

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CP(IB) No. 146/Chd/Hry/2024

(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:

SUPERWAVE COMMUNICATION AND INFRASOLUTION PRIVATE LIMITED

Through its Authorized Representative

Sh. Anshuman Singh

Registered Address: L-9, Plot No.75, 1st Floor,

Surender Singh Building, L-block,

Mahipalpur Extention, Delhi, 110037

....Petitioner/Operational Creditor

vs

RAYWAYS INFRA PROJECTS PRIVATE LIMITED

(CIN: U51909HR2010PTC052389)

Registered Address: Unit No. 309 Vipul Trade Center

Sohna Road Sector-48

Gurugram Haryana -122018

...Respondent/Corporate Debtor

Order delivered on: 11.06.2026

**CORAM: SH. KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)
SH. KHETRABASI BISWAL, MEMBER (JUDICIAL)**

Present: -

For the Petitioner

: Mr. Yashraj Singh, Mr. Sahil Kakkar
Advocates

For the Respondent

: Mr. Subhash Saini, Advocate

JUDGEMENT

The instant application was filed by **Superwave Communication and Infrsolution Private Limited** (Operational Creditor/Applicant/SCAIPL), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**” or “**IBC**”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as ‘CIRP’) against **Rayways Infra Projects Private Limited** (Corporate Debtor/Respondent) for the default of an amount of Rs. 1,22,33,029/- excluding interest. The date of default is 04.01.2024 as mentioned in the application.

2. The averments made by the Operational Creditor/Applicant in its Application and as argued by the Learned Counsel for the Applicant are summarised as under:

- (i) The Applicant is engaged in the business of construction and work related to maintenance of the highways and toll plazas in all parts of India. The Corporate Debtor is also engaged in a similar business.
- (ii) Pursuant to the Project Work order No. 0125-2023 dated 12.10.2023 issued by the Corporate Debtor, the Operational Creditor was

awarded work relating to improvement and construction of Ahmednagar Bypass project in the State of Maharashtra.

(iii) Thereafter, various goods were supplied by the Operational creditor to the Corporate Debtor at its project site against invoices and the work was executed by the Operational Creditor by installing the goods at the project site as per satisfaction of the Corporate Debtor. The details of the invoices raised on the Corporate Debtor and the details of the part payments as follows:

Date of Invoice/ Part payments	Invoice Number/ Part Payment	Amount (Rs)
17.10.2023	SC/TI/2324/203	94,48,897
17.11.2023	SC/TI/2324/231	33,13,440
17.11.2023	SC/TI/2324/232	10,52,772
05.12.2023	SC/TI/2324/264	44,17,920
14.11.2023	Part Payment	(60,00,000)
Total		1,22,33,029

(iv) The Goods were shipped to one GHV India Pvt. Ltd, on account of the Corporate Debtor. The same is evident from the invoices attached as Annexure F to the application. The receiving in invoices was given by GHV India Pvt. Ltd.

(v) As per Clause 9 of the Work order the Payment was required to be made in the following manner:

- (a) After Delivery of Material: 50% of Contract Value to be paid by Corporate Debtor to SCAIPL after receiving material at site.
- (b) After Execution: 50% of contract value to be paid by Corporate Debtor to SCAIPL immediately after successful completion of installation, testing and approval of ordered items.
- (vi) Further, as per the clause 2.4 of the work order, the Corporate Debtor was obligated to make payment on a monthly basis i.e., within 30 days from the date of RA Bills (Running Account Bills).
- (vii) Despite delivery and installation goods, the Corporate Debtor failed to make the payments. Since the Corporate Debtor was not making the payments, the Operational Creditor was compelled to stop supply of further goods in terms of Section 46(2) and 48 of the Sales of Goods Act, 1930 i.e., rights of an unpaid seller.
- (viii) The Operational Creditor made repeated requests for payment through emails dated 16.12.2023 and 03.02.2024. In response, the Corporate Debtor, vide email dated 03.02.2024, called upon the Operational Creditor to complete the project within a stipulated time. The Operational Creditor, however, informed that further work would be carried out only upon release of outstanding dues.
- (ix) Since no payment was received by the Operational Creditor, therefore, it was compelled to issue a legal notice dated 05.03.2024. One

corrigendum dated 12.04.2024 was also issued to the legal notice dated 05.03.2024.

(x) Thereafter, the Operational Creditor issued Statutory Demand Notice under Section 8 of the code dated 16.04.2024 which was sent vide speed post on 19.04.2024 at registered office and branch office of the Corporate Debtor and vide email on 19.04.2024 at rayways.infrasys@gmail.com, mihtikirangulati21@gmail.com. The Corporate Debtor vide its email dated 19.04.2024 sent vide id rayways.infrasys@gmail.com, had acknowledged that it had received the Demand Notice and it will revert within 15 days. Further, the abovementioned Id is the email mentioned in the master data of the Corporate Debtor maintained by MCA. The Corporate Debtor had avoided the service vide speed post, as the speed post issued at the registered office with the remarks, "Lene se Inkaar" which means Delivery refused.

(xi) Despite the lapse of statutory period of 10 days and the time sought in the email dated 19.04.2024 i.e, 15 days, the Corporate Debtor had neither made the payment nor it had replied to the demand notice issued under Section 8 of code.

(xii) As per part IV of the petition, the total amount of Debt is Rs.1,22,33,029/- excluding interest. The date of default is 04.01.2024

3. In this context, defense placed by the Corporate Debtor in its Affidavit in reply and submissions made thereon and as presented/argued by the Learned Counsel for the Corporate Debtor are summarized as under:

(i) The Petitioner has not made compliance of Section 8(1) of IBC before filing this Petition as no demand notice was delivered to the Corporate Debtor. The Operational Creditor itself admitted that Demand Notice sent to the Corporate Debtor was received back undelivered. The remark of the postal authorities on the photocopy of the envelope is as "कोई जानकारी नहीं". Even the Petitioner in order to mislead this Tribunal in this regard, has deliberately neither attached the Original Envelope which was returned undelivered nor attached a copy of delivery status Report after downloading from the Official Government Website of Bhartiya Postal Department i.e. "www.indiapost.gov.in".

(ii) Admittedly the Operational Creditor has not complied with Regulation 2B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, which is compulsorily required to be fulfilled. The Operational Creditor has not issued e-ways bills against Invoice Nos. SC/TI/2324/203, SC/TI/2324/231, SC/TI/2324/232 and SC/TI/2324/264 , which are part of the petition as Annexure F.

(iii) Mr. Anshuman Singh is not authorised by the Board of Directors of the Operational Creditor to file this Petition against the Corporate Debtor before this Court. Mr. Anshuman Singh signed and filed this Petition

maliciously in order to take personal revenge from CEO of the Corporate Debtor as there was neither any debt, which was due and payable to the operational creditor.

(iv) On merits, while admitting issuance of the Work Order dated 12.10.2023, the Operational Creditor failed to complete the project within the stipulated period of 45 days and is liable for delay and penalty. The petitioner failed to complete the project as per condition no. 11. Even the petitioner deliberately misrepresented the condition no. 9 of the work order, which are reproduced herein below:

a. As per term no. 11 of the Work Order; the Operational Creditor would be required to procure and deliver the equipment, install and make functional all the Toll plazas as per time within 45 days from the date of issuance of the Order. Operational Creditor will be liable to pay Rs. 10,000/- to the Corporate Debtor for each day of delay per lane, if exceeded than 45 days.

b. As per term no. 9 of the Work Order; the Corporate debtor would be required to release the 50% of the contract value to the operational creditor after receiving of material at site and the remaining 50% would be paid immediately after successful completion of installation, testing and approval of ordered items as per Annexure A or within 2 weeks whichever is earlier.

(v) The Operational Creditor concealed the material facts from this Court about the issuance of credit notes and lifting of material back by the Petitioner against the alleged invoices long back

(a) Due to quality issues in the material supplied were not up to the stipulated standards, the Operational creditor lifted the material back and issued Credit Notes against the above said all four invoices which are part of Petition vide Credit Note No. SC/CN/2324/032, SC/CN/2324/033, SC/CN/2324/034 & SC/CN/2324/035 all dated 31.12.2023 and did not deposit the GST on all the said four alleged invoices. The alleged Invoices, which are part of the petition, are neither due nor payable and detail of credit notes issued by the corporate debtor, which has been deliberately concealed by the Corporate Debtor, are as per below:

Sl. No.	Invoice No.	Date of Invoice	Amount of Invoice (Rs.)	Credit Note No. issued by the OC against the said Invoice (E)	Date of Credit Note	Amount of Credit Note (Rs.)	Balance Amount Due, against the alleged claimed invoices, if any (Rs.)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)=(D-G)
1.	SC/TI/2324/203	17.10.2023	94,48,897	SC/CN/2324/033	31.12.2023	94,48,897	NIL
2.	SC/TI/2324/203	17.11.2023	33,13,440	SC/CN/2324/034	31.12.2023	33,13,440	NIL

3.	SC/TI/2324/2 03	17.11.2023	10,52,77 2	SC/CN/ 2324/0 35	31.12.2023	10,52,772	NIL
4.	SC/TI/2324/2 03	05.12.2023	44,17,92 0	SC/CN/ 2324/0 32	31.12.2023	44,17,920	NIL

(Copy of GSTR-1 and GSTR-3 Returns for the months of November and December, 2023 of the corporate debtor are attached as Annexure R-1 to the reply)

(b) Rather it is the Operational Creditor itself, who is liable to make the payment of Rs. 2,08,00,000/- including advance payment of Rs. 60,00,000/- to the Corporate Debtor due to its failure to complete the project as per agreed terms and conditions of the Work Order.

(c) Mr. Anshuman Singh, the person who has unauthorisedly signed the petition is also one of the Directors of the Corporate Debtor, which has managed the demand notice through email on behalf of the corporate debtor. Copy of the Master Data of the Corporate Debtor and Operational Creditor showing Mr. Anshuman Singh as one of the directors in both the companies is attached as Annexure R-2 of the reply.

(vi) The Operational Creditor also concealed the material facts from this Court about the pre-existing dispute.

(a) There is a pre-existing dispute between the Corporate Debtor and Operational Creditor relating to alleged claim which is subject matter

of the petition as the operational creditor had issued the credit notes and lifted the material/goods from the site. Even the Petitioner did not deposit GST against the alleged invoices. The Petitioner took the benefits of issued credit notes in its GST Returns.

(b) Admittedly the Operational Creditor failed to complete the work as per agreed terms of the Work Order. The operational creditor failed to meet the agreed guidelines. Even the Corporate Debtor had given extra time of 10 days to the petitioner to complete the project and also conveyed warning of terminating the project, in case of no completion. Due to non-completion of the project as per work contract, work allotted to the Corporate Debtor was cancelled and consequently the work contract was cancelled. Copy of correspondence exchanged in this regard are attached as Annexure R-3 to the reply.

(c) Mr. Anshuman Singh, unauthorized person, who has signed the petition has already filed a complaint dated 14.03.2024 about the alleged debt which is subject matter of the petition. The said complaint is pending for investigation before the Economic Offence Wing, Gurugram. Copy of the Notice No. 782 dated 18.03.2024 received from Economic Offence Wing-1, Gurugram along with a copy of Complaint dated 14.03.2019 filed by the Corporate Debtor are enclosed as Annexure R-4 of the reply.

(d) Mr. Anshuman Singh, has filed this petition due to his personal reasons in order to defame Ms. Kiran Gulati, CEO of the Corporate Debtor and her family. Moreover, Mr. Anshuman Singh was a good friend of CEO of the Corporate Debtor, who wanted some undue favor from her and when the CEO started resisting his demands, Mr. Anshuman Singh started blackmailing the CEO and her family and threatening that Mr. Anshuman Singh will ruin life of CEO Ms. Kiran Gulati. Reply dated 20.03.2024 filed by Ms. Kiran Gulati, CEO of the Corporate Debtor to the above said complaint of the petitioner is attached as Annexure R-5 of the reply.

(e) The Respondent has relied on the *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 1 SCC Online SC 353* and Hon'ble National Company Law Appellate Tribunal, New Delhi in the matter of *M/s Sumilon Polyester Pvt. Ltd. Versus M/s Parikh Packaging Pvt. Ltd.[COMPANY APPEAL (AT) (Insolvency) No. 695 of 2020]*.

(vii) The dispute between the Parties cannot be decided by this Adjudicating Authority under the Code. Proceedings before NCLT are summary in nature and adversarial evidence cannot be led and appraised by this Tribunal. The aforesaid summary jurisdiction of the NCLT has been affirmed in *Rakesh Kumar V. Flourish Paper & Chemicals Ltd. (Company Appeal (AT)(Insolvency) No. 1161 of 2022)*, the relevant portion of the said judgement is reproduced as under -

"It has also been rightly observed that disputes surrounding claims and counter-claims cannot be adjudicated or determined by the Adjudicating Authority given their summary jurisdiction."

(viii) The present case is full of inconsistencies and omissions and it is clear that there is no strict proof of debt and default as is being claimed by the Petitioner.

(ix) Even for arguendo and not admitted, the operational creditor can claim only 50% i.e. 90,45,271/- of the total project value (i.e. 1,80,90,542/- as per Clause No. 10(a) at page no. 93 of the petition) after receiving material at site. Admittedly the operational creditor has received an advance of Rs. 60,00,000/- from the corporate debtor. Hence as per averments made by the operational creditor, it can only claim default of Rs. 30,45,271/- which amount is less than the threshold limit of Rs. 1.00 crore as per provisions of Section 4 of IBC. The operational creditor cannot claim 50% of the total project value, admittedly which is yet to be completed. The remaining amount i.e. i.e. 90,45,271/- (50% of the project value) as per Clause No. 9(B) of the work order was to be payable immediately after successful completion of installation, testing and approval of ordered items.

(x) The Petitioner has come with unclean hands and its Petition is not maintainable. Further the demand notice issued under Section 8 of IBC was admittedly never delivered to the corporate debtor and demand notice

through email was managed by Mr. Anshuman Singh as he was also one of the directors of the Corporate Debtor.

4. In this context, rejoinder and short written submissions was placed by the applicant, the submissions made thereon, apart from reiterating facts already placed in the petition, are summarized as under:

(i) The applicants have denied the averments made by the Corporate debtor which are contrary to the submissions made by the applicant.

(ii) Regarding service of demand notice, the Operational Creditor is claiming service via Email. The Demand notice was served at the Registered email of the Corporate Debtor mentioned in its master data i.e., rayways.infrasys@gmail.com. The Corporate Debtor, in its reply to the said email, acknowledged receipt of the demand notice and stated that it would respond through its counsel. The copy of the said email forms part of the Annexure I of the petition. The demand notice was also served upon Ms. Kiran Gulati, CEO of the Corporate Debtor, at her email address. As per Rule 5(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, service upon a Key Managerial Personnel through email is permissible, and the CEO falls within the definition of KMP under Section 2(51) of the Companies Act, 2013. It is thus contended that the requirements of Section 8(1) of the Code stand duly complied with. The demand notice was properly served at multiple fronts: at the registered office (which was refused), at the official email of the Corporate Debtor, and

to the CEO of the Corporate Debtor. A copy of the email is at Page 74, of the Petition at Annexure D.

(iii) With regard to authorisation, the present petition has been duly filed pursuant to a valid Board Resolution authorizing Mr. Anshuman Singh to initiate proceedings. Mr. Anshuman Singh had resigned from the Corporate Debtor on 17.11.2023, and his resignation took effect from the said date in terms of Section 168 of the Companies Act, 2013. Form DIR-11 was duly filed with the Registrar of Companies. The allegation that he continued to manage the affairs of the Corporate Debtor is denied.

(iv) With respect to e-way bills and delivery of goods, the goods were supplied on behalf of the Corporate Debtor to GHV India Pvt. Ltd., which was the designated recipient at the project site. Accordingly, the e-way bills reflected the name of GHV India Pvt. Ltd. The invoices and delivery challans bear acknowledgment of receipt by GHV India Pvt. Ltd. on behalf of the Corporate Debtor. The Corporate Debtor has not denied the receipt of goods. The goods were supplied by the sister concern of the Operational Creditor Company namely Scipl Intelligent Transportation System Private Limited.

(v) With regard to credit notes and GST, the credit notes relied upon by the Corporate Debtor were subsequently cancelled and are reflected as such in the GST returns. The material was never lifted and continues to remain installed at the project site. The credit notes were initially raised due to non-payment, with an intention to lift the material, however, upon

assurance of payment by the Corporate Debtor, the same were cancelled. The GST liability has been duly discharged in respect of the invoices forming part of the claim. The Credit notes were cancelled in December 2024 and the same are reflected in column 9C of GSTR-3B of February 2024.

(vi) With regard to the payment of ₹60,00,000/-, the same was made as part payment against the invoices raised and not as an advance. The payment was made after issuance of invoices and is duly reflected in the ledger account. The balance amount remains unpaid.

(vii) With regard to the allegation of delay and penalty, no such claim for penalty or damages was ever raised by the Corporate Debtor prior to issuance of the demand notice. The Operational Creditor had repeatedly requested payment through emails dated 16.12.2023 and 03.02.2024, and had informed that further work would be carried out only upon receipt of dues. The work could not be completed on account of non-payment by the Corporate Debtor. Hon'ble NCLAT in *Deepak Gupta Vs Ved Contracts Pvt. Ltd. & Ors, Company Appeal (AT) (Insolvency) 1262 of 2019* dated 19.11.2019 has held that Counter claims cannot be decided in Section 9 Application and rejected contention of the Appellant suspended board that CIRP should have been triggered as there was counter claim of the Corporate Debtor.

(viii) The allegation that material was lifted is contrary to the record, as the Corporate Debtor itself, via email dated 03.02.2024, called upon the Operational Creditor to complete the project within a stipulated time. The said communication indicates that the material was still at site and the work remained pending at the relevant time.

(ix) With regard to the threshold objection, the Operational Creditor supplied and installed goods in terms of the Work Order and raised invoices, out of which only part payment has been made. The amount claimed in default is above the threshold prescribed under Section 4 of the Code. Furthermore, under Clause 2.4, the Corporate Debtor was independently obliged to make payment on a monthly basis within 30 days from the date of RA Bills, which obligation remains unmet despite repeated demands by emails dated 16.12.2023 and 03.02.2024. The payment of ₹60,00,000 made on 14.11.2023 was merely a part payment towards the total invoiced amount of ₹1,22,33,029, as reflected in the ledger and petition. After adjusting this part payment, the remaining liability of ₹1,22,33,029 still stood unpaid and was claimed in the petition, which is clearly above the ₹1 crore threshold required under Section 4 of the code.

(x) With regard to the existence of dispute, it is submitted that there was no pre-existing dispute between the parties prior to issuance of the demand notice. The credit notes were cancelled, the material remains at site, and no contemporaneous record exists showing any dispute raised by

the Corporate Debtor. The work could not be completed due to non-payment, and the Operational Creditor exercised its right to stop further supply under the provisions of the Sale of Goods Act, 1930.

(xi) With regard to the complaint before the Economic Offences Wing, it is submitted that the same was filed by the Operational Creditor on account of non-payment and retention of material by the Corporate Debtor. It is stated that the said complaint does not pertain to any dispute raised by the Corporate Debtor in respect of the operational debt.

(xii) No formal communication of termination of the Work Order was ever issued by the Corporate Debtor to the Operational Creditor, and the communications relied upon pertain to a third party. In the absence of any termination, the Work Order continued to subsist.

(xiii) No claim for damages or penalty was ever raised prior to issuance of the demand notice, and the timeline for completion was extended by the Corporate Debtor vide email dated 03.02.2024.

(xiv) The refusal to carry out further work was on account of non-payment and was in exercise of the statutory rights of an unpaid seller under the Sale of Goods Act, 1930 and exercise of statutory right cannot be considered as dispute.

Analysis and Findings

5. We have heard the learned counsel for the applicant as well as for the respondent and perused the material available on record carefully.

6. The issues arising for determination are: (i) Whether the Operational Creditor has complied with the mandatory requirement of service of demand notice under Section 8(1) of the Code?; (ii) Whether there exists an operational debt and default within the meaning of Sections 5(21) and 3(12) of the Code?; and (iii) whether there exists a pre-existing dispute between the parties.

7. The first issue is regarding the service of demand notice. The Corporate Debtor has contended that the demand notice was not served and was returned undelivered. However, from the record, it is observed that the demand notice dated 16.04.2024 was sent through multiple modes, including speed post as well as email to the registered email address of the Corporate Debtor as reflected in the MCA master data. The Corporate Debtor, vide its email dated 19.04.2024, acknowledged receipt of the demand notice and sought time to respond herein reproduced below.

NOTICE AS PER IBC

sahil kakkar <adv.sahilkakkar@gmail.com> Fri, Apr 19, 2024 at 4:11 PM

To: rayways.infrasys@gmail.com, mishtikirangulati21@gmail.com

Bcc: ANSHUMAN SINGH <anshuman@superwaveinfra.com>

SIR/MAM

PL. FIND THE NOTICE AS PER IBC RULES.

OUR CLIENT: M/S SUPERWAVE COMMUNICATIONS & INFRASOLUTIONS PVT. LTD.

THE SAME HAS BEEN POSTED TO YOU AS WELL

THANKS & REGARDS

SAHIL KAKKAR

(ADVOCATE)

+91-7838276040

CONFIDENTIALITY NOTICE:

The contents of this e-mail are confidential to the ordinary user of the e-mail address to which it was

addressed and may also be privileged. If you are not the addressee of this e-mail you may not copy,

forward, disclose or otherwise use it or any part of it in any form whatsoever. If you have received

this e-mail in error please e-mail the sender by replying to this message.

Please consider the environment before printing this mail.

Rayways Infrasy <rayways.infrasy@gmail.com>

To: sahil kakkar <adv.sahilkakkar@gmail.com> Fri, Apr 19, 2024 at 6:34 PM

Thank you sahil ji

We received the concern our advocate will revert you with in 15 days

Thanks

Thanks and Regards

Rayways Infrasy

Mob-9996969218

8. We also note that the notice was also sent to the CEO of the (Annexure D) Corporate Debtor, who qualifies as Key Managerial Personnel. In view of the acknowledgment by the Corporate Debtor itself, the objection regarding non-service of demand notice is devoid of merit.

9. The second issue is regarding the existence of operational debt and default. The Operational Creditor has placed on record the work order dated 12.10.2023, invoices raised for supply and installation of goods, and the ledger reflecting an outstanding amount of ₹1,22,33,029/-. The Corporate Debtor has not denied the issuance of the work order. Further, it is also not in dispute that part payment of ₹60,00,000/- was made by the Corporate Debtor. The making of part payment indicates acknowledgment of liability. The remaining amount has not been paid despite repeated demands. The contention of the Corporate Debtor that only 50% amount is payable is a matter arising out of contractual interpretation, which cannot defeat the existence of debt at this stage, particularly when invoices have been raised and part payment has been made. Therefore, a prima facie operational debt and default are established.

10. The Corporate Debtor has relied upon certain credit notes issued in December 2023 to contend that the invoices stood nullified and no amount remained payable. However, the Operational Creditor has specifically pleaded that

the said credit notes were subsequently cancelled and that the material remained installed at the project site. It is also noticed that subsequent to the alleged issuance of credit notes, the Corporate Debtor itself addressed an email dated 03.02.2024 calling upon the Operational Creditor to complete the project within a stipulated period. Prima facie, such conduct is inconsistent with the stand that the material had already been lifted and the transaction stood completely reversed in December 2023. The present application was instituted in May, 2024 and the record placed before us does not indicate that the alleged credit notes resulted in a concluded reversal of the transaction prior thereto.

11. Now with regard to the core issue in the present case, i.e. whether there exists a pre-existing dispute between the parties. The Corporate Debtor has raised the many grounds to assert existence of dispute i.e. alleged non-completion of work within stipulated time; Alleged poor quality of material; Issuance of credit notes and alleged lifting of material; Claim of penalty and damages and Termination of contract. On the other hand, the Operational Creditor has contended that Credit notes were cancelled and material remained at site. No contemporaneous dispute or claim of penalty was raised prior to demand notice and work could not be completed due to non-payment by the Corporate Debtor and Emails dated 16.12.2023 and 03.02.2024 show demand for payment and continuation of contract.

12. Hon'ble Supreme Court in the case of "Mobilox Innovative Private Limited vs. Kirusa Software Private Limited, Civil Appeal No. 9405 of 2017, has held that:

"Therefore, all 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 exist in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

13. Applying the ratio in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., supra, the test is whether there exists a "plausible contention" requiring adjudication, and not a patently spurious or illusory defence. In the present case, the emails dated 16.12.2023 and 03.02.2024 indicate that the Operational Creditor was demanding payment. The email dated 03.02.2024 from the Corporate Debtor calling upon the Operational Creditor to complete the project suggests that the contract was subsisting at that point of time. There is no document placed on record prior to issuance of demand notice evidencing any quantified claim of penalty or any formal dispute regarding quality of goods.

14. The defence regarding credit notes is also disputed, as the Operational Creditor has asserted that the same were cancelled and material remained at site. Similarly, the plea of defective goods and lifting of material is not supported by clear records. The alleged counter-claim of ₹2,08,00,000/- and penalty appears to have been raised for the first time in reply. In light of the above, the dispute raised by the Corporate Debtor does not appear to be a genuine pre-existing dispute, but rather a feeble and unsupported contention, falling within the category of “moonshine defence” as contemplated in *Mobilox*.

15. The Corporate Debtor has questioned the authorization of Mr. Anshuman Singh and alleged mala fide intent. However, the Operational Creditor has placed on record a Board Resolution authorizing filing of the petition as per Annexure A of the petition. Further, allegations of personal disputes or mala fide intent are not relevant for determining the existence of debt and default under Section 9 of the Code. Hence, this objection is also without merit.

16. In light of the above findings, this Adjudicating Authority is satisfied that, the Operational Creditor has complied with the requirements of Section 8 of the Code; an operational debt is due and payable; Default has occurred; the application is complete in all respects and also there is no genuine pre-existing dispute exists between the parties.

17. Accordingly, we admit this Application and Order as under:

(i) The Corporate Debtor **Rayways Infra Projects Private Limited** is admitted in the Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the said 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 the 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.

(e) the Order of moratorium shall have effect from the date of this Order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for the liquidation of the Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iii) **Mr. Atul Deep Gupta**, having Registration Number: IBBI/IPA-003/IPA-ICAI-N-00479/2025-2026/14574 Email - atuldeepgupta@gmail.com and Mobile No: 9586100081 is appointed to act as Interim Resolution Professional (IRP) under Section 13(1)(c) of the Insolvency and Bankruptcy Code, 2016. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of the Insolvency and Bankruptcy Code, 2016, r.w. Rules and Regulations made thereunder. The IRP shall make a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Insolvency and Bankruptcy Code, 2016.

(iv) the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The Corporate Debtor is to provide effective assistance to the IRP as and when it takes charge of the assets and management of the Corporate Debtor.

(v) The IRP shall perform all its functions as contemplated, inter alia, by sections 17, 18, 20 & 21 of the Insolvency and Bankruptcy Code, 2016. It is further made clear that all personnel connected with Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the Insolvency and Bankruptcy Code, 2016, to extend every assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter, or any other person, is required to assist or co-operate with the IRP, do not assist or co-operate, the

IRP is at liberty to make an appropriate Application to this Adjudicating Authority with a prayer for passing an appropriate Order.

(vi) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency and Bankruptcy Code, 2016.

(vii) The Operational Creditor is directed to pay an advance of Rs. 3,00,000/- (Rupees Three lakh only) to the IRP within two weeks from the date of receipt of this Order for smooth conduct of Corporate Insolvency Resolution Process and IRP to file proof of receipt of such amount before the Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per the Rules.

(viii) The Registry is directed to communicate a copy of this Order to the Operational Creditor, Corporate Debtor, and the IRP and the concerned Registrar of Companies, after completion of the necessary formalities, within seven working days, and upload the same on the website immediately after pronouncement of the Order.

(ix) The IRP shall also serve a copy of this Order to the various departments, such as Income Tax, GST, State Trade Tax, and Provident Fund, etc. those who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are timely informed about the initiation of CIRP against the Corporate Debtor.

(x) The commencement of the Corporate Insolvency Resolution process shall be effective from the date of this Order.

18. As a result **CP (IB) No. 146/Chd/Hry/2024** *stands allowed and disposed of.*

Sd/-

(Khetrabasi Biswal)
Member (Judicial)

Reet

Sd/-

(Kaushalendra Kumar Singh)
Member (Technical)