IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.307
C.P.(IB)/91(AHM)2025

Under Section 9 IBC

IN THE MATTER OF:

M/s Shri Ked Insulations Pvt. Ltd ....**Applicant**
V/s
M/s Energie Elecinfra Pvt.Ltd ....**Respondent**

Order delivered on: 15/09/2025

Coram:

MR. SHAMMI KHAN, HON'BLE MEMBER(J)
MR. SANJEEV SHARMA, HON'BLE MEMBER(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The common order is pronounced in the open court, vide separate sheet.

-Sd- -Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT–I, AHMEDABAD

CP (IB) No. 91/9/AHM/2025

(Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

M/s Shri Ked Insulations Pvt. Ltd
Having its registered office at
G-19, Saket
New Delhi - 110017

... Applicant/Operational Creditor

VERSUS

M/s Energie Elecinfra Pvt. Ltd.
Having its registered office at
Plot No. 244/8, GIDC Estate
Waghodia –391760, Distt.
Baroda, Gujarat.

... Respondent/ Corporate Debtor

Order Pronounced On: 15.09.2025

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant/OC : Mr. Aaditya Karnavat a.w.
Mr. Atul Sharma, Advocate

For the Respondent/CD : Mr. Kunal Vaishnav, Advocate

ORDER
Per Bench

1. The present Petition is filed on 12.02.2025 by M/s. Shri Ked Insulations Pvt. Ltd., through its Authorized Representative Shri Manoj Kedia (hereinafter referred to as 'Operational Creditor') against M/s. Energie Elecinfra Pvt. Ltd. (hereinafter referred to as 'Corporate Debtor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "IB (AAA) Rules, 2016") for initiation of Corporate Insolvency Resolution Process (CIRP), to appoint an Interim Resolution Professional (hereinafter referred to as "IRP") and declare a moratorium for default in payment of an operational debt of Rs.2,71,38,664/- including interest.

2. Perusal of Part-II of Form-5 reveals that the Corporate Debtor, M/s Energie Elecinfra Pvt. Ltd. (formerly M/s Danke Technoelector Pvt Ltd), has a CIN of U31900GJ2009PTC058250. The Corporate Debtor was incorporated on 07.10.2009 under the Companies Act, 1956, with its registered office at Plot No. 244/8, GIDC Estate, Waghodia-391760, Distt. Baroda (Vadodara), Gujarat.

3. Perusal of Part-III of Form-5 reveals that the Operational Creditor has proposed M/s Efficax Resolutions Private Limited (Corporate IP), IPE registered with IBBI, to act as the Interim Resolution Professional in the matter.

4. Perusal of Part-IV of Form-5 reveals that the total operational debt claimed by the Operational Creditor is Rs.2,71,38,664/- for invoices raised between 10.02.2021 and 28.05.2021. The Operational Creditor has not expressly specified the date of default in Part-IV of Form-5 or in the demand notice issued under Section 8 of IBC, 2016. However, the Operational Creditor has stated that the debt

fell due 30 days after the date of the invoices, calculated as per the payment terms.

5. The Operational Creditor has presented the following facts in the Petition: -

(i) The Operational Creditor, M/s. Shri Ked Insulations Private Limited, is a company registered under the Companies Act, 2013, with its registered office at G-19, Saket, New Delhi-110017, engaged in manufacturing Electrolytic grade Aluminium Enamelled Winding wires. The master data and MSME Certificate are annexed as Annexure-C (Colly).

(ii) The Corporate Debtor, M/s Energie Elecinfra Pvt. Ltd., is a company registered under the Companies Act, 2013, with its registered office at Plot No. 244/8, GIDC Estate, Waghodia-391760, Dist. Baroda (Vadodara), Gujarat, engaged in the energy and environment industry. The master data is annexed as Annexure-D.

(iii) The Corporate Debtor changed its name from M/s Danke Technoelectro Pvt Ltd to M/s Energie Elecinfra Pvt Ltd on 29.01.2022. The Certificate of Incorporation pursuant to the name change is annexed as Annexure-E.

(iv) The Corporate Debtor approached the Operational Creditor in 2015 to supply aluminium wires of different specifications.

(v) Since 2015, the Operational Creditor has supplied goods regularly based on written and verbal orders from the Corporate Debtor. An open, mutual, continuous running account was maintained. All supplied goods were accepted by the Corporate Debtor without objection, based on assurances of payment.

(vi) Since 2015, the Corporate Debtor placed orders, and the Operational Creditor supplied goods. The Corporate Debtor made payments for previous bills and placed new orders. An extract of the ledger from 01.04.2019 to 30.09.2024 is annexed as Annexure-F.

(vii) The Corporate Debtor placed three purchase orders and verbal orders during February 2021 and March 2021. Copies of the purchase orders are annexed as Annexure-G.

(viii) The Operational Creditor raised invoices between 10.02.2021 and 28.05.2021 for supplies, aggregating to Rs.1,71,00,986/-. A schedule of invoices is annexed as Annexure-H. The Corporate Debtor accepted the goods and invoices without objection. Copies of 13 invoices with corresponding e-way bills are annexed as Annexure-I.

(ix) The Operational Creditor demanded the outstanding amount of Rs.1,71,00,986/-. The Corporate Debtor, by email dated 10.05.2022, acknowledged dues of Rs.1,27,57,304.54, sharing its ledger account. The email and ledger are annexed as Annexure-J.

(x) The ledger shows the Corporate Debtor made substantial payments during the COVID period from March 2020 to 28.05.2021, except for the 13 invoices from February 2021 to May 2021 claimed herein.

(xi) The audited balance sheet as on 31.03.2022 and ledger show outstanding amount of Rs.1,71,00,986/- for invoices from 10.02.2021 to 28.05.2021. Copies are annexed as Annexure-K (Colly).

(xii) Due to non-payment, the Operational Creditor sent a demand notice dated 29.11.2022 under Section 8 of IBC, 2016. Copy is annexed as Annexure-L.

(xiii) The Corporate Debtor replied on 06.02.2023, raising objections. Copy is annexed as Annexure-M.

(xiv) The Operational Creditor filed an application for CIRP on 13.07.2023, declined on 18.10.2023 for non-removal of defects.

(xv) A second demand notice was issued on 30.07.2024 for Rs.2,71,38,664/-, including interest. Copy with postal receipt and tracking report is annexed as Annexure-N.

(xvi) The ledger shows outstanding Rs.1,65,46,311.79 as on September 2023.

(xvii) The last invoice was raised on 28.05.2021, and the Corporate Debtor acknowledged dues on 10.05.2022. The petition is within limitation, considering the Supreme Court's order in Misc. Application No. 665 of 2021, excluding the period from 15.03.2020 to 28.02.2022 for limitation computation.

(xviii) No payment has been received, necessitating the present application under Section 9 of IBC, 2016.

6. The Operational Creditor submits that the Corporate Debtor defaulted on the operational debt of Rs.2,71,38,664/-, justifying the initiation of CIRP.

7. Pursuant to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its reply on 21.04.2025, vide inward diary No. D-2583, inter alia, stating therein:

(i) The Operational Creditor issued a notice dated 20.01.2025, purportedly under Section 8 of IBC, 2016, to the email of an erstwhile shareholder, received around 05.02.2025. No physical copy was sent to the registered address.

(ii) Under Section 10A of IBC, 2016, debts due between 25.03.2020 and 24.03.2021 cannot be considered for CIRP. The invoices are from 10.03.2020 to 24.04.2020, barred by Section 10A.

(iii) Payments were made through Letters of Credit (LCs) for invoices, not disclosed in the Company Petition: -

Invoice Nos.	Date of Invoice	Amount	Paid on through LC No.
1006	10-03-2021	17,60,115.00	636
1042	20-03-2021	10,70,525.00	636
1047	20-03-2021	30,245.00	634
5	01-04-2021	27,58,857.00	634
72	10-04-2021	15,28,330.00	634
73	17-04-2021	51,32,865.00	643
95	24-04-2021	7,52,669.00	815

(iv) The notice dated 29.11.2022 was replied to on 06.02.2023, contents incorporated. Copies are annexed as Annexure-A and Annexure-B.

(v) The notice was served on an erstwhile shareholder to pressure current management. ROC data is annexed as Annexure-C.

(vi) A previous petition was filed after the 2022 notice, not proceeded, invoking res judicata. The second notice and petition aim to circumvent the Supreme Court's ruling on Section 10A.

(vii) The NeSL claim dated 20.01.2025, annexed as Annexure-D, shows casual filing.

(viii) The petition does not meet the pecuniary threshold of Rs.1 crore per MCA Notification dated 24.03.2020 (S.O. 1205(E)). Section 10A bars the invoices from March 2020 to March 2021.

(ix) The IBC is not a summary proceeding. The claim includes interest not admitted by the Corporate Debtor.

(x) The notice was not served properly, sent to an erstwhile shareholder. (xi) The petition lacks proper service of notice and NCLT petition copy, warranting rejection.

8. A rejoinder was filed by the Operational Creditor on 17.06.2025, vide inward diary No. D-3829, stating:

(i) The Corporate Debtor has not disputed receipt of goods or raised quality issues, confirming consumption without objection.

(ii) On improper service: The notice dated 20.01.2025 is from NeSL, not the Operational Creditor. The demand notice dated 30.07.2024 was sent via speed post and email, delivered on 12.08.2024 to the registered address per MCA data. Receipt and tracking are on record. Email communications clarify NeSL's role. The allegation is baseless.

(iii) On Section 10A: The National Company Law Appellate Tribunal (NCLAT) holds that if debt from multiple invoices includes some within the 10A period and some outside, the petition is maintainable if the non-10A debt exceeds Rs.1 crore. Invoices after 25.03.2021 aggregate Rs.1,04,17,181/- in the table below: -

Date of Invoice	Invoice No.	Amount unpaid as per the invoice (only principle, no interest)	Amount acknowledge by the Corporate Debtor itself on 10.05.2022
01.04.2021	5	27,58,857/-	27,58,857/-
17.04.2021	72	15,28,330/-	15,28,330/-
17.04.2021	73	51,32,865/-	51,32,865/-
24.04.2021	95	7,52,669/-	7,52,669/-
17.05.2021	139	55,006/-	55,006/-
28.05.2021	SKIPL/21	1,89,454/-	1,89,454/-
	22/06		
Total		**10,417,181**	**10,417,181**

(iv) On LC payments: The Corporate Debtor admitted liability for invoices of 01.04.2021, 17.04.2021, and

17.04.2021 in its ledger from 01.04.2021 to 01.03.2022, annexed with email dated 10.05.2022. No proof of LC payments. The reply dated 06.02.2023 references LCs from 24.12.2020, but no documents support payment. The defense is unsubstantiated.

(v) The debt exceeds Rs.1 crore, is acknowledged, and lacks a pre-existing dispute. The petition should be admitted.

9. Vide order dated 17.06.2025, this Adjudicating Authority directed both parties to file written submissions with citations. The Operational Creditor filed submissions on 25.07.2025, vide inward diary No. D-5013, stating:

(i) The petition is for default of Rs.1,71,00,986/- for supplies from 2015. Payments were made until 2021, except for 13 invoices from 10.02.2021 to 28.05.2021.

(ii) Table enunciating the debt and default is as follows:

Date of Invoice	Tax Invoice Number	Amount	Due Date
10.02.2021	904	408,568	12.03.2021
20.02.2021	942	1,412,171	22.03.2021
28.02.2021	968	1,961,508	30.03.2021
28.02.2021	969	40,463	30.03.2021
10.03.2021	1006	1,760,115	09.04.2021
20.03.2021	1047	30,245	19.04.2021
01.04.2021	5	2,758,857	01.05.2021

17.04.2021	72	1,528,330	17.05.2021
17.04.2021	73	5,132,865	17.05.2021
24.04.2021	95	752,669	24.05.2021
17.05.2021	139	55,006	16.06.2021
28.05.2021	SKIPL/21-22/06	189,454	27.06.2021
		17,100,866	

(iii) Documents support debt and default. The Corporate Debtor's grounds are countered inter alia in the following manner: -

(a) Service: Notice dated 30.07.2024 delivered on 12.08.2024. The 20.01.2025 communication is from NeSL.

(b) Section 10A: NCLAT holds petition maintainable if non-10A debt exceeds Rs.1 crore. Post-25.03.2021 invoices total Rs.1,04,17,181/-, acknowledged. Relied on VPR Mining Private Limited v. Gajraj Mining Private Limited, Company Appeal (AT) (Ins) No. 1546 of 2024, paragraph XVII; Reliance Tech Services Limited v. GCX India Services Limited, 2020 SCC Online NCLT 784, paragraphs 7, 9.

(c) LC payments: No documents. Corporate Debtor admitted liability in ledger. Defense baseless.

(iv) Hence, stated that the petition should be admitted.

10. The Corporate Debtor also filed written submissions on 28.07.2025, vide inward diary No. D-5072, inter alia, stating therein:

(i) Payments made via LCs dated 24.12.2020 for Rs.69,69,232/- and Rs.68,84,831/-. Materials dispatched, bills submitted, amounts credited. Quality issues led to returns vide invoices 243 dated 30.12.2020 (Rs.69,31,966/-) and 246 dated 02.01.2021 (Rs.68,74,565/-). No refunds, replacements provided against invoices 942, 1006, 1042, 5, 72, 73, aggregating Rs.1,36,62,863/- shown as outstanding. Reply dated 06.02.2023 supports this. Relied on ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353,*** paragraph 51, for pre-existing dispute.

(ii) Section 10A bars defaults from 25.03.2020 to 24.03.2021. Claim below Rs.1 crore.

(iii) NeSL form dated 20.01.2025 shows casual filing, listing debt due from 10.02.2021. (iv) Previous petition on 13.07.2023 not disclosed.

11. We have heard the arguments of Ld. Counsel for the Applicant/Operational Creditor as well as Ld. Counsel for the Respondent/Corporate Debtor and perused the material available on record.

12. During the final oral arguments heard on 09.09.2025, the learned counsel for the Corporate Debtor raised the issue that the date of default is neither expressly mentioned in **Part-IV of Form-5** nor in the **Demand Notice dated 30.07.2024**, rendering the petition defective under the IB (AAA) Rules, 2016 and warranting dismissal. The learned counsel for the Operational Creditor rebutted that the mere non-mention of an express date of default in **Part-IV of Form-5** or in the **Demand Notice** does not make the petition defective, as the debt fell due 30 days after the invoices, and the due dates are ascertainable from the unpaid invoices and supporting documents.

13. The Operational Creditor is a company under the Companies Act, 2013, manufacturing aluminium wires. The Corporate Debtor, incorporated under the Companies Act, 1956, operates in the energy sector. Supplies began in 2015, with a running account. Goods were accepted without objection. Invoices from 10.02.2021 to 28.05.2021 total Rs.1,71,00,986/-. Acknowledgment on 10.05.2022 confirms Rs.1,27,57,304.54 due. Ledger and balance sheet reflect outstanding debt. Demand notice dated 30.07.2024 claims Rs.2,71,38,664/-. No payment received.

14. The Corporate Debtor disputes service, cites Section 10A, claims LC payments, invokes res judicata, and questions NeSL filing and threshold.

15. The Operational Creditor counters that goods were consumed without dispute, service was proper, non-10A debt exceeds Rs.1 crore, LC claims lack evidence, and no res judicata applies.

16. The primary issues for determination and considerations are **(a)** whether the absence of an express date of default in Form-5 and the demand notice renders the petition defective; **(b)** whether the demand notice under Section 8 was properly served; **(c)** whether the petition is maintainable despite Section 10A; (d) whether a pre-existing dispute exists; **(e)** whether the debt meets the threshold under Section 4; **(f)** whether the petition is within limitation.

17. **On the absence of an express date of default:** Form-5 and the Demand Notice dated 30.07.2024 do not explicitly state the date of default. Rule 6 of IB (AAA) Rules, 2016 mandates Form-5 for Section 9 petitions, requiring the date of default in Part IV, Serial No. 2. Form-3 for Demand Notice requires the date from which the debt fell due.

18. In ***Kodeboyina Srinivas Krishna Vs. PVM Innvensys Pvt. Ltd., (2020) ibclaw.in 92 NCLAT,*** NCLAT held that the demand notice in Form 3 requires the date of default to be explicitly mentioned, so that on the basis of documents, the debt amount and date of default could be ascertained. Similarly, mentioning the date of default in Form-5 is a statutory requirement as per various rulings on 'Date of Default' being mandatory in Form No.5.

19. In ***Winntus Scaffolding Pvt. Ltd. Vs. Aishwarya Business Corporation Pvt. Ltd. (2023) ibclaw.in 147 NCLT***, NCLT Kochi dismissed the petition for not mentioning the date of default, holding it mandatory. In ***LBF Publication Pvt. Ltd. vs. A & A Business Consulting Pvt. Ltd. (2023) ibclaw.in 517 NCLT***, NCLT Mumbai rejected the petition as the absence made ascertaining default impossible.

20. However, the Operational Creditor argues that the dates are ascertainable from invoices (30 days after), but the explicit mention is mandatory under the rules and forms. The omission is a material defect, rendering the petition not maintainable.

21. Since the petition as well as the Demand Notice suffers from this fatal defect, it is not necessary to examine the other contentions in detail.

22. Accordingly, the petition being **CP (IB) No. 91/9/AHM/2025** is **dismissed** with liberty to file a fresh petition after curing the defects subject to limitation as per law.

23. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

VP