IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA.

C.P.(I.B.) No. 102/KB/2026

Date of Hearing: 13.07.2026

Date of Order: 10.08.2026

In the Matter of:

MKHS HOUSING LLP,

Podra, Langolpota, Near 211 Bus Stop and ACC Cement, P.O. Rajarhat, Bishnupur, North 24 Parganas, Kolkata – 700135.

APPLICANT/OPERATIONAL CREDITOR

Versus

SHIVALAY INFRACON PRIVATE LIMITED,

7, Rabindra Sarani, 4th Floor, Room No. 411, Kolkata – 700001.

RESPONDENT/CORPORATE DEBTOR

CORAM:
Shri. Labh Singh, Hon'ble Member (Judicial)
Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (COURT NO.-II)
KOLKATA.

C.P.(I.B.) No. 102/KB/2026

Present:

For the Applicant. : Ms. Rashmi Singhee, Advocate

Ms. Supriya Harsha, Learned Advocate

O R D E R

Labh Singh Member, (Judicial)

1. The present Company Petition has been filed by MKHS Housing LLP, the Applicant/Operational Creditor (hereinafter being referred to as 'Applicant') for initiation of CIRP against the Respondent, Shivalay Infracon Private Limited Company/Corporate Debtor (hereinafter to be referred as 'Corporate Debtor'), under Section 9 of Insolvency and Bankruptcy Code, 2016 (for short 'the Code') for the alleged default of Rs. 11,13,39,348/- (Rupees Eleven Crore Thirteen Lakhs Thirty-Nine Thousand Three Hundred and Forty-Eight), calculated up to 06.08.2025, on account of supply of materials to the Corporate Debtor.

2. Mr. Srikant Sikaria, a Designated Partner (DIN: 09253182) has been authorised by the Applicant for submitting the application. The copy of the Board Resolution is annexed as **Annexure – B.**

3. Briefly stated that facts of the applicant case are that the applicant is a limited liability partnership firm with the identification no. AAB-4570. The Corporate Debtor approached the Applicant for the supply of materials pursuant to which agreed material were supplied and thus, the payment for the same became due. The copies of letters acknowledging the debt dated 07.06.2023 and 07.01.2024 are annexed as **Annexure – E.**

3.1. It is submitted that on 02.05.2023, an agreement was executed between the parties whereby, the Corporate Debtor acknowledged the liability and sought to convert the operational debt to a loan. The applicant, in pursuance of Board Resolution passed at the meeting of partners held on 21.04.2023, agreed for the conversion of the debt into loan. The agreement contains the due date of 07.01.2024 and an agreed interest of 15% per annum. A copy of the agreement is annexed as **Annexure – D.** A copy of the Board Resolution is annexed as **Annexure – G.**

3.2. The Applicant time and again reminded the Corporate Debtor to clear the outstanding dues vide letters on 15.07.2023, 15.01.2024, 22.01.2024, 29.01.2024 and 05.02.2024. The copies of the emails dated 15.07.2023, 15.01.2024, 22.01.2024, 29.01.2024 and 05.02.2024 are annexed as **Annexures – F.**

3.3. The Applicant approached this Tribunal by filing an application, **C.P. (I.B.) 342/KB/2024** under Section 7 of the Code, wherein this Tribunal observed that a debt of operational nature cannot be re-characterized or treated as a financial debt. The Tribunal, vide an order dated 07.08.2025, allowed the withdrawal of the petition. A copy of the order dated 07.08.2025 is annexed as **Annexure – J.**

3.4. As per Part-IV of the Application an amount of Rs. 11,13,39,348/- (Rupees Eleven Crore Thirteen Lakhs Thirty-Nine Thousand Three Hundred and Forty-Eight) is still due and outstanding to be paid by the Corporate Debtor for the materials supplied by the Applicant.

3.5. The Applicant issued Demand Notice under Section 8 of the Code on 07.08.2025 duly served by hand delivery to the Corporate Debtor. The Applicant has filed an affidavit under Section 9(3)(b) stating that no payment or notice of dispute has been received by Applicant after service of Demand Notice. A copy of the Demand Notice is annexed as **Annexure – K.** The affidavit is annexed at **Page No. 21 of the Application.**

4. This Tribunal issued notice upon Respondent; however, despite due service of notice by way of email, the Corporate Debtor failed to appear before this Tribunal and submit any reply. Thus, the matter was proceeded ex-parte against the Corporate Debtor vide order dated 22.06.2026.

5. We have gone through the case file carefully and perused the pleadings of the Financial Creditor and documents placed on record and heard the arguments put forth by Ld. Advocate appearing for the applicant.

6. The instant application has been filed on 06.04.2026 and the date of default recorded is 30.06.2023. Hence, this application is filled well within the period of statutory limitation.

7. Before we proceed to decide the issue involved in the present matter, it is relevant to refer to the provision of Section 3(11) of IBC 2016, wherein the debt has been defined as a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operation debt. The said relevant provision reads as under:

> *(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*

8. The operation debt has been defined in Section 5(20) of the Code which means a claim in respect of the provision of goods and services including employment or a debt in respect of the payment of dues arising under any law for the time being in force. The relevant provision of Section 5(20) of IBC 2016 read as under:

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

9. In the facts of the present case, it has been proved on record that the Corporate Debtor approached the Applicant for the supply of materials pursuant to which agreed material were supplied and consequently payment became due and not paid by the Corporate Debtor. Thereafter, on 02.05.2023, an agreement was executed between the parties whereby the Corporate Debtor acknowledged the liability and sought to convert the operational debt to a loan. The applicant, in pursuance of Board Resolution passed at the meeting of partners held on 21.04.2023, agreed for the conversion of the debt into loan.

10. Thereafter, the Applicant filed a Company Petition being **C.P. (I.B.) 342/KB/2024** under Section 7 of the Code; however, this Tribunal observed that a debt of operational nature cannot be re-characterized or treated as a financial debt. Consequently, the Tribunal, vide an order dated 07.08.2025, allowed the withdrawal of the petition.

11. Therefore, it has been proved on record that there is a debt of Rs. 11,13,39,348/- (Rupees Eleven Crore Thirteen Lakhs Thirty-Nine Thousand Three Hundred and Forty-Eight) for which the Corporate Debtor has committed default in repayment.

12. Now, it has to be seen whether there is any existence of dispute prior to the filing of the present petition. It is a settled proposition of law that an application under Section 9 of the Code is acceptable once the demand by way of delivery of notice or invoice demanding payment at least an amount of Rs. One crore is made by the operational creditor under Sub Section (1) of Section 8 of the IBC Code 2016 and there is no pre-existing dispute between the parties as defined in Sub Section (6) of Section 5 of the IBC Code 2016. The moment default is of rupees one crore or more, and there is no pre-existing dispute between the parties, the application to trigger Corporate Insolvency Resolution Process under Section 9 of the IBC Code is maintainable.

13. Hon'ble Supreme Court in case of ***Mobilox Innovative Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353,*** observed that:

*"**40.** It is clear, therefore that once the Operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility . It is clear that such notice must bring to the notice of operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster."*

14. In the instant case, the applicant has placed on record a copy of demand notice dated 07.08.2025 which has duly been accepted by the Corporate Debtor by affixing its seal and duly signed by its designated partner. However, despite receipt of demand notice, no notice of existence of a pre-dispute has been served or raised upon the applicant. Therefore, there is no bar for admission of this application under Section 9 of the Code.

15. In view of the above discussion, this Tribunal is of the view that this Company Petition, **C.P. (I.B.) No. 102/KB/2026** is completed and is allowed under Section 9 of the Code and accordingly, we order the initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor.

16. The Applicant has proposed the name of Mr. Chandra Kumar Jain Resolution Professional of the Corporate Debtor. The registration number of the IRP being IBBI/IPA-001/IP-P00214/2017-2018/10414 and email id - ckcacs@yahoo.co.in. Mr. Chandra Kumar Jain has given its written consent in required Form-2 which is attached with the application as **Annexure – C** along with the AFA. Therefore, this bench appoints Mr. Chandra Kumar Jain, as the Insolvency Resolution Professional of the Corporate Debtor.

17. We direct the Applicant to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional, namely Mr. Chandra Kumar Jain to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Applicant. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Applicant.

18. As a consequence of the application being admitted in terms of Section 9(5) of the Code, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate Debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

19. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance reports to the Registrar, NCLT.

Rekha Kantilal Shah — **Labh Singh**
Member(Technical) — **Member(Judicial)**