

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

ITEM No.303
C.P.(IB)/113(AHM)2026

Under Section 9 of IBC 2016

IN THE MATTER OF:

Mittal Construction Co.

...Petitioner

Versus

Pithadai Construction Pvt. Ltd

...Respondent

Order delivered on: 10/06/2026

CORAM:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)

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

ORDER
(Hybrid Mode)

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

— S D —

SANJEEV SHARMA
MEMBER (TECHNICAL)

— S D —

SHAMMI KHAN
MEMBER (JUDICIAL)

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

CP (IB) No.113/9/AHM/2026

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

In the Matter of: Pithadai Construction Private Limited

M/s. Mittal Construction Co.

(Partnership Firm)

Registered office at:

#62, Model Town, Phase-3,

Bathinda, Punjab – 151001

...Applicant/Operational Creditor

VERSUS

Pithadai Construction Private Limited

(CIN: U45203GJ2015PTC083371)

Registered office at: Unit No. FF-36A,

Vaibhav Shopping Complex,

Bhavya Park, Bopal, Ahmedabad,

Gujarat – 380058.

...Respondent/Corporate Debtor

Order Pronounced On: 10.06.2026

C O R A M:

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

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

A P P E A R A N C E:

For the Applicant/OC : Mr. Saumitra Chaturvedi, Adv. a.w.
Mr. Arun Bansal, Adv.

For the Respondent/CD : Mr. Vipul Khandar, CA.

ORDER
Per Bench

1. This Company Petition is filed on **11.03.2026** by the Applicant- M/s. Mittal Construction Co. (hereinafter referred to as 'Operational Creditor') against the Respondent- Pithadai Construction Private Limited (hereinafter referred to as 'Corporate Debtor') under Section 9 of the IBC, 2016 read with Rule 6 of the IB (AAA) Rules, 2016 for initiation of CIRP, appointment of IRP and declaration of moratorium for default in payment of operational debt of **Rs.1,29,77,269/-** including interest arising from supply of services.

2. On Perusal of Part-I of the Form-5 reveals that the Operational Creditor - M/s. Mittal Construction Co. is a Partnership Firm incorporated on 11.08.2021 under the Indian Partnership Act, 1932, having Registration details as per Partnership Deed, with its registered office at #62, Model Town, Phase-3, Bathinda, Punjab – 151001. This Petition is filed through its Partner Mr. Shakti Kumar Mittal, who has been authorised by Partnership Deed and General Power of Attorney annexed as Annexure A-1 & A-2.

- 3.** On perusal of Part-II of the Form-5 reveals that the Corporate Debtor is Pithadai Construction Private Limited, a private limited company incorporated on 01.06.2015 under the Companies Act, 2013, having CIN U45203GJ2015PTC083371. The Corporate Debtor is having registered office at Unit No. FF-36A, Vaibhav Shopping Complex, Bhavya Park, Bopal, Ahmedabad, Gujarat - 380058, with an authorized share capital of Rs.2,00,00,000/- and paid-up share capital of Rs.2,00,00,000/-, as per MCA Master Data annexed as Annexure A-3.
- 4.** On Perusal of Part-III of Form-5, shows that the Operational Creditor has not proposed any name for the appointment of IRP and sought the appointment of IRP by this Tribunal as per the empanelment list of IBBI made available at the time of the admission of this Petition.
- 5.** On Perusal of Part-IV & Part-V of Form-5 reveals that total operational debt as claimed by the Operational Creditor arising from the supply of services to Corporate Debtor is

Rs.1,29,77,269/-. The date of default is stated to be 13.03.2023 and continuing till 20.03.2025.

6. Upon perusal of Part-IV and Part-V of Form-5, it is observed that the Operational Creditor has set out the following facts in support of the present petition: -

- 6.1 The Operational Creditor is engaged in civil construction activities and entered into a Sub-Contract Agreement dated 17.02.2022 with the Corporate Debtor for execution of relining work of Rajasthan Feeder.
- 6.2 The work was originally awarded through chain of contracts involving Executive Engineer Rajasthan Feeder Division and thereafter sub-contracted to the Operational Creditor.
- 6.3 The Operational Creditor duly executed the assigned work as per specifications and raised tax invoices from time to time, which are annexed as Annexure A-5 (Colly).
- 6.4 The Corporate Debtor made part payments on running account basis which were adjusted against invoices on FIFO basis, thereby acknowledging the debt.
- 6.5 A total amount of Rs.1,38,23,090/- was received by the Operational Creditor, however substantial outstanding remained unpaid.

- 6.6 The ledger account maintained by the Operational Creditor reflects the outstanding balance and is annexed as Annexure A-6.
- 6.7 Despite repeated requests and follow-ups, the Corporate Debtor failed to clear the outstanding dues, thereby committing default.
- 6.8 The Operational Creditor computed the default and annexed working as Annexure A-7 showing outstanding operational debt.
- 6.9 The Operational Creditor issued a Demand Notice dated 21.01.2026 under Section 8 of IBC, which is annexed as Annexure A-8.
- 6.10 The said demand notice was duly served through RPAD and email; proof of service is annexed as Annexure A-9 & A-10.
- 6.11 The Corporate Debtor failed to reply to the demand notice within statutory period of 10 days and did not raise any dispute.
- 6.12 There is no pending suit or arbitration proceeding regarding the operational debt, establishing absence of pre-existing dispute.
- 6.13 The Operational Creditor has also filed Form-C with Information Utility (NeSL) evidencing default, annexed as Annexure A-11.
- 6.14 GST returns (GSTR-1 & GSTR-3B) substantiating transactions are annexed as Annexure A-12 (Colly).

6.15 In view of the above facts, the Operational Creditor has sought initiation of CIRP against the Corporate Debtor, appointment of IRP, declaration of moratorium under Section 14, and other consequential reliefs.

7. The Operational Creditor has relied upon the following documents which are as under: -

- a) Partnership Deed dated 11.08.2021 – Annexure A-1
- b) General Power of Attorney dated 31.12.2025 – Annexure A-2
- c) MCA Master Data of Corporate Debtor – Annexure A-3
- d) Sub-Contract Agreement dated 17.02.2022 – Annexure A-4
- e) Tax Invoices (Colly) – Annexure A-5
- f) Statement of Account/Ledger – Annexure A-6
- g) Computation of Default – Annexure A-7
- h) Demand Notice dated 21.01.2026 – Annexure A-8
- i) Proof of Service (RPAD & Tracking Report) – Annexure A-9
- j) Email Service Proof – Annexure A-10
- k) Form-C filed with Information Utility (NeSL) – Annexure A-11
- l) GST Returns (GSTR-1 & GSTR-3B) – Annexure A-12.

8. Pursuant to issuance of notice upon the Corporate Debtor, a reply was filed on 21.04.2026 vide inward diary no. D3362.

The contentions of the Corporate Debtor are mentioned hereunder: -

- 8.1 The Corporate Debtor submits that the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 is not maintainable as the alleged operational debt of Rs.1,29,77,269/- is disputed and not due or payable under law.
- 8.2 The Corporate Debtor states that disputes existed between the parties prior to issuance of demand notice under Section 8 of the Code, relating to execution of work, billing, reconciliation of accounts, and compliance with contractual terms, thereby falling within the meaning of dispute under Section 5(6) of the Code.
- 8.3 The Operational Creditor is an unregistered partnership firm and is not entitled to initiate proceedings in view of Section 69(2) of the Indian Partnership Act, 1932, which bars enforcement of contractual rights by such firm. Reliance is placed on ***Bangalore Sales Corporation v. Sark Spice Products Pvt. Ltd., NCLT Kochi.***
- 8.4 That a subcontract agreement dated 17.02.2022 governs the transaction between the parties and provides that billing shall be based on work executed and measurement as per BOQ and specifications of the principal contract. The subcontract agreement is annexed as Annexure R-1.
- 8.5 The Operational Creditor has raised invoices not in accordance with contractual terms and has not

followed the prescribed measurement units such as Cum, Km, Sqm and other specified units, and the invoices are not reconciled with actual site measurements. The BOQ and invoices are annexed as Annexure R-2.

- 8.6 A joint escrow bank account was opened at Bathinda, Punjab for operational purposes and post-dated cheques were issued, however the Operational Creditor presented such cheques without completion of work and without reconciliation of accounts. The letter dated 14.11.2025 is annexed as Annexure R-3.
- 8.7 That during 05.2025 to 06.2025 it had sought details of work progress and financial reconciliation and thereafter restricted operation of the bank account by communication dated 14.11.2025, which establishes that disputes existed prior to issuance of demand notice under Section 8 of the Code.
- 8.8 The Corporate Debtor relies on ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353***, wherein it is held that existence of a dispute is sufficient to reject an application under Section 9, and also relies on ***Raghuvir Buildcon Private Limited v. Ketan Construction Limited, NCLT Ahmedabad***, which lays down parameters for determining existence of dispute.
- 8.9 The invoices raised by the Operational Creditor contain variation in rates and are not consistent with the

agreed contract terms or standard rates, including instances where rates were changed within a short period, and therefore the amount claimed is disputed and not payable.

8.10 The Corporate Debtor submits that upon reconciliation of accounts and measurement of work executed, the Operational Creditor has raised excess claims and has received excess payment of Rs.79,32,144/-, and is liable to repay the same along with applicable charges. The calculation statement is annexed as Annexure R-4.

8.11 The contract between the parties is a continuing contract which includes execution, defect liability period, and maintenance obligations for 05 years, and since such obligations have not been completed by the Operational Creditor, the liability is contingent and not due or payable under Section 3(12) of the Code.

8.12 The Corporate Debtor submits that in view of existence of dispute, non-compliance with contractual terms, excess payment, and non-completion of contractual obligations, no operational debt exists which is due and payable, and therefore the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 is liable to be rejected.

9. The Operational Creditor filed a rejoinder on 24.04.2026 vide inward diary no. D-3544, denying most contentions

raised by the Corporate Debtor in its reply. The contents of the Rejoinder are reproduced as follows: -

- 9.1 The Operational Creditor states that it is a registered partnership firm under the Indian Partnership Act, 1932 bearing Registration No. 1452 of 2021–2022. It has annexed proof as Annexure-P1 being Form “C” dated 03.09.2021 along with Register entry Form “A”. It is further stated that the present proceedings are maintainable.
- 9.2 The Insolvency and Bankruptcy Code, 2016 is a special statute and the bar under the Partnership Act does not apply to proceedings under the Code. The reliance placed by the Corporate Debtor on ***Bangalore Sales Corporation v. Sark Spice Products Pvt. Ltd., 2022 SCC OnLine NCLT 21027*** is stated to be distinguishable. It is submitted that the said judgment does not apply to the present case.
- 9.3 The Operational Creditor states that an operational debt exists and default has occurred. It relies on ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353***. It also relies on ***Raghuvir Buildcon Pvt. Ltd. v. Ketan Construction Ltd., 2020 SCC OnLine NCLT 13130***. It is submitted that a dispute must be pre-existing and not raised subsequently.

- 9.4 It is stated that a sub-contract agreement dated 17.02.2022 was executed between the parties. The Operational Creditor performed the work and raised invoices from time to time. The Corporate Debtor made payments without objection. The last payment was received on 20.03.2025.
- 9.5 A demand notice dated 21.01.2026 was issued under Section 8 of the Code. The Corporate Debtor did not reply within the statutory period of ten days under Section 8(2). It is stated that the absence of reply establishes that there was no pre-existing dispute. The dispute raised in the Reply is subsequent.
- 9.6 The work stands completed and the final bill dated 18.03.2024 has been raised. The said final bill is annexed as Annexure-P2. The bill has been certified by the Government Department. It is stated that the completion of work is established.
- 9.7 The objection regarding billing units is not correct. The invoices were raised as per agreed terms and were paid without objection. The Corporate Debtor accepted the billing method. It is submitted that the objection raised later is not sustainable.
- 9.8 The Operational Creditor states that emails dated 24.06.2023 and 13.07.2023 issued by the Corporate Debtor confirm acceptance of invoices and ledger entries. Copies of these emails are annexed as

Annexure-P3. The ledger shared by the Corporate Debtor reflects the amounts payable.

- 9.9 The allegation regarding misuse of cheques and the Bathinda account is not correct. The account was a current account with dual signatures. The account was closed by the Corporate Debtor on 03.01.2025. It is submitted that this was done without intimation.
- 9.10 The Operational Creditor states that no complaint regarding misuse of cheques was filed by the Corporate Debtor. Payments continued till 20.03.2025. The conduct of the Corporate Debtor shows acceptance of transactions. The allegation is stated to be unsupported.
- 9.11 The letter dated 14.11.2025 does not constitute a dispute regarding the operational debt. The letter only provides information regarding cheques. It does not deny liability or the amount payable. It is stated that no dispute was raised before issuance of demand notice.
- 9.12 The Operational Creditor states that the allegation of defects in work is not related to the contracted work. The clarification given through email dated 02.09.2025 is annexed as Annexure-P4. It is submitted that the work executed relates to RD 319000 to 329000. No defect has been established.

- 9.13 No defect liability claims or quantified demand has been raised by the Corporate Debtor. No communication was issued before filing of the petition. It is stated that the work stands completed. The liability of the Corporate Debtor remains.
- 9.14 The GST returns including GSTR-1 and GSTR-3B for the relevant financial years have been filed. These returns reflect the invoices raised upon the Corporate Debtor. The records corroborate the operational debt. The entries match with the records of the Corporate Debtor.
- 9.15 The contract is not a continuing contract and the payment obligation has arisen upon completion of work and raising of invoices. The amount of Rs.1,29,77,269/- is due and payable. The conditions under Section 9 of the Code are fulfilled. The petition is stated to be maintainable.
- 10.** The Corporate Debtor filed a Reply to the Rejoinder of the Operational Creditor on 27.04.2026 vide inward diary no. D-3634. The contents of the said Reply to the Rejoinder are produced hereunder: -
- 10.1 The Corporate Debtor has stated that non-submission of reply within 10 days does not amount to admission of liability and does not bar raising of dispute. It is submitted that disputes existed prior to issuance of

demand notice and are required to be examined on merits.

- 10.2 The Corporate Debtor has relied upon precedents including ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*** and ***Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd. (2021)*** to submit that existence of a pre-existing dispute bars initiation of CIRP. It is further submitted that dispute must be bona fide and not illusory.
- 10.3 The contract between the parties is a work contract including operation and maintenance obligations and defect liability period of 60 months from 18.03.2024 till 18.03.2030. It is submitted that the application filed on 11.03.2026 falls within the subsisting contract period and therefore claim is premature.
- 10.4 The Operational Creditor has misused the joint bank account mechanism and encashed undated signed cheques without completion of contractual obligations. It is stated that realization of payment after submission of bills does not establish completion of work or entitlement of the claimed amount.
- 10.5 The Operational Creditor has not completed operation and maintenance obligations and has failed to submit required reports under the contract. The defects were identified during the defect liability period and the

work remains incomplete and therefore no amount is due and payable.

10.6 The Corporate Debtor has relied upon documents annexed as Annexure – Contract Data, Annexure – Defect Letter dated 09.04.2026 issued by Government Authority, Annexure – Letter dated 11.04.2026 issued by M/s. Sri Avantika Contractors (I) Ltd., and Annexure – Email dated 20.04.2026 sent by the Corporate Debtor to the Operational Creditor to establish existence of defects and continuing obligations.

10.7 The Corporate Debtor has stated that filing of GSTR-1 and GSTR-3B does not validate invoices or establish completion of work or debt due. It is submitted that invoices are disputed on the basis of variation in price and measurement as per BOQ and therefore the application is liable to be rejected.

11. The Operational Creditor also filed a Counter Affidavit in Reply to Sur-Rejoinder of the Corporate Debtor on 05.05.2026 vide inward diary no. D-3817, denying most contentions raised by the Corporate Debtor in its reply. The contents of the Rejoinder are reproduced as follows: -

11.1 The Operational Creditor has filed the present Counter Affidavit in Reply to the Sur-Rejoinder filed by the Corporate Debtor and has denied all the averments,

contentions and submissions made therein. The Operational Creditor has reiterated the contents of the Petition and Rejoinder and has stated that the Sur-Rejoinder is not maintainable in law.

- 11.2 The Operational Creditor has submitted that the work was executed pursuant to the Sub-Contract Agreement dated 17.02.2022 and the invoices were raised as per agreed terms. The Respondent made payments from time to time without objection which establishes acceptance of work and liability.
- 11.3 The Operational Creditor has stated that the Final Bill dated 18.03.2024 was duly raised and certified by the concerned Government Department. The certification confirms completion of work and crystallisation of the payment obligation.
- 11.4 The Operational Creditor has submitted that the Respondent failed to reply to the Demand Notice dated 21.01.2026 within the statutory period. The absence of reply shows that no dispute was raised prior to initiation of proceedings.
- 11.5 The Operational Creditor has contended that the dispute raised by the Respondent is not a pre-existing dispute as it has been raised after filing of the Petition on 11.03.2026. The said dispute is not supported by any contemporaneous record.

- 11.6 The Operational Creditor has relied upon the judgment in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*** and has stated that the Respondent has failed to satisfy the test of pre-existing dispute as laid down therein.
- 11.7 The Operational Creditor has further relied upon ***Raghuvir Buildcon Pvt. Ltd. v. Ketan Construction Ltd. 2020 SCC OnLine NCLT 13130*** and has submitted that the alleged dispute is not genuine and has been raised to avoid insolvency proceedings.
- 11.8 The Operational Creditor has submitted that the Respondent has made payments from 2022 till 2025 and has also confirmed the ledger account. The conduct of the Respondent shows that there was no dispute regarding execution or liability.
- 11.9 The Operational Creditor has denied the contention regarding continuing contract and defect liability period and has submitted that the same does not affect payment for completed work. The work stands completed and accepted and the payment became due.
- 11.10 The Operational Creditor has stated that the alleged defect letter dated 09.04.2026 and subsequent communications were issued after filing of the Petition. Such documents cannot be considered as evidence of pre-existing dispute.

- 11.11 The Operational Creditor has further submitted that the alleged defect was rectified immediately and the same was communicated to the Respondent through email dated 25.04.2026 annexed as Annexure A1. The rectification was carried out in presence of departmental officials.
- 11.12 The Operational Creditor has stated that after rectification no issue remained pending and therefore no dispute subsists between the parties. The Respondent cannot rely upon a resolved issue to oppose the Petition.
- 11.13 The Operational Creditor has submitted that the GST returns filed by both parties reflect the invoices and establish the transaction. The Respondent has not denied receipt of invoices or availing of input tax credit.
- 11.14 The Operational Creditor has denied the allegation regarding misuse of cheques from the Bathinda account and has stated that the account was operated jointly. No complaint or proceedings were initiated by the Respondent regarding such allegation.
- 11.15 The Operational Creditor has submitted that all documents including agreement, invoices, ledger, GST returns and demand notice establish the operational debt of Rs. 1,29,77,269 and default thereof. The Respondent has not produced any document to show a prior dispute.

11.16 In view of the above facts, the Operational Creditor has sought rejection of the Reply and Sur-Rejoinder filed by the Corporate Debtor and prayed for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and for passing of appropriate orders.

12. This Adjudicating Authority has heard the submissions of Ld. Counsel for the Applicant/Operational Creditor as well as Ld. Counsel for the Respondent/Corporate Debtor considered their oral submissions, and perused all the documents which were produced on record.

13. This Adjudicating Authority has examined whether an operational debt exists within Section 5(21) of the Insolvency and Bankruptcy Code, 2016. The Sub-Contract Agreement dated 17.02.2022 (Annexure A-4) establishes that services were rendered by the Applicant. The tax invoices (Annexure A-5) and ledger account (Annexure A-6) corroborate the claim. The final bill dated 18.03.2024, certified by the Government Department (Annexure P-2), confirms completion of work. Accordingly, the existence of operational debt is established.

- 14.** The next issue is whether default under Section 3(12) of the Code is proved. The computation of default (Annexure A-7) and ledger account (Annexure A-6) show that an amount of Rs.1,29,77,269 remains unpaid. Payments made till 20.03.2025 reflect acknowledgment of liability. The failure to discharge the remaining amount establishes default. The records placed on file sufficiently demonstrate non-payment of admitted dues.
- 15.** The Demand Notice dated 21.01.2026 issued under Section 8 of the Code (Annexure A-8) was duly served upon the Corporate Debtor through RPAD and email (Annexure A-9 and Annexure A-10). The Corporate Debtor did not reply within the statutory period of ten days. As per Section 8(2), failure to respond is a relevant circumstance indicating absence of dispute at that stage.
- 16.** The Corporate Debtor has raised disputes relating to billing, measurement, excess payment, and contractual compliance. However, no document prior to 21.01.2026 has been produced to show existence of dispute. The letter dated 14.11.2025 (Annexure R-3) does not deny liability and does not quantify any dispute. The Corporate Debtor has not

submitted any record/documents to establish a reason for non-payment of dues. Therefore, no pre-existing dispute is established.

17. The Corporate Debtor relied upon ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353***, wherein it is held that a dispute must be pre-existing, bona fide, and not spurious. Applying this test, the disputes raised by the Corporate Debtor do not satisfy the requirement as they are unsupported by prior records.
18. The Corporate Debtor has also relied upon ***Raghuvir Buildcon Pvt. Ltd. v. Ketan Construction Ltd., 2020 SCC OnLine NCLT 13130***, wherein it is held that a dispute must be genuine and supported by evidence. In the present case, no contemporaneous evidence has been produced to establish such dispute.
19. The reliance placed on ***Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd., (2021)*** is also examined. The Hon'ble Supreme Court held that CIRP cannot be initiated where a real dispute exists.

However, in the present case, no real dispute is demonstrated.

- 20.** The defect letter dated 09.04.2026, communication dated 11.04.2026, and email dated 20.04.2026 (Annexure relied by Corporate Debtor in Reply to Rejoinder) are subsequent to filing of the Petition on 11.03.2026. These documents cannot be considered as evidence of pre-existing dispute under Section 5(6) of the Code. Further, these documents do not evidence any reason for non-payment of dues.
- 21.** The Operational Creditor has demonstrated that the alleged defect was rectified and communicated through email dated 25.04.2026 (Annexure A1 in Counter Affidavit). This shows that even the subsequent issue raised by the Corporate Debtor does not survive as a subsisting dispute.
- 22.** The contention of the Corporate Debtor regarding continuing contract and defect liability period of 60 months is considered. The final bill dated 18.03.2024 (Annexure P-2) and certification by Government Authority show that the work stood completed. The defect liability period put an obligation on the operational creditor to remove defects that

may arise during the defect liability period but that does not postpone payment obligation for completed work. Nothing is on record to establish that the payments are withheld till the defect liability period is over. The objections of the Corporate Debtor is not supported and lacks substance.

- 23.** The argument regarding excess payment of Rs.79,32,144 as per calculation sheet (Annexure R-4) is examined. The said calculation is not supported by prior correspondence or reconciliation records. No demand for refund was raised before issuance of demand notice. Therefore, the contention lacks evidentiary support.
- 24.** The objection regarding maintainability under Section 69(2) of the Indian Partnership Act, 1932 is considered. The Operational Creditor has produced registration certificate dated 03.09.2021 (Annexure P-1). Therefore, it is a registered partnership firm and the bar under Section 69(2) does not apply.
- 25.** Even otherwise, proceedings under the Insolvency and Bankruptcy Code, 2016 are not suits for enforcement of contractual rights. The Code is a special statute and

provides a distinct mechanism for insolvency resolution. Hence, the reliance on ***Bangalore Sales Corporation v. Sark Spice Products Pvt. Ltd., 2022 SCC OnLine NCLT 21027*** is not applicable to the present facts.

- 26.** The allegation of misuse of cheques and operation of joint bank account (Annexure R-3) is not supported by any complaint, FIR, or legal proceedings. Payments continued till 20.03.2025 which shows that the account was being operated in normal course. Therefore, the allegation does not establish dispute.
- 27.** The GST returns (GSTR-1 and GSTR-3B) filed by the Operational Creditor (Annexure A-12) reflect the invoices raised upon the Corporate Debtor. These statutory records corroborate the transactions and are not denied by the Corporate Debtor.
- 28.** On overall consideration of pleadings, documents, and precedents, it is found that the Operational Creditor has established operational debt and default. The Corporate Debtor has failed to demonstrate existence of a pre-existing dispute within the meaning of Section 5(6) of the Code.

29. In view of the findings recorded above, this Adjudicating Authority is satisfied that the Operational Creditor has established existence of operational debt, occurrence of default, absence of pre-existing dispute and compliance of statutory requirements under the Code. The outstanding Operational Debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present Petition.
30. Hence, this Adjudicating Authority holds that the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 satisfies the requirements of law and is liable to be admitted for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
31. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under: -
- (i) The Respondent/Corporate Debtor - **Pithadai Construction Private Limited** is **admitted** in Corporate Insolvency Resolution Process under section 9(5) of the Code.
 - (ii) As a consequence thereof, a 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 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.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor. The moratorium does not apply to transactions notified by the Central Government, as per Section 14(3)(a) of the IB Code, 2016.*
- (iii) The order of moratorium under section 14 of the Code shall come to 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 liquidation of the Corporate

Debtor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the Corporate Debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) Since, the Operational Creditor has not proposed the name of any IRP. Therefore, from the IBBI Panel List, we appoint Mr. Khushvinder Singhal, CA & Adv IBBI/IPA-002/IP-N00888/2019 -2020/12833, (**e-mail:** kvsinghal@gmail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). It shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder. He shall submit his consent Form-2 along-with Form-B and Registration Certificate within three days.
- (i) The IRP so appointed shall make a public announcement (e.g., newspapers, websites) under Regulation 6(2) of IBBI Regulations, 2016, of the initiation of the Corporate Insolvency Resolution Process and call for submissions of claims under section 15 within three days of appointment as per Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as required by Section 13(1)(b) of the Code.

- (ii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its promoters, or any other person associated with the management of the Corporate Debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the Corporate Debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (iii) The IRP is expected to take full charge of the Corporate Debtor's assets and documents without any delay whatsoever within seven days of this order. The Interim Resolution Professional/ Resolution Professional may seek assistance of the local administration or police authorities, if required, for taking custody of the assets and records of the Corporate Debtor.
- (iv) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of the obligation imposed by section 20 of the Code.
- (v) The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority a periodical report with

regard to the progress of the CIRP in respect of the Corporate Debtor.

- (vi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance exclusive of applicable taxes, within 7 days from the date of this order to meet the initial costs of the CIRP, including issuing public notice and inviting claims, as per Regulation 33(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This amount shall be adjustable against the IRP's fees and expenses as approved by the Committee of Creditors (CoC) under Regulation 33(3), with any excess refundable to the Operational Creditor or shortfall recoverable from the Corporate Debtor's estate as CIRP costs.
- (vii) The Registry is directed to communicate this order to the Operational Creditor, Corporate Debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days, and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update the Corporate Debtor's Master Data on the MCA portal to reflect its status as 'under Corporate Insolvency Resolution Process' within 7 working days of receiving this order and submit a

compliance report to the Registrar, NCLT, within 14 working days.

(viii) The public announcement under Regulation 6(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall be published in at least one English (national edition) and one vernacular newspaper with wide circulation in the state of the Corporate Debtor's registered office (Gujarat) and on the Corporate Debtor's website, if any, as per Form A of the said Regulations.

(ix) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

32. Accordingly, this Petition being **CP (IB) No.113/9/AHM/2026** is hereby **admitted**.

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

— SD —

SANJEEV SHARMA
MEMBER (TECHNICAL)

— SD —

SHAMMI KHAN
MEMBER (JUDICIAL)