediation also cannot be entertained. While resolution, rather than liquidation, is indeed the central objective of the IBC—as recognised in *Swiss Ribbons Pvt. Ltd. v. Union of India* (2019) 4 SCC 17—the discretion of the Adjudicating Authority to adopt alternate mechanisms such as mediation is limited under Section 9 of the IBC. Once the existence of operational debt and default is proved and no pre-existing dispute is shown, the Adjudicating Authority must admit the Application. This principle has been reaffirmed in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.* [2022 SCC OnLine SC 841], where the Hon'ble Supreme Court distinguished between the discretion under Section 7 and the mechanical mandate under Section 9 of the IBC, 2016. The CD's invocation of mediation, while well-intentioned, therefore, finds no support under the current legal framework once the debt and default are established.

6.7 In light of the above, it becomes evident that this Application is not only maintainable but is also filed within limitation. The CD's objections, premised on technicalities and strained interpretations, are not supported by either the facts or the applicable legal principles. The Applicant has made consistent efforts to secure payment, and the continued default, despite such efforts, warrants the initiation of the CIRP.



6.8 The applicant has attached all the necessary documents to establish existence of debt and default exceeding the threshold amount of Rs. One Crores. A demand notice under Section 8 was issued to the Respondent, which was not replied to by the latter and that the same has not be controverted by the Respondent in its reply. There is no pre-existing dispute raised or any payment made by the Respondent pursuant to the issuance of the demand notice. There is no disciplinary proceeding pending against the IRP proposed by the Applicant as is evident from the declaration made by the IRP in the Form 2. The information utility i.e. NESL also has authenticated the existence of debt and default by issuance of Form D as attached on page 76 of the Application, which states the status of authentication of default as “authenticated”. In view of the same, we also hold that the Application filed by the Applicant is complete.

ORDER

In view of the aforesaid findings, this Application being C.P. (IB) 387/MB/2025 filed under Section 9 of IBC, 2016 by M/S. Joys Steel Impex Through Its Proprietor Mr. Tejal Shah, the OC, for initiating CIRP in respect of Pentech Metals Limited, the CD, is **admitted**.

We further declare a moratorium under Section 14 of IBC, 2016 with consequential directions as mentioned below:

- I. We prohibit:
 - a) the institution of suits or continuation of pending suits or proceedings against the CD including the 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the CD under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- V. That this Bench hereby appoints **Ms. Dipti Narayan Mundra, a registered Insolvency Professional** having **Registration No. as IBBI/IPA-001/IP-P-02845/2023-2024/14366** and **e-mail ID ip.dipti@gmail.com**, having valid Authorisation for Assignment up to 31.12.2025, as the IRP to carry out the functions under the IBC.



- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules, 2016 for any violation of the law.
- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the CD.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the OC is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.



- XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XII. The Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)**

**Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)**

//AS//