IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

CP(IBC)/05/KOB/2026

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)

Date of filing: 16.04.2026

Order delivered on: 25.05.2026

In the matter of Nest Realtors India Private Limited

MEMO OF PARTIES:

KUNNEL ENGINEERS AND CONTRACTORS PRIVATE LIMITED
Having Registered Office at 3rd Floor, Puthuran Plaza, KPCC Junction, M.G. Road, Ernakulam, Kerala 682011, India

... Petitioner/ Operational Creditor

Versus

NEST REALTORS INDIA PRIVATE LIMITED
Having Registered Office at XIX/346, Stone House, Market Road, Aluva, Ernakulam, Kerala, India, 683101

... Respondent/Corporate Debtor

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

Appearances:

For the Petitioner : Mr. Akhil Suresh, Advocate

For the Respondent : Mr. Shankar P Panicker, Advocate

O R D E R

1. This petition has been filed by Kunnel Engineers and Contractors Private Limited (hereinafter referred as the "Operational Creditor" or "Petitioner") on 16.06.2025 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code" or "IBC"), for initiating the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP"), declaring moratorium and for appointment of Interim Resolution Professional (hereinafter referred to as "IRP"), against the Corporate Debtor M/s Nest Realties India Private Limited.

2. The total amount claimed to be in default as per Part-IV of the petition is Rs.8,84,30,997/-(Rupees Eight Crore Eighty Four Lakh Thirty Thousand Nine Hundred and Ninety Seven only) as of 31.01.2026

3. Brief facts of the case as stated in the petition are as follows: -

   a) The Petitioner is a construction company engaged in infrastructure and residential projects for several decades. The Corporate Debtor had engaged the Petitioner for execution of civil construction works in its Orchid Park project at Kottayam under a Construction Contract dated 16.04.2010. Pursuant thereto, the Petitioner executed substantial works and raised running account bills, escalation claims and other contractual claims. Due to persistent non-payment by the Corporate Debtor, substantial dues accumulated between the parties.

b) Thereafter, under a Settlement Sheet dated 15.12.2015, the total value of work executed was quantified at Rs. 26,21,33,155/-, and after adjustments and deductions, the Corporate Debtor acknowledged a balance amount of Rs. 5,61,53,894/- payable to the Petitioner, which was further reaffirmed through an Agreement dated 21.01.2016. Out of the admitted dues, Rs. 1,21,23,662/- was adjusted towards two villas in another project, while the remaining liability was proposed to be settled through allotment of twelve apartments in the Orchid Park project valued at Rs. 3,99,45,250/- after the Corporate Debtor failed to discharge the dues in cash.

c) Pursuant to the settlement arrived at between the parties, allotment letters, agreements for sale of undivided share of land and construction agreements were executed in respect of twelve apartments in the Corporate Debtor's project. Although the undivided share of land relating to six apartments was registered in favour of the Operational Creditor, the Corporate Debtor failed to complete the construction and hand over possession within the agreed period, resulting in failure of the settlement mechanism. After adjusting the value of the registered land and amounts already accounted for, a principal sum of Rs. 3,16,89,550/- remains due and payable. Along with contractual interest calculated at 10% per annum with monthly compounding amounting to Rs. 5,67,41,447/-, the total outstanding liability as on 31.01.2026 comes to Rs. 8,84,30,997/-.

d) The Petitioner stated that the Corporate Debtor has remained in continuous default since 30.06.2019, being the extended date fixed for completion and handover of the apartments. Subsequently, in a meeting held on 12.04.2022, the Corporate Debtor issued a written acknowledgment assuring completion by September 2023, thereby extending limitation

under Section 18 of the Limitation Act, 1963. Owing to prolonged non-payment of the admitted dues, the Operational Creditor suffered severe financial distress, leading to issuance of a demand notice under Section 13(2) of the SARFAESI Act by State Bank of India and recall proceedings by Axis Bank.

e) Subsequently, the Operational Creditor issued a Demand Notice in Form-3 under Section 8 of the IBC, 2016 dated 16.02.2026 demanding payment of Rs. 8,84,30,997/-. Despite receipt of the notice, the Corporate Debtor failed to discharge the admitted liability. The disputes raised in reply are belated and do not constitute any genuine pre-existing dispute under the Code.

4. The Corporate Debtor/ Respondent filed their reply stating the following:

a) The Respondent contended that the Petitioner does not qualify as an "Operational Creditor" under Sections 5(20) and 5(21) of the IBC, as the dispute no longer relates to provision of goods or services but pertains to allotment and delivery of immovable property. It was submitted that, pursuant to the Settlement Sheet dated 15.12.2015, Agreement dated 21.01.2016 and subsequent arrangement dated 30.05.2017, the original construction-related claims stood novated and extinguished, with the alleged dues adjusted against the allotment of twelve apartments, part of which were registered in favour of the Petitioner. According to the Respondent, the present grievance concerns non-completion and non-handover of apartments, which constitutes a contractual and property dispute rather than an operational debt under Section 5(21) of the Code. And stated that the Petition is an attempt to convert a complex civil dispute into insolvency proceedings and is therefore not maintainable under the IBC.

b) The Respondent contended that the Petitioner failed to satisfy the minimum threshold under Section 4 of the IBC, as the actual outstanding amount, according to the Petitioner's own accounts and pleadings, is only Rs. 33,66,135/-, which is below the statutory threshold of Rs. 1 crore. It was argued that the Petitioner artificially inflated the claim by revaluing and selectively reducing the value of the twelve apartments already accepted towards settlement of dues. Once allotment and registration of immovable property were accepted in partial discharge of liability, the corresponding debt stood extinguished. And the claim for substantial interest was unsustainable and made only to artificially cross the statutory threshold. Petitioner's computation is self-contradictory, as it accepts the settlement value of Rs. 3,99,45,250/- towards discharge of liability while simultaneously seeking to selectively reclassify portions of the same amount to inflate the alleged debt.

c) The Respondent submitted that the Petitioner's audited financial statements from 2018 to 2025 reflect only Rs. 33.66 lakhs as operational liability, while the larger amount of about Rs. 3.99 crores are shown as an asset or advance relating to allotment of flats. According to the Respondent, this accounting treatment, accepted by statutory auditors without qualification, demonstrates that the transaction pertains to immovable property and not operational debt under Sections 5(20) and 5(21) of the Code.

d) And stated that the Petitioner's computation of debt is self-contradictory, as the claim for interest at 10% is based on the subsequent agreement dated 30.05.2017, while the character of "operational debt" is sought to be traced to the original construction contract dated 16.04.2010. According to the Respondent, the Settlement Sheet dated 15.12.2015, Agreement dated

21.01.2016 and subsequent arrangements resulted in novation and substitution of the original contract, extinguishing the earlier construction-related cause of action. It was therefore argued that the surviving claims are purely contractual and property-related, and do not constitute "operational debt" under Section 5(21) of the IBC.

e) The present petition is inconsistent and contradictory to the stands taken by the Petitioner regarding the nature of the alleged debt. It was submitted that the Petitioner initially issued a demand notice dated 30.12.2025 treating the claim as one for "mesne profits," which, according to the Respondent, is a claim for damages relating to immovable property and not an operational debt under Section 5(21) of the IBC. After objections were raised by the Corporate Debtor, the Petitioner allegedly changed its stand and sought to characterize the claim as arising from construction services and later from settlement arrangements. According to the Respondent, these shifting stands demonstrate that the claim is neither fixed nor crystallized and involves complex issues relating to damages, novation, settlement and reciprocal contractual obligations, which cannot be adjudicated in summary insolvency proceedings under Section 9 of the Code.

f) The Respondent contended that the present claim is barred by limitation, as the pleadings and earlier demand notice dated 30.12.2025 allegedly show that the debt became due on 30.05.2017. Even considering the contractual timeline and grace period, the alleged breach crystallized at the latest on 30.06.2019, and therefore the limitation period under Article 137 of the Limitation Act expired on 30.06.2022. Since the demand notices were issued only on 30.12.2025 and 04.02.2026, the claim is stated to be time-barred. The Respondent also contended that the Petitioner cannot rely on Section

22 of the Limitation Act by treating non-handover of apartments as a continuing cause of action, since the alleged breach was complete upon expiry of the contractual period and only a claim for damages, if any, survived thereafter.

g) The Respondent contended that Annexure A-14 dated 12.04.2022 does not constitute an acknowledgment of liability under Section 18 of the Limitation Act. According to the Respondent, the document merely records discussions regarding construction status and projected timelines and does not contain any clear or unequivocal acknowledgment of any quantified or subsisting financial liability payable by the Corporate Debtor. Therefore, the Respondent argued that Annexure A-14 cannot extend the limitation or be treated as an acknowledgment of an operational debt under Section 5(21) of the IBC. The reliance on Annexure A-14 is an afterthought introduced only after the plea of limitation was raised in reply to the earlier demand notice, in which no reference to such acknowledgment was made, and was intended solely to artificially extend the limitation. And added that Mr. Shameer Marickar had no authority to acknowledge liability on behalf of the Corporate Debtor, as no Board Resolution or authorization under Section 179(3) of the Companies Act, 2013 was produced. It was stated that he had ceased to be Whole-Time Director with effect from 31.07.2017 and lacked authority to bind the Company. The Respondent further referred to criminal proceedings initiated against him in Crime No. 259/2026 involving allegations of fraud and misappropriation, and argued that any document associated with him, including Annexure A-14, lacks legal value. According to the Respondent, Annexure A-14 merely records pending construction activities and timelines, does not acknowledge any quantified debt, and

instead reflects reciprocal obligations and pre-existing disputes between the parties.

h) The Respondent stated that the villa transaction was not an independent personal transaction but formed an integral part of the settlement arrangement through which the alleged liability was proposed to be discharged. According to the Respondent, the attempt to segregate the villa transaction is an afterthought intended to avoid the existence of disputes and invoke the IBC. The Respondent further stated that the Petitioner's own plea that it was compelled to accept the villas shows that the settlement itself is disputed. Therefore, either the settlement is voidable on account of compulsion or the parties remain bound by reciprocal obligations requiring adjudication before a civil or arbitral forum.

i) The Petitioner's attempt to treat Rs. 1,21,23,662/- as a loan to its Directors through internal accounting entries is irrelevant, as unilateral book entries cannot alter the nature of the settlement transaction. According to the Respondent, the pending proceedings before K-RERA and criminal courts arising from the same transaction establish the existence of pre-existing disputes concerning property rights and contractual obligations. The Respondent further alleged that the present proceedings were initiated to bypass the agreed arbitration mechanism under the Settlement Agreement dated 21.01.2016, overcome limitation, and exert pressure on the Corporate Debtor, since any arbitration proceedings would now allegedly be time-barred.

j) The Respondent contended that the Petitioner has acted mala fide by selectively invoking different remedies arising from the same business relationship. While the Petitioner had earlier invoked arbitration in

Arbitration No. 1 of 2021 and obtained an arbitral award in another transaction, the present Section 9 proceedings have been initiated on a separate and disputed claim at a stage when the Corporate Debtor is pursuing appellate remedies against the order passed under Section 34 of the Arbitration and Conciliation Act, 1996.

k) The present proceedings seek to convert a complex and civil dispute into a summary insolvency process under the IBC. The disputes involve reciprocal obligations, alleged breaches, disputed settlement arrangements, and inflated claims, all of which require detailed adjudication before a civil court or arbitral tribunal and cannot be determined in proceedings under Section 9 of the Code. The Respondent also alleged that the Petitioner attempted to interfere with the Corporate Debtor's banking and financial arrangements by issuing communications to Federal Bank containing allegations of fraud and financial impropriety, which were denied by the Corporate Debtor.

l) The reliance placed by the Petitioner on the judgment in Propertree Real Estate Solutions Pvt. Ltd. v. A. Viswanadha Sarma is misplaced, since the Petitioner had accepted allotment and registration of immovable properties and treated them as assets in its books rather than operational receivables. It was further argued that the records and balance sheets produced before the Tribunal show that the actual outstanding amount is only Rs. 33.66 lakhs. On these grounds, the Respondent submitted that the petition is liable to be rejected for failure to satisfy the threshold under Section 4 of the Code, bar of limitation, absence of operational debt, novation of contract, existence of pre-existing disputes, suppression of material facts, and mala fide invocation of the insolvency process.

5. The Petitioner has filed the Rejoinder stating as follows:

a) The Petitioner stated that the foundational transaction between the parties arose from civil construction works executed by the Petitioner in the Orchid Park project. Substantial construction services were rendered and the corresponding dues were quantified under the Settlement Sheet dated 15.12.2015 and reaffirmed under the Agreement dated 21.01.2016, wherein the Respondent acknowledged amounts payable towards pending bills, claims, and retention monies arising from the construction works. It was therefore contended that the debt clearly originated from provision of services and falls within the scope of "operational debt" under Sections 5(20) and 5(21) of the IBC. The subsequent allotment of apartments and undivided share of land did not alter the nature of the debt. According to the Petitioner, the apartment arrangement was only an alternate mode of discharge proposed by the Respondent in lieu of cash payment of the admitted operational dues. The character of the debt must be determined from the original transaction giving rise to the liability, namely the construction services rendered, and not from the subsequent settlement mechanism adopted for payment. The Respondent itself had admitted that the settlement arrangement was towards discharge of construction dues. Reliance was also placed on Section 63 of the Indian Contract Act, 1872 to contend that acceptance of an alternate mode of satisfaction or extension of time for performance does not extinguish the underlying liability unless the substituted arrangement is fully performed. It was submitted that the Respondent failed to complete and hand over the apartments despite extensions granted, including the assurances recorded in the meeting dated 12.04.2022.

b) The Petitioner added that the Respondent's plea of novation is misconceived, since the substituted arrangement is never fully performed. The Respondent has failed to complete construction, hand over possession, obtain completion certificates, or effect final conveyance of the apartments, and therefore the original operational debt cannot be treated as extinguished.

c) The registration of undivided share of land in respect of certain apartments is specifically disclosed in the Petition, and the value attributable to such registered portions is duly deducted while computing the surviving principal debt of Rs.3,16,89,550/-. Mere registration of undivided share of land does not amount to full discharge of liability when the apartments remain incomplete, possession is not handed over, and the agreed settlement mechanism itself remains unfulfilled.

d) In reply to the Respondent's contention that the Petitioner does not qualify as an Operational Creditor, the Petitioner stated that the claim arises from civil construction works executed by the Petitioner for the Orchid Park project, pursuant to which substantial dues became payable. These dues were quantified and acknowledged under the Settlement Sheet dated 15.12.2015 and reaffirmed through the Agreement dated 21.01.2016. The subsequent arrangement involving allotment of apartments was only an alternate mode proposed by the Respondent for discharge of the admitted operational liability and did not alter the original nature of the debt. The Petitioner is not claiming as a homebuyer, investor, or purchaser under an independent property transaction. The grievance is not based on enforcement of property rights or specific performance, but on the Respondent's failure to honour the agreed mode of settlement by

completing and handing over the apartments within the agreed timeline. The Respondent's plea of novation and extinction is unsustainable since the substituted arrangement admittedly remains incomplete and unperformed. The Respondent does not contend that all twelve apartments are completed, possession delivered, occupancy requirements complied with, or the admitted dues fully satisfied. Mere registration of undivided share of land in respect of certain apartments cannot amount to complete discharge of liability when the apartments themselves remain incomplete and undelivered.

e) The petitioner further stated that the underlying operational liability continues to subsist because the alternate settlement mechanism fails due to the Respondent's own non-performance. The Petitioner accepts the alternate arrangement only because the Respondent fails to discharge the admitted dues in cash. The acknowledgment dated 12.04.2022, wherein the Respondent assured completion and delivery of the apartments by September 2023, further demonstrates that the Respondent itself treated the liability as continuing and subsisting. Accordingly, the Petition invokes the Code on the basis of unpaid operational dues arising from construction services rendered by the Petitioner, and not for adjudication of title disputes or enforcement of independent property rights.

f) The petitioner submits that the Respondent's objection regarding non-fulfilment of the threshold under Section 4 of the Insolvency and Bankruptcy Code, 2016 is based on a selective and misleading reading of the Petition and the accounts of the Petitioner. The present application is not founded on the figure of Rs.33,66,135/- as incorrectly projected by the Respondent, but on a principal operational debt of Rs.3,16,89,550/- together with contractual

interest, aggregating to Rs.8,84,30,997/- as on 31.01.2026. The figure of Rs.33,66,135/- represents only a notional accounting residual that would arise if the entire value of the twelve apartments were treated as fully adjusted towards discharge of liability. However, the agreed settlement mechanism itself failed because the Respondent admittedly did not complete construction or hand over possession of the apartments. The Petition specifically traces the admitted operational liability from the Settlement Sheet dated 15.12.2015 and the Agreement dated 21.01.2016, under which dues arising from construction works stood quantified and acknowledged. Since the Respondent failed to clear the admitted dues in cash, it proposed discharge through allotment of twelve apartments valued at Rs.3,99,45,250/-. As the apartments remained incomplete and undelivered, and after excluding the value attributable to the registered portions, the surviving principal debt was computed at Rs.3,16,89,550/-, which is far above the statutory threshold under Section 4 of the Code.

g) The Petitioner submits that the Respondent's allegation of artificial reconstruction of the claim proceeds on the erroneous assumption that incomplete acts such as allotment letters and partial registration of the undivided share of land amount to full satisfaction of liability, whereas the agreed settlement specifically contemplated completion and delivery of apartments, which admittedly never occurred. The Petition itself discloses the registered portions, and the corresponding value of Rs.82,55,700/- is duly deducted while computing the surviving debt. The deduction is made only to confine the claim to the unpaid portion of the failed settlement arrangement and avoid any overstatement.

h) The Petitioner submits that reliance on accounting entries and audited financial statements cannot conclusively determine the legal character or extent of liability, particularly when the underlying settlement arrangement remains not performed. The books of accounts cannot override the admitted transactions and the Respondent's failure to complete the agreed mode of discharge. The Petition is founded not on Rs.33,66,135/-, but on the subsisting operational debt of Rs.3,16,89,550/-, which is well above the statutory threshold.

i) The petitioner denies the Respondent's contention that the claim falls below the threshold prescribed under Section 4 of the IBC. The Petition is not founded on the figure of Rs.33,66,135/- as alleged by the Respondent, but on a principal operational debt of Rs.3,16,89,550/- together with contractual interest aggregating to Rs.8,84,30,997/- as on 31.01.2026. The Respondent has selectively relied upon an accounting residue of Rs.33.66 lakhs by incorrectly assuming that the entire apartment arrangement stood fully adjusted and satisfied, whereas the Petition specifically pleads that the agreed settlement mechanism failed due to the Respondent's failure to complete and deliver the apartments.

j) The Petitioner submits that the dues arising from construction works were quantified under the Settlement Sheet dated 15.12.2015 at Rs.5,61,53,894/-. Under the Agreement dated 21.01.2016, Rs.1,21,23,662/- was adjusted towards two villas, leaving a balance of Rs.4,40,30,232/-. Since the Respondent failed to discharge the liability in cash, an alternate settlement involving twelve apartments valued at Rs.3,99,45,250/- was proposed. However, the apartments were never completed or handed over. After giving due credit to the value attributable to the registered undivided share

of land, the surviving principal liability was computed at Rs.3,16,89,550/-. The computation therefore directly flows from the admitted liability and failure of the agreed mode of discharge.

k) It is further submitted that mere allotment letters, agreements, or partial registration of undivided share of land cannot amount to complete discharge of liability when the apartments themselves remain incomplete and undelivered. The Petitioner has already disclosed the registered portions and deducted the corresponding value of Rs.82,55,700/- to avoid overstatement of the claim. Reliance on audited financial statements and accounting entries is also misplaced, since accounting classifications cannot override the underlying legal and contractual position. The principal operational debt itself exceeds Rs.1 crore and independently satisfies the threshold under Section 4 of the Code, irrespective of the contractual interest component.

l) The Petitioner contends that the Respondent's objections are based on an artificial attempt to separate the origin of the debt from the later arrangements relating to its discharge. According to the Petitioner, the foundational transaction is undisputed, namely that the Petitioner executed civil construction works for the Orchid Park project, raised invoices and claims, and that the outstanding dues arising from such construction activities were admitted and quantified under the Settlement Sheet dated 15.12.2015 and reaffirmed under the Agreement dated 21.01.2016. The Petitioner therefore asserts that the debt squarely arises from provision of construction services and consequently falls within the definition of "operational debt" under Sections 5(20) and 5(21) of the Insolvency and Bankruptcy Code, 2016. It is further contended that the subsequent

apartment arrangement did not create a fresh or independent transaction, but merely regulated the mode and timeline for discharge of the already admitted liability.

m) The Petitioner further states that there is no inconsistency in relying upon the original construction contract to establish the operational character of the debt while simultaneously relying upon later settlement arrangements for computation of the outstanding amount and contractual interest. According to the Petitioner, the subsequent arrangements, including the arrangement dated 30.05.2017, only acknowledged the subsisting liability and prescribed the manner of delayed payment, including interest at the agreed rate. The Petitioner submits that such later agreements do not alter the underlying character of the debt or divest the Petitioner of its status as an Operational Creditor. It is also contended that the interest component is merely ancillary to the principal operational debt and that, in any event, the principal amount itself exceeds the statutory threshold prescribed under Section 4 of the Code.

n) The Petitioner also disputes the Respondent's plea of novation and extinction of liability by contending that the alleged substituted arrangement admittedly remains incomplete and unperformed. According to the Petitioner, the Respondent failed to complete construction of the apartments, hand over possession, obtain completion certificates, or fully implement the agreed settlement mechanism. The Petitioner submits that mere allotment letters, agreements, or partial registration of undivided share of land cannot amount to complete discharge of the admitted liability when the apartments themselves remain incomplete and undelivered. It is

therefore contended that the underlying operational debt continues to subsist due to failure of the agreed mode of discharge.

o) The Petitioner further contends that the Respondent has nowhere denied the execution of construction works, raising of invoices, quantification of dues, or execution of settlement arrangements. According to the Petitioner, the original construction contract and subsequent settlement documents form part of one continuous commercial relationship and must be read together. It is also submitted that even assuming there is any dispute regarding computation of interest or settlement adjustments, such issues do not affect maintainability since the principal operational debt independently satisfies the threshold requirement under Section 4 of the Code.

p) The Petitioner contends that the Respondent's objections are founded primarily on the earlier demand notice dated 30.12.2025, which had already been expressly withdrawn prior to institution of the present proceedings. According to the Petitioner, the present Section 9 application is founded solely on the subsequent and operative demand notice dated 04.02.2026, which specifically recorded withdrawal of the earlier notice. It is therefore submitted that the withdrawn notice has no legal relevance for adjudication of the present proceedings and cannot be relied upon to challenge maintainability, limitation, or consistency of the claim. The Petitioner further states that the earlier notice was withdrawn due to inadvertent drafting errors and stray references, including an erroneous reference to "mesne profits," and that a corrected statutory notice was thereafter issued transparently and bona fide. It is also contended that the Respondent itself had earlier questioned the validity and authorization of the first notice and

therefore cannot now rely upon the same withdrawn notice to construct its defence.

q) The Petitioner further submits that no prejudice whatsoever has been caused to the Respondent, since a fresh statutory notice was issued, the Respondent was granted full opportunity to respond, and detailed objections have in fact been raised in the counter affidavit. According to the Petitioner, there is no prohibition under the Insolvency and Bankruptcy Code, 2016 against withdrawal of a defective notice and issuance of a corrected notice under Sections 8 and 9. The objections raised on the basis of the withdrawn notice are therefore described as diversionary and devoid of merit.

r) On the issue of limitation, the Petitioner contends that the Respondent's plea is legally unsustainable and again proceeds largely on the basis of the withdrawn demand notice. The Petitioner states that the present petition itself clearly discloses the relevant dates and the basis on which limitation stands extended. According to the Petitioner, the apartments were required to be completed and handed over by 31.12.2018, subject to a six-month grace period ending on 30.06.2019, and default first arose upon failure to hand over the apartments within the said period. However, limitation is stated to have been validly extended by the written acknowledgment dated 12.04.2022 recorded on the Corporate Debtor's letterhead, wherein the Respondent allegedly assured completion and delivery of the apartments by September 2023.

s) The Petitioner specifically relies upon the Record of Meeting dated 12.04.2022 as constituting a valid acknowledgment under Section 18 of the Limitation Act, 1963, since it allegedly recognizes the subsisting obligation

to complete and hand over the apartments offered towards discharge of admitted dues. According to the Petitioner, an acknowledgment need not contain a quantified admission and any written recognition of a subsisting jural relationship is sufficient to extend limitation. Since the acknowledgment was allegedly made before expiry of the original limitation period reckoned from 30.06.2019, it is contended that a fresh period of limitation commenced therefrom. The Petitioner also argues that the transaction involved a continuing obligation to complete and deliver the apartments and that continued non-completion and non-handover constitute a continuing breach. The Petitioner therefore maintains that the Respondent cannot seek time till September 2023 for performance and thereafter contend that the claim became time-barred in June 2022, and accordingly asserts that the present Section 9 application is well within limitation.

t) The Petitioner contends that the Respondent's objections against Annexure A-14 are unsustainable and are raised only to avoid the legal consequences arising from the document, particularly the acknowledgment of the continuing obligation to complete and hand over the apartments by September 2023. According to the Petitioner, Annexure A-14 is a formal document issued on the Corporate Debtor's letterhead during the course of continuous commercial dealings between the parties and bears the signature and seal of the Respondent. It is submitted that the Respondent does not dispute the execution, issuance, signature, or authenticity of the document, but merely seeks to minimize its legal effect by describing it as a routine project communication.

u) The Petitioner further contends that Annexure A-14 cannot be treated as a mere construction status update, since the document specifically records the Respondent's continuing obligation to complete and deliver the apartments that had been offered towards discharge of the admitted dues arising from the construction works executed by the Petitioner. According to the Petitioner, the document clearly evidences the subsistence of the jural relationship and therefore constitutes a valid acknowledgment under Section 18 of the Limitation Act, 1963. It is also submitted that there was no requirement for the document to once again quantify the liability, as the dues had already been quantified and acknowledged under the Settlement Sheet dated 15.12.2015 and the Agreement dated 21.01.2016. The Petitioner additionally states that non-reference to Annexure A-14 in the earlier withdrawn demand notice is irrelevant, since the earlier notice stood withdrawn and a statutory demand notice is not required to contain every supporting document relied upon in the proceedings.

v) The Petitioner disputes the Respondent's challenge regarding the authority of Mr. Shameer Marickar and contends that he had consistently represented the Corporate Debtor throughout the course of dealings between the parties. According to the Petitioner, Mr. Shameer Marickar acted on behalf of the Corporate Debtor in connection with execution of the construction agreement, settlement agreement, apartment-related documents, sale deeds, and other transactions forming part of the continuing commercial relationship. It is submitted that, even after the alleged internal change in his designation or status, the Respondent continued permitting him to represent the company and execute documents without communicating any restriction or limitation upon his authority to the Petitioner. The Petitioner

therefore contends that the Respondent cannot now disown his authority after having continuously held him out as a person authorised to act for and on behalf of the company. Reliance is also placed on the principles of indoor management and ostensible authority to contend that any alleged internal restrictions or absence of board authorization cannot prejudice a bona fide third party dealing with the company in the ordinary course of business.

w) The Petitioner further contends that the allegations of collusion, fabrication, fraud, and criminal misconduct raised against Mr. Shameer Marickar are wholly baseless and unsupported by any credible material. According to the Petitioner, Annexure A-14 is a contemporaneous business document generated during ordinary settlement discussions between the parties and cannot be portrayed as a fabricated acknowledgment merely because the Respondent subsequently chose to dispute its legal consequences. The Petitioner submits that the FIRs and criminal proceedings relied upon by the Respondent arose much later in time, concern unrelated allegations, and have no bearing on the validity or authenticity of Annexure A-14. It is also contended that no specific board resolution was necessary for issuance of such a document by a person who was openly acting on behalf of the Corporate Debtor in regular commercial dealings.

x) The Petitioner therefore submits that Annexure A-14 must be read together with the earlier settlement documents, agreements, and continuous course of dealings between the parties, all of which demonstrate acknowledgment of the continuing obligation to complete and hand over the apartments in discharge of admitted dues. According to the Petitioner, the Respondent is taking contradictory stands by simultaneously relying upon the apartment settlement arrangement while disputing the acknowledgment issued under

the very same arrangement. The Petitioner accordingly maintains that Annexure A-14 constitutes a valid acknowledgment under Section 18 of the Limitation Act, 1963 and that the Respondent's objections regarding authority, fabrication, collusion, and legal effect are unsustainable.

y) The Petitioner submits that the Respondent has failed to establish the existence of any genuine pre-existing dispute in relation to the operational debt claimed in the present petition and has instead attempted to rely upon collateral transactions, unrelated grievances, criminal proceedings, RERA complaints, FIRs, and third-party litigations to create an artificial defence. Relying upon the principles laid down in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* and *Transmission Corporation of Andhra Pradesh Ltd. v. Equipment Conductors & Cables Ltd.*, the Petitioner contends that only a real and bona fide dispute concerning the operational debt can defeat a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, whereas the Respondent's defence is merely illusory, unsupported by contemporaneous material, and intended only to avoid the consequences of admitted default.

z) According to the Petitioner, the operational debt forming the subject matter of the present petition stands expressly admitted and crystallised through the Settlement Sheet dated 15.12.2015 and the Agreement dated 21.01.2016, under which the outstanding dues arising from construction works executed by the Petitioner were quantified and acknowledged by the Respondent. It is contended that the subsequent arrangement involving allotment of twelve apartments was merely an alternate mode of settlement proposed by the Respondent after failure to discharge the admitted dues in cash. The Petitioner states that the Respondent has nowhere produced any

contemporaneous denial disputing execution of the construction works, raising of invoices, quantification of dues, or the obligation to discharge the admitted liability through the apartment arrangement.

aa) The Petitioner further contends that the Respondent has wrongly attempted to portray the matter as involving complex and long-standing disputes, whereas the records clearly demonstrate that the liability was admitted from inception and only the agreed mode of discharge subsequently failed due to non-completion and non-delivery of the apartments. According to the Petitioner, the dispute did not exist at the stage when the operational debt arose or when it was quantified and acknowledged; rather, the Respondent admitted the dues, proposed discharge through apartments, and thereafter defaulted in performing the settlement mechanism. It is therefore submitted that failure of the settlement arrangement cannot retrospectively be converted into a "pre-existing dispute" so as to defeat maintainability under Section 9 of the Code.

bb) The Petitioner also submits that the Respondent's reliance on disputes relating to two villas, criminal proceedings, RERA complaints, and proceedings involving third parties is wholly irrelevant to the present operational debt. It is specifically pointed out that the amount relating to the villas already stands excluded from the present claim and that the petition is confined only to the unpaid component arising from the apartment settlement arrangement. According to the Petitioner, the Respondent is merely attempting to cloud the admitted liability by importing unrelated disputes and collateral proceedings having no nexus with the operational debt claimed in the present proceedings.

cc) The Petitioner further contends that the Respondent has not produced any contemporaneous correspondence, protest, or proceedings disputing the Settlement Sheet dated 15.12.2015, the Agreement dated 21.01.2016, or the admitted liability arising thereunder. It is submitted that the petition transparently discloses all relevant transactions, including the settlement arrangements, villa adjustments, apartment allotments, partial land registration, and the acknowledgment dated 12.04.2022. The Petitioner therefore maintains that there is neither suppression nor misuse of the Code and that the Respondent's objections are merely moonshine defences raised to avoid insolvency consequences arising from admitted and unpaid operational dues.

dd) The Petitioner submits that the allegations of mala fides are wholly baseless and that the present proceedings have been validly initiated under Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016 on the basis of an admitted operational debt and continuing default. According to the Petitioner, the mere availability of alternative remedies such as arbitration or civil proceedings does not render invocation of the Code abusive or impermissible. It is contended that the relevant consideration is only whether an operational debt and default exist, and not whether some other remedy may also be available in law. The Petitioner further states that the Respondent is wrongly equating the existence of an arbitration clause with absence of maintainability under the Code, whereas a Section 9 petition remains maintainable so long as there is no genuine pre-existing dispute regarding the operational debt.

ee) The Petitioner further contends that the debt arises from admitted construction dues relating to civil works executed in the Orchid Park project,

which were subsequently sought to be discharged through an alternate settlement mechanism involving allotment of apartments. According to the Petitioner, the transaction evolved through allotment letters, agreements and partial registration of undivided share of land, and therefore the Respondent cannot rely upon the arbitration clause alone to allege mala fides or defeat the present proceedings. It is also submitted that the Respondent has deliberately attempted to import unrelated arbitral proceedings, awards and transactions concerning other projects in order to create confusion regarding the present claim. The Petitioner states that Annexures A-10 and A-11 and the arbitral award relied upon by the Respondent pertain to separate projects and transactions and do not form part of either the operative demand notice or the debt claimed in the present petition.

ff) The Petitioner also submits that the present Section 9 proceedings are confined solely to the operational debt arising from the Orchid Park transaction and the failed apartment settlement mechanism, and that the Respondent is misleadingly conflating distinct causes of action to project a false case of multiplicity of remedies. It is further contended that there is no suppression of material facts or misuse of the Code, since the petition transparently discloses the settlement documents, apartment arrangements, partial land registration, acknowledgment dated 12.04.2022 and withdrawal of the earlier demand notice. According to the Petitioner, the Respondent substantially admits the sequence of transactions, settlement and apartment arrangement, and is merely attempting to avoid insolvency consequences by re-characterising the debt and introducing collateral proceedings. The Petitioner therefore contends that the

allegations of mala fides are unsupported by facts or law and that the present petition is a legitimate invocation of statutory remedies available to an Operational Creditor.

Analysis and Findings

6. This Adjudicating Authority has heard the learned counsels for both parties and has gone through the pleadings, documents on record, written submissions made at the Bar, and the case laws cited on behalf of the rival parties.

7. The present application under Section 9 of the Code has been filed by M/s Kunnel Engineers and Contractors Private Limited, seeking initiation of CIRP against the Corporate Debtor on the allegations of default committed on account of alleged, admitted, crystallized, and continuing operational debt arising from the execution of civil construction work. The Petitioner has claimed a principal amount of Rs. 3,16,89,550/- and interest of Rs. 5,67,41,447/-, total amounting to Rs. 8,84,39,997/-.

8. It is the case of the Petitioner that the Corporate Debtor is a real estate development company engaged in a residential project, including Orchid Park, Kottayam, and pursuant to the construction agreement/contract dated 16.04.2010, the Corporate Debtor engaged the Operational Creditor for the execution of civil construction works in the Orchid Park project. The Operational Creditor duly executed substantial portions of work and raised running account bills, escalation claims, and other contractually admissible claims in accordance with the contract between the parties. However, the Corporate Debtor failed to pay the same and committed default. Thereafter, one comprehensive settlement sheet dated 15.12.2015 was executed between the parties quantifying the value of work executed at Rs. 26,21,33,115/-, and after admitted recoveries and

deductions, the Corporate Debtor unequivocally acknowledged balance payment of Rs. 5,61,53,894/- to the Operational Creditor. The said liability was reconfirmed under the agreement dated 21.01.2016, and such agreements constitute acknowledgment of debt. The Corporate Debtor, in pursuance of the said settlement, gave two villas in some other project in the name of individual directors and agreed to give 12 apartments to the Operational Creditor. The Corporate Debtor failed to give possession of the 12 apartments, though sale deeds for undivided shares in respect of six apartments were executed. Subsequently, the Corporate Debtor acknowledged its liability in a meeting held on 12.04.2022, whereby the period of limitation was extended. Despite issuance of demand notices under Section 8 of the Code, the Corporate Debtor failed to discharge the debt. As such, the Petitioner has filed the present Section 9 Petition. Whereas, the Corporate Debtor has come with a plea that the original operational debt stood extinguished by novation under Section 62 of the Contract Act, 1872, and the Section 9 Petition on the basis of the original debt itself is not maintainable.

9. Further, it is the defence of the Corporate Debtor that the Petitioner has failed to meet the threshold limit under Section 4 of the Code. As per the books of accounts of the Petitioner and the Corporate Debtor, the petition is barred by limitation, and there exists a pre-existing dispute before RERA. The alleged acknowledgment of debt, i.e., Annexure-A14, is stated to be non est due to lack of authorization by the Corporate Debtor. Further, the Corporate Debtor has come with a plea that multiple demand notices and changes in the nature of debt would have their own bearing on the merits of the Section 9 Petition. Further, the inconsistent and contradictory stand taken by the Petitioner is fatal to the present petition.

10. Having considered the rival contentions of both sides, there is no dispute about the existence of certain construction agreements between the parties executed on 16.04.2010. Further, there is no dispute that owing to certain defaults there had been some settlement between the parties in the years 2015 and 2016. Factually, there is also no dispute that two villas were given to the individual directors, regarding which some dispute is pending before RERA. There is no dispute that the Corporate Debtor agreed to give 12 apartments to the Petitioner, and there is no dispute that the respondent has already executed undivided shares in respect of six apartments in favour of the Petitioner. There is also no dispute that the Respondent/Corporate Debtor has failed to hand over possession of the 12 apartments as agreed by them.

11. Considering the contentions of both parties, the core question before this Adjudicating Authority is regarding the effect of the subsequent settlement between the parties on the existence of the original operational debt and whether the subsequent agreement executed between the parties was only a settlement to change the mode of repayment or whether it was an independent agreement. Further, the question is whether, upon execution of the subsequent settlement, the original debt stood extinguished and there was novation of the contract or not.

12. To get an effective answer to the above query, this Adjudicating Authority is required to examine the agreement/settlement dated 21.01.2016 executed between the parties. It was executed between the Petitioner as the party of the Second Part and the Respondent/Corporate Debtor as the party of the First Part on 21.01.2016. Having reference to the agreement dated 16.04.2010, it is specifically recorded in the said agreement that the earlier agreement stands

terminated with immediate effect. The relevant clauses of the agreement are as under: -

> ***WHEREAS the FIRST PARTY and SECOND PARTY had entered into an Agreement on 16th April, 2010 (hereinafter referred to as the "AGREEMENT"), whereby the work of construction of a multistoried Residential building in the name and style of ORCHID PARK in the landed property having an extent of 98.051 cents belonging to Marickar Plantations Pvt. Ltd., comprised in Survey. Nos 218/2-2 and 219/5 in Vijayapuram Village of Kottayam Taluk in Kottayam District, was awarded to the SECOND PARTY by the FIRST PARTY, on the terms and conditions detailed in the agreement thereof;***
>
> ***AND WHEREAS the FIRST PARTY and SECOND PARTY have upon mutual discussions and agreement between themselves, agreed to terminate the AGREEMENT, as also covenants there under, with parts of the construction works of the buildings there under having been completed;***
>
> ***AND WHEREAS the FIRST PARTY and SECOND PARTY have after mutual discussions, agreed to certain terms and conditions for settlement of all obligations between themselves on account of the AGREEMENT, and works executed there under as also termination of the said agreements effected hereby;***
>
> ***AND WHEREAS the FIRST PARTY and SECOND PARTY have also agreed to execute an agreement in writing incorporating the terms and conditions, mutually agreed between themselves;***
>
> ***NOW THIS AGREEMENT WITNESS AS FOLLOWS:***
>
> 1) ***That the AGREEMENT shall stand terminated with immediate effect and the SECOND PARTY shall stand relieved off of all the obligations and liabilities under the said AGREEMENT including further construction works of the buildings there under, with immediate effect.***
> 2) ***That the FIRST PARTY shall be free to get all further construction works of the said building, completed through any agency, contractor or modus as they would wish.***
> 3) ***That the FIRST PARTY shall pay the SECOND PARTY a sum of Rs.5,61,53,894/- (Rupees Five Crores Sixty One Lakhs Fifty Three Thousand Eight Hundred And Ninety Four only only) in full and final settlement of all their claims towards outstanding under pending bills,***

retention monies so far retained, loss and damages as also amounts on account of completed works not billed, in respect of the entire works comprehended by the said AGREEMENT.

8) ***That all mutual obligations and liabilities under the said AGREEMENT as between the FIRST PARTY and SECOND PARTY shall stand extinguished by virtue of this agreement; provided, however, that they shall be obliged to discharge their respective obligations and liabilities covenanted by this agreement.***

9) ***If any delay occurs in the payment of the installment as agreed to in clause 4 above, interest @ 15% will be applicable.***

10) ***That all actions, disputes, differences, claims and/or controversies arising between FIRST PARTY and SECOND PARTY or between their legal representatives relating to the rights, obligations, duties and liabilities in relation to, or in connection with, or on account or out of this agreement, shall be finally settled and resolved by arbitration to be conducted at Kochi, in accordance with the Arbitration and Conciliation Act 1996 or any statutory amendments thereof and shall be referred to the sole arbitrator to be nominated by the Builders' Association of India, Kochi Chapter.***

13. Thus, the agreement executed between the parties itself contains a recital regarding termination of the earlier agreement dated 16.04.2010. Had there been any clause in the agreement executed on 21.01.2016 regarding the revival of ongoing operational debt, the commission of default, the matter would have been different. However, the agreement contains provision about withdrawal of concession upon commission of default. It was not merely a diversion in the mode of repayment, but a fresh contract for which consideration flowed from the earlier transaction. The settlement agreement specifically and unequivocally records that the earlier operational liability stands fully extinguished, substituted, or discharged even such type of recitals appears time and again in the agreement dated 21.01.2016. This was the turning point wherein the parties adopted a new arrangement to settle their disputes.

14. Under such circumstances, the settlement would amount to novation under Section 62 of the Indian Contract Act, and the original cause of action ceases to survive. The rights of the parties thereafter flow only from the substituted agreement. The Operational Creditor accepted two villas and twelve apartments and also accepted execution of sale deeds for undivided shares of land in respect of six apartments. Therefore, the earlier operational debt would not retain its independent existence for the purpose of Section 9 of the Code. The subsequent breach by the Corporate Debtor would ordinarily give rise to remedies flowing from the settlement agreement itself, vis-à-vis specific performance, damages, recovery, or other civil remedies, rather than revival of the original operational debt. Further, after the said settlement, the Petitioner itself made changes in its accounting and financial statements.

15. In this regard, the Respondent has specifically relied upon the audited financial statements of the Petitioner to contend that, for the period from 2018 to 2025, only a sum of Rs.33.66 lakhs was consistently reflected as "operational debt", whereas the substantially larger amount of Rs.3.99 crores was not shown as receivables but was classified as an asset/advance towards purchase of flats, thereby indicating that the earlier operational liability stood substituted under the settlement arrangement[1]. On the other hand, the Petitioner has contended that such accounting classification was merely for presentation in the books of accounts and cannot, by itself, determine the legal character or enforceability of the claim. If such accounting treatment is read in conjunction with the express

[1] Reply para 17: Further, it is most respectfully submitted that the audited financial statements of Applicant, which have been produced by them in support of their own pleadings, unequivocally establish that only a sum of Rs. 33.66 lakhs has been consistently treated and classified as "operational debt" for the entire period from 2018 to 2025. For this continuous span of nearly 7-8 years, the said amount alone has been reflected as operational liability, while the substantially larger sum of Rs.3.99 crores has been consistently been shown as an asset other than receivables or as an advance towards purchase of flat...

terms of settlement and the conduct of parties, it assumes relevance in examining whether the original operational debt continued to subsist independently or stood absorbed into the substituted arrangement.[2]

16. However, the changes made in the financial statements also supplement the defence taken by the Respondent that there was novation of the contract. Had there been only a change in the mode of payment, the debt would have continued to exist in the books of accounts, and there would have been no need to alter the books of accounts. Once the parties expressly agreed that the previous liability stood substituted and discharged altogether, the original operational debt lost its character and enforceability. Thereafter, the claim essentially became one arising out of breach of settlement obligations relating to the transfer of immovable properties, which may not fall within the ambit of operational debt as defined under the Code.

17. Further, the present petition is founded on the agreement dated 21.04.2010. It was the duty of the Petitioner to produce the said foundational document before this Adjudicating Authority. Non-production of the same permits an adverse inference to be drawn against the Petitioner.

18. By their act and conduct, the parties intended to extinguish and substitute the earlier liabilities, and as such, the Petitioner cannot now switch over to the earlier operational debt upon the failure of the Respondent to fulfill its obligations under the new contract. The change of the earlier operational debt in

[2] Rejoinder para 35: The Respondent's reliance on audited financial statements to contend that the larger amount was shown as an asset or advance rather than receivable also does not dislodge the Applicant's case. The nomenclature used in financial statements for purposes of accounting presentation cannot by itself determine the existence or non-existence of a legally enforceable operational claim under the Code. The accounting presentation merely reflects how the Applicant internally recorded the settlement arrangement and the property-linked mode of discharge. It does not alter the origin of the debt, nor does it amount to a binding concession that the Respondent's admitted liability stood completely extinguished notwithstanding non-performance of the settlement.

the balance sheet of the Petitioner itself reflects that the Petitioner agreed to the novation of the contract, and as such, the Petitioner cannot take benefit under Section 63 of the Contract Act, but is bound to face the consequences in terms of Section 62 of the Contract Act.

19. Further, the Petitioner has relied upon Annexure-A14, i.e., the minutes of the meeting. Though the Respondent has taken a defence to the contrary, in the opinion of this Adjudicating Authority, the acknowledgment so recorded therein is qua fulfillment of obligations under the settlement agreement, and there is no recital reviving the original operational debt. Therefore, the said acknowledgment cannot be linked with revival of the original operational debt.

20. In this case, the Petitioner has sent two demand notices under Form 3 dated 30.12.2025 and 14.02.2026 The distinction between the two demand notices is as follows: -

Issue	**Earlier Notice**	**Present / Second Notice**
Characterisation of debt	The opening paragraph described the claim as mesne profit	Present notice clearly pleads that the claim is an operational debt under Sections 5(20) & 5(21) IBC arising from construction services, and apartment allotment was only a mode of discharge
Principal debt basis	Claimed Rs 3,99,45,250/- (entire value of 12 apartments)	Principal reduced to Rs 3,16,89,550/- after deducting Rs 82,55,700/- (value of land/construction attributable to 6 units already registered)
Default date	Default stated as 30.05.2017/- (date of apartment agreements)	Default now pegged to 30.06.2019 (expiry of completion period + 6-month grace period)

Subsequent acknowledgment	No specific reliance on later acknowledgment	Relies on 12.04.2022 Record of Meeting, where CD acknowledged liability and promised completion by Sept 2023
Interest basis	Claimed Kerala RERA statutory interest @ 17% p.a. simple interest	Interest now claimed at 10% p.a. (contractual basis), cumulatively on monthly basis
Total amount claimed	Rs 9,77,31,252/-	Rs 8,84,30,997/- (Principal Rs 3,16,89,550/- + Interest Rs 5,67,41,447/-)
Limitation basis	Primarily relied on Section 22 continuing cause of action	Relies on continuing default + express acknowledgment dated 12.04.2022

21. Though in this petition the Petitioner has come with a plea that they withdrew the earlier demand notice, the fact remains that there is no recital regarding withdrawal of the earlier demand notice in the alleged second demand notice. The Petitioner or Operational Creditor cannot be permitted to send multiple demand notices with different claims. If there were any typographical errors, it was the duty of the Petitioner to specifically point out the said typographical errors and the reasons thereof. In the present case, as already noticed, there are substantial variations between the two demand notices in respect of the characterization of debt, principal amount claimed, date of default, basis of limitation, interest computation, and the very foundation of the claim. Such changes cannot be treated as mere typographical corrections or inadvertent mistakes.

22. The Hon'ble NCLAT in *Innovators Cleantech Pvt. Ltd. v. Pasari Multi Projects Pvt. Ltd.*, (2025) ibclaw.in 489 held,

14. Coming to our analysis and findings, it is an undisputed fact that the Operational Creditor had initially sent a Demand Notice on 12.02.2019 to the Corporate Debtor. This demand notice was purportedly despatched by the Appellant by speed post on the same date. When we look at the material placed on record, it is clear that the first Demand Notice was however received by the Corporate Debtor only on 16.02.2019 as evident from the Tracking Report placed at page 118 of Appeal Paper Book ('APB' in short). More significantly, the first demand notice was admittedly withdrawn by the Operational Creditor on grounds of typographical error in that they had failed to take into account certain payments already received by them from the Corporate Debtor.

15. Given this factual backdrop that the demand notice of 12.02.2019 under Section 8 of the IBC was withdrawn, we now proceed to analyse whether the second demand notice of 25.04.2019 can be held to be in continuation of the first demand notice or a fresh notice. We find that that the second demand notice itself mentions of being a "fresh notice". The second demand noticealso nowhere mentions that it was a continuation of the first demand notice. In such circumstances, there is force in the contention of the Corporate Debtor that the first demand notice having been withdrawn stood abandoned. When we look at the ground cited by the Appellant behind the revision of the first demand notice, it was claimed to have been actuated by clerical/typographical errors. However, the ground of clerical error lacks credence as we find that there were substantial changes in the second demand notice from the first demand notice with regard to amounts of default, date of default, date on which last payments was received etc. The Adjudicating Authority in paragraphs 12 and 13 of the impugned order has belaboured in outlining the modified particulars which has already been extracted at para 13 above. The second demand notice was clearly a novated demand notice with particulars of debt and default and date of default being at variance from the first demand notice. Hence the Adjudicating Authority did not commit any infirmity in adjudicating on the pre-existence of disputes from the perspective of the date of the issue of the fresh second demand notice. We would also like to add here that the reliance placed by the Appellant on the Dinesh Singh judgement supra does not come to the help of the Appellant since in that case the first Section 8 notice had been issued by the Advocate and therefore replaced by a demand notice issued by the Operational Creditor.

Thus in that case the second demand notice was issued on purely technical grounds without modification of particulars unlike in the present facts of the case.

23. The Hon'ble Appellate Tribunal held that where a second demand notice contains substantial changes in the claim particulars, it cannot be regarded as a continuation of the earlier notice and would amount to a fresh demand notice, the earlier notice having been effectively abandoned. The Hon'ble Appellate Tribunal further held that material changes in the amount claimed, date of default, and other particulars of debt are not clerical corrections and such inconsistencies can have a bearing on the maintainability of proceedings under Section 9 of the Code.

24. Accordingly, this Adjudicating Authority is of the opinion that the Petitioner cannot be permitted to issue multiple demand notices and that too, with materially inconsistent claims and it would not be appropriate to say that the later notice is only clarificatory in nature, the Respondent would be well within its rights to take advantage of inconsistencies and contradictions in the so-issued demand notices to the disadvantage of the Petitioner. Thus, the stand taken in the earlier demand notice can be read against the Petitioner. Till issuance of first demand notice the Petitioner was pressing default in terms of agreement executed subsequently ie, the value of 12 apartment whereas in subsequent demand notice Petitioner is pressing its claim on the basis of agreement dated 16.04.2010. The earlier demand notice would be fatal to the instant petition as the stand taken in subsequently issued demand notice is altogether different from the account books maintained by Respondent in its ordinary course of business.

25. To sum up and at the cost of repetition, this Adjudicating Authority must record that the Issuance of two separate demand notices under Section 8 by the same

Operational Creditor containing materially different particulars is a relevant circumstance requiring consideration. Though such inconsistency may not by itself establish a pre-existing dispute with the Corporate Debtor in terms of provisions of IBC, it does indicate uncertainty in the claim put forward by the Operational Creditor itself regarding the nature, amount and basis of the alleged debt. A demand notice under Section 8 of IBC is the foundation for initiating proceedings under Section 9 of IBC, and therefore, the debt and default claimed therein must be clear and specific. Section 8 of the IBC notice is not an empty ritual, but rather is a statutory requirement to trigger Section 9 of the IBC. When the creditor itself issues more than one statutory notice with materially different particulars, the same becomes a relevant factor while examining whether the claim is definite and whether the requirements under Section 8 of the Code have been duly complied with. The minor contradictions may not be fatal but this case has different facts; the comparison of two notices indicates a sudden shift from written settlement and financial records, indeed invite adverse inference.

26. The Petition merits dismissal, and the Petitioner is precluded from invoking Section 9 Petition on the basis of the original operational debt after execution of the settlement agreement, wherein there is a specific recital regarding the extinguishment of the earlier agreement and balance liability. The Petitioner cannot be allowed to use the IBC mechanism as a recovery process or to substitute IBC process to overcome contractual obligations. Recently, the Hon'ble Supreme Court of India in Anjani Technoplast Ltd. v. Shubh Gautam, (2026)ibclaw.in 209 SC, held the following,

> *19. The legislative object of the IBC is well settled and requires no extended elaboration. The Code was enacted to provide for the reorganisation and insolvency resolution of corporate persons in a time-bound manner for the maximisation of the value of assets. It is not a debt recovery legislation. This Court has held so in clear and express terms on*

more than one occasion. In Swiss Ribbons (P) Ltd. v. Union of India, while upholding the constitutional validity of the IBC, this Court explained the nature and object of the Code in paragraph 28 as follows:

> *"28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management…"*
>
> *The above referred passage identifies the essential character of the IBC, whose purpose is the rescue and revival of the corporate debtor as a going concern. It is not a proceeding for the benefit of individual creditors seeking to recover their dues. The moratorium under Section 14 operates in the interest of the corporate debtor itself. The resolution process is not intended to be adversarial toward the corporate debtor but rather to be protective of its interests.*

20. The same principle was affirmed by this Court in Pioneer Urban Land and Infrastructure Ltd. v. Union of India [(2019) ibclaw.in 13 SC][5], where a three-Judge bench made it clear that the IBC is not a forum for individual creditors to realise their dues through the back door of insolvency. The moment a Section 7 petition is admitted, the process moves entirely beyond the control of the petitioning creditor and operates for the collective benefit of all stakeholders. The insolvency mechanism cannot, therefore, be pressed into service as a substitute for ordinary execution or recovery proceedings.

21. In another instance, a three-Judge Bench of this Court in GLAS Trust Co. LLC v. BYJU Raveendran [(2024) ibclaw.in 275 SC][6], consolidated the position in paragraph 39.3 in the following terms:

> *"39.3. IBC must not be used as a tool for coercion and debt recovery by individual creditors. Improper use of the IBC mechanism by a creditor includes using insolvency as a substitute for debt enforcement or attempting to obtain preferential payments by coercing the debtor using insolvency proceedings. That the mechanism under the IBC must not be used as a money recovery mechanism has been reiterated in a consistent line of precedent by this Court."*

This statement of the law is directly applicable to the present case. The respondent, holding a final decree and having the full machinery of civil execution at his disposal, chose instead to invoke the insolvency jurisdiction. Such conduct is precisely what this Court in GLAS Trust (supra) has characterised as an improper use of the IBC using insolvency as a substitute for debt enforcement and as a means of coercing the corporate debtor into payment.

22. This Court had occasion to state the same principle with equal clarity in Tottempudi Salalith v. State Bank of India [(2023) ibclaw.in 123 SC], while dealing with the interplay between proceedings before the Debt Recovery Tribunal and the initiation of CIRP under the IBC, held as follows:

> *"21. IBC itself is not really a debt recovery mechanism but a mechanism for revival of a company fallen in debt, but the procedure envisaged in IBC substantially relates to ensuring recovery of debts in the process of applying such mechanism. The question of election between the fora for enforcement of debt under the 1993 Act and initiation of CIRP under IBC arises only after a recovery certificate is issued. The reliefs under the two statutes are different and once CIRP results in declaration of moratorium, the enforcement mechanism under the 1993 Act or the SARFAESI Act gets suspended. In such circumstances, after issue of recovery certificate, the financial creditor ought to have option for enforcing recovery through a new forum instead of sticking on to the mechanism through which recovery certificate was issued."*
>
> *(emphasis supplied)*

23. The distinction drawn above by this Court is important and bears emphasis. While the IBC incidentally results in the satisfaction of creditors' claims, that consequence is a byproduct of the resolution process and not its primary object. The object is the revival of the corporate debtor as a going concern. It follows that a creditor who approaches the NCLT not with any genuine concern for the resolution of the corporate debtor but purely to secure payment of his individual dues is acting contrary to the purpose and spirit of the Code. The existence of adequate and efficacious alternative remedies makes such misuse all the more apparent.

24. Lastly, Section 65 of the IBC provides that if any person initiates the insolvency resolution process fraudulently or with malicious intent for any purpose other than the resolution of insolvency, the Adjudicating Authority may impose a penalty. The presence of this provision in the statute itself underscores the legislative intent that the IBC is not to be misused as a tool for recovery or as a lever to coerce payment.

27. In the backdrop of the above, the Petition merits dismissal, and the Petitioner is precluded from invoking Section 9 Petition on the basis of the original operational debt.

28. Though the Respondent has set up a crucial defence on account of limitation and pre-existing dispute, this Adjudicating Authority is of the opinion that under the given circumstances of the present case, where the findings of the nature of debt

are against the Petitioner, it would not serve any fruitful purpose to go into the merits of other pleas raised in the defence.

29. In view of the above, **CP(IBC)/5/KOB/2026** is, therefore, **dismissed** and disposed of accordingly, with no order as to costs.

30. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

31. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.

32. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities

Sd /-

VINAY GOEL

(MEMBER JUDICIAL)

Signed on this the 25th day of May, 2026.

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