

NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-3
C.P. (IB)/639/MB/2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **10.07.2026**

NAME OF THE PARTIES: **Ovaron Infrastructure & MEP Services**

Vs.

Shapoorji Pallonji And Company Private Limited

Under Section 9 of the IBC, 2016.

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, *vide* separate order. A detailed order is being uploaded on the NCLT portal today.

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

//AS//

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/639/MB/2025

*[Under Section 9 of the Insolvency and Bankruptcy Code,
2016 r/w Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016]*

OVARON INFRASTRUCTURE & MEP SERVICES

a partnership firm having its Corporate Office at:

South City Business Park, Suit No. 708

770 Anandapur, E.K.T Private

Kolkata – 700107.

...Operational Creditor

V/s

SHAPOORJI PALLONJI AND COMPANY PRIVATE LIMITED

[CIN No.: U45200MH1943PTC003812]

70, Nagindas Master Road,

Fort, Mumbai – 400023.

...Corporate Debtor

Pronounced: 10.07.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Udayan Mukherjee a/w. Debashish Sinha, Adv. Rishav Ray

For Respondent: Adv. Amir Arsiwala a/w Adv. Ahmed Padela, Adv. Radha Naik
i/b The Law Point

ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This C.P. (IB) No. 639 of 2025 (Application) was filed on 17.02.2025 by a partnership firm named Ovaron Infrastructure & MEP Services, the Operational Creditor (OC), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Shapoorji Pallonji And Company Private Limited, the Corporate Debtor (CD), having CIN No.: U45200MH1943PTC003812.

1.2 As per Part IV of the Application, the amount claimed to be in default is Rs.1,20,72,652/- (One Crore Twenty Lakhs Seventy-Two Thousand Six Hundred Fifty-Two Rupees), of which the principal amounts to Rs. 96,18,384/- and the statutory interest component @ 19.5% under Section 16 of the MSMED Act, 2006, amounting to Rs. 20,79,883/- and Rs. 3,74,397/- being 18% GST on interest. The date of default in amended Part IV is stated as 13.07.2024.

2. CONTENTIONS OF APPLICANT (OC)

2.1 The Applicant was issued a Work Order having number 3200027271 dated 20.03.2020 by the CD for Mechanical, Electrical, and Plumbing (MEP) Services at the CD's project- Dr. BABASAHEB AMBEDKAR VAIDYAKIYA PRATISHTHAN MULTI-SPECIALITY HOSPITAL at SIVASAGAR, Assam and a further Work Order having number 3200027920 dated 20.06.2020

with regard to the same project for MEP Services for a total sum of Rs.96,18,384/- plus taxes.

2.2 Upon fulfilment of its obligations under the Work Order and the subsequent Work Orders, the Applicant raised invoices on the CD.

2.3 A Certificate of Completion to the satisfaction of the CD was issued to the Applicant.

2.4 The Applicant addressed a representation to the CD to follow up on due remittance against the 5 outstanding invoices towards payment for the MEP Services rendered. Thereafter, the Applicant followed up through repeated emails.

2.5 The Applicant issued a representation to the CD whereby the CD was called upon to make payment of the balance amount forthwith.

2.6 Perturbed with the CD's persistent dishonour of its contractual liability to make payment of the amount of Rs. 1,20,72,652/- and repeated assurances from its end, the Applicant issued a demand notice under Section 8 of the IBC on the CD.

2.7 The CD has been continuously evading its express and admitted contractual liability at the cost of the Applicant's loss and damage. The CD has extended several assurances to the Applicant, promising to remit payment of the outstanding amount at the earliest. However, such assurances and promises were disingenuous and intended only to keep the Applicant's just and *bona fide* claims lingering in thin air. Even after being served with the Demand Notice under Section 8 of the IBC, the CD has not remitted payment of the outstanding amount to the Applicant and has replied to the said notice denying to pay the same on false and frivolous grounds.

However, there is a clear admission of debt owed to the Applicant herein, as can be seen from the responses of the CD to the repeated reminders and demands.

2.8 In fact, the admission of Debt *qua* the 5 invoices raised by this Applicant is palpable from its Form 26AS available on the Income Tax Portal, wherein the CD, in due acknowledgement of the debt, has deducted the TDS against the invoices, but has not discharged and paid the debt in settlement of its liability towards the Applicant.

2.9 The Applicant has attached the following supporting documents along with the Application and Additional Affidavit dated 25.07.2025 and 11.08.2025, respectively:

- a) Master data of the CD.
- b) Affidavit of Applicant in support of the Application for initiation of CIRP.
- c) Copy of Work Orders issued to the Applicant by the CD having the following numbers- i) 3200027271 dated 20.03.2020 and ii) 3200027920 dated 20.06.2020.
- d) Copy of Invoices raised by Applicant against the services rendered to the CD.
- e) Copy of Completion Certificate issued by the CD.
- f) Copy of reminders sent by the Operational Creditor to the CD.
- g) Working regarding computation of default in tabular form along with Ledger Reconciliation.
- h) Copy of Demand Notice dated 01.07.2024 issued to the CD by the Applicant along with postal receipts and tracking report.

- i) Copies of the correspondences by the CD acknowledging the debt payable to the Applicant.
- j) Copy of the Applicant's Form 26AS for FY 2022-23 along with Reconciliation Chart.
- k) Statement of Bank Accounts where deposits are made or credits received normally by the Applicant in respect of the debt of the CD.
- l) Copy of Record of IU (NeSL Certificate) & proof of service of application for initiation of CIRP on IBBI.
- m) Copy of Applicant's UDYAM Registration Certificate No. UDYAM-WB-18-0006044
- n) Copy of Work Order No. SPCPL/CAL/3000/2019/WO/306 dated 17.12.2019.
- o) Copy of Amended Form-5.

3. ADDITIONAL AFFIDAVIT (OC) dt. 25.07.2025

3.1 This Additional Affidavit, dated 25.07.2025, was filed and affirmed by one Mr. Anupam Dutta, who is the Partner and authorised representative of the Applicant, to carry out amendments in the Application, in furtherance of our order dated 16.07.2025.

3.2 The Applicant issued its statutory notice u/s 8 of the IBC, 2013 upon the CD on 01.07.2024, calling upon the CD to repay its debt as made out in Part IV in Form 5 within a period of 10 days of the receipt of the said notice. The notice was duly served, as acknowledged by the CD on 03.07.2024. For the said reasons, Point No. 2 in Part IV in Form 5 was amended and read as under:

“Date of Default - 13.07.2024”

- 3.3 The Applicant is classified as a "Small" enterprise within the scheme of the MSMED Act, 2006, and it has obtained UDYAM Regd. Number UDYAM-WB-18-0006044 vide its registration dated 03.06.2021.
- 3.4 As per Section 16 of the MSMED Act, 2006, the Operational Creditor, being a supplier within the meaning of the Act is entitled to receive compound interest on the amount due at three times the bank rate notified by the Reserve Bank of India. The mandatory statutory interest payable by the Corporation Debtor has been calculated as per the prevailing bank rate determined by RBI.
- 3.5 The payment terms are contained and set out in the Work Order No. SPCPL/CAL/3000/2019/WO/306 dated December 17, 2019 and the terms and conditions in the said Work Order dated 17th December, 2019 are binding in all subsequent Work Orders including Work Orders being Number 3200027271 dated 20.03.2020 and 3200027920 dated 20.06.2020.

4. ADDITIONAL AFFIDAVIT (OC) dt. 11.08.2025

- 4.1 This Additional Affidavit, dated 11.08.2025, was filed and affirmed by one Mr. Anupam Dutta, who is the Partner and authorised representative of the Applicant, to file an amended Form 5 through an additional affidavit, in furtherance of our order dated 07.08.2025.
- 4.2 Amended Form 5 was annexed to the said Additional Affidavit with the corrected date of default as 13.07.2024.

5. CONTENTIONS OF CD

5.1 This Affidavit-in-Reply, dated 11.09.2025, was filed and affirmed by one Mr. Vivek Puranik, who is the Senior Manager (Contracts) and authorised representative of the CD.

5.2 The CD is engaged in the business of providing construction and infrastructure development services. The CD is a leading construction company in India that provides construction services to corporations, governments, and international clients across various sectors. The CD is a well-functioning and reputed. company that has successfully executed various contracts pan-India.

5.3 The Present Petition is not maintainable as the demand of Rs. 1,20,72,652/- ("alleged Operational Debt") is not due and payable by the Corporate Debtor.

5.4 The present Petition is frivolous, baseless, lacking in merit, untenable in law and suffers from misrepresentation. The claim of the Operational Creditor is disputed and denied as misconceived, misleading, and untenable. The Demand Notice is issued in violation of the provisions of IBC and the rules made thereunder. The Demand Notice and the present Petition are merely an afterthought on the part of the Operational Creditor to extract inflated amounts.

5.5 Without admitting in any manner, the amounts claimed by the Applicant or the veracity thereof, the CD highlighted certain discrepancies within the documents filed by the Petitioner with the Petition as follows:

- i) Sl. No. 2 under Part IV of Form 5 of Affidavit dated 11.08.2025 mentions the date of default as 13.07.2024, whereas Exhibit XI which

is the NeSL Certificate at Page 173 mentions the date of default as 01.07.2024.

- ii) There is considerable difference between the invoice amounts mentioned at Exhibit - V (at. Page 108) and the individual invoice amounts as mentioned at Exhibit – II (Page 79 - 91). For example, the Invoice No. OIMS/WB/2223/102 dated 01.03.2023, as mentioned in the Tabular chart on page 108 of Exhibit V, lists the taxable value as Rs. 26,45,912/-, whereas the copy of Tax Invoice No. OIMSIWB/2223/102 dated 01.03.2023 at Page 82 of Exhibit - II mentions taxable value as Rs. 11, 15,000/-. Similar discrepancies are also observed with other invoices.

5.6 It is submitted without prejudice that the conditions upon which the supply of goods was contracted by the Respondent did not include any interest component on any amount that is unpaid. Moreover, it is submitted that the Operational Creditor has unilaterally calculated the alleged interest without any basis or rationale. It is stated that there was no consensus between the parties to charge any interest on any of the delayed payments. Thus, the inclusion of any interest in operational debt is *mala fide* and bogus. Therefore, the Petitioner has wrongly charged interest and the Petition is liable to fail on this ground.

5.7 The claim of interest so made rests primarily on the status of the Operational Creditor as an MSME enterprise. It is true that the MSMED Act specifically states that interest shall be paid on delayed payments irrespective of whether there is an express agreement or not to that effect. However, it is now settled that if interest is not agreed upon between the parties, it cannot

form a part of the Operational Debt within the meaning of Section 5(21) of the Code and no such interest can be claimed in an application under Section 9 of the Code.

5.8 The Operational Creditor has failed to establish the existence of crystallized and undisputed operational debt exceeding the prescribed threshold limit under Section 4 of the Code due and payable by the Corporate Debtor, which is sine qua non for admission of an application under Section 9 of the Code.

5.9 This Hon'ble Tribunal does not hold the power to adjudicate upon any claim consisting of interest under MSME specifically the entitlements of the Petitioner arising out of MSME Act.

5.10 It is further submitted that as per the law settled by Hon'ble NCLAT in multiple instances, it is quintessential that the rate of interest in any given case is documented and has been agreed upon between the parties. In the absence of the parties expressly contracting for such interest, there is no right for the creditor to unilaterally impose an interest upon any unpaid amount.

5.11 In the facts of the present case, the Petitioner has imposed an exorbitant amount of statutory interest of Rs. 24,54,268/- over and above the allegedly outstanding principal amount of Rs. 96,18,384/-. It is therefore submitted that such an act of imposing interest on the alleged outstanding principal is mala fide and arbitrary in terms of the POs which formed the basis of the business between the present parties. The Hon'ble Supreme Court in *Swiss Ribbon Pvt. Ltd. v/s Union of India* [(2019) 4SCC 17] has held that IBC is not a recovery proceeding and the Application which has been filed by the

appellant in the present case is only the application for recovery of balance amount of the interest which, is not due nor payable and application was not filed for resolution of any insolvency of the CD.

5.12 An invoice is a unilateral demand by the supplier and interest could only be awarded on its terms if it is supported by an agreement or promise to pay, interest by the receiver which is absent in the present case. Furthermore, Section 5(21) of IBC reads as under:

"(21) 'operational debt' means a claim in respect of the provision of goods or services including employment or a debt in respect of the ²[payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority; "

5.13 A perusal of the aforesaid section clearly shows that in the definition of the term 'operational debt', the word 'interest' has not been mentioned as opposed to the use of the word in the definition of 'financial debt'.

5.14 Additionally, without prejudice to the foregoing contention, it is stated that The Operational Creditor has sought to rely upon its purported registration under the MSME Act to claim entitlement to statutory interest. However, it is pertinent to note that the work order relied upon by the Petitioner is dated 17.12.2019, (at page 7 of the Affidavit dated 25.07.2025), Registration Certificate whereas the Udyam placed on record. reflects that the Petitioner was registered as a small enterprise under the MSME Act only on 03.06.2021 (at page 5 of the Affidavit dated 25.07.2025). Consequently, the Petitioner cannot, at any rate, claim the benefit of MSME registration in

respect of the said work order, as no such registration existed on the date of issuance of the Work Order.

5.15 A Petition under section 9 of IBC cannot lie for recovery of interest component. Inflating the operational debt amount by adding the interest component to cross the threshold limit of Rs. 1 crore is not legal and tenable in law.

5.16 Only in the event that the alleged statutory interest is added to the Principal, the claim of the Petitioner will cross the threshold of Rs. 1 Crore. Therefore, the present Petition does not satisfy the threshold limit of Rs. 1 crore. In view of the aforesaid, it is humbly prayed that the present Petition is not maintainable for being malafide and premature; therefore, it should be dismissed with cost.

5.17 It is submitted by the CD that any claim or dispute raised by the Operational Creditor ought to have been referred to Arbitration. The Work Order provides for a dispute resolution mechanism which reads as under :

"3.0 DISPUTES: Dispute, if any, will first be resolved by mutual discussion and if no amicable settlement is arrived at, the dispute may be referred to competent court for Arbitration as per arbitration Act 1996. SPCPL reserves its right to appoint sole arbitrator in the case of disputes and venue of proceeding the case shall be in Kolkata."

5.18 On perusal of the above, it is clear that the Operational Creditor ought to have initiated appropriate proceedings as per the above Clause 3 .0 for

resolving the pre-existing disputes, instead of approaching this Hon'ble Tribunal in a malafide manner.

5.19 It is submitted that the captioned Petition has been filed with an intent that is not envisaged under the IBC. It is submitted that, without prejudice to other contentions, the captioned Petition has been filed for the sole purpose of purported recovery rather than resolution. It is submitted that it is a settled principle of law that recourse under IBC cannot be for recovery but has to necessarily be for resolution of an insolvent company. It is stated that the Corporate Debtor Company is very much profit-making company and is in no way an insolvent company. It is, submitted that the captioned Petition has been very obviously filed, so as to blackmail the Corporate Debtor and arm-twist it for illegal claims.

5.20 The Operational Creditor is misusing the mechanism provided under IBC only to recover money. I say that on perusal of the present Petition and the documents brought on record, it is evident that the intent of the Operational Creditor is to invoke the provisions of IBC to enforce recovery against the Corporate Debtor. It is well settled that a Petition under Section 7 and Section 9 of IBC is not an alternative for recovery of dues. The Hon'ble Supreme Court in ***M/s Invent Asset Securitization and Reconstruction Pvt. Ltd v. M/s Girnar Fibers Ltd.*** in Civil Appeal No. 3033 of 2022 has held that the provisions of the Code are essentially intended to bring the Corporate Debtor to its feet and are not of money recovery proceedings.

5.21 Respondent is one of the leading Indian construction companies, established over 160 years ago, having substantial size and undertaking. SPCPL has an excellent reputation for construction safety, quality, and

timely delivery and has won many awards for excellence in construction. Respondent has executed numerous fast-track, large magnitude and multi-disciplinary construction projects for its esteemed clientele, including many Multinationals, corporations, PSUs, Government Organisations and Charitable Trusts.

5.22 A Company of Respondent's size, stature and capabilities ought not to be held to ransom by suppliers claiming to be Operational Creditors by putting up disputed claims before Hon'ble Tribunal in matters of Construction contracts, which are complex and require special and technical knowledge for resolution of disputes. These are surely matters that require adjudication through normal civil processes like suits and arbitrations. If at all IBC Petitions founded on disputed claims like those made by the Petitioner herein, are admitted for CIRP, the same may adversely impact not only Respondent's businesses but also institutions, Companies and entities whose projects are being executed by Respondent's various Divisions besides the direct employees of Respondent as also persons/entities having indirect employment generated through Respondent's projects. It is therefore submitted that this Hon'ble Tribunal ought to take notice of Respondent's unique position and exercise discretion to dismiss the above Petition while relegating the Petitioner to its ordinary civil remedies for agitating its alleged claims.

5.23 It is further submitted that the Operational Creditor, by way of the present Petition, is also indulging in forum shopping only to seek recovery of money and has not come before this Hon'ble Tribunal with clean hands. The present Petition has only been filed to harass the Corporate Debtor and to

coerce the Corporate Debtor into paying the amount which is neither due nor defaulted.

6. REJOINDER

6.1 This Affidavit-in-Rejoinder, dated 27.10.2025, was filed and affirmed by one Mr. Anupam Dutta, who is a Partner and authorised representative of the Applicant.

6.2 There is an explicit admission of debt on the part of the CD along with an assurance to pay, and such irrefutable correspondences are exhibited to the Application. These averments indubitably establish that the CD is not before this Tribunal with clean hands.

6.3 The objections raised are essentially frivolous and are with a view to avoiding a legally enforceable operational debt. The date of default in the NeSL Certificate has been inadvertently mentioned as 01.07.2024, being the date of the Statutory Demand Notice. However, the same was rectified in the Petition by way of an Additional Affidavit with the leave of this Hon'ble Tribunal. The date of default is 13.07.2024 as calculated on the basis of the fact that the statutory demand notice called upon the CD to repay its debts as made out in Part IV of Form 5 within a period of 10 days of the receipt of the said notice. The receipt of the statutory notice was duly acknowledged by the CD on 03.07.2024.

6.4 With reference to the averments *qua* the alleged discrepancies between the invoice amounts, the same are strongly denied by the Applicant. Exhibit - V has been annexed for ease of understanding. Since the CD never made payments invoice-wise, the Operational Debt due and payable to the Petitioner can be clearly established from the Ledger Reconciliation

Statement at Exhibit - V (Pg. 109). Further, Exhibit - VIII to the Petition is the Form 26-AS filed by the Petitioner, which clearly demonstrates that the CD has deducted TDS on the entire invoice amount, although it has not remitted the sums payable to the Petitioner herein. Therefore, there is no room for the CD to deny that principal component of the debt, viz., the invoice amount of Rs. 96,18,384/-.

6.5 With respect to the contention of the CD that the Petitioner has wrongly charged interest and is not entitled to claim such interest in terms of the express provisions of the MSMED Act, 2006, the Applicant states that interest is a statutory interest that the CD is under a bounden duty to pay on the invoice amount remaining due and payable. The operational debt is significantly above the prescribed threshold as stipulated under Section 4 of the IBC, standing at Rs. 1,20,72,625/-. The defaulted amount is a validly enforceable Operational Debt within the meaning of the IBC, and this Hon'ble Tribunal is empowered to adjudicate such claims within the framework of the Code.

6.6 It is a settled position of law that an arbitration clause in an agreement does not divest this Hon'ble Tribunal from exercising its Powers under the IBC in an application under Section 9. The existence of an arbitration clause is not a bar in initiating CIRP against a Corporate Debtor in default.

6.7 There is an operational debt to the tune of Rs. 1,20,72,625/- which is legally due and payable to the Operational Creditor. Despite service of a statutory notice of demand, the Operational Creditor has failed to satisfy its debt, and is therefore, amenable to the rigours of the IBC 2016. The Applicant states that the objections raised in these paragraphs are essentially frivolous,

evasive, and have been made with the sole intent to evade its legal obligations.

7. WRITTEN SUBMISSIONS (OC)

7.1 Computation of Operational Debt:

- a) Unpaid Invoice Amount: Rs. 96,18,384/-.
- b) Statutory Interest u/s 16 of the MSMED Act, 2006: Rs. 20,79,883/-.
 - i) Section 5(21) of the IBC, 2016 defines Operational Debt as a claim in respect of provision of goods or services. Claim as defined under Section 3(6) of the Act means a right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment.
 - ii) The CD is in breach of the payment terms agreed upon by and between the parties since it has failed to discharge its debts within the stipulated time specified in the work orders. *[Ref: Pg. 24, Petitioner's Addl. Affidavit dt. 25.07.2025]*
 - iii) Therefore, the interest leviable under the MSMED Act, 2006 is statutory in nature and comprises as a part of the operational debt. This interest is distinguishable from levy of interest on unpaid invoices where creditor does not have any statutory right to claim interest.
 - iv) Section 15 of the MSMED Act, 2006 provides that buyer shall make payment for supply of goods or services on or before agreed date or before the appointed date. *[See: Section 2(b) MSMED Act, 2006].*

- v) Date of deemed acceptance of service is taken as 24.01.2023: Completion Certificate was issued by the Corporate Debtor [Ref. Exhibit – III @ Pg. 92]
 - vi) Section 16 of the MSMED Act, 2006 stipulates that notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, the buyer shall be liable to pay compound interest to the supplier on the amount due from the appointed day, at three times of the bank rate notified by the Reserve Bank. Section 17 of the MSMED Act, 2006 further stipulates that for any goods supplied or services rendered, the buyer shall be liable to pay the amount with interest thereon as provided in Section 16.
 - vii) In the case of ***Dy. Commissioner of Income Tax (LTU), Bangalore v. Bosch, [2017] 87 taxmann.com 351 (para 7)*** it has been held that payment of interest for delayed payment under Section 16 of the MSMED Act, 2006 is in the nature of penalty or it is penal interest, and therefore, shall statutorily apply, irrespective of any agreement or absence thereof, by and between the parties on the issue of interest.
- c) GST on interest @18% as per Section 15(2)(d) of the Central Goods and Services Tax Act, 2017: Rs. 3,74,397/-.
- i) In terms of Section 15(2)(d) of the CGST Act, 2017, the value of taxable supply shall be inclusive of any interest or late fee or penalty for delayed payment of any consideration for any supply.

7.2 It is most respectfully submitted that the Hon'ble Supreme Court, in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, (2018)

1 SCC 353, laid down a three-fold test, which the adjudicating authority ought to consider for admission of an application as per the mandate of Section 9(5) of the Code. It is most respectfully submitted that the aforesaid test has been satisfied in the present application; *viz.*, *firstly*, the Operational Debt is beyond the statutory threshold of Rs. 1 crore, *secondly*, there is sufficient documentary evidence to demonstrate that the debt is due and payable, and has not been paid, and *lastly*, there is no pre-existing dispute of proceedings in relation to the debt. In the present case, the invoices, reconciliation statement, and correspondence between the parties clearly establish the operational debt and default. Even taking the earliest possible date, i.e., 15 days from the date of Certificate of Completion dt. 24.01.2023, the petition is within limitation, and minor controversies *qua* precise date of default do not go to the root of maintainability and ought not to defeat admission since this Tribunal is not a recovery court.

7.3 It is further submitted that it is a settled position in law as laid down by the Hon'ble Supreme Court ***Hasan Shafiq v. CT-Technologies APS & Anr.***, (2023) 236 Comp Cas 350 at Para 19, that the proceedings under the Code having been given overriding effect, the right to initiate application under section 9 shall not be taken away by the operational creditor by any agreement of arbitration in the contract. When an operational creditor elects to initiate proceedings under section 9, the same cannot be rejected merely on the ground that an arbitration agreement exists.

7.4 It is further submitted that the Respondent's contention on affidavit that this Tribunal is not empowered to adjudicate on interests under the MSMED Act, 2006 may be premised on the judgment of the Hon'ble NCLAT in ***M/s. Vedic Projects Pvt. Ltd. v. Shri Sutanu Sinha***, Company Appeal (AT) (Ins.) No. 1927 of 2024, wherein the Hon'ble Appellate Tribunal, on distinguishable facts had merely observed that the Adjudicating Authority is not the appropriate Forum to consider the issue pertaining to interest under MSMED Act. Such an observation of the Hon'ble Appellate Tribunal does not amount to a binding ratio, and the decision of the coordinate bench of this Tribunal in ***Tanaya Enterprises Pvt. Ltd. v. Risa International Ltd.***, CP (IB) 4137/MB/2018 holds the field.

8. WRITTE SUBMISSION (CD)

8.1 It is submitted without prejudice that the conditions upon which the supply of goods was contracted by the Respondent did not include any interest component on any amount that is unpaid. Moreover, it is submitted that the operational Creditor has unilaterally calculated the alleged interest without any basis or rationale. It is stated that there was no consensus between the parties to charge any interest on any of the delayed payments. Therefore, the Petitioner has wrongly charged interest and the Petition is liable to fail on this ground.

8.2 The claim of interest so made rests primarily on the status of the Operational Creditor as an MSME enterprise. It is true that an MSMED Act specifically states that interest shall be paid on delayed payments irrespective of whether there is an express agreement or not to that effect. However, it is now settled that if interest is not agreed upon between the parties, it cannot

form a part of the Operational Debt within the meaning of Section 5(21) of the Code and no such interest can be claimed in an application under Section 9 of the Code.

8.3 In the present case, there is no agreement between the parties entitling the Petitioner to contractual interest. Instead, the Petitioner is attempting to assert a statutory right to interest under the MSMED Act, post facto. However, it is a settled position that where a claim arises from the MSMED Act, the forum for adjudication is the MSEFC, and not the NCLT under the IBC.

8.4 In support of its contentions, the Corporate Debtor is relying upon the following judgments:

1. ***Rishabh Infra v. Sadbhav Engineering Ltd.*** in [C.A. No. (AT) 1881/2024] has held that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest.
2. ***M/s Vedic Projects Pvt. Ltd. Vs. M/s Simplex Projects Ltd.*** [Company Appeal (AT) (Insolvency) No.1927 of 2024] has held that with regard to claim under the MSME, the Adjudicating Authority has observed that NCLT is not appropriate Forum to consider the issue pertaining to the interest, claimed by the Appellant under Section 16 of the MSMED Act.

8.5 Additionally, without prejudice to the foregoing contention, it is stated that the Operational Creditor has sought to rely upon its purported registration under the MSME Act to claim entitlement to statutory interest. However, it

is pertinent to note that the work order relied upon by the Petitioner is dated 17.12.2019, (at page 7 of the Affidavit dated 25.07.2025), whereas the Udyam Registration Certificate placed on record. reflects that the Petitioner was registered as a small enterprise under the MSME Act only on 03.06.2021 (at page 5 of the Affidavit dated 25.07.2025). Consequently, the Petitioner cannot, at any rate, claim the benefit of MSME registration in respect of the said work order, as no such registration existed on the date of issuance of the Work Order.

8.6 In support of its contentions, the Corporate Debtor is relying upon the following judgments:

1. ***SHAARC Projects Limited v. Hindustan Construction Company Limited*** [NCLT CP (IB) No.1077/MB/2021] has placed reliance on the Supreme Court in the matter of Silpi Industries Etc. versus Kerala State Road Transport Corporation and Another (2021 SCC Online SC 439) stating that "If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favor of a party not intended by legislation." And in view of the same rejected the Company Petition.
2. ***Skoda Auto Volkswagen India Pvt. Ltd. v. Susee Automotive Pvt. Ltd.*** [NCLT CP (IB) No.1116/MB/2024] has held that the interest not agreed upon by the parties cannot be treated as part of the operational debt in terms of the MSMED Act. It was also held that the MSMED Act does not have retrospective operation, in order to claim interest from a

pre-date. Provisions of the MSMED Act do not override the threshold limit stipulated under Section 4 of the IBC.

8.7 In light of the above, it is submitted that the Petitioner's interest claim is unsupported by agreement, barred by law, and outside the jurisdiction of the NCLT. The Petitioner is seeking to improperly inflate its claim to cross the threshold limit under Section 4 of the IBC by including inadmissible interest, which cannot be permitted.

8.8 The Central Government, by way of Notification F. No. 30/09/2020 dated 24.03.2020 in exercise of the powers conferred by the proviso to Section 4 of the IBC, specified one crore rupees as the minimum amount of default for the purposes of Section 4. Admittedly, the present petition is filed after that date.

8.9 As stated above, the Petitioner is not entitled to claim interest from the Respondent in the absence of any agreement for the same. As such, the principal amount being claimed by the Petitioner is only Rs. 96,18,384/- which is below the threshold. Therefore, the present petition, according to the CD, must be dismissed.

9. ANALYSIS AND FINDINGS

9.1 We have perused the documents as placed before us and have heard the Ld. Counsels for the Applicant and the CD.

9.2 The following facts are substantially undisputed:

- a) The CD issued Work Orders bearing Nos. 3200027271 dated 20.03.2020 and 3200027920 dated 20.06.2020 to the Applicant for

rendering MEP services at the Dr. Babasaheb Ambedkar Vaidyakiya Pratishthan Multi-Speciality Hospital Project at Sivasagar, Assam.

- b) The Applicant executed the works contemplated under the said Work Orders and raised invoices upon the CD.
- c) A Completion Certificate dated 24.01.2023 was issued by the CD acknowledging completion of the work.
- d) The CD did not dispute issuance of the Work Orders, execution of work, issuance of invoices, or issuance of the Completion Certificate.
- e) The statutory demand notice under Section 8 of the IBC dated 01.07.2024 was admittedly received by the CD on 03.07.2024.
- f) The principal outstanding amount claimed under the invoices is Rs.96,18,384/-.

9.3 The following issues, however, remain seriously contentious between the parties:

- a) Whether the Applicant is entitled to claim statutory interest under Sections 15 to 17 of the MSMED Act, 2006.
- b) Whether such statutory interest can be included within the expression "operational debt" under Section 5(21) of the IBC.
- c) Whether the threshold requirement under Section 4 of the IBC stands satisfied if the interest component is excluded.
- d) Whether the Applicant can claim benefits of MSME registration when the foundational Work Order dated 17.12.2019 preceded its Udyam Registration dated 03.06.2021.
- e) Whether discrepancies in the date of default and invoice figures affect the maintainability of the Petition.

- f) Whether the arbitration clause contained in the Work Order bars initiation of proceedings under Section 9 of the IBC.
- g) Whether there existed any pre-existing dispute regarding the operational debt prior to issuance of the demand notice.

9.4 The Applicant has asserted that a sum of Rs. 96,18,384/- remains outstanding towards invoices raised for services rendered and that upon addition of statutory interest under Sections 15, 16 and 17 of the MSMED Act, 2006 and GST thereon, the total operational debt aggregates to Rs.1,20,72,652/-. The CD, on the other hand, has disputed both the quantum of debt and the entitlement of the Applicant to claim MSME interest. A perusal of the record reveals that the principal amount claimed by the Operational Creditor is admittedly Rs.96,18,384/-, which is below the threshold of Rs.1 crore prescribed under Section 4 of the IBC pursuant to the notification dated 24.03.2020. Therefore, the maintainability of the present Petition substantially depends upon whether the disputed claim towards MSME interest can be treated as a crystallized and undisputed component of operational debt.

9.5 The Applicant has strongly relied upon Sections 3(6) and 5(21) of the IBC and has contended that the statutory interest payable under the MSMED Act forms an integral part of its claim and therefore constitutes operational debt. It has further been argued that such interest is statutory in nature and becomes payable irrespective of any contractual stipulation between the parties. We are unable to accept the said submission in the facts of the present case. Before the interest component can be treated as part of the operational debt, it must first be established that the Applicant is entitled to

invoke the provisions of the MSMED Act and that the amount claimed towards interest is legally due and payable. The CD seriously challenges both these aspects on the ground that the debt has arisen pursuant to a purchase order issued prior to the MSME registration of the Applicant and therefore the benefit of Section 16 of the MSME Act shall not be available to the Applicant in respect of the said debt. The entitlement to statutory interest itself thus becomes a subject matter requiring adjudication. Insolvency proceedings are not intended to determine complex questions relating to the applicability of special statutes, computation of statutory interest and adjudication of contested monetary claims. Such disputes necessarily fall outside the limited summary jurisdiction exercised under Section 9 of the IBC.

9.6 The contention of the Applicant that the debt stands conclusively established from the invoices, ledger reconciliation and completion certificate also does not satisfy this Tribunal, especially in regard to the claim of interest by the OC. Moreover, the CD has specifically pointed out discrepancies between the figures reflected in the invoices and those appearing in the reconciliation statement relied upon by the Applicant. By way of illustration, Invoice No. OIMS/WB/2223/102 dated 01.03.2023 reflects a taxable value different from the amount reflected in the reconciliation chart. The explanation furnished by the Applicant is that the chart was prepared only for convenience and that payments were not made invoice-wise. However, such an explanation itself demonstrates that the determination of the exact amount outstanding requires reconciliation and examination of accounts. The existence of such discrepancies cannot be

brushed aside as inconsequential, particularly in proceedings where admission of a petition entails serious consequences for the CD.

9.7 The Applicant has further sought to rely upon the alleged acknowledgements and assurances of payment contained in various communications exchanged between the parties. According to the Applicant, such correspondence constitutes an unequivocal admission of liability. Having considered the material placed on record, this Tribunal is unable to hold that the correspondence amounts to an unconditional admission of the entire claim including interest forming the subject matter of the present Petition. Commercial correspondence indicating discussions regarding outstanding dues or requests for payment cannot, by themselves, bar the CD from raising legitimate disputes regarding quantum or entitlement. At best, such communications may constitute evidentiary material in an appropriate adjudicatory proceeding. They do not eliminate the disputes that have emerged from the record in the present case.

9.8 The Applicant has also placed reliance upon Form 26AS to contend that deduction of TDS by the CD amounts to acknowledgement of debt. While deduction of TDS may constitute a relevant circumstance, it cannot be regarded as conclusive proof of an undisputed operational debt for the purposes of admission under Section 9 of the IBC. The fact that tax may have been deducted at source does not resolve disputes relating to the exact amount payable, the correctness of reconciliation of accounts, or the entitlement to statutory interest under the MSMED Act.

9.9 Particular significance must be attached to the Information Utility record placed on record by the Applicant itself. The Applicant seeks to rely upon

the NeSL record as evidence of default. However, a perusal thereof reveals that the status of default has been recorded as "**Disputed**". More importantly, the remarks column specifically records that the "*Amount claimed is disputed*". The IU mechanism has been introduced under the IBC to provide a reliable and objective record of debt and default. When the very record relied upon by the Applicant reflects that the amount claimed is disputed, the same substantially weakens the assertion that an undisputed operational debt exists. Rather than supporting the case of the Applicant, the IU record lends credence to the CD's contention that disputes regarding the debt had already arisen.

9.10 The aforesaid conclusion also finds support from the recent judgment of the Hon'ble NCLAT, New Delhi, in **Salil Musale Vs. Lintec India Pvt. Ltd. & Ors.** (Company Appeal (AT) (Insolvency) No.870 of 2026) dated 25.05.2026, wherein, while setting aside the admission order in CP (IB) No. 669 (MB) of 2025, which was admitted by this Bench of NCLT, the Hon'ble Appellate Tribunal has held the following:

*"11. Section 9(5)(d)(ii) provides that the Adjudicating Authority shall reject the application when notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility. Present is a case where notice of dispute was issued by the corporate debtor within 10 days from receipt of the demand notice and there was also record of dispute in NeSL record where status was mentioned as disputed. We may refer to the judgment of this Tribunal in Company Appeal (AT) (Insolvency) No. 557 of 2025- "**Bhawani Prasad Mishra V/s Armaco Infralinks Pvt.***

Ltd. & Anr.” decided on 25.04.2025 where this Tribunal has held that when the status of NeSL record mention the dispute, Adjudicating Authority cannot proceed to admit Section 9 application. Relevant paragraphs of the judgment are as follows:-

“28. When we look into Section 9(5)(ii)(d) there are two circumstances under which Section 9 application deserves to be rejected i.e. (i) notice of dispute has been received by operational creditor or (ii) there is record of dispute in the Information Utility. In the present case, both the above clauses are fully met since notice of dispute has been received by operational creditor and there is record of dispute in the Information Utility. The record of dispute in the Information Utility as extracted above was information which was submitted by 'Armaco Infralinks Pvt. Ltd.' for authentication and authentication made on the same day by the corporate debtor disputing the information which is captured in the Information Utility information. The statutory condition as contained in Section 9(5)(ii)(d) was fully in existence, hence, Adjudicating Authority had to reject the application. Adjudicating Authority although in paragraph 31 has noticed the record of default in the Information Utility which paragraph 31 is as follows:-

“31. Further, upon perusal of record of default in the information utility namely National EGovernance Services Ltd. ('NeSL') produced by the Respondent vide its reply dated 18.01.2025, we notice the existence of prior dispute

between the parties. The relevant screenshot is reproduced hereunder:

31. Section 8(2)(a) is a provision which provides that the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute. Section 8(2)(a) does not in any manner dilute the requirement of Section 9(5)(ii)(d). The initiation of insolvency against the Corporate Debtor has a serious consequences and when there are sufficient material to indicate that condition as mentioned in Section 9(5)(ii)(d) are in existence, Adjudicating Authority cannot proceed to ignore the same. There can be no dispute to the proposition laid down by the Hon'ble Supreme Court in "Mobilox Innovations Private Limited vs. Kirusua Software Pvt. Ltd. (2018) 1 SCC 353" that dispute which is contemplated in Section 8(2)(a) has to be a bonafide dispute. In paragraph 38 of the judgment of "Mobilox Innovations Private Limited" following was laid down:-

"38. It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid

operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which "the existence of a dispute" alone is mentioned. Even otherwise, the word "and" occurring in Section 8(2)(a) must be read as "or" keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as "or". If read as "and", disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. This would lead to great hardship; in that a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an Arbitral Tribunal or a court. Further, given the fact that long limitation periods are allowed, where disputes may arise and do not reach an Arbitral Tribunal or a court for up to three years, such persons would be outside the purview of Section 8(2) leading to bankruptcy proceedings commencing against them. Such an

anomaly cannot possibly have been intended by the legislature nor has it so been intended. We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties."

12. It is relevant to notice that the Adjudicating Authority has also noted the fact that NeSL record claim is disputed. In paragraph 7.21 and 7.22, Adjudicating Authority noticed following:-

"7.21 The Applicant has placed on record the NeSL record of default in Form D. which reflects the Status of Authentication of default as 'Disputed with remarks that there exists a preexisting dispute. The Applicant has relied on the judgment of Hon'ble NCLAT, in Rakesh Bhailalbhay Patel v. Vasundhara Seamless Stainless 4 Tubes (P) Ltd., 2025 SCC OnLine NCLAT 1669, vide Order dated 17.10.2025, has clarified the legal position regarding marking of dispute on NeSL portal. The relevant portion of the judgment is reproduced as under:

"79. The contention regarding the NeSL portal is also not convincing. The Code does not treat the NeSL information as determinative of the existence of a dispute. The mere

marking of a debt as "disputed" on the portal, without supporting evidence, cannot override the underlying contractual documents and financial records".

7.22 The CD with regard to above, relied upon the judgment of Hon'ble NCLAT in Bhawani Prasad Mishra v. Aramco Infralinks Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 557 of 2025 (Order dated 25.04.2025), wherein it was held that Section 9(5)(ii) (d) of the IBC is mandatory and that the application must be rejected if either notice of dispute is received or there is a record of dispute in the Information Utility. However, the said order has already been challenged before the Hon'ble Supreme Court in Civil Appeal Diary No. 26723 of 2025. In any event, in the present case, the Applicant has substantiated its claim through invoices, e-way bills and GSTR-1 filings, thereby establishing the operational debt and default."

9.11 To summarise, the Hon'ble NCLAT in *Salil Musale v. Lintec India Pvt. Ltd. & Ors. (supra)*, reiterated that Section 9(5)(ii)(d) of the IBC mandates rejection of a Section 9 application where either

- (i) a notice of dispute has been received by the Operational Creditor, or
- (ii) there exists a record of dispute in the Information Utility.

The ingredients as laid down by Hon'ble NCLAT are present in the present Company Petition before us as there exists a record of dispute in the Information Utility.

9.12 This Tribunal also finds merit in the CD's objection regarding inconsistencies in the date of default. While the amended Form-5 records the date of default

as 13.07.2024, the IU record relied upon by the Applicant reflects the date of default as 01.07.2024. The Applicant has sought to explain the discrepancy by contending that the earlier date was inadvertently mentioned and that the correct date would be 10 days after receipt of the demand notice. Be that as it may, the inconsistency assumes significance because the IU record is simultaneously relied upon as proof of default. Such contradictions further demonstrate that the factual foundation of the petition is not free from controversy.

9.13 The Applicant has placed considerable reliance upon the judgment of the Hon'ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, (2018) 1 SCC 353 and has contended that all ingredients required for admission of a petition under Section 9 stand satisfied. In our considered view, the said judgment does not advance the case of the Applicant. The Hon'ble Supreme Court in *Mobilox* held that the Adjudicating Authority must determine whether there exists a plausible contention requiring investigation and whether the dispute raised is not a patently feeble legal argument unsupported by evidence. The Hon'ble Court further held that where a genuine dispute exists, the application must be rejected. Applying the said test to the facts of the present case, this Tribunal finds that the disputes raised regarding the quantum of debt, particularly regarding the interest component, reconciliation of accounts, entitlement to MSME interest, applicability of MSME registration, date of default and the disputed status recorded by the Information Utility are neither illusory nor spurious. On the contrary, they constitute substantial disputes requiring

adjudication before a competent forum. Therefore, the principles laid down in *Mobilox* operate against the admission of the present petition.

9.14 The Applicant has further relied upon *Dy. Commissioner of Income Tax (LTU), Bangalore v. Bosch Ltd.*, [2017] 87 taxmann.com 351 to contend that interest payable under Section 16 of the MSMED Act is statutory and mandatory. There can be no quarrel with the proposition that delayed payment interest under the MSMED Act may arise by operation of law. However, the issue before this Tribunal is not whether such interest may be recoverable in an appropriate proceeding. The issue is whether such a disputed interest can be treated as a crystallised operational debt for the purpose of meeting the statutory threshold under Section 4 of the IBC. The said judgment does not address the maintainability of a Section 9 petition founded substantially on a disputed claim for MSME interest and is therefore of limited assistance to the Applicant.

9.15 The Applicant has also relied upon the decision of the Hon'ble Supreme Court in *Hasan Shafiq v. CT-Technologies APS & Anr.* to contend that the existence of an arbitration clause does not bar initiation of proceedings under Section 9 of the IBC. The proposition laid down therein is well settled. However, the present Petition is not being rejected on account of the arbitration clause contained in the work order. The rejection follows from the existence of substantial disputes concerning the interest portion of the debt itself and the inability of the Applicant to establish an undisputed operational debt above the threshold prescribed under Section 4 of the IBC. Consequently, the said judgment does not assist the Applicant.

9.16 The Applicant has further sought to contend that this Tribunal is competent to examine claims involving statutory interest under the MSMED Act and has attempted to distinguish authorities relied upon by the CD. In the present case, however, it is unnecessary to enter into a conclusive determination on that issue. Even assuming that such jurisdiction exists, the entitlement of the Applicant to claim MSME interest remains disputed. The threshold requirement under Section 4 cannot be satisfied by relying upon a component of debt, i.e., interest dues, whose very existence and enforceability are under challenge.

9.17 The cumulative effect of the aforesaid circumstances leaves little room for doubt that the present claim is not free from substantial dispute. The principal amount admittedly remains below the threshold prescribed under Section 4 of the IBC. The threshold is crossed only upon inclusion of MSME interest and GST thereon, both of which are seriously contested. The Information Utility record itself records the amount claimed as disputed. Material discrepancies have been pointed out in the documents relied upon by the Applicant. Determination of the actual liability would necessarily require a detailed adjudication of facts and law, especially in regard to chargeability of interest, which is impermissible within the framework of a summary proceeding under Section 9 of the IBC.

9.18 In view of the foregoing discussion, this Adjudicating Authority is unable to arrive at a satisfaction that there exists an undisputed operational debt exceeding the threshold prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016. The disputes raised by the CD, especially in regard to the interest component included in the claim amount, are real and

substantial and cannot be characterized as moonshine or illusory defences. Consequently, the requirements of Sections 8 and 9 of the IBC remain unsatisfied. Moreover, in view of the judgement of Hon'ble NCLAT, New Delhi, in the matter of *Salil Musale v. Lintec India Pvt. Ltd. & Ors. (supra)*, this Adjudicating Authority is required to reject the Application solely on the ground that the NeSL Record of Default is reflecting "Disputed" status of the debt and default.

9.19 The present Company Petition bearing No. **C.P.(IB)/639/MB/2025** is therefore liable to be **rejected** and is accordingly dismissed.

Sd/-

NILESH SHARMA

MEMBER (JUDICIAL)

//AS//

Sd/-

SAMEER KAKAR

MEMBER (TECHNICAL)