

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT-I, CHANDIGARH**

CP (IB) NO.35/Chd/J&K/2025

*[Petition Under Section 9 of the
Insolvency and Bankruptcy
Code, 2016]*

IN THE MATTER OF:

M/s Kokila Mining Private Limited

Address: 810, Tandice, Next to Darpan Telephone,
Exchange, Behind Western Express Metro
Andheri (East), Mumbai – 400093.

Email: kokilamining@gmail.com

Represented Through: Mr. Prem Nath Nair,

Authorised Representative,

Phone No. 877758995

Email ID: kokilamining@gmail.com

...OPERATIONAL CREDITOR/PETITIONER

VERSUS

1. M/s Tycoons Industries Pvt. Ltd.

Address: 1st Floor, Nawa-1, Subh Building,
1st Floor, Zero Bridge, Srinagar, Jammu & Kashmir (190001)
Also at: Tycoons Industries Pvt. Ltd.
487D, Mandir Marg, Ashok Nagar, Ranchi9
Jharkhand- 834002.

Represented through: Mr. Joy Deb Chatterjee, Director

S/o Late Samir Kumar Chatterjee

DIN: 559907

Address: Round House, A.G. Office Road, Opposite Loreto Convent,
North Office Para, Ranchi – 834002

Phone No.: 9386252988, Email ID: jdc@tycoonsindustries.com

...CORPORATE DEBTOR/RESPONDENT

Order delivered on: 11.06.2026

Coram: **SH. KHETRABASI BISWAL, HON'BLE MEMBER (JUDICIAL)**
 SH. SHISHIR AGARWAL, HON'BLE MEMBER (TECHNICAL)

Present:

For the Petitioner : Mr. Anjani Sinha, Advocate

For the Respondent : Mr. Bharat Arora, Advocate

ORDER

The present Petition has been filed by Kokila Mining Private Limited, through its Authorised Representative Mr. Prem Nath Nair (hereinafter referred to as the "Operational Creditor") under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for inter alia, initiating Corporate Insolvency Resolution Process (for short "CIRP") against Tycoons Industries Pvt. Ltd. (hereinafter referred to as the "Corporate Debtor").

FACTS

(2) The brief facts of the Petition, which are relevant to the issue in question, are as under:

- (i) M/s Kokila Mining Private Limited, the Operational Creditor, is engaged in the business of providing heavy mining equipment including Tippers and Excavators on a contractual service basis.
- (ii) The Corporate Debtor, Tycoons Industries Pvt. Ltd., is engaged in coal mining operations.

- (iii) In the year 2022, the Corporate Debtor approached the Operational Creditor requesting Tippers and Excavators vide a Service/Work Order (bearing No. CBCMPL/22-23/TIPPER/0010) dated 10/08/2022 on a lease basis, representing that it was facing operational bottlenecks in its mining operations at NTPC coal mines, Chattibariatu, Hazaribag, and ECL coal mines, Chapapur, Dhanbad, Jharkhand. Based on the Corporate Debtor's representations, the Operational Creditor agreed to provide the requisite equipment.
- (iv) Accordingly, a Work Order dated 10.08.2022 was executed between the parties, which governed the terms and conditions of the provision of equipment, including rates, downtime provisions, and operational obligations. The Operational Creditor duly deployed Tippers and Excavators at the Corporate Debtor's mining sites and rendered services thereunder. The existence of the Work Order, dated 10.08.2022 and the contractual relationship between the parties has been admitted by the Corporate Debtor.
- (v) During the course of business transactions, a meeting was held between the parties for review of operations. The Corporate Debtor issued a second Work Order dated 01.07.2023, annexed to the Petition as Exhibit 'B' Colly, covering the period 01.07.2023 to 20.06.2025, with revised

rates for equipment. The execution of the second Work Order corroborates the Corporate Debtor's satisfaction with the Operational Creditor's work performance and its continued engagement.

- (vi) The Operational Creditor duly raised invoices for the services rendered, all of which were received and acknowledged by the Corporate Debtor, annexed to the Petition at Exhibit 'C' Colly. Monthly billing was undertaken based on the actual number of days of work per equipment after adjusting the permissible downtime of two days per month as per Clause 7 of the Work Order dated 10.08.2022. Fleet numbers mentioned in fractions in certain invoices reflect downtime adjustments only, which were duly reconciled between the parties. The total amount of invoices raised by the Operational Creditor was Rs. 18,53,62,218/-, against which the Corporate Debtor made payments and adjustments of Rs. 7,51,39,162/-.
- (vii) Notwithstanding the Operational Creditor's continued services, the Corporate Debtor persistently defaulted on payment obligations, causing mounting dues. Work at the Corporate Debtor's sites came to a stop on 30.04.2024 due to the Corporate Debtor's continued failure to clear the outstanding dues, which also adversely affected the Operational Creditor's ability to service its hire purchase EMIs for the equipment deployed. The Operational Creditor

had procured the Tippers and Excavators on hire purchase basis, under which approximately 75% of the monthly revenue goes towards EMI and 20% towards salary, repairs and maintenance.

(viii) Subsequently, on 01.04.2024, a Reconciliation Statement cum Balance Confirmation was prepared and it was duly confirmed and signed by the Director of the Corporate Debtor, Mr. Joy Deb Chatterjee, acknowledging the outstanding balance of Rs. 11,02,23,056/- (Rupees Eleven Crores Two Lakhs Twenty-Three Thousand Fifty-Six Only) as payable to the Operational Creditor as on 31.03.2024, annexed to the Petition at Exhibit 'G' and Exhibit 'F'. This document constitutes a clear, voluntary, and formal acknowledgment of the outstanding operational debt by the Corporate Debtor's own Director and is based on summation of invoices raised after deducting payments received and other adjustments mutually agreed upon and reconciled by both parties.

(ix) Being aggrieved by the continued non-payment of the unpaid operational debt amounting to Rs. 11,02,23,056/-, the Operational Creditor issued a Statutory Demand Notice under Section 8 of the Code dated 19.07.2024 in the prescribed Form, which was duly served upon the Corporate Debtor through Speed Post at its registered office, annexed to the Petition at Exhibit 'H'. The Corporate

Debtor failed to raise any dispute or make any payment within the statutory period of ten days from receipt of the said notice, nor at any time thereafter.

- (x) The National E-Governance Services Limited (for short "NeSL"), vide letter dated 17.08.2024, confirmed the Record of Default as "Deemed to be Authenticated," as the Corporate Debtor neither raised any dispute nor any grievance in respect of the said default with NeSL within the prescribed period. This NeSL Record of Default constitutes corroborative evidence of the existence of the operational debt and the Corporate Debtor's default thereunder.
- (xi) Subsequently, a sum of Rs. 30,00,000/- was received from the Corporate Debtor's vendor and it has been duly acknowledged and adjusted against the outstanding dues in paragraph 32 of the petition. After accounting for this adjustment, the remaining outstanding balance aggregates to Rs. 10,72,23,056/-. This net amount continues to remain due and payable, far exceeding the statutory threshold limit of Rs. 1 Crore prescribed under Section 4 of the Code.
- (xii) The Operational Creditor has proposed Mr Neehal Mahamulal Pathan, having Registration No. IBBI/IPA-001/IP-P01561/2018-19/12406, as the Insolvency Professional to act as Interim Resolution

Professional (for short “IRP”) in the CIRP of the Corporate Debtor.

REPLY OF THE CORPORATE DEBTOR

(3) The Corporate Debtor filed its Reply to the application, and the averments made therein are summarised as under:

- (i)** The present petition filed under Section 9 of the Code is not maintainable and is liable to be dismissed in limine. The alleged operational debt is wholly disputed and inflated, and the petition has been filed with malafide intent to misuse insolvency proceedings as a coercive debt recovery mechanism.
- (ii)** The existence of business dealings with the Operational Creditor is not denied; it is vehemently denied that any undisputed operational debt of Rs. 11,02,23,056/- or any such amount is payable. The Corporate Debtor is engaged in coal mining operations and had engaged the Operational Creditor for provision of supply of Tippers and Excavators. However, the Operational Creditor's machinery repeatedly suffered breakdowns and failed to satisfy the guaranteed working hours as per the contractual terms, causing substantial operational losses to the Corporate Debtor.
- (iii)** The first Work Order dated 10.08.2022 was in fact issued in favour of KLISCO Mining LLP, which is a distinct legal entity of the Operational Creditor but not in favour of the CD, annexed to the Reply at Annexure R-2. Despite this, invoices were

subsequently raised by Kokila Mining Private Limited without there being a formal novation or assignment of the Work Order with the Corporate Debtor's consent.

- (iv)** The Demand Notice, dated 19.07.2024, allegedly issued under Section 8 of the Code, was sent through Speed Post and was never received by the Corporate Debtor. All communications and dealings between the parties were conducted exclusively through email, and the Corporate Debtor's email address was well known to the Operational Creditor. The deliberate choice to send the notice by post to the exclusion of email, the absence of any postal acknowledgement of delivery, and the fact that the Operational Creditor's own email of 19.07.2024 enclosing a ledger to the Corporate Debtor makes no mention whatsoever of any demand notice having been sent, collectively establish that the demand notice was never validly served upon the Corporate Debtor.
- (v)** There exists a clear and genuine pre-existing dispute between the parties, predating the alleged demand notice, on multiple grounds. First, a substantial number of invoices raised by the Operational Creditor were marked "received not verified" owing to repeated machinery breakdowns and services not actually rendered, as reflected in the invoices at pages 64, 66, 68, 78, 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, and 94 of the petition itself. Second, there is a significant and material discrepancy between the GST amounts shown in the

Operational Creditor's invoices and the actual GST deposited with the government, as evidenced by the GSTR-2B Summary (Annexure R-11), which reflects actual GST payments of only Rs. 26,34,300/- against the Operational Creditor's ledger claim of Rs. 2,80,09,406/- a discrepancy of over Rs. 2.53 crores establishing that the invoices forming the basis of the claimed debt are unreliable and incorrect. Third, under Clause 10 of the first Work Order and Clause 13 of the second Work Order, salaries of workers deployed at the site were to be paid by the Corporate Debtor and adjusted from the Operational Creditor's bills, which deductions have not been properly accounted for, annexed to the Reply at Annexure R-2 and Annexure R-4.

- (vi)** A meeting was convened on 17.06.2023, precisely because of the Operational Creditor's inability to perform its contractual obligations. The rate reductions agreed upon from Rs. 4,65,000 to Rs. 4,50,000 per month for Volvo FMX 460, and from Rs. 4,00,000 to Rs. 3,65,000 per month for Bharat Benz Thunderbolt reflect performance deficiencies, not routine commercial revision. The Operational Creditor's machinery failed to satisfy the guaranteed working hours of 450 hours per month as stipulated in Clause 3 of the Minutes of Meeting.
- (vii)** The Reconciliation Statement cum Balance Confirmation dated 01.04.2024 cannot constitute a binding, final, and conclusive admission of the claimed debt. The said document was prepared on the basis of the Operational Creditor's own ledger figures,

which are demonstrably incorrect in light of the GST discrepancy. The reconciliation was a working document and not a final settlement of accounts. This is evidenced by the Corporate Debtor's email of 19.07.2024 enclosing its rival calculations, the follow-up email of 23.07.2024 with revised calculations, and the formal request of 20.08.2024 inviting the Operational Creditor's representative to Ranchi for reconciliation of accounts and discrepancies all demonstrating that the accounts were never treated as finally settled by the Corporate Debtor, annexed to the Reply as Annexure R-12 and Annexure R-14.

- (viii)** Adhunik Power and Natural Resources Limited and Viraj Steel and Energy Private Limited are group entities and sister concerns of the Operational Creditor. Adhunik Power owes Rs. 3.25 crores to the Corporate Debtor for goods and services purchased in 2022 (Annexure R-5). Viraj Steel and Energy Pvt. Ltd. placed a Purchase Order dated 17.01.2022 for Rs. 4.58 crores (Annexure R-6), against which the Corporate Debtor raised invoices of Rs. 4,45,98,461.39/-, with approximately Rs. 1.2 crores remaining unpaid. These liabilities and reciprocal claims have been suppressed in the petition. After adjusting these amounts along with other payments made, the Corporate Debtor is actually entitled to recover a net sum of Rs. 3.72 Crores from the Petitioner and its group entities, and the Operational Creditor is not entitled to any amount.

- (ix) As per the Corporate Debtor's verified accounts, the total taxable dues payable to the Operational Creditor amount to only Rs. 10,14,17,363/-, against which total payments of Rs. 8,94,45,673/- have been made, leaving a balance of only Rs. 1,20,71,690/-. After deducting the payment of Rs. 30,00,000/- made through CBCMPL on 26.07.2024, the outstanding balance reduces to approximately Rs. 90,71,690/- an amount below the statutory threshold of Rs. 1 Crore as mentioned under Section 4 of the Code.
- (x) The CD, relying upon the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353***, submitted that where a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has no option but to reject the application. Further, in the matter of *M/s Kellton Tech Solutions Ltd. v. M/s Actas Technologies Pvt. Ltd. (2024 SCC Online NCLAT 60)*, it is held that pre-existing disputes evidenced through emails and WhatsApp communications regarding non-delivery or non-completion of services bar initiation under Section 9. In the matter of *Gupta Exim (India) Pvt. Ltd. v. Knitcraft Apparels International Pvt. Ltd. (2022 SCC Online NCLAT 3986)*, it is held that the claimed default amount does not meet the statutory threshold when properly computed after accounting for all payments and adjustments.

(xi) The Corporate Debtor prayed that the present Petition be dismissed with costs.

REJOINDER OF THE OPERATIONAL CREDITOR

(4) The Operational Creditor filed its Rejoinder to the Reply and the averments made therein are summarised as under:

(i) All averments, contentions, and allegations made in the Reply are categorically denied. The Petition has been filed strictly in accordance with law after issuance of a valid Demand Notice under Section 8 of the Code and lapse of the mandatory ten-day period without any payment or notice of dispute being received.

(ii) The outstanding amount of Rs. 11,02,23,056/- is a well-settled amount arising out of the Reconciliation Statement cum Balance Confirmation duly confirmed and signed by the Director of the Corporate Debtor on 01.04.2024. The balance as on 31.03.2024 was duly confirmed by the Corporate Debtor's own Director, and the calculation is based on summation of invoices after deducting all payments received and adjustments made. This is not a disputed demand the Corporate Debtor's Director's own signature constitutes an unequivocal and binding admission of the debt.

(iii) All invoices raised by the Operational Creditor were duly received and acknowledged by the Corporate Debtor. The fact that the Corporate Debtor did not inscribe "verified" on the acknowledgements does not invalidate the invoices. It is a usual trade practice to

acknowledge receipt of invoices with the mark "not verified" and subsequently to inform the supplier in writing if any discrepancy is noticed during verification. In the present case, the Corporate Debtor did not raise any dispute regarding any of the invoices, nor did it forward any email specifying any discrepancy in any invoice at any point prior to the issuance of the Demand Notice. The Corporate Debtor instead accepted and confirmed the Reconciliation Statement cum Balance Confirmation dated 01.04.2024. The allegations regarding invoices in the Reply are therefore false, frivolous, and afterthought defences.

(iv) The meeting dated 17.06.2023 was a regular work review meeting and the second Work Order issued on 01.07.2023 following the said meeting corroborates the Corporate Debtor's satisfaction with the Operational Creditor's work performance. The meeting was convened to renegotiate service charges reflecting commercial negotiation and not performance deficiency. Regarding downtime, monthly billing was done based on actual days of work after adjusting permissible downtime, and fleet numbers in fractions reflect these adjustments which were duly reconciled. There is accordingly no dispute on account of breakdown or downtime.

(v) The Corporate Debtor has raised frivolous issues regarding workers' salaries. All equipment were operated by the Operational Creditor's own staff whose salaries were paid by the Operational Creditor. Clause 15 of the Work Contract dated 01.07.2023, annexed to the Petition as Exhibit 'B' Colly, expressly provides that accommodation

and food for staff shall be provided by TIPL free of charge. The reconciliation statement of 01.04.2024 signed by the Corporate Debtor makes no mention of any deduction on account of workers' salaries or food charges, conclusively establishing that no such deductions were due.

(vi) The Corporate Debtor's contentions regarding GST are untenable. The Corporate Debtor endeavours to avail GST credit without making payment of the invoice amounts, which is wholly unjust and would allow the defaulting party to benefit from its own default. The Operational Creditor undertakes to deposit the differential GST amount as soon as the outstanding dues along with interest are paid by the Corporate Debtor. Until payment is received, the Operational Creditor cannot be expected to deposit GST on amounts not yet received.

(vii) Any relationship whatsoever between the Operational Creditor and Adhunik Power and Natural Resources Limited or Viraj Steel and Energy Private Limited is denied. There is no common director, no common shareholding, and no holding-subsiidiary or sister concern relationship, as conclusively established by the MCA records annexed as Exhibits O, P, and Q colly. Manoj Agrawal, referred to in the Corporate Debtor's WhatsApp communications, was never a director, shareholder, or employee of the Operational Creditor. Any WhatsApp communication between the Corporate Debtor's director and Manoj Agrawal has no bearing whatsoever on the legitimate claims of the Operational Creditor.

(viii) After the reconciliation statement was signed on 01.04.2024, there is no scope for retrospective re-reconciliation at this stage of adjudication, particularly because work stopped on 30.04.2024. Any attempt at re-reconciliation after a signed balance confirmation is legally untenable. The Corporate Debtor did not raise any dispute in response to the Demand Notice dated 19.07.2024, and the NeSL Record of Default dated 17.08.2024 was marked "Deemed to be Authenticated" because the Corporate Debtor raised no dispute or grievance with NeSL. The email dated 20.08.2024 is of no legal consequence as no statement of accounts or reconciliation statement was annexed therewith and it was merely a failed attempt to take shelter under the smokescreen of a pre-existing dispute.

(ix) There is no manipulation of invoices or accounts as alleged. The operational debt within the meaning of the Code is clearly established and the petition is fit to be admitted for initiation of CIRP.

(5) The Additional submissions made by both parties to the extent not already urged are summarised as under:

Corporate Debtor's Additional Submissions

(i) The emails dated 19.07.2024 and 23.07.2024 between the parties, now filed as additional documents, conclusively establish the absence of valid service of the demand notice. On 19.07.2024, the Operational Creditor sent an email to the Corporate Debtor enclosing its ledger with no mention of any demand notice having been dispatched the same day. The Corporate Debtor responded the same evening with its

own approved calculations disputing the Operational Creditor's figures. On 23.07.2024, the Corporate Debtor again sent revised calculations to which the Operational Creditor did not respond. This unbroken email chain, entirely silent about any demand notice on or after 19.07.2024, dismisses any claim of valid service.

(ii) In furtherance of arguments advanced during hearing on 29.04.2026, that the WhatsApp chat at Page 57 of the Reply is dated 15.08.2024, wherein the Corporate Debtor described the entire payment position that dues of Rs. 10.14 crores were passed, Rs. 7.11 crores was paid, Rs. 1.2 crores was directed to be paid by Rithwik Projects directly to the Operational Creditor per email of 22.06.2024, and Rs. 1.8 crores due from Viraj Steel was to be adjusted all of which was received and not disputed by the Operational Creditor's representative. The ledger sent via WhatsApp was only received but never verified or acknowledged by the Corporate Debtor.

(iii) A critical payment of **Rs. 11,00,000/-** was made on **01.10.2024** by CBCMPL to the Operational Creditor on behalf of the Corporate Debtor, as evidenced by the bank instruction letter dated 01.10.2024 issued by Chatti Bariatu Coal Mining Private Limited to the Assistant General Manager, State Bank of India, Somajiguda, wherein at **Serial No. 3** it is recorded: "**KOKILA MINING PVT. LTD., BELPAHAR JHARSUGUDA, UTIB0003092, Rs. 11,00,000/-**." This document is filed herewith as an additional document. This payment was discovered only after filing of the Reply during reconciliation with CBCMPL. The

Operational Creditor's petition filed after 01.10.2024 deliberately omits this payment while disclosing the Rs. 30,00,000/- payment of 26.07.2024, confirming the suppression was intentional and constitutes mala fide conduct before this Adjudicating Authority. On account of the aforesaid suppressed payment, the revised position as per the Corporate Debtor's accounts at the time of filing of the petition is as under:

| (6) Particulars | (7) As per Kokila (Rs.) | (8) As per TIPL (Rs.) |
|---------------------------------------|------------------------------------|----------------------------------|
| (9) Total Dues | (10) 15,30,71,790.00 | (11) 10,14,17,363.06 |
| (12) Payments Made | (13) 7,51,39,452.00 | (14) 8,94,45,673.00 |
| (15) Balance (Net of GST) | (16) 7,79,32,338.00 | (17) 1,20,71,690.06 |
| (18) Less: Paid 26.07.2024 | (19) 30,00,000.00 | (20) 30,00,000.00 |
| (21) Less: Paid 01.10.2024 | (22) Not disclosed | (23) 11,00,000.00 |
| (24) Balance at time of filing | (25) 7,49,32,338.00 | (26) 79,71,690.06 |

As per the Corporate Debtor's calculations supported by documentary evidence, the balance outstanding at the time of filing was only **Rs.**

79,71,690.06/-, well below the statutory threshold of Rs. 1 Crore under Section 4 of the Code. Reliance is placed upon **Gupta Exim (India) Pvt. Ltd. v. Knitcraft Apparels International Pvt. Ltd.** (2022 SCC Online NCLAT 3986). The present petition is accordingly liable to be dismissed as a misuse of the process of law.

Operational Creditor's rebuttal

(i) The Demand Notice dated 19.07.2024 was duly served upon the Corporate Debtor through Speed Post, and proof of dispatch along with the speed post receipt and consignment tracking report evidencing delivery at the Corporate Debtor's office at Ranchi, Jharkhand has been placed on record. The Corporate Debtor's plea of non-receipt, raised for the first time in its Written Submissions and conspicuously absent from its Affidavit in Reply, is a belated and mischievous attempt to mislead this Adjudicating Authority.

(ii) The payment of Rs. 30,00,000/- was not mentioned in the Demand Notice dated 19.07.2024 for the reason that the said payment was received by the Operational Creditor only on 01.08.2024 subsequent to the issuance of the notice. Similarly, the payment of Rs. 11,00,000/- purportedly made on 01.10.2024 was not disclosed in the Company Petition for the reason that the petition was notarised on 05.09.2024, before the said payment, and accordingly the same could not have been included therein.

(iii) The judgments relied upon by the Corporate Debtor are distinguishable on the facts. ***Kellton Tech Solutions Ltd. v. Actas Technologies Pvt. Ltd. (2024 SCC Online NCLAT 60)*** is distinguishable as in that case the dispute was raised before the demand notice, whereas in the present case, admittedly, no dispute was raised at any point before the issuance of the demand notice under Section 8 of the Code. ***Gupta Exim (India) Pvt. Ltd. v. Knitcraft Apparels International Pvt. Ltd. (2022 SCC Online NCLAT 3986)*** is distinguishable as that petition was dismissed on two grounds i.e., failure to meet the threshold and the petitioner itself being under CIRP, neither of which applies to the present case.

(iv) Since all the ingredients required for admission under Section 9 of the Code as laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*** are satisfied as an operational debt exceeding the threshold, documentary evidence of the debt being due and unpaid, and the absence of any pre-existing dispute, the present Company Petition is fit to be admitted and CIRP be initiated against the Corporate Debtor.

ANALYSIS AND FINDINGS

6. We have heard the submissions made by the Ld. Counsels for both the parties and gone through the relevant documents available on record and also gone through the judgments relied upon by them.

7. For the adjudication of the present application filed under Section 9 of the Code, this Adjudicating Authority is required to examine **(a)** whether the

application is complete in all respects, **(b)** whether there has been a default in payment of the operational debt, **(c)** whether the demand notice has been duly served upon the Corporate Debtor, and **(d)** whether any notice of dispute has been received by the Operational Creditor prior to the issuance of the demand notice. For ready reference, the relevant portions of Section 9(3) and Section 9(5) of the Code are reproduced hereunder:

"Section 9(3) — *The operational creditor shall, along with the application furnish— (a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor; (b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt; (c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; (d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed."*

.....xxx.....

"Section 9(5) — *The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order— (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,— (a) the application made under sub-section (2) is complete; (b) there is no payment of the unpaid operational debt; (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any; (ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if— (a) the application made under sub-section (2) is incomplete; (b) there has been payment of the unpaid operational debt; (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor; (d) notice of dispute has been received by the operational creditor or there is a record of dispute in*

the information utility; or (e) any disciplinary proceeding is pending against any proposed resolution professional."

8. At the outset, it is noted that the existence of a contractual relationship between the Operational Creditor and the Corporate Debtor is not in dispute. The Corporate Debtor has itself admitted in its Reply the engagement of the Operational Creditor for the provision of Tipplers and Excavators at its coal mining sites pursuant to Work Orders dated 10.08.2022 and 01.07.2023, the provision of services thereunder, and the raising of invoices by the Operational Creditor. It is further admitted that the Corporate Debtor made part payments on account from time to time, the total of such payments and adjustments being Rs. 7,51,39,162/-. A claim arising out of such services constitutes an operational debt within the meaning of Section 5(21) of the Code, and the existence of the debt as such is not in controversy.

9. We note that the Operational Creditor has placed on record a Reconciliation Statement cum Balance Confirmation dated 01.04.2024, bearing the signature of the Director of the Corporate Debtor, Mr. Joy Deb Chatterjee, acknowledging an outstanding balance of Rs. 10,45,71,347/- as on that date. The variance between the reconciled balance of Rs. 10,45,71,347/- as on 01.04.2024 and the final claimed amount of Rs. 11,02,23,056/- is established by the Operational Creditor in his Calculation Sheet (Exhibit 'F'). As per Exhibit 'F', following the reconciliation, the Operational Creditor raised the final two invoices dated 05.05.2024 (Invoice Nos. KMPL/24-25/001 and KMPL/24-25/002) for subsequent services, bringing the gross value of all 32 invoices to Rs. 18,53,62,218/-. Against

this total billed amount, Exhibit 'F' records the cumulative part-payments received from the Corporate Debtor as Rs. 7,51,39,162/-. The net result of subtracting the total received amount from the total invoiced amount yields the exact final claimed balance of Rs. 11,02,23,056/-, demonstrating a documented progression of the running account rather than a discrepancy.

10. Further, subsequent to the Demand Notice dated 19.07.2024, a payment of Rs. 30,00,000/- was made to the Operational Creditor on 26.07.2024 by the Corporate Debtor's vendor CBCMPL on its behalf, confirmed vide email dated 01.08.2024 from Mr. V. Srinivas, which has been duly acknowledged and deducted by the Operational Creditor. The receipt of this post-notice payment through the Corporate Debtor's own vendor is itself indicative of the Corporate Debtor's awareness of its outstanding dues. The Reconciliation Statement dated 01.04.2024, bearing the voluntary signature of the Corporate Debtor's own Director, constitutes an unequivocal and binding acknowledgement of a debt of Rs. 10,45,71,347/-, a figure that far exceeds the statutory threshold of Rs. 1 Crore prescribed under Section 4 of the Code.

11. The Operational Creditor has submitted that this document was arrived at following a detailed physical meeting between the parties on 01.04.2024, at the conclusion of which the Corporate Debtor's Director signed the statement acknowledging the outstanding balance. The Corporate Debtor has not denied the signing of this document in its Reply. A balance confirmation signed by the Director of the Corporate Debtor, following a reconciliation meeting, is a document of considerable evidentiary value and ordinarily constitutes strong prima facie evidence of the existence and

quantum of the debt. This document is further supported by the NeSL Record of Default dated 17.08.2024, which shows the amount of default as Rs. 11,02,23,056/- (Rupees Eleven Crores Two Lakhs Twenty-Three Thousand Fifty-Six only), with a status "**Deemed to be Authenticated**", the Corporate Debtor having not raised any dispute with NeSL within the prescribed period.

12. On the question of service of the Demand Notice dated 19.07.2024, the Operational Creditor has placed on record the speed post receipt along with the consignment tracking report evidencing delivery of the notice at the Corporate Debtor's office at Ranchi, Jharkhand. Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 expressly permits service by speed post at the registered office of the Corporate Debtor, and the Operational Creditor having complied with this requirement, we are satisfied that the Demand Notice was duly served.

13. The law on pre-existing disputes in the context of Section 9 of the Code is well settled by the Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353**, wherein it was held as under:

"Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) Whether there is an 'operational debt' as defined exceeding Rs. 1 lakh? (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? And (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute? If any one of the aforesaid conditions is lacking, the Application would have to be rejected... the dispute must truly exist in fact and must not be spurious, hypothetical or illusory."

Bearing the aforesaid precedent in mind, we proceed to examine whether the Corporate Debtor has demonstrated the existence of a genuine pre-existing dispute on the material before us.

14. The Corporate Debtor's primary defences may be examined under the following heads. First, the Corporate Debtor has pointed to several invoices bearing the stamp "received not verified" and has contended that these reflect contemporaneous objections to the services billed. We are unable to accept this contention. The Operational Creditor has in our view rightly submitted that "received not verified" is a standard trade practice notation placed upon invoices at the point of receipt pending internal processing, and that the Corporate Debtor, having received thirty-two invoices over a period of nearly two years without raising a single written objection specifying any discrepancy to any of those invoices, and having thereafter signed the Reconciliation Statement on 01.04.2024, must be treated as having accepted those invoices. The Corporate Debtor has not placed on record any document in the nature of a credit note, rejection memo, inspection report, etc. or any written communication prior to the demand notice raising a specific objection to any invoice. In the absence of such contemporaneous documentary evidence, the allegation of disputed invoices amounts to a bald assertion unsupported by evidence, which the Hon'ble Supreme Court in ***Mobilox (supra)*** has specifically held cannot constitute a genuine pre-existing dispute.

15. Second, the Corporate Debtor has placed on record the GSTR-2B Summary showing actual GST deposits of Rs. 26,34,300/- against the ledger figure of Rs. 2,80,09,406/-, contending that this discrepancy

establishes a pre-existing dispute about the correctness of the invoices. We have considered this submission carefully. The Operational Creditor has explained that the GST could not be deposited on account of the Corporate Debtor's own failure to make payment of the invoice amounts, and undertakes to deposit the differential amount upon receipt of the outstanding dues. We find this explanation to be commercially plausible and consistent with the documented payment difficulties experienced by the Operational Creditor on account of the Corporate Debtor's mounting defaults. More importantly, we note that the Corporate Debtor signed the Reconciliation Statement on 01.04.2024, which was arrived at after a physical meeting with full knowledge of the state of GST compliance, having itself been a party to the commercial relationship throughout. The GST discrepancy, while noted, does not, in our considered view, constitute a pre-existing dispute that was raised or communicated by the Corporate Debtor before the demand notice, and cannot therefore satisfy the standard laid down in ***Mobilox (supra)***.

16. Third, the Corporate Debtor has relied upon the email communications of 19.07.2024 and 23.07.2024 wherein it dispatched rival calculations to the Operational Creditor, and the reconciliation request of 20.08.2024, as evidence of a pre-existing dispute. We note that the email of 19.07.2024 was sent by the Corporate Debtor in response to the Operational Creditor's ledger email of the same date, and that the reconciliation request of 20.08.2024 does not predate the demand notice. The Hon'ble NCLAT in ***M/s Kellton Tech Solutions Ltd. v. M/s Actas Technologies Pvt. Ltd. (2024 SCC Online NCLAT 60)*** has held that the dispute must predate the

demand notice. The Operational Creditor has correctly distinguished this judgment on the ground that in that case the dispute predated the notice, whereas in the present case no dispute was raised at any point prior to the issuance of the demand notice. The Corporate Debtor's attempt to characterise these post-notice communications as evidence of a pre-existing dispute is not persuasive, particularly in the backdrop of the signed reconciliation statement of 01.04.2024.

17. Fourth, the Corporate Debtor has contended that Adhunik Power and Natural Resources Limited and Viraj Steel and Energy Private Limited are group entities of the Operational Creditor and that amounts owed by them to the Corporate Debtor ought to be adjusted against the present claim. The Operational Creditor has placed on record MCA records establishing conclusively that there is no common director or shareholder between the Operational Creditor and either of the said entities, and that Manoj Agrawal, referred to in the Corporate Debtor's WhatsApp communications, is not a director, shareholder, or employee of the Operational Creditor. In the absence of any demonstrated relationship between the Operational Creditor and the said entities, amounts owed by separate legal entities cannot be set off against the Operational Creditor's claims in these proceedings. This contention is accordingly rejected.

18. The Corporate Debtor has raised a contention regarding the statutory threshold under Section 4 of the Code, submitting that on its own calculations, the balance outstanding is approximately Rs. 79,71,690/-. We note, however, that the Corporate Debtor arrives at this figure primarily by making unilateral deductions of alleged dues owed by third-party entities,

namely Adhunik Power and Viraj Steel. Under the summary jurisdiction of the Code, the Corporate Debtor cannot unilaterally set off the liabilities of distinct corporate entities against the Operational Creditor's legally crystallised invoices to artificially drag the debt below the prescribed threshold.

19. We have also noted the Corporate Debtor's submission that a payment of Rs. 11,00,000/- was made on 01.10.2024 by its vendor CBCMPL to the Operational Creditor, which was not disclosed in the petition. The Operational Creditor has clarified, and we find this explanation satisfactory, that the Company Petition was notarised on 05.09.2024 before the said payment of 01.10.2024, and, accordingly, the same could not have been included in the petition. Similarly, the payment of Rs. 30,00,000/- received on 01.08.2024 through the same CBCMPL channel was made after the issuance of the Demand Notice dated 19.07.2024 and has been duly disclosed and acknowledged by the Operational Creditor and has been adjusted against the outstanding dues. The receipt of these part payments, made after the demand notice through the Corporate Debtor's own vendor, is in fact consistent with the Operational Creditor's position that the Corporate Debtor acknowledged its liability and was making on-account payments, rather than disputing the debt.

20. Based on the material on record, we are satisfied that the outstanding operational debt at the time of filing the petition exceeded the threshold of Rs. 1 Crore prescribed under Section 4 of the Code.

21. We have also examined the Corporate Debtor's contentions regarding machinery breakdowns, worker salaries, accommodation charges, and

performance deficiencies. None of these contentions is supported by any contemporaneous documentary evidence predating the Demand Notice, and the Reconciliation Statement dated 01.04.2024 makes no mention of any pending deductions on these heads, effectively superseding any prior unverified status of the invoices. Such allegations, raised for the first time in the Reply, fall within the category of disputes that are spurious and illusory within the meaning of ***Mobilox (supra)***.

22. Having examined the material on record in its entirety, we find that the present application satisfies all the conditions for admission under Section 9(5)(i) of the Code. The operational debt and default is established and is not in genuine dispute. The Demand Notice dated 19.07.2024 was duly served and no reply was received within the statutory period of ten days. No notice of dispute was received by the Operational Creditor prior to the demand notice, and no genuine pre-existing dispute has been demonstrated by the Corporate Debtor on the basis of documentary evidence. The outstanding amount of Rs. 11,02,23,056/-, even after the deduction of 30 lakhs as acknowledged by the Operational Creditor, meets the prescribed threshold.

23. In view of the foregoing discussion, we issue the following directions:

In the Result, **CP (IB) No. 35/Chd/J&K/2025** is hereby admitted by initiating CIRP against the Corporate Debtor viz., Tycoons Industries Pvt. Ltd., with the following directions:

- (i) The moratorium under Section 14 of the Code is hereby declared with effect from the date of this Order, prohibiting all of the following in terms of Section 14(1) of the Code:

(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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

(ii) The order of moratorium shall have effect from the date of this Order till the completion of the CIRP or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 of the Code, as the case may be. It is clarified that the moratorium shall not apply to such transactions as may be notified under Section 14(3) of the Code.

(iii) We hereby appoint Mr Neehal Mahamulal Pathan, having Registration No. **IBBI/IPA-001/IP-P01561/2018-19/12406**, Address: Plot No. 27, RS No. 825, Sahjeevan Parisar, Near TPM Church, Behind Circuit House, Kolhapur (416003), Maharashtra, Email: ca.neehal@gmail.com, who has submitted his written consent, certified that no disciplinary proceedings are pending against him, and holds an Authorization for Assignment (AFA) valid till 31.12.2026, to act as the Interim Resolution Professional ("IRP") in the CIRP of the

Corporate Debtor under Section 13(1)(c) of the Code. The IRP shall conduct the CIRP in accordance with the provisions of the Code read with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and all other applicable Regulations and Rules made thereunder.

(iv) Upon his appointment taking effect, the powers of the Board of Directors of the Corporate Debtor shall stand suspended and shall vest in and be exercised by the IRP in terms of Section 17 of the Code. The IRP shall take custody and control of all assets of the Corporate Debtor, including business records, books of accounts, equipment, machinery, vehicles, and all other movable and immovable property of the Corporate Debtor, in accordance with Section 18 of the Code. The IRP shall manage the operations of the Corporate Debtor as a going concern under Section 20 of the Code, and shall constitute the Committee of Creditors in accordance with Section 21 of the Code upon completion of the claims collation process.

(v) All personnel connected with the Corporate Debtor, its promoters, directors including Mr. Joy Deb Chatterjee, Director of the Corporate Debtor and any other person associated with the management of the Corporate Debtor are under a legal obligation under Section 19 of the Code to extend every assistance and cooperation to the IRP and to furnish all documents, records, information, and clarifications as may be required by the IRP for the proper conduct of the CIRP. In the event any such person fails or refuses to cooperate with or assist the IRP, the IRP is at liberty to

make an appropriate application before this Adjudicating Authority seeking suitable directions.

(vi) The IRP shall make a public announcement of the initiation of the CIRP immediately and to call for submission of claims from all creditors of the Corporate Debtor under Section 15 of the Code, as required by Section 13(1)(b) of the Code, within three days of the date of his appointment in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(vii) The supply of goods or services to the Corporate Debtor, if continuing, shall not be terminated, suspended, or interrupted during the period of moratorium in terms of Section 14(2A) of the Code. The IRP shall be under a duty to protect and preserve the value of the property of the Corporate Debtor and to manage its operations as a going concern. The Operational Creditor, Kokila Mining Private Limited, is directed to pay an advance of Rs. 4,00,000/- (Rupees four lakhs Only) to the IRP within 1 week from the date of receipt of this Order for the purpose of meeting the initial costs and expenses of the CIRP, and the IRP is directed to file proof of receipt of such amount before this Adjudicating Authority along with the First Progress Report filed under Regulation 17 of the CIRP Regulations. The IRP may raise further demands for interim funds as the CIRP progresses, which shall be dealt with in accordance with the Code and the Rules made thereunder.

(viii) The Interim Resolution Professional shall send a communication, along with a copy of the public announcement made under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations (CIRP Regulations), 2016, to all statutory authorities likely to have claims against the Corporate Debtor. Such authorities shall include the Income Tax Department, GST Authorities, State Trade Tax Department, Provident Fund Organisation, and any other concerned departments, as well as the trade unions and employees' associations of the Corporate Debtor. The purpose of such communication shall be to duly inform them of the admission of the Corporate Debtor into the CIRP and to ensure that they are apprised of its commencement in a timely manner.

(ix) The Interim Resolution Professional shall cause a hoarding to be erected prominently at the entrance of the project site. Such hoarding shall display the public announcement issued under Regulation 6 of the CIRP Regulations, 2016, pertaining to the commencement of the CIRP, with the object of affording reasonable notice thereof to all concerned stakeholders.

(x) The Registry is directed to communicate a copy of this Order to the Operational Creditor, Kokila Mining Private Limited, the Corporate Debtor, Tycoons Industries Pvt. Ltd., and the Interim Resolution Professional, and to the concerned Registrar of Companies, Ministry of Corporate Affairs, after completion of necessary formalities, within 7 working days from the date of this Order, and to upload the same on

the website of this Adjudicating Authority immediately upon pronouncement of this Order.

24. For the Aforesaid reasons and circumstances of the case and by taking into consideration the settled position of laws on the issue, we are of the considered view that the instant Petition has been filed as per law, the debt in question was not paid, the statutory demand notice issued was not responded to and an Authorised RP has been proposed to be appointed as an IRP. Hence, it is a fit case to admit and initiate CIRP against the CD.

25. Accordingly, **CP (IB) No. 35/Chd/J&K/2025** is ***allowed*** and the Corporate Debtor, M/s Tycoons Industries Pvt. Ltd., is hereby ***admitted*** into the Corporate Insolvency Resolution Process (CIRP).

26. List the **CP (IB) No. 35/Chd/J&K/2025** on 08.07.2026 and the IRP is directed to apprise the Adjudicating Authority about the actions being taken from time to time by filing appropriate Applications.

SD/-

(SHISHIR AGARWAL)
MEMBER (TECHNICAL)

Yuvraj

SD/-

(KHETRABASI BISWAL)
MEMBER (JUDICIAL)