NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P2

C.P. (IB)675/(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **28.07.2026**

NAME OF THE PARTIES: **Gulf Extrusions LLC**

V/s

Facade One International Private Limited

Under Section 9 of the IBC

ORDER

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

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)
//Sumant//

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.675/MB/2025

[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:

M/s GULF EXTRUSIONS LLC
CBLS No.; 10796812
Jebel Ali, Industrial Area,
P.O. Box 5598, Dubai,
United Arab Emirates

…Operational Creditor/Applicant

V/s

M/s FACADE ONE INTERNNATIONAL PRIVATE LIMITED
[CIN: U74900MH2015PTC261746]
Plot No. H-23 & 24, Additional MIDC,
Kudavali Village, Murbad, Thane,
Maharashtra, India- 421401

...Corporate Debtor

Pronounced: 28.07.2026

CORAM:
HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid
Operational Creditor: Adv. Mr. Manaswi Agarwal, Adv. Mr. Ashutosh Kumar
Corporate Debtor: Adv. Mr. Akshay Doctor, Adv. Mr. Pulkit Sharma i/b Adv. Mr. Ashish Santosh Mishra.

ORDER

[PER: BENCH]

1. BACKGROUND

1.1 This is an Application bearing C.P.(IB) No.675/MB/2025 filed on 08.07.2025 by Ms Gulf Extrusions LLC, the Applicant (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Facade One International Private Limited, the Corporate Debtor (CD).

1.2 This Application has been affirmed by one Mr. Marwan Mohd. Kiswani, the Authorised Representative of the Applicant.

1.3 As per Part IV of the Application, the amount claimed to be in default is USD290,386.90 converted in rupees to Rs. 2,47,12,012.30 (Rupees Two Crore Forty-Seven Lakh Twelve Thousand Twelve Rupee and Thirty Paisa only).

1.4 The date of default is stated as 30.06.2019 and subsequently on various dates as and when invoices were raised and left due and unpaid.

1.5 The Applicant has not proposed the name of an IRP.

1.6 The Applicant has relied on the following documents:

i. A copy of the Memorandum of Association of the Operational Creditor in favour of the authorised representative of the Petitioner/Operational Creditor

ii. Copy of the Cooperation Agreement between Facade One International Pvt Ltd and M/s Gulf Extrusions LLC dated 10th January, 2019

iii. Printout of the Registration Details of the Operational Creditor as an LLP

iv. Master Data of the Corporate Debtor

v. A copy of the Die Amortisation Agreement between Facade One International Pvt Ltd and Gulf Extrusions LLC dated 1st February, 2019.

vi. copy of the Purchase Orders raised by Facade One International Pvt Ltd Towards Gulf Extrusions LLC for supply of Facade One System Profiles from May, 2019 till November, 2021.

vii. True Copy of the Invoices raised by M/s Gulf Extrusions LLC on the Facade One International Pvt Ltd pertaining to services rendered that are outstanding and payable from 30.06.2019 till 02.11.2021.

viii. copy of the Latest Statement of Accounts reflecting all debits and credits for Facade One International Pvt Ltd related to Gulf Extrusions LLC, along with the total outstanding payment due.

ix. A copy of the email dated December 20, 2023 addressed by the Corporate Debtor to the Operational Creditor.

x. copy of the Section 8 Demand Notice dated 10- 10-2024 sent by the operational creditor to the corporate debtor along with proof of dispatch/ True print out of email.

xi. copy of the Reply dated 19-10-2024 sent by the Corporate Debtor in response to Section 8 Demand Notice dated 10-10-2024.

2. <u>AVERMENTS OF THE APPLICANT</u>

2.1 It is stated that the Corporate Debtor and Operational Creditor executed a Cooperation Agreement at Dubai on 10 January, 2019, whereby Corporate Debtor for the terms of agreement provided Operational Creditor with all the drawings and technical support and grant it all the rights to use Facade System Profiles for the extrusion of the Products as well as suggestions for machinery purpose.

2.2 The Operational Creditor used to procure the dies as per the drawings received from the Corporate Debtor (Facade One Systems Pvt. Ltd.) as per Die Amortisation Agreement dated 1st February 2019. The Die Amortisation Agreement dated 1st February 2019 is annexed as **Annexure E** to the Application.

2.3 Operational Creditor, introduced, extruded and marketed Facade System Profiles and sold all the products within the Gulf Cooperation Council and to other customers worldwide. As per the said agreement, Operational Creditor was entitled to receive 3% commission of the total invoice value of Facade System Profiles sold upon by the support of Operational Creditor. Pursuant to multiple Purchase Orders issued by Corporate Debtor, Operational Creditor has been supplying facade one system profiles to Corporate Debtor since 2019, in accordance with the terms of the Cooperation Agreement dated January 10, 2019 and is procuring dies as per drawings received from Corporate Debtor as per Die Amortisation Agreement dated 1st February 2019. Copies of the Purchase orders issued by the Corporate Debtor are annexed as **Annexure F (colly).**

2.4 Operational Creditor raised various invoices corresponding to the Purchase Order issued by Corporate Debtor, all in line with the aforementioned Agreements. Copies of the invoices raised by the Operational Creditor are annexed as **Annexure G (colly)**

2.5 Operational Creditor has raised invoices for the period of supply of Facade One System commencing from January 2019 until November 2021. As per the terms and conditions set out in cooperation agreement dated 10.01.2019, each invoice raised by Operational Creditor is payable by Corporate Debtor in 30 Days from the invoice date.

2.6 The Corporate Debtor has failed to make payments against various invoices raised by the Operational Creditor amounting to a total of USD 290,386.90 (US Dollars Two Lakh Ninety Thousand Three Hundred Eighty-Six and Ninety Cents Only)

2.7 As per the agreement dated 10th January 2019, Operational Creditor is entitled to receive 3% commission of the total invoice value of Facade System Profiles sold upon Corporate Debtor by the support of Operational Creditor

2.8 While Corporate Debtor made part payments of commission to the Operational Creditor but full payments were never made by Corporate Debtor. The last payment made by the Corporate Debtor to the Operational Creditor under the agreements was on October 31, 2021. A copy of the Statement of Account maintained by the Operational Creditor in respect of the Corporate Debtor is annexed as Annexure H.

2.9 In unequivocal terms, Corporate Debtor has accepted the obligation of outstanding debt vide an email dated 20.12.2023. In the said email, the outstanding amount payable by Corporate Debtor to Operational Creditor at that point of time has clearly been acknowledged. The relevant extract of the said email from Mr VS Ravi, Facade One International Pvt Ltd to Mr. Rajasekharan Kombrath, Gulf Extrusions LLC dated 20.12.2023, is reproduced below;

> *"Dear Mr. Rajsekharan, We are in receipt of your mail and letter dtd 15th December 23 from Mr. Feraz Al Kayyali. Firstly, we agree that our original outstanding of payment around 400 K AED against project material supply is still to be paid. Our operation in Dubai is completely standstill after 2020 and neither recovery of payments happening no local business. We have lost almost 800 K AED with 3 of contactors who went Bankrupt."*

Copy of the email dated December 20, 2023 addressed by the Corporate Debtor to the Operational Creditor is annexed as **Annexure I**

2.10 In view of the above a total amount of USD 290,386.90 (US Dollars Two Lakh Ninety Thousand Three Hundred Eighty-Six and Ninety Cents Only) against the invoices raised by Gulf Extrusions LLC till date remain outstanding.

2.11 The operational debt for the first invoice originally became due on 30.06.2019 (i.e., the upper limit of 30 Days PDC from invoice date that was raised by Gulf Extrusions LLC on FOIPL) and subsequently on various dates as and when invoices were raised and left due and unpaid

2.12 The final invoice no. 211015480 was raised by Gulf Extrusions LLC on 02nd November, 2021 as per which there was an upper limit of 30 Days PDC from the invoice date.

2.13 The Corporate Debtor had made a payment of USD 13,099.35/- on 23-10-2021 and lastly a payment of USD 655.00, - was paid by the Corporate Debtor on 31st October, 2021 through Bank transfer.

2.14 The Corporate Debtor had further acknowledged its debt vide email dated 20-12-2023, despite which no payment has been made by the Corporate Debtor thereafter

2.15 That a Demand Notice u/s 8 of the IBC, dated 10-10-2024 was sent to the Corporate Debtor on 11-10-2024 through Speed post with Registered A.D. as well as by email and the same has been delivered. That the true copy of the demand notice issued by the operational creditor to the corporate debtor along with proof of dispatch/ True print out of email is attached as **Annexure J**

2.16 Thereafter The Corporate Debtor sent its Reply dated 19-10-2024 in response to Section 8 Demand Notice dated 10-10-2024. The said reply is frivolous and the allegations made therein are merely an afterthought to cover the defaults on the part of the Corporate Debtor. Further the corporate debtor has not denied the existence of the debt due to operational creditor anywhere in the said reply to the demand notice. That the true copy of the reply dated 19-10-2024 is being filed as **Annexure K**

2.17 That the Corporate Debtor is liable to make the balance payment to Operational Creditor with interest thereafter since the time the claimed amount became due. A lot of communication through mails and letters were done by the Operational Creditor to the Corporate Debtor demanding the due payment but the Corporate Debtor did not respond the said e-mails despite receipt, which proves that the Corporate Debtor did not raise any dispute as regards the transaction. The present dispute has not become time barred on the grounds of limitation, since the outstanding invoices were raised from June 2019 onwards and the Corporate Debtor had unconditionally acknowledged its liability in the email dated 20.12.2023. Further, despite receipt of the demand notice dated 10-10-2024, the corporate debtor has neither raised any dispute regarding the debt nor disclaimed the default and liability thereunder. Therefore, the present application has been filed well within the limitation period.

3. <u>CONTENTIONS OF CORPORATE DEBTOR</u>

3.1 The CD filed Affidavit-in-Reply dated 04.10.2025 affirmed by Mr. Ravi Venkat Subramani , Director of the CD authorised *vide* Board Resolution dated 18.10.2022.

3.2 The Respondent states that OC is misusing IBC as a recovery tool.

3.3 The Respondent submits that there exists a pre-existing, genuine, and bona fide dispute between the parties concerning the alleged operational debt. The said dispute existed well prior to the issuance of the Demand Notice dated 10.10.2024 under Section 8 of the IBC and was expressly articulated in the Respondent's Reply dated 19.10.2024.

3.4 The disputes pertain from the failure of the Petitioner, to duly perform and discharge its obligations under the Cooperation Agreement dated 10.01.2019, as required by the terms and conditions set forth therein.

3.5 It is specifically averred that the Petitioner Company has failed to discharge its contractual obligations as expressly set forth under Clause 2.3 of the Cooperation Agreement dated 10.01.2019, which obligated the Petitioner to introduce genuine leads and actively facilitate the sale of products across the Gulf Cooperation Council

(GCC) region as well as to other customers worldwide; the said clause, reproduced here for ready reference, states:

"Gulfex shall introduce and market Facade System Profiles and extrude and sell all the products within GCC and to other Customer worldwide."

3.6 Notwithstanding the clear and unequivocal language of this provision, the Petitioner failed to introduce any credible or actionable leads and did not take any substantive steps towards the fulfillment of its marketing or sales-related responsibilities.'

3.7 Furthermore, it is also submitted that under Clause 3.1 of the said Agreement, the Petitioner had agreed to provide ongoing sales and marketing support to the Respondent to facilitate product sales and business development initiatives; however, at no point during the subsistence of the Agreement did the Petitioner extend any such support, either directly or indirectly, thereby materially breaching the express terms of the contract.

3.8 It is also necessary to state that the Respondent Company, acting in good faith and in anticipation of the Petitioner's performance under the Cooperation Agreement, made substantial investments in technology, infrastructure, and research & development, all of which were directed towards achieving the mutual objectives contemplated under the Agreement; however, due to the Petitioner's persistent non-performance and willful neglect of its contractual obligations, the Respondent has suffered severe financial losses, operational setbacks, and a significant disruption in its commercial prospects, which has caused irreparable harm to its business and market position.

3.9 Additionally, the Petitioner Company and the Respondent Company entered into a Die Amortization Agreement executed by the Responded Company on 05.04.2019, annexed and marked as Annexure E to the petition. Under this agreement, the Petitioner was responsible for procuring the die and producing products using the same as per the Respondent's orders. The cost of the die was to be amortized over a period of 24 months. However, the Petitioner's failure to act under Cooperation agreement combined with the impact of the COVID-19 pandemic, constituting a force majure event , severly disrupted market conditions in GCC and other regions, making it difficult to influence consumers to purchase higher cost products in comparison to low-technology and cheaper commodity has given big set back to the Respondent Company.

3.10 That the Petitioner Company, in its petition, has demanded USD 290,386.90. However, the said demand has been made grossly towards "die amortization costs, which can be verified and assessed from the latest Statement of Accounts reflecting all debits and credits of Facade One International Pvt. Ltd., annexed as Annexure H to the Petition.

3.11 It is pertinent to mention that the Petitioner had never raised a single invoice upon the Respondent Company towards die amortization charges, as annexed to the present petition. Instead, the Petitioner has directly approached this Hon'ble Tribunal for recovery of the said amount.

3.12 Furthermore, the alleged charges are merely notional and, as governed under Clause 3.7 of the said Die Amortization Agreement, are only recoverable in the event the Respondent Company fails to place purchase orders required for the amortization quantity for a particular die. In such circumstances, the Petitioner Company was obligated to notify the Respondent Company of such default and thereafter raise an invoice for the same. However, the Petitioner Company has failed to notify any such default or shortfall in meeting the purchasing requirements. The relevant clause is reproduced herein for ready reference,

> *"3.7 In case Facade One System Pyt Ltd. failes to meet the obligation in terms of purchasing the required quantity for a particular die. Gulf Extrusions will notify Facade One Systems Pvt Ltd. for their default and will invoice the cost of that die*

to Facade One System Pvt Ltd. accordingly. However, Gulf Extrusion will send quarterly aging report regarding die amortisation status to Facade One System Pvt Ltd."

3.13 Therefore, the Petitioner Company intentionally ignored and failed to fulfill its obligations, never acted as per agreed clauses. Also failed to comply and follow appropriate steps before raising and claiming invoices upon the Respondent Company.

3.14 Further It is stated that it is a settled proposition of law, as held by the Hon'ble Supreme Court in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2017) 1 SCC 353, that the existence of a pre-existing dispute, even if not finally adjudicated, is sufficient to render a petition under Section 9 of the IBC not maintainable. The present case squarely falls within the said principle.

3.15 The Petitioner seeks to rely upon an alleged acknowledgment of debt through an email dated 20.12.2023. The Respondent vehemently denies that the said communication constitutes a clear, unconditional, and unequivocal admission of liability.

3.16 The said email was written in the course of ongoing commercial discussions aimed at exploring settlement possibilities between the Petitioner, Gulf Extrusions LLC and Facade One International FZ LLC. which were undertaken with a view to exploring potential settlement options for resolving outstanding financial disputes between the parties. Facade One International FZ LLC, Dubai based entity, had entered into all such discussions with the Petitioner on account of their shared directorship under Mr. Ravi Venkat Subramani, who holds a directorial position in both entities. In this context, the Petitioner, vide email dated 18.12.2023, enclosed and forwarded a letter dated 15. 12.2023, bearing reference number FXGE/E-20188. The contents of the said letter expressly recorded the names of the respective debtor entities and the specific outstanding amounts due and payable as of that date, namely, a sum of AED 520,000.00 owed by Facade One International FZ LLC and a sum of USD 362,985.00 stated as outstanding from the Respondent Company. A copy of outstanding letter dated 15 December, 2023 is annexed as Exhibit D.

3.17 It is further evident from the terms of Die Amortisation Agreement, that the amortisation value per metric ton is denominated in USD. as clearly set out in Clause 3.5 thereof. The said die cost pertains to amortisation and not to the cost of sale, As the Petitioner failed to secure business, the amortisation value was reduced. Moreover, the Petitioner has themselves annexed latest Statement of Accounts to the Petition wherein all commercial values are reflected exclusively in USD. This demonstrates that the currency governing trade and financial dealings between the Petitioner and the Respondent Company is USD alone.

3.18 It is also pertinent to note that, in response to the aforesaid email, Mr. Ravi Venkat Subramani, vide his reply dated 20.12.2023, specifically referred to the outstanding dues of Facade One International FZ LLC AED. The said email reply, annexed and marked as Annexure I to the Petition, was clearly expressed in tentative, issued without prejudice, and not intended to crystallise any admission of debt for the Respondent Company, particularly as the alleged outstanding amount is payable in USD. It is trite law that communications made during the course of negotiations or settlement discussions for another entity cannot be construed as acknowledgment of debt so as to extend the period of limitation under Section 18 of the Limitation Act, 1963.

3.19 The alleged default is pleaded to have occurred between 30.06.2019 and November 2021. The present Petition, filed in 2025, is ex facie barred by limitation. The attempt to extend limitation on the strength of the purported acknowledgment dated 20.12.2023 must fail, as the — said communication does not satisfy the requirements of Section 18 of the Limitation Act. Consequently, the Petition is liable to be dismissed on the ground of limitation alone.

3.20 Without prejudice to the foregoing contentions, and solely with a view to preserve the commercial relationship between the parties and to avoid protracted litigation, the Respondent expresses its willingness to enter into good faith settlement negotiations with the Petitioner.

3.21 The Respondent reiterates that this proposal is made strictly on a "without prejudice" basis solely to preserve commercial relations and does not constitute any admission of liability. The Respondent is confident that upon reconciliation of accounts and adjustment of debit notes, the alleged outstanding will stand extinguished or substantially reduced .The Respondent, therefore, prays that this Hon'ble Tribunal may be pleased to take note of its willingness to explore an amicable resolution and grant the parties time to pursue settlement discussions. The Respondent further reserves its right to pursue all legal remedies available in law in the event settlement discussions fail.

3.22 The respondent has placed reliance on the following judgements;-

a. Swiss Ribbons Pvt. Ltd Anr. Vs. Union of India & Ors
b. Mobilox Innovation Private Limited Vs. Kirusa Software Private Limited,
c. Transmission Corporation of Andhra Pradesh Limited Vs. Equipment Conductors And Cables Limited,

4. <u>REJOINDER OF THE APPLICANT</u>

4.1 The Applicant filed Rejoinder *vide* an Affidavit dated 28.10.2025.

4.2 It is stated that the Respondent's Affidavit is a classic example of a belated and manufactured dispute, raised solely with the mala-fide intent to thwart the admission of a legitimate Petition under Section 9 of the Insolvency & Bankruptcy Code, 2016. The entire defense raised by the Respondent in its reply is constructed on vague, unsubstantiated allegations of non-performance, which are not only factually incorrect but also legally irrelevant to the existence of the admitted operational debt. That the alleged dispute being raised by the Respondent Corporate Debtor is "manufactured" and "belated," and therefore the entire burden to prove that the said alleged disputes/issues were raised before the Section 8 notice lies solely on the Respondent.

4.3 The Respondent Corporate Debtor has on multiple occasions acknowledged its outstanding contractual liabilities towards the Petitioner and even offered to settle but neither any concrete steps were ever taken, nor any part payment of the outstanding dues was made which goes to show that the sole motive of the Corporate Debtor is only to delay the initiation of legal proceedings.

4.4 That the Respondent has filed its counter affidavit running into 275 pages and two volumes but the only relevant and material document being relied upon by the Respondent is the outstanding letter dated 15th December, 2023 which has been filed at Annexure D (page no. 256) of the Affidavit in reply. It is stated that the said outstanding letter itself amounts to admission and acknowledgement of the outstanding dues on behalf of the Corporate Debtor.

4.5 That the Petitioner vehemently denies the existence of any genuine pre-existing dispute regarding the operational debt prior to the issuance of the Demand Notice under Section 8 of the IBC.

4.6 The alleged disputes concerning the "Cooperation Agreement dated 10.01.2019" are raised for the first time in these proceedings and were never communicated to the Petitioner prior to the Respondent's reply to the Section 8 Notice. The respondent has failed to place on a record a single document or communication to show or establish that it had raised any genuine pre-existing dispute. It is most respectfully submitted that the plea of pre-existing dispute cannot be a moonshine defence and a dispute to be considered as "pre-existing," must be raised in a contemporaneous manner, not ex-post facto as a litigation strategy.

4.7 The Respondent's attempt to portray the Petition as a "debt recovery proceeding in disguise" is a mischaracterization of the law and the facts. The Petitioner has strictly adhered to the statutory framework of the IBC for a defaulted debt that is due, payable, and has been acknowledged by the Respondent on multiple occasions. It is further pertinent to state herein that the Petitioner Operational Creditor has not initiated any other case or suit for the recovery of its the outstanding dues from the Corporate Debtor.

4.8 That the Respondent Corporate Debtor has duly acknowledged the execution of the contract as well as the terms & conditions contained therein. That as per clause 2.3 of Co-operation agreement dated Petitioner was to Introduce, Market, Excrude and Sell facade system profiles within GCC and other countries worldwide.

4.9 That by virtue of the mutually agreed terms & conditions of the Co-operation agreement and the die amortization agreement, the Corporate Debtor was liable to may payments to the Petitioner on the following accounts:

i. 3% Commission Charges on entire sales (Clause 6.1 of Co-operation agreement)

ii. Cost of Die Development

iii. Project material consumed for extrusion of facade profiles

iv. Service charges inclusive of freight and packaging.

v. Die Amortization Charges (clause 3.7 of Die Amortization Agreement)

4.10 It is stated that the Respondent Corporate Debtor has not denied the execution of Co-operation Agreement & Die-Amortization Agreement and neither has it disputed the terms & conditions stipulated therein.

4.11 Further the Corporate Debtor in its reply has not even denied the issuance of multiple Purchase orders to the Petitioner Operational Creditor which have been filed along with the petition. That the Petitioner Operational Creditor used to raise its invoices to the Corporate Debtor in accordance with the purchase orders.

4.12 Also, the Respondent has not filed a single communication or document to show that the petitioner had committed any breach of the express terms of the contract. That there is not even a single document or communication to this effect which has been filed by the Respondent along with its affidavit in reply.

4.13 That the respondent has made hollow statements with respect to making substantial investments in technology. On the contrary it is stated that it is the Petitioner who has made substantial investments in terms of the Co-operation agreement by introducing the corporate debtor, developing dies for extrusion of the facade systems on behalf of the Corporate Debtor and market the same within the GCC countries. The Respondent has failed to place on record a single document to show that it had made any investments in technology, infrastructure and research and development.

4.14 That the respondent corporate debtor has duly acknowledged the contractual responsibilities of the Petitioner OC which included procurement of dies and excursion of facade profile systems at the behest of the Respondent. The Respondent has further clearly admitted that the cost of the die was to be amortized over a period of 24 months.

4.15 The respondent has further duly admitted that as per the terms & conditions of the contract, the die amortization charges are recoverable in the event the Respondent fails to place purchase orders in accordance with the mutually agreed terms & conditions.

4.16 That the defence taken by the Respondent Corporate Debtor under Clause 3.7 of the Die Amortization Agreement is absolutely misleading and misconceived. The clause provides a specific contractual right to the Petitioner to invoice the die cost in case of a shortfall in purchase orders. The liability itself arises from the Respondent's failure to place the requisite purchase orders, a factual condition that is not in dispute.

4.17 That the ledger statement filed along with the petition duly included all the components towards Die charges,commission on sales, and service charges towards freight and packaging.

4.18 The Respondent's bald assertions regarding the Petitioner's failure to introduce leads and provide marketing support are entirely unsubstantiated. The Corporate Debtor in its reply has not even filed a single document or communication to show that it had raised any such plea with the Petitioner before sending of the demand Notice under Section 8 of the Insolvency & Bankruptcy Code, 2016. It is reiterated that the Petitioner has diligently performed its contractual obligations. The Respondent has failed to provide a single piece of credible evidence, such as any email, notice, or communication sent to the Petitioner prior to the Section 8 proceedings, raising these alleged breaches. The silence of the Respondent for years, while continuing to accept the benefits under the Co-Operation agreement and "Die Amortization Agreement," is a clear waiver and an estoppel against raising such disputes now.

4.19 It is most respectfully stated that the reference to the COVID19 pandemic as a "force majeure" event is a generic and unsubstantiated excuse portrayed by the Respondent Corporate Debtor. The Respondent has failed to demonstrate how the pandemic specifically prevented it from meeting its payment obligations for the die amortization costs, which were a separate and distinct contractual commitment.

4.20 The continuous reflection of this debt in the Statement of Accounts, which was regularly shared with and never objected to by the Respondent, constitutes a clear and unequivocal acknowledgment of the liability. The Respondent cannot now claim ignorance or dispute a debt that is explicitly recorded in its own accounts.

4.21 That with respect the acknowledgment of debt and limitation, it is humbly stated that the Email Dated 20.12.2023 is a clear and unequivocal acknowledgment of the outstanding liability. The Petitioner relies on the email dated 20.12.2023 (Annexure I to the Petition) not as a standalone document, but as part of a chain of correspondence that includes the Petitioner's letter dated 15.12.2023. (Exhibit D to the Reply).

4.22 The Respondent's attempt to parse the email of 20.12.2023, claiming it only refers to the FZ LLC entity's dues in AED, is a disingenuous reading. The email is a direct response to the Petitioner's communication which listed two distinct debts: one for FZ LLC. (in AED) and one for the Respondent Corporate Debtor (in USD). By responding to this email and discussing the "outstanding," Mr. Ravi Venkat Subramani, the common director, was unequivocally acknowledging the existence of the debt owed by the Respondent Company.

4.23 It is pertinent to note herein that the email dated 20-12-2023 was admittedly sent by the Corporate Debtor in response to the letter dated 15-12-2023 (filed by CD along with its Reply as Exhibit-D, page 257). It is imperative to state herein that a conjoint reading of both the last effective communication would clearly reflect that the Corporate Debtor had neither denied its liability nor disputed/claimed difference in the outstanding amounts being claimed by the Petitioner.

4.24 It is pertinent to state herein that Free Zone LLC (FZ LLC) entity is a sister concern of the Corporate Debtor having common directorship. It is humbly stated that the dues in default as stated in the petition exclusively pertains to the purchase orders raised by the Respondent Corporate Debtor and not the FZ LLC entity. The purchase orders and the corresponding invoices, ledger statement strictly pertain to the Corporate Debtor alone and the contractual relationship between the parties were governed by the Co-operation Agreement and Die-Amortization agreement (of which the FZ LLC was nowhere a signatory).

4.25 That it is reiterated that the Petition is well within the statutory Limitation period as the default is a continuous one, with the debt being reflected in the latest Statement of Accounts. Crucially, the email correspondence of December 2023, culminating in the Respondent's email dated 20.12.2023, constitutes a clear acknowledgment in writing of the debt, thereby extending the period of limitation under Section 18 of the Limitation Act, 1963. The Petition filed in 2025 is, therefore, well within the period of limitation reckoned from December 2023.

4.26 That in response to the Respondent's "without prejudice" settlement proposal under paragraphs 25-27 of its Reply, it is stated that the same is a tacit admission of the existence of the debt and the financial stress of the Corporate Debtor. It is a last-ditch effort to delay the adjudication of present Petition by this Hon'ble Adjudicating Authority. The Petitioner has already engaged in multiple discussions in good faith, which did not yield any result. The Petitioner is not obliged to endlessly pursue settlement negotiations, especially when the Respondent uses it as a tactic to protract litigation and avoid its lawful liabilities. It is further stated that the "without prejudice" tag, if any, cannot be used as a shield to deny a clear acknowledgment of & jural relationship of debtor and creditor.

4.27 It is further most respectfully stated that the Reply of the Corporate debtor was filed after expiry of almost two months from the service of notice issued by this Hon'ble Tribunal. The Corporate Debtor was even duly served with the advance copy of the company petition at the time of filing and listing. Therefore, it is evident from the conduct of the Respondent that its only intention is to delay and thwart the legal proceedings.

5. WRITTEN SUBMISSION (CD)

5.1. Invoices claimed are invalid and legally untenable as per Clause 3.7, of the Die Amortization Agreement, costs are only recoverable if the Respondent fails to place purchase orders for the required amortization quantity. The Petitioner was obligated to notify the Respondent before raising an invoice. However, the Petitioner has failed to notifiy any such default or shortfall in meeting the purchasing requirements. It is a settled position that when a contract stipulates a specific mode of performing an act (notification of default), it must be performed in that manner or not at all. Further in the petition alleged majority of outstanding invoices pertains to Die Amortization charges.

5.2. Absence of "operational debt" under section 5(21) as The Petitioner has directly approached this Hon'ble Tribunal without ever issuing a single invoice which is allegedly due and payable. In the absence of an invoice or a demand for a crystallized sum supported by the underlying contract's conditions, no "debt" has become "due or payable" under Section 3(12) of the Code. Furthermore, the Petitioner has failed to place on record any invoices pertaining to "commission" or "project material," or "Cost of Development" nor do such claims form part of the present Petition, rendering these amounts speculative and outside the ambit of "Operational Debt" under Section 5(21). Moreover, Export sales, have already been fully discharged by the Respondent, as reflected in the Petitioner's own ledger.

5.3. Existence of prior bona fide dispute exist as the dispute was raised via the Reply to the Statutory Demand Notice dated 19.10.2024. The correspondence proves that the "dispute" is not a feeble legal argument" but is based on the non-performance of the Petitioner.

5.4. Suppression of material facts & misleading acknowledgment exists as the email dated 20.12.2023 was written without prejudice and was written in the course "acknowledgment of debt." of ongoing commercial discussions aimed at exploring settlement possibilities

5.5. Further it is stated that the petition is barred by limitation and that the Applicant is using IBC not for resolution but for recovery.

6. **WRITTEN SUBMISSION (Applicant)**

6.1. The pleadings in the Application/ Rejoinder and Written Submission are same and hence for the sake of brevity the plea in Written Statement not recorded herein.

7. **ANALYSIS AND FINDINGS**

7.1. We have heard the Ld. Counsels for the Applicant and the CD and have perused the records as placed before us. During the course of arguments Ld. Counsel for the Respondent brought to our notice that the due dates of the invoices as per the application fall within 10-A period. He stated that the said defence is not taken in reply or in Written Submissions, however the plea is purely a legal submission and can be taken up at any point of time. Our findings in the matter are as under:

7.2. On perusal of the documents it is observed that Applicant and the CD entered into a Cooperation Agreement dated 10th January, 2019 (Cooperation Agreement), which stipulated that the CD would provide the OC with drawings and technical support and grant it the right to use Facade System Profiles for the extrusion of the Products. In turn, the OC was to introduce and market the Facade System Profiles and sell the products within the Gulf Cooperation Council and worldwide. As per Clause 6.1 of Co-operation Agreement, 3% Commission Charges on the invoice value sold with the support of the OC was agreed to be paid by the CD, within one week of receipt of sale price by the CD from its customers.

7.3. Further both the parties executed a Die Amortisation Agreement dated 1st February, 2019 which stipulated that the OC was to procure dies as per the drawings provided by the CD.

7.4. At the outset it is observed that the Applicant has placed invoices starting from 30.06.2019 till 02.11.2021. The repayment was to be done within 30 days from the date of the Invoice.

7.5. **<u>The claim of the Operational Creditor is based upon the invoices which are detailed herein below:-</u>**

Sr. No.	Invoice Date	Amount Outstanding(In USD)	Due date
1.	30.06.2019	67,830	30.07.2019
2.	30.06.2019	27,450	30.07.2019
3.	31.07.2019	1,980	31.08.2019
4.	01.08.2019	10,135	01.09.2019
5.	30.11.2019	10,115	30.12.2019
6.	30.11.2019	16,410	30.12.2019
7.	31.12.2019	16,410	31.01.2020
8.	31.12.2019	12,645	31.01.2020
9.	31.12.2019	40,630	31.01.2020
10.	14.01.2020	1,484	14.02.2020
11.	16.01.2020	10,117.42	16.02.2020
12.	30.01.2020	436.96	01.03.2020
13.	30.03.2020	32,067.11	30.04.2020
14.	30.04.2020	17,490.00	30.05.2020
15.	01.07.2020	20,750	01.08.2020
16.	20.07.2020	6,785	20.08.2020
17.	05.10.2020	236.30	05.11.2020

18.	06.10.2020	630.00	06.11.2020
19.	13.10.2020	5,485	13.11.2020
20.	04.11.2020	9,395	04.12.2020
21.	05.11.2020	8,805	05.12.2020
22.	23.11.2020	15,540	23.12.2020
23.	10.12.2020	140	10.01.2021
24.	14.12.2020	47.12	14.01.2021
25.	28.12.2020	2,438.89	28.01.2021
26.	02.11.2021	13,754.32	02.12.2021

7.6. It is further observed that majority of the due date of the invoices occurred between 10A period and the claim amount of USD 290,386.90 (in Rs. 2,47,12,012.30) includes the invoices which were due in the 10A period.

7.7. At this moment it is pertinent to refer Section 10A of the code.

"Section 10A. Suspension of Initiation of corporate insolvency resolution process. -

Notwithstanding anything contained in section 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf.

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

The said period was extended by notification dated 24.09.2020 by the Central Government for a period of 3 months vide S.O. 3265 (E) dated 24.09.2020 and was further extended for further period of 3 months till 24.03.2021 vide S.O.4368€ dated 22.12.2020.

7.8. The object behind the enactment of Section 10A was to protect corporate persons from being pushed into insolvency on account of financial distress arising from the unprecedented disruption caused by the COVID-19 pandemic. The legislative intent is explicit that where the default falls within the protected period, initiation of CIRP is permanently barred irrespective of the date on which the application is subsequently filed.

7.9. The Hon'ble Supreme Court in **Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd.,** Civil appeal no. 4050 of 2020, has categorically held that where the date of default falls within the period covered by Section 10A, the embargo is absolute and the application is not maintainable. The expression **"no application shall ever be filed"** employed by the Legislature leaves no scope for any contrary interpretation. Relevant portion of para 23 of the said judgment is reproduced hereunder:

> ***"23*** *Adopting the construction which has been suggested by the appellant would defeat the object and intent underlying the insertion of Section 10A. The onset of the Covid-19 pandemic is a cataclysmic event which has serious repercussions on the financial health of corporate enterprises. The Ordinance and the Amending Act enacted by Parliament, adopt 25 March 2020 as the cut-off date.* ***The proviso to Section 10A stipulates that <u>"no application shall ever be filed"</u> for the initiation of the CIRP <u>"for the said default occurring during the said period"</u>. The***

***expression <u>"shall ever be filed"</u> is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred on or after 25 March 2020 for a period of six months, extendable up to one year as notified**. The explanation which has been introduced to remove doubts places the matter beyond doubt by clarifying that the statutory provision shall not apply to any default before 25 March 2020. The substantive part of Section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of the CIRP in respect of a corporate debtor for a default occurring on or after 25 March 2020; the embargo remaining in force for a period of six months, extendable to one year. Acceptance of the submission of the appellant would defeat the very purpose and object underlying the insertion of Section 10A. For, it would leave a whole class of corporate debtors where the default has occurred on or after 25 March 2020 outside the pale of protection because the application was filed before 5 June 2020.”*

(emphasis supplied)

7.10. Applying the aforesaid settled principle to the facts of the present case, this Bench finds that most of the invoices were defaulted during 10A period. Further the Applicant has failed to provide any bifurcation or clarification to delineate the amounts that fell due during the protected Section 10A window from those falling outside its purview. Consequently, the present Application is hit by the statutory bar contained in Section 10A of the Insolvency and Bankruptcy Code, 2016.

7.11. In view of the foregoing discussion, this Bench is of the considered opinion that the present Company Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 is **not maintainable**, as the alleged defaults have arisen during the period protected by Section 10A of the Code.

ORDER

In view of the aforesaid findings, Application bearing C.P.(IB) No.675/MB/2025 filed under Section 9 of the Code by Gulf Extrusions LLC, the Applicant, for initiating CIRP in respect of **Facade One International Private Limited**, the Corporate Debtor is hereby **Rejected**.

We clarify here that the Applicant has the right to recover the dues by all the means available to him including approaching commercial courts and also to file a fresh application for initiation of CIRP under the provisions of IBC 2016 in respect of the outstanding dues , which have not been defaulted during the 10A period provided the other Requirements of IBC 2016 including meeting the threshold of Rs. One Crore as per Section 4 of IBC,2016.

Rejection of this CP shall not affect the said right of the Applicant provided the same is otherwise permissible under law. It is also made clear that we have Rejected this CP only on the ground that this CP has been filed in respect of the defaults,which include the defaults falling under Section 10A of IBC,2016 and have not expressed our view in regard to other Merits or Demerits of the said CP.

Sd/-	**Sd/-**
NILESH SHARMA **MEMBER (JUDICIAL)**	**SAMEER KAKAR** **MEMBER (TECHNICAL)**