



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) NO.148/ALD/2024**

*(Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016  
R/w Rule 6 of the Insolvency and Bankruptcy Rules, 2016)*

**IN THE MATTER OF:**

**ALAKHRAM INFRASTRUCTURE PRIVATE LIMITED**

**(CIN: U74999UP2018PTC101218)**

Registered Office: (00, Sarv Nagar, Jhansi, Uttar  
Pradesh, India, 284003)

**.....Operational Creditor/Applicant**

*Versus*

**SHANTI INFRACONSTRUCT PRIVATE LIMITED**

**(CIN: U45309UP2020PTC127006)**

**Formerly known as : M/s Shanti Construction**

Registered Office: B-52 SECTOR - 64, Gautam Buddha Nagar,  
Noida, Uttar Pradesh, India, 201301

**.....Corporate Debtor/Respondent**

**Order pronounced on: 11.06.2026**

**Coram:**

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

**Appearances:**

Sh. Suraj Sharma, CS : For the Operational Creditor

Sh. Udai Chandani alongwith : For the Corporate Debtor  
Sh. Tanmay Sadh & Sh. Mayank  
Goswami, Advs.

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CP (IB) NO.148/ALD/2024

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ

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## ORDER

1. The present Application was filed on 02.11.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “the Code/IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as “the Rules”) by M/s Alakhram Infrastructure Private Limited (hereinafter referred as "Applicant/Operational Creditor") to initiate the Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against M/s Shanti Infraconstruct Private Limited (hereinafter referred as "Corporate Debtor/Respondent").
2. Part-I of the Petition sets out the details of the Operational Creditor. It is averred that the Operational Creditor is a private limited company incorporated on 22.02.2018, which is represented by Mr. Suraj Sharma (PCS) with its office situated at 00, Sarv Nagar, Jhansi, Jhansi, Uttar Pradesh, India, 284003.
3. Part-II of the Petition sets out the details of the Corporate Debtor. M/s Shanti Infraconstruct Private Limited is a private Limited company incorporated on 13.02.2020, having its registered office at B-52 Sector - 64, Gautam Buddha Nagar, NOIDA, Uttar Pradesh, India, 201301. As per the records of the MCA, it is stated that Board of directors of the Corporate Debtor has passed a resolution on 25.03.2022 wherein the main object clause of the Corporate

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Debtor stands altered. In particular, the following clause was added to the existing Clause IIIA (Main Objects) of the Memorandum of Association:

*“IIIA (1): 1. To takeover the business of Proprietor of M/s SHANTI CONSTRUCTION PROP. SH. JAYPRATAP NARAIN SINGH having its office: A-68, FLAT NO-7 SAKET, NEW DELHI, 110030.”*

4. In view of such alteration, Mr Jay Pratap Narayan Singh, Proprietor of M/s Shanti Construction, issued a 'No Objection Certificate' (NOC) consenting to the transfer of all assets and liabilities of M/s Shanti Construction to Shanti Infraconstruct Private Limited.
5. In Part-III of the Petition, the Operational Creditor has proposed Mr Vinay Kumar Singhal, having IBBI Registration No.: IBBI/IPA-002/IP-N00624/2018-19/11880 and AFA valid till 31.12.2026, as Insolvency Professional to act as a Resolution Professional.
6. Part-IV of the Petition states that the total outstanding Debt is Rs. 6,72,92,000/- towards the remaining balance of outstanding invoices, and the Date of Default is shown as 08.05.2023.
7. Part-V of the Petition describes the particulars of the Operational Debt, documents, records and evidence of the default as below:
  - a. Invoices raised by the Operational Creditor
  - b. Ledger Account prepared by the Operational Creditor
  - c. Calculation Sheet.

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- d. Form GSTR-1 and Form GSTR-3B
  - e. Form 26AS
8. It is submitted that the Corporate Debtor placed purchase orders upon the Applicant for the supply of gas pipelines required for various projects undertaken by the Corporate Debtor. These orders were duly executed and completed by the Applicant. Subsequently, invoices for the services were raised on 03.03.2023, 08.03.2023, 10.03.2023, 11.03.2023, 14.03.2023, 17.03.2023, 19.03.2023, 21.03.2023, and 24.03.2023, thereby creating a lawful obligation on the part of the Corporate Debtor to make payment thereof. However, no payment was made by the Corporate Debtor. Meanwhile, the Applicant, in compliance with GST laws, filed mandatory GST returns and further, as per the Income Tax Act, duly deposited the TDS at the rate of 2%.
9. The Applicant further submits that the raised invoices were duly acknowledged by the Corporate Debtor by duly deducting and depositing TDS on such invoices, as evidenced by the Form 26AS statement annexed as Annexure 9, constituting a clear admission and acknowledgement of operational debt due and payable. The Applicant also relies on its ledger account, which reflects all transactions, including outstanding invoices and payments.

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10. On account of persistent defaults, the Applicant submits that it had made multiple requests through telephonic communications to the Corporate Debtor for the payment of the outstanding invoices. Despite these repeated and earnest efforts, the Corporate Debtor has failed to make the payments. Consequently, the Applicant issued a Section 8 notice on 29.08.2024 at the registered office of the Corporate Debtor, successfully delivered on 03.09.2024.
11. The Applicant, while substantiating its debt falling due, submits that as per section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (“MSMED Act”), the Corporate Debtor was required to make payment within 45 days. The debt becomes due on various dates as per the invoices raised by the Operational Creditor to the Corporate Debtor. The last date of the invoice was 24-03-2023. Therefore, the date from which such debt fell due is 08-05-2023 i.e. 46th day from the date of the last invoice. Hence, on receiving no payment of the outstanding dues, the Applicant has filed the present application.

### **REPLY FILED BY THE CORPORATE DEBTOR/RESPONDENT**

12. The Respondent, through its reply filed on 13.05.2025, denied all the averments of the Applicant and raised the following contentions:
- a. At the outset, the Respondent contends that the present application is not maintainable on account of a valid pre-existing dispute between the

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parties which was duly communicated to the Applicant prior to the issuance of the Section 8 notice by the Applicant.

- b.** The Respondent further contends that pursuant to the execution of tenders between the parties, the Applicant only completed a part of the work for which the requisite payments were duly made by the Corporate Debtor to the Applicant from time to time. However, the Applicant had neither completed the entire work as awarded to it nor the work done by the Applicant was up to the prescribed standard as required by the Corporate Debtor in terms of the tender that was awarded to Shanti Construction and Corporate Debtor by Torrent, IoAGPL and IOCL.
- c.** The Corporate Debtor further contends that Shanti Construction by itself vide various telephonic conversations intimated the said fact to the Directors of the Applicant and requested them to rectify the errors and complete the work in accordance with the terms and conditions of the work order. However, no heed was paid with respect to said requests made by Shanti Construction later taken over by the Corporate Debtor due to which the Corporate Debtor was constrained to allot the remaining work with respect to the said sites to other contractors for the completion of the remaining work of laying down gas pipeline as awarded to the Applicant.
- d.** The Respondent contends that vide email dated 27.07.2024 from one of the directors of the Applicant seeking payment of certain invoices, the Respondent, in response on 10.08.2024, disputed the said invoices on the following grounds, as referred in its reply is reproduced below:

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- a) Failure on the part of the Operational Creditor to perform the obligation with respect to the work order issued by the Corporate Debtor to the Operational Creditor;
  - b) The work done by the Operational Creditor being either incomplete or not initiated at all on account of which the Corporate Debtor was constrained to get the said work completed from other contractors;
  - c) Exorbitant losses suffered by the Corporate Debtor due to the defective work, delayed progress and non-performance on the part of the Operational Creditor;
  - d) In addition to the above the Corporate Debtor directed the Operational Creditor to provide certain documents from the Operational Creditor in order to ascertain whether any amount is due or payable to the Operational Creditor or not;
  - e) Providing the relevant work orders in respect of which the invoices have been issued and the necessary evidences in respect of the claim being made on behalf of the Operational Creditor.
- e. Thereafter, the Applicant, despite replying to the said concerns and providing documents, issued a demand notice on 29.08.2024, which could not be replied by the Corporate Debtor due to the shifting of the office of the Corporate Debtor.
- f. The Respondent further, in support of its contention, relies on the judgment passed by Hon'ble Supreme Court in the case of *Mobilox Innovation Pvt. Ltd. vs. Kirusa Software Pvt. Ltd (2018) 1 SCC, Civil Appeal No. 9405 of 2017*, whereby the Hon'ble Apex Court has held as under:

*"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor there is a record of dispute in the information utility. It is clear that such notice must bring to the*

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*notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."*

- g.** In light of the aforesaid judgment, the Respondent submitted that in the present case, there is pre-existing dispute which had been brought to the notice of the Applicant prior to the issuance of the Section 8 notice dated 29.08.2024. Hence, the Applicant fails to disclose the said material fact before this Tribunal.
- h.** The Respondent also contends that on bare perusal of the invoices appended by the Applicant along with the present Application as Annexure-7(Colly), it is evident that the invoices issued by the Applicant do not have any reference to the work orders issued by the Corporate Debtor, which is contrary to the terms and conditions of the work contract itself. Furthermore, from a bare perusal of the invoices dated 03.03.2023 and 08.03.2023, it is evident that the said invoices bear the same invoice number, but the same are of different dates and

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are of different values. Similarly, the invoices dated 14.3.2023 and 24.3.2023 have the same invoice number, but they are issued on different dates with different amounts. Thus, it is submitted that the authenticity and the correctness of the said invoices as raised by the Applicant, is itself questionable, and hence it can be concluded that the said invoices are forged and fabricated and have been issued with the sole motive of extracting undue gains from the Corporate Debtor and Shanti Construction. Hence, the present petition has been filed by the Applicant with a malicious intent, and therefore, the same is liable to be dismissed and exemplary costs shall be imposed upon the Applicant under Section 65 of the IBC for initiation of fraudulent and malicious proceedings against the Corporate Debtor.

- i. The Respondent avers that all the work order issued to the Operational Creditor were issued by M/s Shanti Constructions which was a proprietorship concern and had been subsequently taken over by the Corporate Debtor for limited purpose of transferring the qualification criterion of the Proprietor into a Company so that it doesn't end with the life of the Proprietor.
- j. The Respondent also contends that the present application lacks the placing on record of any work order or any document demonstrating that the goods and services have actually been supplied to the Corporate Debtor. Further the Applicant has also filed his claim under Section 18(1) of MSMED Act, before the MSME Facilitation Council Jhansi against M/s Shanti Constructions for recovery of the present dues. Thus by invoking the said provision of MSMED Act, the Applicant has itself acknowledged that there is a dispute between the parties with regard to the payment of the invoices as being alleged to be unpaid under the

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present application.

- k. In support of its contention, the Respondent relies on the judgment passed by the Hon'ble NCLAT in the case of *Arpan Packaging Pvt. Ltd. v. Regma Ceramics Pvt. Ltd (Company Appeal (AT) (CH) (Ins) No. 94/2023)*, wherein it has been held that the Facilitation Council had the authority to arbitrate the "dispute" under the provisions of the Arbitration and Conciliation Act 1996. Further the Hon'ble NCLAT concluded that a dispute existed, and the unpaid amount was now the subject of controversy pending resolution by the MSME Facilitation Council.
- l. The respondent lastly contends that the averment of the Applicant, claiming its entire amount on the basis of the TDS deduction being made and reflected in Form 26AS, cannot amount to an acknowledgement of debt. The said position, the Respondent further finds support from the order passed by the Co-ordinate NCLT Bench-Jaipur in the case of *Anil Kumar Sharma v. Riddhiraj Builder and Promoters LLP (CP No. (IB)- 102/7/JPR/2019)* and NCLT Bench New Delhi in the case of *AXKYno Capital Services Pvt. Ltd. v. Rattan India Power Ltd (CP (IB) No. 1464 (PB)2018)*.

### **REJOINDER FILED BY THE APPLICANT**

13. The Applicant, in its rejoinder filed on 20.07.2025, denied and countered all the contentions of the Respondent on the following grounds:

- a. Firstly, the Applicant submits that the Reply in the present case, has been filed by Mr. Ankur Singh, without having authorization from the Board of Directors of the Corporate Debtor and without annexing any Board

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Resolution. In the absence of any such authorization, the filing of the Reply by Mr. Ankur Singh is unauthorized and not maintainable in law.

- b. The Applicant further submits that during the entire course of engagement, as well as after the completion of the services, the Corporate Debtor never raised any objection, dispute, or grievance regarding the quality, nature, or scope of the services rendered by the Applicant. At no point did the Corporate Debtor communicate any dissatisfaction or raise any issue, either in writing or otherwise. Such conduct clearly indicates that the services were accepted without demur and that the debt became due and payable without any protest or contest.
- c. Furthermore, all the original tenders or master work orders issued by Torrent, IOAGPL, and IOCL were exclusively in the possession of the Corporate Debtor and were never shared with the Applicant. The Applicant acted purely as a sub-contractor and executed the work strictly as per the scope and terms contained in the work orders issued directly by the Corporate Debtor. At no stage did the Corporate Debtor provide any reference documents or technical specifications allegedly forming part of the tenders issued by Torrent, IOAGPL, or IOCL.
- d. As far as the alleged allotment of the remaining work at the respective sites to other contractors is concerned, it is submitted that the Corporate Debtor has not placed on record a single document to substantiate its claim that the

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Applicant failed to complete the assigned work, or that any remaining portion of the work was subsequently allotted to another contractor.

- e. Further, the reliance on the email dated 10.08.2024 for proving pre-existing dispute merely seeks certain legal documents and licenses, and does not, in any manner, raise any concern, complaint, or deficiency with regard to the services provided by the Applicant. Mere administrative or formal document requests, raised long after completion of the services, cannot be stretched to mean or imply a “dispute” in terms of Section 8(2)(a) of the Code. It is settled law that in order to constitute a "pre-existing dispute" under Section 8(2)(a) of the Code, such dispute must be substantial, genuine, and must exist prior to the issuance of the demand notice. A fabricated, illusory, or afterthought dispute raised post-facto with the sole intent of defeating a valid claim cannot be considered a bar to admission of an application under Section 9.
- f. The Applicant also submits that all the invoices raised were corresponding to the respective work order executed. The Applicants highlight that the Corporate Debtor itself had shared the invoice formats in Excel sheet form with the Operational Creditor, indicating the manner in which the invoices were to be structured and raised. Acting upon the same, the Applicant generated and issued the final tax invoices strictly in line with the said format provided by the Corporate Debtor, through WhatsApp. Hence, such prior

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confirmation and approval by the Corporate Debtor before issuance of final tax invoices further nullifies the contention of any dispute regarding the services rendered or the amounts claimed.

- g.** Subsequently, the allegation made by the Corporate Debtor that the invoices are forged and fabricated is denied in toto. It is submitted that all the invoices were raised by the Operational Creditor only after receiving confirmation and the invoice format from the Corporate Debtor.
- h.** With respect to non-reply to the demand notice due to shifting of office, the Applicant submits that as per the documents annexed by the Corporate Debtor itself in its Reply (Annexure 3), the change in the registered office was effected only on 18th November 2024, more than two months after the delivery of the Demand Notice and even after the filing of the present application under Section 9. Therefore, the objection raised by the Corporate Debtor regarding non-receipt or failure to respond to the Demand Notice is wholly untenable, misconceived, and liable to be rejected.
- i.** With respect to the contention stating only qualification criterion was transferred to the Corporate Debtor from M/s Shanti construction Private Limited, the Applicant submits that firstly the Work Orders were issued by both M/s Shanti Construction and Shanti Infraconstruct Private Limited and thereafter also states that he Board of Directors and Shareholders of the Corporate Debtor had duly passed a Board Resolution and a Special

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Resolution, respectively, approving the complete takeover of the business of M/s Shanti Construction i.e., formally and lawfully taken over all assets and liabilities of M/s Shanti Construction. Accordingly, the Corporate Debtor amended its Memorandum of Association, incorporating the new object clause to reflect the business takeover, and filed the requisite Form MGT-14 with the Registrar of Companies. Upon compliance with statutory requirements, the ROC issued the Certificate, thereby giving legal effect to the said takeover.

- j. The Applicant submits that while the Applicant had initially filed an application before the MSME Facilitation Council, the same was subsequently withdrawn voluntarily by the Applicant vide letter dated 27.08.2024. Further submits that the proceedings under the MSMED Act and the Insolvency and Bankruptcy Code, 2016 are distinct and independent.
- k. The Applicant also relies on the judgment of the Hon'ble NCLAT, New Delhi, passed in *iValue Advisors Pvt. Ltd. vs. Srinagar Banihal Expressway Ltd. (Company Appeal (AT) (Ins) No. 1142 of 2019)*, wherein it was held that the context of the word “dispute” in Section 18 of the MSMED Act derives its meaning from Section 17 of the said Act, and is distinctly different from the context of “dispute” under Section 5(6) of the Code.
- l. With respect to the reliance of the Respondent on the case of *Arpana Packaging Pvt. Ltd. vs. Regma Ceramics Pvt. Ltd. (Supra)*, the Applicant

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submits that the said case is not applicable to the facts and circumstances of the present case, as the matter was pending adjudication before the MSME Facilitation Council. However, in the present case, the Applicant had already withdrawn the application filed under the MSMED Act.

m. The Applicant submits that the payment of GST by the Operational Creditor and deduction of TDS by the Corporate Debtor not only demonstrate the legitimacy of the invoices but also constitute a clear and binding acknowledgement of the underlying transactions and liability. Therefore, the attempt of the Corporate Debtor to now dispute the genuineness of the invoices is misleading, contradictory, and legally unsustainable.

14. It is noted that the Applicant filed an affidavit on 23.09.2025 and placed before this Tribunal Form-D obtained from NeSL, which is reproduced below:

**FORM D  
RECORD OF DEFAULT (RoD)**

*(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)*

This Record of Default is issued to the Operational Creditor M/s ALAKHRAM INFRASTRUCTURE PRIVATE LIMITED in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s ALAKHRAM INFRASTRUCTURE PRIVATE LIMITED
(b) Schedule-2 Bank (Y/N):	N
(c) Name of Corporate Debtor:	M/s SHANTI INFRACONSTRUCT PRIVATE LIMITED
(d) Unique Debt Identifier Number:	AAQCA5435Q_ABDCS4321D
(e) Registered Address:	00, Sarv Nagar, Jhansi, Jhansi, Uttar Pradesh, India, 284003
(f) Total Outstanding Amount:	INR 67292000.00
(g) Default Amount:	INR 67292000.00
(h) Submission ID:	1
(i) Date of Default:	08-05-2023
(j) Status of Authentication of Default:	<b>DEEMED TO BE AUTHENTICATED</b>
(k) Authentication Completed on:	30-11-2024 00:11:35
(l) Date of Last Acknowledgement of Debt (AoD):	23-02-2024

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15. Further, the Applicant vide another affidavit filed on 04.01.2026 has also placed on record the filed GSTR-3B returns provided by the Deputy Commissioner of the GST Department- Gautam Budh Nagar.

**ADDITIONAL REPLY FILED BY THE RESPONDENT/ CORPORATE DEBTOR.**

16. The Respondent filed an additional reply on 23.03.2026, denying and countering all the submissions made by the Applicant in Rejoinder. The same has been taken on record and, for the sake of brevity, is not reproduced herein. However, certain new submissions made have been recorded as follows:

- a. With respect to the withdrawal of the MSME proceedings by the Applicant, the Respondent contends is misconceived as the MSME Facilitation Council has, on 28.02.2026, itself issued notice to the Applicant as well as the Corporate Debtor for uploading of documents for initiation of conciliation proceedings. The MSME conciliation proceedings are subsisting, and recourse to parallel insolvency proceedings in respect of the same cause of action is not maintainable.
- b. The Respondent, in support of its contention that there has been a fundamental breach of obligation by the Applicant, also places on record two works orders dated 09.05.2024 executed with M/s Mahalakshmi Traders and M/s Leadedge Infratech Private Limited for completion of the balance works at the site which had been abandoned by the Applicant. The consequent engagement of alternative contractors at higher costs and attendant losses, the Corporate Debtor has in fact

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suffered substantial damages and financial loss attributable directly to the defaults of the Applicant.

- c. The Respondent also contends that due to the shifting of the office premises of the Corporate Debtor around the relevant period, the Corporate Debtor could not, despite due diligence, furnish a response to the demand notice issued under Section 8 of the Code by the Operational Creditor within the stipulated time, nor could it promptly raise a dispute before the Information Utility within the prescribed period.
- d. Moreover, by the time such access to the portal was enabled and the Corporate Debtor attempted to record its dispute on the portal, the time limit for recording such a dispute had already expired, resulting in the alleged debt being treated as "deemed authenticated" on the portal. The said deemed authentication arose purely on technical grounds and not on account of any conscious admission by the Corporate Debtor. Thus, it cannot be treated as an unequivocal admission of liability by the Corporate Debtor.

17. In pursuance of the direction passed vide order dated 24.03.2026 by this Tribunal, the Applicant as well as the Corporate Debtor have filed their written submissions on 30.03.2026 and 31.03.2026, respectively. Therefore, the same has been taken on record, however not been reproduced herein for the sake of brevity.

### **FINDINGS AND ORDER**

18. We have heard the arguments of Learned Counsels appearing for both Applicant Financial Creditor and Respondent Corporate Debtor and perused

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the pleadings, records, written submissions and exhibits/annexures marked thereto in respect of the present application. On perusal of the records, exhibits/annexures and after considering arguments advanced by respective Learned Advocates, the issue which are before us to be decided in respect of the present Application are as follows:

- i. Whether there is debt and default.**
- ii. Whether there is a pre-existing dispute as per the given facts and circumstances.**

**19.** Before delving into the specific issues concerning the admission or rejection of the present application, it is noted that the application under Section 9 of the Code was filed before this Tribunal on 02.11.2024. As reflected in Part IV of the application, as well as in Form D (Record of Default) issued by NeSL, the date of default has been recorded as 08.05.2023, being 46 days from the date on which the last invoice dated 24.03.2023 became due for payment.

**20.** Even otherwise, upon considering the payment terms stipulated in the Work Order, which provided that payment against approved invoices was to be released within two months from the date of submission, the liability arising from the last invoice dated 24.03.2023 admittedly remains unpaid as on date. The continuous non-payment of the said invoice clearly evidences subsistence of default. Accordingly, reckoned from the date of default i.e., 08.05.2023,

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the present application filed on 02.11.2024 is well within the three year period of limitation prescribed under Article 137 of the Limitation Act, 1963.

**i. Whether there is debt and default.**

21. As regards the first issue, it is observed that the Corporate Debtor had issued a Work Order dated 12.02.2022 in favour of the Applicant for laying of 8-inch and 4-inch diameter pipelines through HDD machine, in accordance with the terms, conditions, and rates stipulated therein, for the Corporate Debtor's project at Mahendragarh GA. The Work Order further stipulated that the quantities mentioned therein were subject to increase or decrease depending upon the actual site conditions. It is further observed that the general terms and conditions of the Work Order required submission of certified bills along with a copy of the Work Order, and the payment clause specifically provided that payment would be released within two months from the date of submission of the approved invoice/bill.
  
22. Pursuant to the aforesaid Work Order and upon completion of the assigned work, the Operational Creditor raised various invoices on 03.03.2023, 08.03.2023, 10.03.2023, 11.03.2023, 14.03.2023, 17.03.2023, 19.03.2023, 21.03.2023, and 24.03.2023. The said invoices were duly issued in terms of the contractual arrangement between the parties, thereby establishing a commercial relationship and a corresponding obligation on the part of the

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Corporate Debtor to make payment against the work executed and completed by the Applicant.

23. Simultaneously, the Operational Creditor also duly filed the requisite GST returns, and TDS was deducted by the Corporate Debtor in respect of the invoices raised. However, it is the case of the Applicant that despite completion of the work and compliance with all statutory requirements, the Corporate Debtor failed to clear the outstanding dues amounting to Rs. 6.72 Crores, as reflected in Part IV of the application, against the 11 invoices raised by the Operational Creditor.
24. It is further submitted that repeated follow-ups and communications were addressed to the Corporate Debtor seeking payment of the outstanding amount; however, the same yielded no result. Consequently, the Operational Creditor issued a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 29.08.2024, which was duly served upon the registered office of the Corporate Debtor on 03.09.2024.
25. The Applicant/Operational Creditor has further relied upon the ledger accounts and bank statements to substantiate the existence and continuance of the operational debt. Additionally, the default has also been recorded in

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Form D (Record of Default) issued by the National E-Governance Services Limited (NeSL), as noted hereinabove in para 14 of this Order.

26. Upon perusal of the ledger account of the Corporate Debtor maintained in the books of the Operational Creditor, the bank statements placed on record, as well as the submissions made by the Corporate Debtor in its reply, it emerges as an undisputed fact that certain payments were made by the Corporate Debtor from time to time against the invoices raised by the Operational Creditor. The records placed before this Tribunal reflect that such payments cumulatively amount to a sum of Rs. 2,55,08,000/- only. The factum of part-payment further fortifies the existence of jural relationship between the parties and acknowledgment of liability by the Corporate Debtor.
27. After considering the above facts and circumstances of the case, we are of the view that the Work Order, invoices raised thereunder, ledger accounts, bank statements, deduction of TDS, filing of GST returns, and the Record of Default maintained by NeSL collectively establish the existence of a legally enforceable operational debt. The continued failure of the Corporate Debtor to make payment of the outstanding amount against the invoices raised by the Operational Creditor clearly establishes the occurrence of default within the meaning of the IBC.

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28. As per section 4 of the Code, the minimum threshold for initiating a CIRP application is Rs. 1 Crore. In the present case, the Applicant has placed sufficient documents to show that a debt of more than Rs. 1 crore, as also mentioned in Part IV of the Application, is due and that there has been a default in payment on the part of the Corporate Debtor. Therefore, we are satisfied that there is a debt of more than Rs. 1 Crore and also a default has occurred on the part of the Respondent to pay this debt.

**ii. Whether there is any Pre-Existing Dispute**

29. With regard to the determination of the existence of a pre-existing dispute in the present case, we have examined the contention of the Corporate Debtor founded upon an email dated 10.07.2024, admittedly issued prior to the issuance of the demand notice under Section 8 of the Code, wherein allegations of deficiency in service and non-performance were raised against the Operational Creditor. The relevant extract of the said communication reads as under:

*“You were informed that you have failed to perform the obligations imposed by the Work Orders awarded to you. Kindly peruse the original work orders with you to see that the works assigned to you are either incomplete or not initiated at all, due to which we had to engage other contractors at your risk and cost. It was also informed that we have been suffering humongous losses due to your defective work, delayed work progress and non-performance among other*

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*issues. We are in the process of assessing the cost being incurred and the administrative loss being suffered in the work assigned to you”*

- 30.** The Corporate Debtor has further contended in its reply that the Operational Creditor neither completed the entire scope of work awarded under the Work Order nor executed the same in accordance with the prescribed standards and specifications required under the principal contracts/tenders awarded by Torrent, IOAGPL, and IOCL. It has additionally been contended that the Corporate Debtor was compelled to engage separate entities for completion of the alleged incomplete work.
- 31.** Upon consideration of the material placed on record, it is evident that the aforesaid email dated 10.07.2024 was indeed issued prior to the demand notice dated 29.08.2024 and, therefore, satisfies the temporal requirement of a dispute existing prior to the issuance of the demand notice. However, it is now well settled that mere issuance of correspondence or raising of bald allegations prior to the demand notice does not ipso facto constitute a “pre-existing dispute” within the meaning of Section 5(6) of the Code. The dispute sought to be raised must be genuine, plausible, and supported by cogent and contemporaneous material demonstrating a bona fide disagreement requiring adjudication.
- 32.** In the present case, we are of the view that the email dated 10.07.2024 merely contains vague and bald allegations regarding defective work, delay, and non-

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performance without specifically identifying the nature of the alleged defects, the exact portions of work allegedly left incomplete, or the contractual specifications purportedly breached by the Operational Creditor. Significantly, no inspection reports, measurement books, site records, technical evaluations, correspondence from the principal employers, debit notes, damage assessments, or any contemporaneous documentary evidence have been placed on record to substantiate the allegations raised by the Corporate Debtor.

33. Further, although the Corporate Debtor has relied upon subsequent work orders allegedly issued to third parties for completion of work, no material has been produced to demonstrate the precise scope of incomplete work attributable to the Operational Creditor under the Work Order dated 12.02.2022. Mere engagement of third-party contractors, in the absence of supporting evidence establishing defective or incomplete execution by the Operational Creditor, cannot by itself constitute proof of a genuine dispute.
34. We also observe that although the Corporate Debtor has sought to rely upon obligations arising under the principal contracts/tenders awarded by Torrent, IOAGPL, and IOCL, no document has been placed on record to show that any objection, complaint, penalty, adverse remark, or withholding of payment was ever communicated by the said entities in relation to the work executed by the Operational Creditor. In the absence of any contemporaneous protest or

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substantiated claim for damages, the allegations raised by the Corporate Debtor appear to be unsupported and lacking in material particulars. Hence in our considered view the alleged pre-existing dispute raised by the Corporate Debtor is a mere assertion unsupported by credible evidence and does not disclose a real or substantial dispute requiring adjudication.

- 35.** Now examining the allegations of invoices being forged and fabricated. It has been observed that the Corporate Debtor has further alleged that certain invoices dated 03.03.2023, 08.03.2023, and 14.03.2023, relied upon by the Operational Creditor, are forged and fabricated. However, upon consideration of the material placed on record, we observe that the Corporate Debtor had itself shared, through email dated 10.04.2023, the invoice format in Excel sheet form with the Operational Creditor, thereby prescribing the manner in which the invoices were to be structured and raised. Acting upon the said instructions, the Operational Creditor generated and issued the final tax invoices in conformity with the format so provided by the Corporate Debtor and transmitted the same through WhatsApp. The aforesaid circumstances prima facie demonstrate that the invoices were raised in the ordinary course of business and in accordance with the procedure mutually followed between the parties. Having itself prescribed the invoicing format and mode of submission, the Corporate Debtor cannot subsequently be permitted to dispute the very process initiated at its own instance.

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36. Further, the computation of debt and ledger accounts placed on record by the Operational Creditor reflect that the Corporate Debtor had admittedly made part-payments against certain invoices which are now alleged to be forged. Such conduct is wholly inconsistent with the plea of fabrication subsequently sought to be raised by the Corporate Debtor and, in fact, amounts to acknowledgment of the invoices and the liability arising thereunder.
37. Moreover, even assuming, arguendo, that the invoices were forged or fabricated, as alleged by the Corporate Debtor, it would ordinarily be expected that immediate and appropriate legal proceedings, whether civil or criminal in nature, would have been initiated before the competent forum. However, no material whatsoever has been placed on record to demonstrate that any complaint, FIR, civil proceedings, or other legal action alleging forgery or fabrication of invoices was ever initiated by the Corporate Debtor against the Operational Creditor. The absence of any contemporaneous protest, forensic material, expert opinion, or legal proceedings substantially undermines the credibility of the defence sought to be raised. Hence in our view, the said allegations raised by the Corporate Debtor does not constitute a valid pre-existing dispute for the purposes of Section 9 proceedings under the Code.
38. Lastly, the Corporate Debtor has sought to contend that a pre-existing dispute stood established on account of the Operational Creditor having invoked the provisions of Section 18 of the MSMED Act prior to initiation of the present

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proceedings by filing an application dated 10.07.2024 before the MSME Facilitation Council for recovery of the outstanding dues forming the subject matter of the present petition. According to the Corporate Debtor, the very institution of proceedings before the MSME Facilitation Council evidences the existence of disputes between the parties in relation to the unpaid invoices and consequently bars initiation of proceedings under Section 9 of the Code.

39. In support of the aforesaid contention, reliance has been placed upon the judgment of the Hon'ble NCLAT in *Arpan Packaging Pvt. Ltd. v. Regma Ceramics Pvt. Ltd. (supra)* to contend that the MSME Facilitation Council is vested with powers of conciliation and arbitration under the Arbitration and Conciliation Act, 1996. Reliance has further been placed upon the notice dated 28.02.2026 issued by the MSME Facilitation Council, Jhansi, calling upon the parties to upload documents for commencement of conciliation proceedings, thereby contending that adjudicatory proceedings concerning the same claim were already pending prior to issuance of the demand notice under Section 8 of the Code.

40. At the outset and considering the present facts, we are of the considered view that invocation of remedies under Section 18 of the MSMED Act by an Operational Creditor for recovery of its admitted dues cannot, by itself, be construed as acknowledgment of a dispute regarding such dues. Proceedings under Section 18 of the MSMED Act are fundamentally recovery-oriented in

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nature and are initiated by a supplier asserting non-payment of operational dues in pursuant to Section 17 of the MSMED Act. The mere fact that a creditor has resorted to one statutory remedy for recovery of unpaid amounts does not automatically imply the existence of a bona fide dispute concerning the underlying liability.

41. The test under Sections 8 and 9 of the Code is not whether any proceeding is pending between the parties, but whether there exists a genuine and substantial dispute concerning the debt prior to issuance of the demand notice. In this regard, we place reliance appropriately upon the judgment of the Hon'ble NCLAT in *iValue Advisors Pvt. Ltd. v. Srinagar Banihal Expressway Ltd.(Supra)*, wherein it was categorically held that mere pendency of proceedings before the MSME Council does not establish a pre-existing dispute and that the Adjudicating Authority is required to independently assess whether the dispute raised is real, plausible, and supported by credible material.
42. In the present case, significantly, the application under Section 18 of the MSMED Act was instituted by the Operational Creditor itself seeking recovery of unpaid invoices. Such invocation, far from evidencing a dispute, in fact reinforces the Operational Creditor's consistent assertion that operational dues remained unpaid. The Corporate Debtor has failed to demonstrate that, prior to receipt of the demand notice, any substantive

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defence, counterclaim, quantified damages, or contemporaneous objection disputing the invoices or quality of services had been raised before the MSME Facilitation Council, Jhansi. Therefore, mere participation in, or pendency of, conciliation proceedings initiated for recovery of dues cannot elevate unsupported allegations into a “pre-existing dispute” within the meaning of Section 5(6) of the Code.

43. Further, the notice dated 28.02.2026 issued by the MSME Facilitation Council merely reflects initiation of conciliation proceedings in exercise of statutory powers under Section 18 of the MSMED Act. The said notice neither records existence of any adjudicated dispute nor contains any prima facie finding regarding defective services or disputed liability. No counterclaim, or adjudicatory determination has been brought on record by the Corporate Debtor to substantiate its plea.
44. Viewed holistically, the reliance placed by the Corporate Debtor on the pendency of MSME proceedings is merely an attempt to create an illusory defence in absence of any genuine dispute regarding the operational debt. The record consistently demonstrates acknowledgment of the contractual relationship, execution of work, raising of invoices, and part-payments made by the Corporate Debtor. In the absence of any credible contemporaneous material evidencing a bona fide dispute, we are of the considered view that the pendency of proceedings before the MSME Facilitation Council does not

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constitute a valid pre-existing dispute so as to defeat the present application under Section 9 of the Code.

45. Further it is a settled principle of law that the Hon'ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited (Supra)* has held that, for the purposes of Sections 8 and 9 of the Code, the Adjudicating Authority is only required to examine whether the dispute raised is real, genuine, and substantial, requiring further adjudication, and not a mere bluster, unsupported assertion, or patently feeble legal argument. Tested on the touchstone of the aforesaid principles, the defence raised by the Corporate Debtor in the present case does not satisfy the threshold of a "pre-existing dispute" within the meaning of Section 5(6) of the Code.
46. Considering the above facts and circumstances, the Respondent Corporate Debtor has defaulted in the payment of operational debt which amount had clearly become due and payable above the threshold limit, and further in the absence of any credible or plausible pre-existing dispute, we find all requisite conditions necessary to trigger CIRP under Section 9 stands fulfilled with operational debt having been acknowledged and default committed thereto and there being no real pre-existing disputes discernible from given facts. For the foregoing reasons, we are of the view that the application of the Operational Creditor filed under Section 9 of the Code deserves to be admitted.

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47. Thus, in view of our aforesaid findings and analysis, the Applicant / Operational Creditor has proved that there is a 'debt' and 'default' on the part of the Corporate Debtor and outstanding debt is more than the threshold limit of Rs. 1 crore. The application is also filed within the limitation period and complete in all respects. Accordingly, the present application under Section 9, has been found fit fulfilling all the conditions for admissions of the Application and initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor i.e. M/s Shanti Infraconstruct Private Limited, and hence we allow this application and order to initiate the CIRP against the Corporate Debtor.

48. We note that the Operational Creditor has proposed the name of Mr. Vinay Kumar Singhal to be appointed as Interim Resolution Professional ('hereinafter referred to as '*IRP*') in Part-III of the Application. Therefore, we appoint Mr. Vinay Kumar Singhal as IRP having Registration Number: IBBI/IPA-002/IP-N00624/2018-2019/11880, Email ID: [vinaysinghal.ip@gmail.com](mailto:vinaysinghal.ip@gmail.com), R/o- 411,Fourth Floor, Essel House ,Asif Ali Road ,Near Turkman Gate ,National Capital Territory of Delhi ,110002. The Law Research Associate of this Tribunal, Ms. Kriti Kaushal, has checked the credentials of Mr. Vinay Kumar Singhal, and found that there are no disciplinary proceedings pending against the proposed Insolvency Professional and also there is nothing adverse against him. Upon verification

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from the website of IBBI, it is found that Insolvency Professional holds valid authorization till 31.12.2026. After considering these details, we appoint Mr. Vinay Kumar Singhal having registration No. IBBI/IPA-002/IP-N00624/2018-2019/11880, as IRP.

**49.** Accordingly, this application is admitted u/s 9 of the Code, 2016, under the following terms and conditions.

- i.** The Application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e., M/s Shanti Infraconstruct Private Limited is hereby admitted.
- ii.** We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the Code.
- iii.** This Adjudicating Authority hereby appoints Mr. Vinay Kumar Singhal to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 48 above.
- iv.** The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 has commenced from the date of this order prohibiting the following:

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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 (54 of 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.
- vi.** Apart from above prohibitions in respect of the corporate debtor, it is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- vii.** The provisions of Section 14(3) shall, however, not apply to such transactions 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 a corporate debtor.
- viii.** The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31

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or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

- ix.** The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.
- x.** The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor and to constitute a Committee of Creditors (hereinafter referred as "COC") and shall file a report certifying the constitution of the COC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the COC within seven days of filing the report of the constitution of the COC.
- xi.** As the IRP appointed herein is proposed by this Tribunal, he will ensure that his written consent in Form-2 shall be duly submitted before this Tribunal.
- xii.** The COC in its first meeting shall appoint a Resolution Professional (hereinafter referred as "RP") as per the provision of section 22(2) and file an application before this Tribunal for confirmation of the appointment of the RP.
- xiii.** The Suspended Board of Directors of the corporate debtor is directed to give to IRP/RP complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the IRP/RP all the information regarding maintaining the Backup and regarding service provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014

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respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the service provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case, accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs.

- xiv.** The Statutory Auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI.
- xv.** The IRP/RP is directed to take custody and control of all the records of information relating to assets of the Corporate Debtor, its Books of Account in physical form or the computer systems storing the electronic records at the earliest in accordance with the provision of Regulation 3A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "CIRP Regulations, 2016").
- xvi.** The Operational Creditor shall also provide necessary assistance to IRP/RP in obtaining the necessary information about the Corporate Debtor as envisaged in Regulation 4(3) of the CIRP Regulations, 2016.
- xvii.** In case of any non-cooperation by the Suspended Board of Directors or the Statutory Auditors, IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for the retrieval of relevant information from the systems of the corporate debtor.
- xviii.** The IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench/IBBI/MCA for this purpose.

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- xix.** The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances.
- xx.** The IRP/RP is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.
- xxi.** The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities'/institutions/others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings.
- xxii.** The IRP/RP is directed to approach all the concerned Government Departments and authorities as discernible from the books of account of the Corporate Debtor requesting them to file claims if any amount is outstanding against the Corporate Debtor.
- xxiii.** The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIR Proceedings as per law.
- xxiv.** The IRP/RP shall collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the Corporate Debtor.
- xxv.** The IRP/RP is further directed to send regular progress reports to this Tribunal every month.
- 50.** We direct the Operational Creditor to deposit a sum of Rs. 1,00,000/-with the Interim Resolution Professional, to meet out the expenses to perform the

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functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

51. A certified copy of the order shall be communicated to both the Applicant Operational Creditor and the Respondent Corporate Debtor. The learned counsel for the Applicant Operational Creditor shall deliver a certified copy of this order to the IRP forthwith. The Registry is also directed to send a certified copy of this order to the IRP at his e-mail address forthwith.
52. List **CP (IB) 148/ALD/2024** on 14.07.2026 for filing of the progress report/further proceeding.

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**(Ashish Verma)  
Member (Technical)**

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**(Praveen Gupta)  
Member (Judicial)**

**Date: 11.06.2026**