

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I
KOLKATA**

COMPANY PETITION (IB) NO. 185/KB/2025

An Application 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:

BRICK2WALL INFRATECH PRIVATE LIMITED

...Applicant/Operational Creditor

-Versus-

TIRUPATI BUILD-CON PRIVATE LIMITED

...Respondent/Corporate Debtor

Date of Pronouncement: 10.06.2026

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Operational Creditor/Applicant:

Mr. Devul Dighe, Adv.

For the Corporate Debtor/Respondent:

Mr. Shreyas Dharmadhikari, Adv.

MS. Teerthesh Bharilya, Adv.

ORDER

Per: Smt. Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. The learned counsels for the parties were heard at length.
3. The instant Petition being C.P. (IB) No. 185/KB/2025 has been filed by **BRICK2WALL INFRATECH PRIVATE LIMITED** (hereinafter referred to as the Applicant/Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code (hereinafter referred to as IBC, 2016) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) against **TIRUPATI BUILD-CON PRIVATE LIMITED** (hereinafter referred to as the Corporate Debtor).

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4. Facts:

4.1 The Operational Creditor supplied Bitumen VG-40 to the Corporate Debtor for a total value of Rs. 2,23,90,500/- in terms of purchase orders dated 10.03.2025. The said supplies were invoiced under eight invoices raised between 11.03.2025 and 30.03.2025, against which an amount of Rs. 1,39,84,279/- remains due and payable by the Corporate Debtor.

4.2 The Corporate Debtor in discharge of its liability provided the following post-dated cheques which returned dishonored due to insufficient of funds:

Chq. No.	Date	Amt (in Rs.)
435947	07.03.2025	50,00,000/-
435946	07.03.2025	50,00,000/-
435948	07.03.2025	50,00,000/-
Total		1,50,00,000/-

4.3 In view of the Circular dated 23.08.2023 issued by the Ministry of Road and Transport and Highways which mandated source approval of Bitumin VG-40, the authority engineer, L.N. Malviya, issued a letter dated 06.04.2025 to the Corporate Debtor prohibiting it from further procuring Bitumin VG-40 from the Operational Creditor until such source approval was obtained.

4.4 A Demand Notice dated 06.06.2025 was issued by the Operational Creditor in prescribed Form-3 Notice under Section 8 of IBC, 2016.

4.5 The Applicant claims that a total amount of Rs. 1,40,96,857/- (Rupees One Crore, Forty Lakhs, Ninety Six Thousand, Eight Hundred and Fifty Seven Only) inclusive of interest is due and payable.

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5. Submissions on Behalf of the Operational Creditor/Applicant:

- 5.1** It is submitted that the Operational Creditor has supplied Bitumin of Grade VG-40 for a total amount of Rs. 1.1 Crore and Rs. 1.2 Crore in accordance with the purchase orders dated 10.03.2025 placed by the Corporate Debtor.
- 5.2** It is further submitted that after accepting the goods and having no dispute or demur with respect to the said goods, the Corporate Debtor provided post-dated cheques amounting to Rs. 1.5 Crores to the Operational Creditor in discharge of its liability. However, the cheques returned dishonored due to insufficient funds.
- 5.3** It is submitted that the Corporate Debtor made part payments to the Operational Creditor in discharge of its liability which evidences lack of dispute regarding the goods.
- 5.4** It is submitted that the debt became due on the expiry of thirty days from the date of each invoice in terms of the Purchase Orders as well as invoices raised by the Operational Creditor upon the Corporate Debtor.
- 5.5** It is submitted that the Operational Creditor issued a Demand Notice dated 06.06.2025 in in prescribed Form-3 Notice under Section 8 of IBC, 2016, however, the Corporate Debtor failed to make payment of its outstanding debt owed to the Operational Creditor.
- 5.6** It is submitted that a total amount of Rs. 1,40,96,857/- (Rupees One Crore, Forty Lakhs, Ninety Six Thousand and Eight Hundred and Fifty Seven) inclusive of interest remains due and payable.

6. Submissions of Behalf of the Corporate Debtor:

- 6.1** It is contended that the Corporate Debtor had, vide reply dated 29.06.2025 to the Demand Notice dated 06.06.2025 raised a dispute under Section 8(2) of the IBC, 2016. It has been stated that the purchase orders were cancelled and

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partial payments of Rs. 5 Lakhs were made as the Operational Creditor failed to obtain source approval for Bitumen VG-40, despite having assured the same. The department has withheld payment for the work executed by the Corporate Debtor on account of the pending source approval.

- 6.2** It is claimed that as per the circular dated 23.08.2023 issued by Ministry of Road, Transport and Highways, the source approval of Bitumin VG-40 is mandatory. The Corporate Debtor purchased the goods on the Operational Creditor's assurance that source approval from the department would be provided. However, the assurance was not fulfilled, and no source approval for the bitumen has been given till date.
- 6.3** It is contended that L.N. Malviya Infra Projects Pvt. Ltd., the authority engineer issued a letter dated 06.04.2025 wherein it is clearly stated that owing to the failure of the Corporate Debtor to get source approval of bitumen VG-40, the payments which had to be paid to the Corporate Debtor are kept in abeyance and the same could be released after source approval only.
- 6.4** It is further contended that the Corporate Debtor has sufficient means to discharge the debt, as reflected in its audited accounts and the security deposits maintained with government departments, which constitute reliable assets.
- 6.5** It is averred that there clearly exists a dispute with regard to the issue involved in the present case in terms of Section 8(2)(a) of the IBC, 2016.
- 7.** The materials placed on record have been perused, submissions and rival contentions have been noted.
- 8. Analysis and Findings:**
- 8.1** The primary issues for consideration before this Tribunal is whether there is a pre-existing dispute within the meaning of Section 8(2)(a) of IBC, 2016 and whether the present Application is maintainable in law?

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- 8.2** As evident from the purchasing orders, e-way bills and the invoices raised by the Operational Creditor, it is clear that the Operational Creditor had duly supplied Bitumin VG-40 in accordance with the agreed terms between the parties. Further, as reflected in the ledger statement of the Corporate Debtor maintained by the Operational Creditor, the Corporate Debtor had made a partial payment of Rs. 5 Lakhs on 26.05.2025, while an amount of Rs. 2.9 Crore still remains due. The Corporate Debtor had also issued three cheques amounting to Rs. 1.5 Crores in discharge of its liability, but the cheques were dishonored due to insufficiency of funds, thereby further supporting the subsisting debt and default on part of the Corporate Debtor.
- 8.3** The Corporate Debtor's reliance on the circular dated 23.08.2023 issued by the Ministry of Road, Transport and Highways, mandating source approval for Bitumin VG-40 as well as the letter issued by the authority engineer to the Corporate Debtor, prohibiting the Corporate Debtor from procuring more Bitumin of grade VG-40 from the Operational Creditor until source approval is provided, as an evidence for pre-existing dispute is wholly misplaced.
- 8.4** In **Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353**, the Hon'ble Apex Court has held that as per Section 5(6) read with Section 2(8)(a) of the IBC, 2016, a dispute must exist before the receipt of Demand Notice or the invoice. The relevant portion of the judgement is reproduced as under:

“24. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand

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notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be...

(emphasis added)

- 8.5** It is a settled position of law that an “existence of dispute” within the meaning of Section 8 of the Insolvency and Bankruptcy Code, 2016 must pre-date the issuance and service of the statutory demand notice. In the present case, the Corporate Debtor has, for the first time, raised the issue of alleged non-availability of source approval for Bitumen VG-40 only in its reply to the Demand Notice dated 06.06.2025 and not before the receipt of Section 8 Notice.
- 8.6** The Corporate Debtor has stated that the information provided by the authority engineer was communicated to Mr. Krishna Kant Choudhary, the General Manager of the Operational Creditor. However, there is no evidence on record to substantiate this claim.
- 8.7** Prior to the issuance of the said Section 8 notice, no objection whatsoever had been raised by the Corporate Debtor regarding the source approval of the goods supplied. Additionally, the Corporate Debtor also admitted to utilization of the goods supplied by the Operational Creditor for the rehabilitation and upgradation works of NH-39 project.
- 8.8** The Circular issued by the Ministry of Road, Transport and Highways sets out the mandatory regulatory framework governing the procurement and supply of Bitumin VG-40 and the letter issued by the authority engineer is to ensure compliance with the regulations prescribed under the Circular. Mere existence of the aforesaid documents which is applicable to all contracts

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engaged in supply and procurement of Bitumin VG-40 is not an evidence of pre-existing dispute between the parties by itself.

- 8.9** In the absence of any objections raised by the Corporate Debtor regarding the nature and quality of good supplied, coupled with the consumption of the goods they are purportedly dissatisfied with, can not give rise to a pre existing dispute within the meaning of Section 5(6) read with Section 8(2)(a) of IBC, 2016.
- 8.10** It is also pertinent to note that the Director of the Corporate Debtor has himself acknowledged the existence of debt in email dated 23.06.2026 and has attributed the failure to pay the subsisting debt to non-receipt of payment from the MP Road Development Corporation and has sought more time to discharge the outstanding liability. This clearly demonstrates the inability of the Corporate Debtor to clear its dues is because of financial constraints rather than existence of a genuine dispute.
- 8.11** From the correspondence exchanged between the Directors of Operational Creditor and the Corporate Debtor, it is evident that an aggregate amount of 1.39 Crores is undisputedly due and payable which is well above the minimum threshold of Rs. 1 Crore prescribed under Section 4 of the IBC, 2016.
- 8.12** As per the invoices raised by the Operational Creditor, the debt became due and payable after expiry of 30 days from the date of each invoice. The invoice dated 11.03.2025 became due and payable on 11.04.2025 and the Corporate Debtor failed to pay the amount due, the default occurred on and from 11.04.2025. Since the present Application has been filed in June 2025, therefore it is well within the period of limitation and maintainable under the scheme of IBC, 2016.
- 9.** In view of the foregoing discussion, we **allow** this application being **C.P. (IB) NO. 185/KB/2025** filed under **Section 9 of I&B Code**, and

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accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by the **BRICK2WALL INFRATECH PRIVATE LIMITED (Operational Creditor)**, under **Section 9** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **TIRUPATI BUILD-CON PRIVATE LIMITED. (Corporate Debtor)**.

- ii.** As a consequence of this Application being admitted in terms of Section 9 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - 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 asset 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);*

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D) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has not proposed any name as the “IRP”. Hence, we appoint **Ms. Mamta Binani IBBI/IPA-002/IP-N00086/2017-18/10227 Mobile no- 9831099551; Email id - mamtabinani@gmail.com**. as the **Interim Resolution Professional (IRP)** of the Corporate Debtor, by invoking the provision under Section 16 (3) (a) of the I&B Code, 2016 to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional)

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Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.

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- x.** The IRP or the RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 9(5)(i) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

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- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 10.** Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.
- 11.** Post the matter on **20/07/2026** for filing the Periodical Progress Report by the IRP/RP.

Cmde Siddharth Mishra
Member (Technical)

Smt. Bidisha Banerjee
Member (Judicial)

The Order signed on **10th** day of **June** 2026.

Anubhuti S. (LRA)