

NATIONAL COMPANYLAW TRIBUNAL
GUWAHATIBENCH
GUWAHATI

ORDER SHEET OF THE HEARING ON 30th APRIL 2026

CP (IB)/23/GB/2025

Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha
2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh

In the Matter of	Smile Nonwovens Private Limited Vs T. K. Engineering Consortium Private Limited
Under Section	U/s 9 of IBC, 2016

Appearances (via video conferencing/physically)

For Petitioner (s) : Ms. Mamta Binani, Adv
: Mr. Devesh Kumar Bhutra, Adv
: Ms. Sudha Sarma, PCS

For Respondent (s) : Mr. Pravin Kumar Chhajer, CS

ORDER

Order pronounced in open court *vide* separate sheets.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP(IB)/23/GB/2025

*Application to initiate CIRP in respect of Corporate Debtor 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:

Smile Nonwovens Private Limited, bearing CIN U25209WB2009PTC136360 Having its
registered office at 17/1, Sahapur Colony, 3rd Floor, New Alipore, Kolkata - 700 053

...Operational Creditor/ Petitioner

-Versus-

T. K. Engineering Consortium Private Limited, bearing CIN: U40I02AR2008PTC008252,
having its registered office at Model Village, Naharlagun, Arunachal Pradesh, India, 791110

...Corporate Debtor/ Respondent

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

Appearances (through video conferencing):

For Petitioner : Ms. Mamta Binani, Adv

For Respondent : Mr. P. Chhajer, CS

Order pronounced on: 30.04.2026

As Per Bench

JUDGEMENT

1. This Company Petition is filed by Smile Nonwovens Private Limited (“Operational Creditor”/ “OC”) represented by its Director Mr. Saurabh Gupta, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process (“CIRP”) against **T.K. Engineering Consortium Private Limited** (“Corporate Debtor”/ “CD”) for defaulting in its obligations to pay an outstanding principal amount of Rs 2,64,67,527/- (“Operational debt”) along with interest @18% p.a. calculated from the date of defaults of invoices till 15.07.2025 or till the date of payment whichever is later.
2. T. K. Engineering Consortium Private Limited (Corporate Debtor) is an unlisted private, non-government company limited by shares, incorporated on 04.02.2008, within the meaning of the Companies Act, 2013, with Corporate Identity Number U40102AR2008PTC008252. The company maintains its registered office at Model Village, Naharlagun – 791110, Arunachal Pradesh, India. Currently, the Corporate Debtor has an authorized share capital of Rs. 1,00,00,00,000/- (Rupees One Hundred Crores Only) and a paid-up share capital of Rs. 81,78,48,600/- (Rupees Eighty One Crore Seventy Eight Lakhs Forty Eight Thousand Six Hundred Only).
3. **Submissions of the Operational Creditor -**
 - 3.1 The Operational Creditor is engaged in the business of inter alia, manufacturing and supply of fabrics and Mega Bags etc.
 - 3.2 In or around 2018, the Corporate Debtor approached the Operational Creditor for supply of 1.5 meters × 2.00 meters Mega Bags, comprising woven and non-woven geotextile fabrics (hereinafter referred to as “Goods”), which proposal was duly accepted. Subsequently, the parties executed a Memorandum of Understanding dated 02.03.2019, stipulating, inter alia, the nature of Goods, delivery mechanism, and payment terms.

A copy of the Memorandum of Understanding dated 02.03.2019 is annexed to the petition and marked as “**Annexure H**”.

- 3.3 The business arrangement between the parties operated such that the Corporate Debtor would raise purchase orders upon the Operational Creditor for supply of Goods. Upon receipt of such purchase orders, the Operational Creditor would manufacture and dispatch the Goods along with lorry receipts. The Corporate Debtor, upon due verification of the quality and quantity of Goods, would accept the same and endorse the invoices. The Operational Creditor, in turn, duly filed GST returns corresponding to such invoices. Additionally, on an annual basis, the Operational Creditor provided ledger accounts for reconciliation, which were duly acknowledged by the Corporate Debtor.
- 3.4 The Corporate Debtor issued a purchase order dated 20.11.2020 via email dated 21.11.2020 for procurement of Goods. Further, the Corporate Debtor issued security cheques aggregating to Rs. 5,00,00,000/- (Rupees Five Crores Only) towards existing outstanding dues as on November 2020 and as security for future supply of the Goods as sought for in the purchase orders. A copy of the purchase order dated 20.11.2020 is annexed to the petition and marked as **Annexure D**.
- 3.5 Pursuant to the said purchase order, the Operational Creditor commenced manufacturing and dispatch of Goods. Although the stipulated delivery timeline was 31.12.2020, however, owing to the second wave of the Covid-19 pandemic, due to which the logistics and manufacturing process was halted, the delivery could not be completed by 31.12.2020. The Corporate Debtor, being aware of such circumstances, granted extension of time to the Operational Creditor to make supplies even after 31.12.2020, as evidenced by its continued acceptance of Goods supplied beyond 31.12.2020 without any protest or demur.
- 3.6 Despite receipt and acceptance of Goods, the Corporate Debtor failed to adhere to the agreed payment terms and made only sporadic and negligible payments and began deviating from the payment terms as stipulated in the MOU and the purchase order, thereby resulting in accumulation of outstanding dues.

Copies of outstanding invoices along with lorry receipts and GST returns filed by the Operational Creditor are annexed to the petition and marked as **Annexure E and F**.

- 3.7 That despite persistent requests, the Corporate Debtor preferred to disobey the payment terms and made infrequent payments at its own will. However in light of the deep rooted business relationship the Operational Creditor continued to supply goods and the rental services on the pretext of assurances received from the Corporate Debtor, that the payments will be made, while only at a later point it was realised that the assurances were false. The Corporate Debtor repeatedly requested the Operational Creditor not to deposit the security cheques and assured that payments would be made in due course. Acting in good faith and on the basis of such assurances, the Operational Creditor refrained from depositing the said cheques. However, the Corporate Debtor failed to honour its commitments, thereby wrongfully withholding the legitimate operational debt.

Copies of the security cheques issued by the Corporate Debtor to the Operational Creditor are annexed to the petition and marked as "**Annexure D**".

- 3.8 All transactions between the parties were conducted in the ordinary course of business and after due diligence. The Goods supplied were accepted without any objection, thereby establishing that there existed no dispute with respect to quality or supply.
- 3.9 The first default occurred on 15.05.2021 in respect of invoice dated 15.04.2021. Thereafter, payments became irregular, leading to mounting outstanding dues. Despite repeated demands, the Corporate Debtor failed to regularize the account. The last default occurred on 05.12.2021 in respect of invoice dated 05.11.2021. The last payment of Rs. 1,00,00,000/- was made on 11.04.2022 by the Corporate Debtor in respect to the compounded dues.

A copy of the default sheet evidencing details of the outstanding dues is annexed to the petition and marked as "**Annexure C**".

- 3.10 The Corporate Debtor has, from time to time, acknowledged its liability as under:

Sl. No.	Period	Date of receipt of acknowledgement	Amount (Rs.)
1.	01.04.2019- 31.03.2020	13.10.2020	9,95,61,102/-
2.	01.04.2020- 31.03.2021	25.05.2021	6,14,21,463/-
3.	01.04.2021- 31.03.2022	30.08.2022	6,53,88,990/-
4.	01.04.2022- 31.03.2023	27.04.2023	5,53,88,990/-

As per the aforesaid acknowledgements, the Corporate Debtor has acknowledged the outstanding debt due to the Operational Creditor from the Corporate Debtor of a sum of Rs. 5,53,88,990/- (Rupees Five Crores Fifty Three Lakhs Eighty Eight Thousand Nine Hundred and Ninety Only) on 27.04.2023. In view of the latest acknowledgment dated 27.04.2023, the limitation period stands extended up to 26.04.2026. Accordingly, the present application is within limitation.

Copies of all debt acknowledgements from the period 01.04.2019 till 31.03.2023 are annexed to the petition and marked as “**Annexure J**”.

- 3.11 The total value of transactions between October 2018 and November 2021 amounts to Rs. 36,42,99,452/-, against which payments of Rs. 30,20,94,540/- were received. After accounting for adjustments of Rs. 68,15,922/- (towards credit notes, TDS, and TCS), an amount of Rs. 5,53,88,990/- remains outstanding. An amount of Rs. 2,89,21,463/- pertaining to the period covered under Section 10A of the Code has been excluded from the present claim. Accordingly, no claim in respect thereof is raised in the instant petition and the Operational Creditor reserves its rights to avail appropriate legal remedies for the said claim.

A copy of the ledger account of the Corporate Debtor and the Operational Creditor for the Financial Year 2018-19 till 15.07.2025 is annexed to the petition and marked as “**Annexure I**”

- 3.12 As on date, the total non-Section 10A outstanding amount is Rs. 4,57,69,145/-, comprising principal amount of Rs. 2,64,67,527/- and interest of Rs. 1,93,01,618/-

calculated @ 18% per annum computed from the date of default of the first invoice till 15.07.2025 or till the date of payment whichever is earlier.

- 3.13 Despite repeated follow-ups, including telephonic communications, the Corporate Debtor failed to clear the outstanding dues. The Operational Creditor is also liable to deduct tax collected at source (TCS), which were duly deposited by the Operational Creditor.

Copies of the TCS return (Form-27EQ) with Party wise breakup of TDS for the Quarters - Dec'20, Mar'21 & Jun'21, is annexed to the petition and marked as **"Annexure - G"**.

- 3.14 The Operational Creditor issued a demand notice in Form 3 dated 19.06.2025, which was duly delivered on 25.06.2025. No reply was received within the statutory period, nor was the debt repaid. It is pertinent to state here that the website of the India Post did not display the delivery status of the demand notice as on the date of the instant petition, hence, the Operational Creditor raised a complaint on the website of the India Post, to which a response was received from India Post indicating that the demand notice was duly delivered at the registered office of the Corporate Debtor on 25.06.2025.

A copy of the Demand Notice served upon the Corporate Debtor by way of Speed Post and Email are annexed to the petition and marked as **"Annexure B"**.

A copy of the speed post receipt of the demand notice along with the delivery report and the response received from the India Post office to the complaint raised by the Operational Creditor is annexed to the petition and marked as **"Annexure A"**.

- 3.15 The Operational Creditor had also issued a separate legal notice demanding payment of its outstanding dues of Rs. 5,07,11,174/ i.e. the principal amount of Rs. 2,89,21,463/- alongwith interest amounting Rs. 2,17,89,711/- for claims pertaining to the Section 10A period. Accordingly, no demand notice in accordance with the provisions of the Code has been issued to the Corporate Debtor in respect of the said default.

A copy of the legal notice dated 16.06.2025 is annexed to the petition and marked as **"Annexure N"**.

3.16 The Corporate Debtor replied to the legal notice dated 16.06.2025, on 17.07.2025, whereby the Corporate Debtor inter alia, acknowledged a debt to the tune of Rs. 1,83,13,540/- and requested for amicably resolving the issue qua the remaining invoices.

A copy of the reply by the Corporate Debtor against the legal notice dated 16.06.2025 is annexed to the petition and marked as "**Annexure O**".

3.17 In response to the reply by the Corporate Debtor dated 17.07.2025, the Operational Creditor shared the copies of the outstanding invoices, alongwith associated documents, once again and requested for resolving the issue. Despite subsequent correspondence and sharing of documents by the Operational Creditor, the dispute remains unresolved.

A copy of the response of the Operational Creditor to the reply by the Corporate Debtor dated 17.07.2025 is annexed to the petition and marked as "**Annexure P**".

3.18 In view of the above, it is evident that a debt is due and payable, and the Corporate Debtor has defaulted in its repayment. The Corporate Debtor is thus liable for initiation of Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.

3.19 Particulars of the Application as required under Rule 6 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 for the purpose of the application is set out in Form No. 5 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016.

3.20 Accordingly, it is respectfully prayed that this Hon'ble Tribunal be pleased to admit the present application and initiate CIRP against the Corporate Debtor.

4. Submissions by the Corporate Debtor:

4.1 The present Reply is being filed by the Respondent Corporate Debtor in compliance with the Hon'ble NCLT Order dated 18.12.2025 through its Authorized Representative, CS Pravin Kumar Chhajer (M. No. A25787), duly authorized vide Board Resolution dated 02.12.2025. The Respondent denies and disputes all

averments and claims made by the Applicant, save and except those expressly admitted or forming part of the record, and such denial may be treated as specific.

- 4.2 At the very outset and before dealing with the allegations made by the Applicant herein, the Respondent craves leave to submit the following preliminary objections as well as preliminary submissions in order to enable this Tribunal to truly appreciate the sheer perversity of the present proceedings.

A. PRELIMINARY OBJECTIONS:

- i. The Respondent is a private limited company incorporated under the Companies Act, 1956 (CIN: U40102AR2008PTC008252), employing approximately 600 personnel. The Respondent is a going concern and financially solvent entity. Initiation of insolvency proceedings against such an entity is contrary to the scope and intent of the Insolvency and Bankruptcy Code, 2016.
- ii. That the Respondent Company is engaged in the business of construction works mainly roads, highways, bridges, sports infrastructure, embankments etc.
- iii. The Turnover details of Corporate Debtor since last four years is as demonstrated in the below table:

SL. No	Financial year	Turnover (in rs.)
1.	2020-2021	5,453,179,928.38
2.	2021-2022	2,878.786,000.00
3.	2022-2023	1,234,328,000.00
4.	2023-2024	1,741,287,000.00

Further the respondent has ongoing projects of State & Central Govt. This includes strategic constructions and maintenance of structures and road along Indo-china boarder.

- iv. The Respondent submits that the present proceedings constitute a misuse of the Code as a recovery mechanism and are fraudulent and malicious in terms of Section 65 of the IBC, 2016.
- v. The Respondent submits that the Applicant has, with mala fide intent, suppressed material facts before this Tribunal, and on this ground alone the present

application is liable to be dismissed in limine ; the said facts are set out herein below under “Preliminary Submissions”.

B. PRELIMINARY SUBMISSIONS:

- i. The Respondent entered into a business relationship with the Applicant for procurement of geo-bags of various grades and Sizes for construction of anti-erosion works for protection of Majuli Island from Flood and Erosion.
- ii. The Respondent is a financially sound entity, having a net worth of Rs. 23,727.25 lakhs as per Audited Financial Statement for FY 2023–24 which clearly demonstrates and signifies the financial solidarity of the Concern and dragging such a company to Insolvency and Bankruptcy is a mere de-motivation to all substantial entities putting massive efforts in building an empire.
- iii. The Respondent submits that its operations were adversely impacted by the COVID-19 pandemic, resulting in a significant decline in revenue (as reflected in Para III of the Preliminary Objections). Without prejudice to the rights and contentions of the Respondent Company, it is most respectfully submitted that owing to the economic slowdown triggered by the Covid-19 pandemic, the Respondent Company is regular to fulfill all its obligations, however the Applicant’s payments have been withheld due to ongoing commercial disputes, including issues relating to purchase order terms, rate variations, delays in supply, and non-receipt of certain invoices.
- iv. As per Purchase Order no. TKECPL/SNPL/PO/2020-21/11-01 dated 20.11.2020, payments were expressly conditional upon realization of funds from the Brahmaputra Board and the Applicant accepted these terms. (Copy of purchase order dated 20-11-2020 is attached hereto and marked as **Annexure-B**)
- v. That the respondent submits that it has still bills pending for payment with the department (Brahmaputra Board) for the project work under consideration amounting to Rs. 23,14,27,700/- and Earnest Money & Performance Guarantee amounting to Rs. 8,29,25,243/- totaling Rs. 31,43,52,943/-. This clearly shows that the debt is still not due. However the respondent instead of the above clause

regarding payment has made maximum payments to operational creditor and this shows the business ethics followed by the respondent.

(Copy of Acknowledgement duly signed by Junior Engineer, Brahmaputra Board evidencing the pendency of Payment is attached hereto and marked as **Annexure-C**)

- vi. Further the respondent submits that along-with the purchase order dated 20-11-2020, it has issued six numbers of post dated cheques amounting to Rs. 3,00,00,000/- (Rupees Three Crores) as Security/Guarantee reflecting its bona fides.
- vii. That the Memorandum of Understanding (MoU) for supply of Mega Bags for a total specified quantity of 1,00,000 pieces and Non-Woven Geo-textile Fabrics 2,00,000 sq. mtrs. on 02-03-2019 was limited to the supply made till 20/04/2019 and that was specifically mentioned in clause 3 of the MoU. After the supply of agreed quantity of materials the Respondent Company has issued a fresh purchase order bearing no. TKECPL/SNPL/PO/2020-21/11-01 dated 20-11-2020. In light of the above the terms of the MoU ceased to exist after issuing a fresh Purchase Order.
- viii. The Respondent submits that upon receipt of invoices, it was found that the Applicant had charged rates higher than those agreed under the purchase orders for instance: Rs. 493/- agreed vs. Rs. 540/- charged, Rs. 207/- agreed vs. Rs. 240/- charged. The Applicant, however, assured that such rate differences and issues of short supply would be mutually resolved, thereby maintaining continuity in business transactions.
- ix. That it is highly predominant to bring into canvas the reply letter dated 17/07/2025 by the respondent in response to the legal notice dated 16/06/2025 sent to the applicant expressed willingness for amicable settlement, On that count, the fallacious accusation made by the applicant in the present Application stands no longer on its feet by disregarding our initiative to settle the dispute.
- x. That after filing the instant petition Under Section 9 of the IBC, on the request of the respondent, the operational creditor has convened a meeting for settlement

citing the urgent requirement of funds and the respondent accordingly made a payment of Rs. 1,00,00,000/- (Rupees One Crore) on 29-09-2025 out of the principal amount claimed by the operational creditor of Rs. 2,64,67,527/-. But after receiving the amount, surprisingly the operational creditor has denied the terms of settlement as mutually agreed between the respondent and operational creditor and also refused to enter into a settlement agreement as mutually agreed.

(Copy of Bank Statement evidencing the payment is attached hereto and marked as Annexure-D)

- xi. That in a routine process both goods and disputed invoices were supplied to the site by the applicant and thereafter disputed invoices were particularly forwarded to the Accounts Department at the respondent's office for accounting records. Subsequently the Finance Department was bewildered while scrutinizing the records which uncovered a huge mismatch in the disputed Invoices against the corresponding Purchase order concerning the deficiency in quantity and rates thereof and immediately with no delay, steps were taken to inform the same verbally to the Applicant and only on the basis of verbal assurance of the applicant both parties have kept their business transaction continued.
- xii. That it is pertinent to mention that the Respondent Company has issued Purchase order on 20/11/2020 for supply of Geo bags of various sizes on bulk basis at a freezed rate and period of supply. Moreover the applicant has delayed in supply of the goods after issuing Purchase order which gave rise to delay in completion of the ongoing projects of the Respondent Company ultimately causing grievous financial setbacks.
- xiii. The Respondent denies alleged acknowledgments of debt dated 05-10-2020, 14-05-2021 and 17-08-2022 relied upon by the Applicant, as the same were never acknowledged by the respondent.
- xiv. That it is highly predominant to bring into canvas that the application is beyond the limitation. The applicant has mentioned 9 Nos. of Due date/Date of Default of purported Invoices in Part-IV (Separate sheet attached as Annexure-C, Pg no. 62) of the application details as under:-

Date of invoice	Invoice number	Due date and date of default
15-04-2021	SNPL/GST014/2122	15-05-2021
17-04-2021	SNPL/GST015/2122	17-05-2021
22-04-2021	SNPL/GST021/2122	22-05-2021
23-04-2021	SNPL/GST022/2122	23-05-2021
04-05-2021	SNPL/GST034/2122	03-06-2021
20-05-2021	SNPL/GST038/2122	19-06-2021
20-05-2021	SNPL/GST039/2122	19-06-2021
02-06-2021	SNPL/GST048/2122	02-07-2021
05-11-2021	SNPL/GST0107/2122	05-12-2021

The last date of default is 05.12.2021, whereas the Application was filed on 27.08.2025, therefore the instant application made Under Section 9 of the IBC 2016 is beyond the limitation, hence not maintainable.

(Copy of Screenshot from NCLT website evidencing the date of filing of this Instant Application is attached herewith as Annexure- E)

- xv. It is settled law that no purpose would be served in discussing other grounds for admission, when the Application is already hit by Article 137 of the Limitation Act, 1963. It is not the endeavor of Adjudicating Authority to give new lease of life to time-barred debts – **Trigger Facility Pvt. Ltd. v. Larsen and Tuobro Ltd., [2024] ibclaw.in 487 NCLT**

(Copy of judgment herein referred above is attached to the reply marked as Annexure- F)

- xvi. That the applicant has neither charged nor demanded any Interest on the outstanding balances earlier. Furthermore if the interests have ever been charged by the applicant it should have been accounted in the books of account for which the applicant should submit their audited financial statement of the relevant period. However the applicant has charged the Interest in the demand notice and

instant application. That being the case we can conclude that interest as assessed and imposed is entirely unwarranted since neither earlier disclosures were made nor and arrangements of interest on outstanding amount (if any) was made between the parties.

- xvii.** The Respondent categorically states that neither the supply of goods nor the amounts as claimed as due and payable by the Applicant were ever accepted to be correct. These continue to be disputed by the Respondent Company.
- xviii.** The Respondent Company submits that the Application filed by the Applicant suffers from the following incurable errors of law as well as facts:
- a.) Further actions of the Applicant, including the present Applications, are also not valid in law because (a) the demand notice was illegal and non-est, and (b) there was no default even on the date of filing of the present complaint, or even till date since the claimed debt amount is disputed and time barred.
 - b.) It is well established that the object of operational debt under the IBC was to ensure that debts smaller than financial debts do not put the corporate debtor into Insolvency or enable initiation of CIRP for extraneous consideration and further stated that one of the pre-requisites to be examined to understand ‘existence of a dispute’ is the validity of claim made by the operational creditor and hence the Apex court dismissed the Appeal. [Mobilox Innovations Private Limited V/s Kirusa Software Private Limited, AIR 2017 SC Civil Appeal No. 9405].
 - c.) Since the demand notice was issued, and the present Application filed when no default has been established by the material on record, the present application merits dismissal, in limine.
 - d.) The Respondent states that in view of the aforesaid key contentions, the present proceedings are founded on moonshine, spurious, illusionary, hypothetical and not supported by proper valid evidence and suppression of material facts as well as figures that do not reflect the true accounts made by the Respondent Company after the receipt of the Demand Notice. That being the indubitable position, the present Application merits being dismissed by the Hon’ble Tribunal.

C. PARAWISE REPLY:

That the contents of Part I, II, III and V are not denied being a matter of record. The respondent however categorically denies anything contrary to the records.

That with regard the contents of Part IV & V, the Respondent Company craves leave of this Hon'ble Tribunal to refer and rely upon the contents of the instant objections and submissions as response to the Part IV & V under reply.

D. That in light of the aforesaid, the Respondent states that the Respondent Company has been able to establish that the Application filed by the Applicant under Section 9 of the IBC is beyond the limitation and not as per the Rules prescribed under the Code and is in violation of the provisions of the IBC Code and an abuse of the process of law and further pre-existing disputes explicitly depict that the instant application filed by the applicant is not maintainable.

5. In rebuttal to the contentions raised by the Respondent/Corporate Debtor, the Operational Creditor filed a Rejoinder on 02.02.2026, wherein the following submissions were made:

5.1 The Petitioner denies all averments, allegations, contentions, and submissions made in the Reply. The contents of the Reply, to the extent not specifically dealt with, are denied as being incorrect, inconsistent with the record, and unsupported by law. The contents of Paragraphs 1 to 3 of the Reply are stated to be matters of record. Hence, no specific reply is called for.

PARA-WISE REJOINDER

I. With reference to Paragraphs (i) to (v) of the Preliminary Objections, save and except what is a matter of record, all other averments are denied. The petitioner denies that the corporate debtor is a “flourishing concern” and highlights that six CIRP applications have been filed against it, demonstrating that it is a habitual defaulter incapable of managing its affairs. The allegation that the present application is malicious or a recovery mechanism is denied. On the contrary, the Corporate Debtor is adopting dilatory tactics to evade its admitted liabilities. A declining turnover, as reflected in its own records, further substantiates its financial instability.

A copy of the NCLT Portal reflecting all the Section 7 & Section 9 proceedings initiated against the corporate debtor are hereby annexed and marked as “**Annexure A**’.

II. With reference to Paragraph (i) - (iii) of the Preliminary Submissions, save and except matters of record, all averments of the Respondent are denied. It is denied that the Applicant insisted on entering into a business relationship, as the executed MoU evidences a mutually agreed and continuing association. The allegation that initiation of CIRP is demotivating is misconceived; defaults cannot be justified at the cost of suppliers. The Respondent's repeated defaults and multiple proceedings indicate financial distress and warrant action under the Code. It is further denied that payments were withheld due to purchase order terms, rate disputes, delays, or non-receipt of invoices, or that COVID-19 caused any such inability, as the Applicant's records reflect continued business transactions. These contentions are raised for the first time in the Reply and were neither taken earlier nor in response to the demand notice.

III. With reference to Paragraphs (iv) to (vi) of the Preliminary Submissions, save and except what are matters of record and what lawfully emanates therefrom, all other allegations and statements of the Respondent are denied and disputed. It is specifically denied that the Operational Creditor agreed to receive payments contingent upon the Corporate Debtor drawing bills from the Brahmputra Board. The contention that the covenants of the arrangement negate repayment obligations is wholly misconceived and is emphatically denied.

At the outset, it is pertinent to refer to Purchase Order No. TKECPL/SNPL/PO/2020-21/11-01 dated 20.11.2020 (Annexure D), under which the Operational Creditor was to supply 1,00,000 pieces of 2.0m x 1.5m woven geo-textile bags at ₹493 each (₹4,93,00,000) and 1,00,000 pieces of 1.2m x 1.0m bags at ₹207 each (₹2,07,00,000), aggregating to ₹7,00,00,000/-. The Purchase Order clearly stipulates the payment terms as: "Lot-wise payment will be made after receipt of Geo Bags at sight." It further sets out terms relating to GST, delivery (by 31.12.2020), and transportation to Majuli, Assam.

The said Purchase Order constitutes a binding and enforceable contract, wherein payment upon delivery is unequivocally the essence of the agreement. As an additional assurance, the Corporate Debtor issued a letter dated 20.11.2020 (Ref. No. TKECPL/SNPL/2020-21/11-02), providing security in the form of post-dated cheques.

In the first part, four cheques of ₹50,00,000/- each dated 15.12.2020 were issued, clearly establishing the due date for payment. In the second part, six further cheques of ₹50,00,000/- each dated 10.04.2021 were issued as additional security, along with a statement that payments would be made “as and when bills are drawn from the Department (Brahmaputra Board).”

The said reference to the Brahmaputra Board, read in context and applying the principle of ejusdem generis, is merely in the nature of an assurance or indication of source of funds and cannot be construed as a condition precedent to payment. The reliance placed by the Corporate Debtor on such phrase to avoid its clear contractual liability is misplaced and contrary to the express terms of the Purchase Order. Accordingly, the attempt to create ambiguity around the payment terms is untenable and is rejected.

- IV.** It is denied that the debt is not due. Any arrangement between the Corporate Debtor and the Brahmaputra Board is irrelevant to the Petitioner and cannot affect the Petitioner’s right to payment. Any reference to the Brahmaputra Board was merely a way of assurance and disclosure of the Corporate Debtor’s source of funds, and cannot be construed as a condition precedent to payment, particularly when the payment terms are expressly stipulated in the purchase order.
- V.** The post-dated cheques were issued as security and acknowledgment of liability. At the time of issuance of the Purchase Order, substantial dues were already outstanding. The cheques were issued to secure continued supply and cannot now be selectively relied upon to deny liability.
- VI.** With reference to Paragraph (v) of the Preliminary Submissions, save and except what are matters of record and what lawfully emanates therefrom, all other averments of the Respondent are denied and disputed. It is submitted that the Corporate Debtor is attempting to mislead this Tribunal by referring to alleged pending bills amounting to ₹23,14,27,700/- based on a purported document annexed as “Annexure C” to the Reply. Without admitting the contents thereof, it is pertinent to note that the said document refers to both Majuli Division and Lakhimpur Division and is dated 12.02.2024, containing remarks pertaining to certain test reports. The supplies in question, however,

were made during 2020–2021, and therefore cannot be correlated to the said document of 2024.

In any event, the Purchase Order dated 20.11.2020 clearly stipulates the “Testing/Certification” clause, which mandates submission of in-house test reports at the time of delivery, random sampling and testing at accredited laboratories, and replacement of goods within 20 days in case of non-compliance. Thus, the testing process was required to be contemporaneous with supply and cannot be raised belatedly after several years. Accordingly, the reliance placed by the Corporate Debtor on the said document is wholly misplaced, untenable, and an afterthought to evade its payment obligations.

- VII.** The testing clause itself demonstrates that any quality-related objection ought to have been raised at the time of delivery. Raising such issues after several years is untenable.
- VIII.** The Respondent has further sought to mislead this Tribunal by clubbing amounts towards earnest money and performance guarantee, totalling Rs. 8,29,25,243/-, with the alleged pending dues of Rs. 23,14,27,700/- to portray them as payable by the Department, which is incorrect. It is also pertinent that the Respondent has not updated the status of the performance guarantees as reflected in the said document.
- IX.** With reference to Paragraph (vii), all allegations are denied except matters of record. The MoU terms reinforce the consistent understanding between parties that timely payment was the essence of the contract.
- X.** With reference to Paragraphs (viii) and (ix), it is denied that there was any discrepancy in pricing. It is stated that if at all there were changes in price due to cost fluctuation of the raw materials, it was duly communicated to the corporate debtor verbally, and once they confirmed, the goods were dispatched and invoices were issued. No objection was raised contemporaneously by the respondent and has received all the goods. The plea of pre-existing dispute is an afterthought, raised only in their reply affidavit after initiation of proceedings, and is therefore untenable in law. . It is denied that any pre-existing disputes were ever brought on record, except those raised for the first time in the response letter dated 17.07.2025. It is submitted that the contentions relating to conciliation of accounts, as stated in the said response, were never raised prior to the issuance of the demand notice

and, therefore, do not fall within the ambit of a pre-existing dispute under Section 8(2) of the Code.

- XI.** With reference to Paragraph (X) of the Preliminary Submissions, save and except matters of record, all averments of the Respondent are denied. It is denied that any settlement arose due to urgency of funds; while receipt of Rs. 1,00,00,000/- is acknowledged, the same was not pursuant to any concluded settlement. It was only agreed that Rs. 3,50,00,000/- would be paid in two tranches (Rs. 1.50 Cr by 25.09.2025 and Rs. 2.00 Cr by 15.10.2025) towards principal dues during the pendency of proceedings, and only upon such payment would a formal settlement and withdrawal of the application be considered.
- XII.** With reference to Paragraphs (xi) to (xii) of the Preliminary Submissions, save and except matters of record, all averments of the Respondent are denied. It is denied that there was any deficiency in quantity or rates or that any assurance was given to continue transactions. All invoices, along with e-way bills, were duly delivered and acknowledged without protest at the time of supply. Any delay in delivery was duly communicated and arose bona fide due to COVID-19 related disruptions, which was never previously disputed by the Respondent, who continued to accept the goods.
- XIII.** With reference to Paragraphs (xiii) to (xv) of the Preliminary Submissions, save and except matters of record, all averments of the Respondent are denied. It is denied that the Application is barred by limitation, as the Corporate Debtor has repeatedly acknowledged its liability by signing and attesting the Operational Creditor's ledgers from time to time. Notably, after the last payment dated 11.04.2022 of Rs. 1,00,00,000/-, the outstanding of Rs. 5,53,88,990/- was duly acknowledged on 27.04.2023, thereby extending the period of limitation till 26.04.2026; copies of such acknowledgements are annexed as Annexure G to the rejoinder.
- XIV.** Save and except matters of record, the Respondent's averments are denied. The Corporate Debtor's denial of acknowledgements dated 05.10.2020, 14.05.2021, 17.08.2022 and 27.04.2023 is untenable in view of its signed records. Such acknowledgements, including financial statements, constitute valid acknowledgment of debt under Section 18 of the Limitation Act, as affirmed in *Laxmi Pat Surana v. Union of India*, thereby extending

limitation from 27.04.2023 till 26.04.2026 A Copy of the order of the Hon'ble Supreme Court is hereby annexed and marked as "**Annexure H**".

- XV.** With reference to Paragraphs (xvi) to (xvii) of the Preliminary Submissions, save and except matters of record, all averments of the Respondent are denied. It is denied that the interest claimed is unwarranted, as the Operational Creditor, being a registered MSME, is entitled to statutory interest under Section 16 of the MSMED Act, 2006 upon delayed payment, without any requirement of separate accounting in audited statements. It is further denied that the supplies were not accepted, that the demand notice is illegal, or that the debt is disputed, time-barred, or unsupported; the existence of debt and default stands duly established. It is denied that application deserves to be dismissed. It is denied that the present application is filed with no established default as there is abundant proof attached with the application by the Operational Creditor with respect to the established default. It is denied that the present proceedings are founded on moonshine, spurious, illusionary, hypothetical, and not supported by proper valid evidence material.
- XVI.** With reference to Part "C" of the Reply Affidavit, save and except matters of record, all averments of the Respondent are denied. The Corporate Debtor has failed to furnish paragraph-wise replies and has instead made vague submissions; in the absence of specific denials, the averments of the Operational Creditor are deemed admitted, reflecting an attempt to evade a direct response to the factual matrix.
- XVII.** With reference to Part "D" of the Reply Affidavit, save and except matters of record, all averments of the Respondent are denied. It is denied that the Application is time-barred, as compliance with the Limitation Act has been established hereinabove. It is further denied that the Petition is an abuse of process or that any pre-existing dispute exists; the defences raised are afterthoughts, illusory, and insufficient to challenge the maintainability of the Petition.
- XVIII.** In view of the foregoing facts, submissions, and documentary evidence on record, it is respectfully prayed that this Hon'ble Tribunal be pleased to reject the Respondent's Reply, admit the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, initiate CIRP against the Corporate Debtor, and pass such further orders as deemed fit in the facts and circumstances of the case.

6. That this Hon'ble Tribunal, vide Order dated 15.01.2026 directed both the parties to file the convenience note in CP (IB)/23/GB/2025.

A. The Convenience Note filed by the petitioner on 16.02.2026 is summarized as below:

- i. The Operational Creditor issued a Demand Notice under Section 8 of the Code dated 19.06.2025 claiming Rs 4,57,69,145/- (Principal: ₹2,64,67,527/-; Interest @ 18% p.a.: Rs 1,93,01,618/-). Despite receipt, the Corporate Debtor neither replied to the notice nor discharged the liability, leading to the filing of the present Section 9 Application on 21.08.2025.
- ii. The Corporate Debtor, in its Reply dated 13.01.2026, has challenged the maintainability of the Application on grounds of alleged prematurity, absence of acknowledgment, and purported settlement. These contentions have been raised for the first time and stand duly rebutted in the OC's Rejoinder as afterthoughts to stall the insolvency process.
- iii. The contention that payment was contingent upon receipt of funds from the Brahmaputra Board is misconceived. The governing Purchase Order clearly stipulates "payment at sight" on a lot-wise basis, the Corporate Debtor is attempting to override this definitive obligation by mischaracterizing a secondary security and assurance letter as a condition precedent to payment.
- iv. The Corporate Debtor made a post-filing payment of ₹1,00,00,000/- pursuant to a conditional arrangement contemplating a proposed agreement, which was subject to full and timely compliance, failing which CIRP proceedings were to continue. As the payment was partial and not in accordance with the agreed timeline, no settlement or concluded agreement came into existence, contrary to the Respondent's assertion.
- v. The plea of limitation is untenable in view of signed ledger confirmations acknowledging the debt. The challenge to interest is equally without merit, the Petitioner being entitled to statutory interest as an MSME. The alleged disputes are belated and unsupported by contemporaneous record.

POINTS FOR CONSIDERATION AS MENTIONED IN CONVENIENCE NOTE

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- vi. The parties are governed by Purchase Order dated 20.11.2020, which is a binding contract clearly stipulating lot-wise payment “at sight” upon delivery, along with other commercial terms.
- vii. The nomenclature relied upon by the Corporate Debtor is reflected in letter no. TKECPL/SNPL/2020-21/11-02, which records proposed security arrangements in view of the admitted outstanding of ₹3,18,56,294/- as on 20.11.2020, owing to which the Operational Creditor was unwilling to continue supplies.
- viii. The Corporate Debtor’s letter constitutes a two-fold admission of liability, wherein it issued four post-dated cheques of ₹50,00,000/- each, dated 15.12.2020, with a stipulation for their return upon RTGS payment before the due date, thereby clearly establishing 15.12.2020 as the date of default for the said liability.
- ix. In the same letter, the Corporate Debtor furnished six post-dated cheques of ₹50,00,000/- each dated 10.04.2021 as additional security; the reliance on the phrase “as and when bills are drawn from the Department” is misconceived, as it merely reflects the Corporate Debtor’s liquidity position and assurance not to withhold payment, and cannot override the clear and agreed payment terms under the purchase orders, rendering such defence illusory and untenable.
- x. The Corporate Debtor failed to raise any dispute in response to the Section 8 notice. Allegations regarding pricing, quality, or delay have been raised for the first time in the Reply. These disputes are against invoices duly signed and acknowledged, for goods admittedly received, and in all likelihood against which GST input credit has been availed, while the Operational Creditor has duly complied with statutory requirements, including filing GST returns and depositing the collected tax/TCS with the competent authorities.
- xi. In *Writers and Publishers Pvt. Ltd. v. Oriental Coal Corporation*, the Hon’ble NCLAT held that failure to raise a dispute in response to a Section 8 notice renders subsequent defences as afterthoughts. In the present case, the Corporate Debtor’s plea that liability under the purchase order was contingent on payments from the Brahmaputra Board was never previously raised and is contradicted by prior payments, thereby constituting a belated and untenable defence.

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- xii. Pursuant to a conditional post-filing arrangement, the Corporate Debtor was to pay ₹3.50 crore in two tranches, with settlement and withdrawal of the Section 9 application contingent upon full and timely compliance; however, only a delayed part-payment of ₹1,00,00,000/- was made on 29.09.2025, which was appropriated on a FIFO basis against earlier invoices falling within the Section 10A period, and therefore does not satisfy the present claim or warrant dismissal of the application.
- xiii. The WhatsApp communications exchanged between the parties clearly record acknowledgment of outstanding dues and agreed payment terms, These communications also serve as a clear acknowledgement of debt.
- xiv. The Operational Creditor has produced duly signed and attested ledgers for consecutive years, with the latest acknowledgment dated 27.04.2023 reflecting an outstanding of ₹5,53,88,990/-, thereby extending limitation till 26.04.2026. In view of the law laid down in *Laxmi Pat Surana v. Union of India*, held that the signed ledgers and other financial documents of the company are valid acknowledgement of debt and activate section 18 of the Limitation Act, 1963 rendering the the present Application within time.
- xv. The Operational Creditor, being a registered MSME, is statutorily entitled to interest on delayed payments under Section 16 of the MSMED Act, 2006; the Corporate Debtor, having been aware of such status and invoice terms and having raised no prior objection, cannot now dispute the interest, rendering the contention untenable.
- B. The Convenience Note filed by the Respondent on 16.04.2026 is summarized as below:**

The Respondent has raised preliminary objections as to its maintainability, inter alia, on the grounds that no operational debt is due, the claim is barred by limitation, and there exist pre-existing disputes.

1. Debt Not Due

- a) As per Purchase Order no. TKECPL/SNPL/PO/2020-21/11-01 dated 20.11.2020, payment was expressly contingent upon realization of funds from the Brahmaputra Board. The Petitioner accepted such terms and supplied goods accordingly. Substantial amount aggregating to Rs. 31,43,52,943/- (including pending bills,

earnest money, and performance guarantee) remains receivable from the Department due to non-submission of requisite test reports by the Petitioner which was a precondition of the Purchase Order Dated 20-11-2020. Consequently, the payment obligation has not crystallized, and no operational debt is presently due.

- b) The MoU dated 02.03.2019 was limited to the supply made till 20/04/2019 and that was specifically mentioned in clause 3 of the MoU. After the supply of agreed quantity of materials the Respondent Company has issued a fresh purchase order bearing no. TKECPL/SNPL/PO/2020-21/11- 01 dated 20-11-2020. In light of the above the terms of the MoU ceased to exist after issuing a fresh Purchase Order.

2. The instant application filed by the petitioner is beyond the limitation:

- a) The present Petition is ex facie barred by limitation under Article 137 of the Limitation Act, 1963, as it has not been filed within three years from the alleged date of default.
- b) It is submitted that although the Applicant has stated in Form 3 of the Demand Notice and in the Application that the last acknowledgment of debt is dated 27.04.2023, no such document was filed with the main Application; instead, in the Rejoinder, filed by the Applicant it has submitted a false and fabricated acknowledgment of debt pertaining to a separate firm of the Respondent namely "T. K. ENGINEERING ENTERPRISES", which amounts to a misstatement and an attempt to mislead this Hon'ble Tribunal.
- c) The Respondent denies having acknowledged any such ledger provided in the application and Rejoinder. The alleged signatory had ceased association prior thereto in June 2022. Furthermore, the signature of Mr. Raju Nath, the site in-charge, is completely different in the MOU dated 02-03-2019 compared to the forged acknowledgment of debt submitted by the Applicant.

3. Contradictory Dates of Default:

It is submitted that the dates of default stated in the Demand Notice and the Application are legally untenable, as the Applicant's own case reflects that the debt was not due and no default had arisen. Further, the calculation of due dates based on a presumed 30-day from the date of invoice but no such period of 30 days was

anywhere mentioned in the Purchase Order or Invoices. These material contradictions demonstrate a lack of consistency and legal standing.

4. Fabricated Evidence and Concealment

It is submitted that the Applicant's own pleadings, stating that no payments or acknowledgments were received after 11.04.2022, contradict the purported fabricated 'acknowledgments of debt' submitted by the Applicant. Such inconsistencies clearly demonstrate that the documents in question are fabricated and fraudulent, manufactured solely to create a false appearance. In view of such inconsistencies and the expiry of limitation, it is respectfully prayed that the present Application be dismissed with exemplary costs.

5. Pre-existence of Disputes:

- a) There exists a dispute regarding inflated and inconsistent pricing. Goods agreed at fixed rates under the Purchase Order were invoiced at higher rates, contrary to contractual terms.
- b) There were delays in supply by the Petitioner, adversely impacting project execution and causing financial losses to the Respondent.

6. Fraudulent approach of the applicant:

It is submitted that the Applicant has approached this Tribunal with unclean hands and mala fide intent; pursuant to post-filing settlement discussions citing urgent need of funds, the Respondent, acting in good faith, made a payment of ₹1,00,00,000/- on 29.09.2025 towards the claimed principal amount of Rs. 2,64,67,527/- and the liabilities which are covered under Section 10A of the IBC, 2016 but the Applicant, after receiving the payment, arbitrarily repudiated the agreed terms and refused to execute the settlement, thereby misusing the insolvency process as a coercive tool to extract payment.

7. Misinformation in the calculation table of due date/date of default:

Inaccurate Statement of Accounts: The Applicant has failed to provide a transparent or accurate calculation of the alleged debt. The table submitted to determine the Date of Default and Due Dates is inconsistent with the Applicant's own records and lacks the requisite clarity for adjudication.

Suppression of Payments: It is submitted that the Applicant has engaged in gross misinformation and concealment of facts. Specifically, the ledger submitted by the Applicant clearly indicates a payment of Rs. 1 Crore made by the Respondent on 11-04-2022.

Bad Faith Litigation: Despite receiving this substantial sum, the Applicant has deliberately omitted this credit in their summary table. By failing to account for this payment, the Applicant has inflated the alleged default amount and misled this Tribunal. Such suppressio veri and suggestio falsi warrants the immediate dismissal of the application.

FINDINGS OF THE TRIBUNAL

7. Heard the Learned Counsel for the Parties and perused the pleadings, documents placed on record, including the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, the Reply filed by the Corporate Debtor, the Rejoinder thereto, and the Convenience Notes submitted by both sides.
8. Before we proceed with the facts of the present case, the statutory framework regarding the Application under Section 9 of the Code needs to be recapitulated. An application under Section 9 of the Code can only be filed after the delivery of a demand notice as provided under Section 8 of the Code.
9. Section 8 of the Code requires the Operational Creditor, upon the occurrence of default, to deliver a Demand Notice for unpaid Operational Debt. Furthermore, Section 8(2) specifies that the Corporate Debtor must, within 10 days of receiving the Demand Notice, inform the Operational Creditor of any existing dispute. Under Section 9(1), if Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Sub-section (2) of Section 8, may file an Application under Section 9(1) of the Code.
10. The Tribunal notes that the Operational Creditor issued a demand notice dated 19.06.2025 in the prescribed Form under Section 8 of the Code. The Corporate Debtor failed to respond to the said demand notice within the statutory period, and no

contemporaneous reply raising any dispute was placed on record. The last payment made by the Corporate Debtor was on 11.04.2022.

11. Additionally, the Operational Creditor has placed on record acknowledgments of debt, including duly signed and attested ledger statements, reflecting the outstanding liability of the Corporate Debtor. The said acknowledgments, coupled with part payments, establish the subsisting nature of the debt.
12. The Operational Creditor has complied with all statutory requirements under the Code, including issuance of the demand notice, submission of invoices, ledger statements, and other supporting documents. No payment has been made towards the outstanding operational debt forming part of the present claim, and no credible evidence of a pre-existing dispute, as contemplated under Section 8(2) of the Code, has been substantiated by the Corporate Debtor.
13. In light of the foregoing facts and material on record, and upon perusal of the pleadings, documents, and submissions made on behalf of both the Operational Creditor and the Corporate Debtor, the following issues arise for consideration by this Tribunal:
 - (i) Whether an operational debt and default exists;
 - (ii) Whether the Application is within limitation; and
 - (iii) Whether there exists any pre-existing dispute between the parties prior to issuance of demand notice under Section 8.
14. **The First Issue - Whether an operational debt and Default Exist**
 - I. The Operational Creditor has placed on record the Memorandum of Understanding dated 02.03.2019 (Annexed as Annexure H to the petition) , Purchase Order dated 20.11.2020 (Annexed as Annexure D to the petition), invoices raised during the period 2020–2021, lorry receipts, GST returns, and ledger accounts to substantiate supply of goods to the Corporate Debtor asserting an outstanding principal amount along with interest.
 - II. The Corporate Debtor has not denied the business relationship or supply of goods per se, but has disputed:
 - The rates charged in invoices,
 - The timeliness and completeness of supply, and

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- The conditions governing payment obligations.
- III. A crucial contention raised by the Corporate Debtor is that as per the Purchase Order dated 20.11.2020, payments were to be made *“as and when bills are drawn from the Brahmaputra Board”*, thereby rendering the liability contingent.
- IV. However, the Operational Creditor has placed reliance on the same Purchase Order to contend that payment terms clearly stipulate **“lot-wise payment at sight upon delivery”**, and that the reference to the Brahmaputra Board appears only as a additional assurance/security.
- V. Upon perusal of the documents, this Tribunal finds that:
- The Purchase Order constitutes the primary contractual document governing the transaction;
 - The payment clause therein indicates payment upon receipt of goods;
- VI. The subsequent reference to payments linked with the Brahmaputra Board appears in the nature of an assurance or source of funds, and not a condition precedent.
- VII. Further, the Operational Creditor has placed reliance on ledger confirmations and acknowledgements of debt for multiple financial years (Annexed as Annexure J to the petition). The Corporate Debtor has denied such acknowledgements; however, no cogent material has been placed on record to dislodge the authenticity of the said documents.
- VIII. In addition, the Corporate Debtor, in its reply to the legal notice dated 17.07.2025, has admitted liability to the extent of Rs. 1,83,13,540/-. Such admission, though partial, lends credence to the existence of operational debt. (Annexed as Annexure O to the petition)
- IX. Therefore, The Tribunal is in the opinion that this defense untenable. A contract between a CD and a third party (Brahmaputra Board) cannot generally override the direct payment obligations to a supplier unless specifically structured as a "pay-when-paid" clause that the OC explicitly accepted as the sole mode of recovery. Furthermore, the OC's ledger and the CD's sporadic payments suggest that the debt was acknowledged as an independent liability, and the contention of the Corporate Debtor that no debt has

become due is not prima facie tenable. Accordingly, this Tribunal is satisfied that an operational debt exists and that there has been default in payment thereof.

15. The Second Issue - Whether the Application is within limitation

- I. The Corporate Debtor has contended that the present Application is barred by limitation, as the date of last default is stated to be 05.12.2021, whereas the Application has been filed on 27.08.2025. However, the Operational Creditor has placed on record acknowledgments of debt, including the acknowledgment dated 27.04.2023, reflecting the outstanding liability of the Corporate Debtor. The said acknowledgment having been made within the original period of limitation, squarely attracts Section 18 of the Limitation Act, 1963, thereby extending the limitation period.
- II. However, the CD alleges that the acknowledgment dated 27.04.2023 is fabricated, claiming the signatory had left the company in 2022 and that the document pertains to a different entity, "T.K. Engineering Enterprises". The Corporate Debtor has denied such acknowledgments alleging fabrication and lack of authority of the signatory.
- III. While the CD alleges forgery, they have not provided a forensic report or conclusive evidence to summarily dismiss the signed ledgers at this stage. Under the principle established in *Laxmi Pat Surana v. Union of India*, signed financial records constitute valid acknowledgments.
- IV. It is a settled position of law that a valid acknowledgment of debt in writing, made before the expiry of the prescribed limitation period, gives rise to a fresh period of limitation commencing from the date of such acknowledgment.
- V. In view of the above, this Tribunal is of the considered opinion that the present Application, having been filed on 27.08.2025, is well within the period of limitation and the objection raised by the Corporate Debtor on this ground is liable to be rejected. Even assuming, arguendo, that the acknowledgment dated 27.04.2023 is to be disregarded on the ground urged by the Corporate Debtor that it pertains to a different entity of the group, the acknowledgment admittedly made on 30.08.2022 by the Corporate Debtor (which is annexed as Annexure G, Page 155 to the rejoinder) would still extend the limitation period up to 29.08.2025. Since the present Application has been filed on 27.08.2025, it would, in any event, fall within the prescribed period of limitation.

16. The Third Issue- Pre-existing Dispute

- I. The principal defence raised by the Corporate Debtor is the existence of a pre-existing dispute on account of:
- alleged rate variation,
 - short supply,
 - delay in delivery, and
 - discrepancies in invoices.
- II. It is well settled by the Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* that the Adjudicating Authority is required to examine whether there exists a "plausible contention" requiring further investigation and that such dispute is not a patently feeble legal argument or unsupported assertion.
- III. In the present case, it is noted that the Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was issued by the Operational Creditor on 19.06.2025. Admittedly, the Corporate Debtor did not issue any reply within the statutory period of ten days as contemplated under Section 8(2) of the Code raising the alleged disputes now sought to be urged in these proceedings. The objections relating to conditional payment terms, inflated invoices, short supply, quality issues and alleged settlement were raised only subsequently in the Reply to the present petition.
- IV. The record instead indicates that:
- the goods were accepted without protest,
 - invoices were acknowledged, and
 - part payments were made from time to time.
- V. In the considered view of this Tribunal, the failure of the Corporate Debtor to bring any dispute to the notice of the Operational Creditor in response to the demand notice assumes significance, as Section 8(2) contemplates disclosure of a pre-existing dispute at that stage itself. The belated nature of the objections, coupled with absence of contemporaneous correspondence or material evidencing disputes prior to issuance of the demand notice, lends support to the contention that the defence raised is an afterthought and does not constitute a genuine pre-existing dispute so as to defeat

admission under Section 9 of the Code. This Tribunal is, therefore, of the considered view that no bona fide pre-existing dispute existed prior to the issuance of the demand notice.

17. From the materials on record, it emerges that though the Corporate Debtor has alleged that invoices, including invoice dated 15.04.2021 (Annexure E to the petition), reflected rates of ₹540/- and ₹240/- as against the agreed rates of ₹493/- and ₹207/- under the Purchase Order dated 20.11.2020, such invoices were acted upon and part-payments were made thereafter on 11.04.2022 and 29.09.2025 without any contemporaneous protest regarding excess billing. No correspondence disputing the invoiced rates at the relevant time has been placed on record. Such conduct does not support the plea of a pre-existing dispute on pricing.
18. It is noted that although the Corporate Debtor has alleged delay in supply beyond the stipulated delivery date of 31.12.2020 under the Purchase Order dated 20.11.2020, no contemporaneous communication or correspondence has been placed on record showing any objection regarding delayed or non-delivery. In the absence of material evidencing such grievance, particularly when the goods were accepted and subsequent payments were made by the Corporate Debtor, the plea of delay in supply is not supported by the record.
19. On perusal of the record it shows that the payment clause contained in the Purchase Order dated 20.11.2020 unequivocally provides as follows:

“3)Payment: lot-wise basis payment will be made after receipt of Geo Bags at site.”

The said clause is clear and unconditional, and does not make payment contingent upon release of funds from the Brahmaputra Board or upon occurrence of any other external event. If such conditionality were intended to govern the payment obligation, the same would have found express mention in the payment clause itself. In the considered view of this Tribunal, the Corporate Debtor's attempt to import a condition precedent to payment from a separate assurance/security communication is contrary to the express contractual terms of the Purchase Order. The plea that payment was dependent upon realization of bills from the Department, therefore, cannot override the unambiguous

payment terms mutually agreed between the parties and appears to be a belated and untenable defence.

20. A perusal of the record shows that the Corporate Debtor's plea regarding non-submission of testing certificates does not constitute a tenable defence. Clause 6 of the Purchase Order dated 20.11.2020 not only required the supplier to furnish test reports, but also provided a mechanism for random sample testing through accredited laboratories and replacement of non-conforming goods. Even assuming the test reports were not furnished, the Corporate Debtor has placed no material to show that it invoked the contractual testing mechanism, conducted any independent testing, or raised contemporaneous objections regarding quality. On the contrary, the goods were accepted and utilized without resort to such procedure, which also indicates omission on the part of the Corporate Debtor. The said plea, therefore, appears belated and does not establish a genuine pre-existing dispute.
21. Further with regard to the denial of the acknowledgments, this Tribunal finds that the denial of acknowledgments dated 05.10.2020, 14.05.2021 and 17.08.2022 is unsupported by cogent material. The acknowledgments/ledger confirmations placed on record bear signatures and stamps attributed to the Corporate Debtor, and mere bald denial, in absence of evidence of fabrication or lack of authority, cannot displace their evidentiary value. No contemporaneous protest disputing these acknowledgments has been shown, and the subsequent part-payments further support the subsistence of debt. Accordingly, the contention is untenable.
22. With regard to the plea of settlement, it is noted that though a payment of ₹1,00,00,000/- was made on 29.09.2025 during pendency of the proceedings, no concluded or executed settlement agreement evidencing discharge of the debt has been placed on record. The materials only reflect conditional settlement discussions which did not fructify. Mere part-payment during negotiations cannot extinguish the operational debt or render the present application non-maintainable; rather, such payment reinforces the subsisting liability.
23. It is seen from the record that the Operational Creditor has placed on record the report of the National E-Governance Services Limited (NeSL), annexed as Annexure K to

the petition, wherein a default of ₹4,51,81,781/- is reflected. The said Information Utility record constitutes relevant evidentiary material supporting the existence of debt and occurrence of default. The entry recorded in the Information Utility, read along with the invoices, ledger confirmations and other documents on record, lends further corroboration to the Operational Creditor's claim that the amount is due and payable by the Corporate Debtor. In the absence of any substantive material produced by the Corporate Debtor to dislodge the said record, the NeSL report also supports the conclusion regarding subsistence of operational debt and default.

24. In view of the foregoing discussion and upon perusal of the material available on record, this Adjudicating Authority is satisfied that:

- a) the existence of an operational debt within the meaning of Section 5(21) of the Code;
- b) occurrence of default as defined under Section 3(12) of the Code; and
- c) absence of any pre-existing dispute.

25. Accordingly, the petition satisfies all the legal requirements for admission under Section 9 of the Code. The application under Section 9 of the Code found to be complete and is liable to be admitted for the purpose of initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

ORDER

1. The above Company Petition bearing CP(IB)/23/GB/2025 is hereby **allowed** and initiation of CIRP is ordered against **T. K. Engineering Consortium Private Limited**, under Section 9 of the Code read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with the following directions.
2. This Bench hereby appoints M/s Stellar Insolvency Professionals LLP, having its registered address at Suit -1B, 1st Floor, 22/28A Manoharpukur Road, Deshopriya Park, Kolkata -700029, Registration No. IBBI/IPE-0137/IPA-1/2023-24/50053, email: anup_singh@stellarinsolvency.com, phone number: 9830726554 as the Interim Resolution Professional (IRP) to carry out the functions as contemplated under the Code.

Upon admission, in terms of Section 13(1)(b) of the Code, the IRP shall cause a public announcement of initiation of CIRP. The contents of such announcement shall conform to Section 15 of the Code, and the manner of publication shall be in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

3. The Operational Creditor is directed to deposit a sum of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand only) towards the initial CIRP costs by way of a Demand Draft drawn in favour of the IRP appointed herein, immediately upon communication of this Order. The IRP shall utilise the said amount strictly for expenses, and not towards professional fees until decided by the Committee of Creditors.
4. The moratorium under Section 14 of the Code shall come into effect from the date of this order and shall remain in force until completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be. In terms of Section 14(1) of the Code, this Bench hereby prohibits:
 - i. The institution or continuation of suits or proceedings against the Corporate Debtor, including execution of any judgment, decree, or order by any court, tribunal, arbitration panel, or authority;
 - ii. The transfer, encumbrance, alienation, or disposal of any of the Corporate Debtor's assets or legal or beneficial interests therein;
 - iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor;
 - iv. The recovery of any property by an owner or lessor where such property is in possession of the Corporate Debtor.
5. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated, suspended, or interrupted during the moratorium period.
6. The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

7. The IRP shall take necessary steps as mandated under Sections 15, 17, and 18 of the Code and file a report before this Adjudicating Authority within the timelines prescribed.
8. During the CIRP, the management of the affairs of the Corporate Debtor shall vest in the IRP. The suspended board of directors and personnel of the Corporate Debtor shall extend all cooperation and provide access to all information and documents as required by the IRP/RP.
9. The IRP shall take necessary steps as mandated under the Code and file a report before this Adjudicating Authority within the timelines prescribed.
10. The Registry is directed to send a copy of this Order to the Registrar of Companies, Guwahati, to update the Master Data of the Corporate Debtor accordingly.
11. Registry is directed to communicate a copy of this order to the Operational Creditor, the Corporate Debtor, and the IRP forthwith.
12. Accordingly, with the above observations and direction, **CP (IB)/23/GB/2025** is **admitted**.
13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel.
14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
15. File be consigned to records.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 30th day of April, 2025

Niketa Choudhary (LRA)