Case Citation: (2026) ibclaw.in 4026 NCLT

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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 69/9/JPR/2025

IN THE MATTER OF:

Amit Enterprises

...Operational Creditor

Versus

Urvashi Material Trading Company Pvt. Ltd.

...Corporate Debtor

MEMO OF PARTIES

Amit Enterprise
3, Shri Krushna Complex,
Bhudar Pura Road, P.O
Ambavadi, Ahmedabad

... Operational Creditor

Versus

Urvashi Material Trading Company Pvt. Ltd.
R/o 143, Bharat Vila,
Opp. Mother Teresa Asram Krisnapura,
Bhupalpura Main Road, Udaipur (Raj.)

...Corporate Debtor

PRESENT: -
For The Operational Creditor : Karan Pratap Singh, Adv.
Nishant Sarraf, Adv.

ORDER

Order Pronounced On: 16.10.2026

Per: Ms. Reeta Kohli, Judicial Member

1. The instant Petition has been preferred by by *Amit Enterprise* ('Petitioner' / 'Operational Creditor') seeking initiation of corporate insolvency resolution

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process ('CIRP') against *Urvashi Material Trading Company Private* ('Respondent' / 'the Corporate Debtor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for an alleged default of sum amounting to Rs. 1,07,07,595/- (Rupees One Crore Seven Lakhs Seven Thousand Five Hundred Ninety-Five only) as on 31.01.2025.

2. The submissions made by the Petitioner are as follows:-

2.1 The Petitioner is engaged in the business of Building material, Marble Tiles and Electrical items and came in contact with the Respondent for the supply of material to the Petitioner on regular basis.

2.2 The Petitioner issued a Purchase Order dated 01.07.2015 to Respondent for the supply of Customized Marble Tiles, which were to the be specifically manufactured as per the specifications provided by the Petitioner. The supply was to be made before 31.12.2015.

2.3 The Petitioner submitted that pursuant to the Purchase Order, the Respondent demanded an advance payment on the ground that the order involved the manufacture of customized Marble Tiles to which the Petitioner duly agreed. Thereafter, a total of Rs. 1,07,07,595/- was deposited in the account of Respondent on different dates. The Corporate Debtor received and acknowledged Rs. 1,07,07,595/-.

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2.4 It is the case of the Petitioner that the Corporate Debtor failed to supply the agreed material within the stipulated time limit of delivering before 31.12.2015 and defaulted in fulfilling its contractual obligations, despite having received the advance payment from the Petitioner.

2.5 Thereafter, the Petitioner requested timely supply for the smooth functioning of their business but the Respondent failed to supply as per the agreed terms. The Petitioner subsequently demanded a refund of the advance payment made against the purchase orders.

2.6 It is the case of the Petitioner that the Respondent neither paid the advance back nor supplied the material against the purchase orders therefore all the advance amount paid remained pending. However, no remaining dues have been cleared by the Respondent till date.

2.7 Subsequently, the Petitioner sent a Demand Notice dated 08.02.2025 under Section 8(1) of the Code and the Respondent replied to the same vide letter dated 17.02.2025 accepting the debt owed to the Petitioner. Accordingly, the instant Petition has been preferred by the Petitioner under Section 9 of the Code.

3. At this juncture, it is pertinent to mention that the Respondent in this instant case chose not to file any reply. This fact has been recorded vide Order Dated 28.09.2026.

4. Further, vide orders dated 27.07.2026 and 13.07.2026, the Petitioner was directed by this Adjudicating Authority to file the list of past and present

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directors of the Respondent as well as the Petitioner. The Petitioner, in compliance of the aforementioned directions has filed an affidavit dated 11.08.2026.

5. We have heard the Ld. Counsel for both the parties and have perused the documents placed on record.

6. At the outset, it is pertinent to take a note of the chronological progression of the instant proceedings: the notice of motion was issued on 28.10.2025 and the Respondents were duly served on 12.11.2025, in proof of which an affidavit of service was filed on 08.12.2025. Subsequently, the counsel for the Respondent entered an appearance and sought time to file a reply, and further appeared on 10.02.2026 and 11.03.2026. Thereafter, settlement negotiations arose between the parties, spanning several dates, namely 21.04.2026, 11.05.2026, and 25.05.2026, culminating ultimately in the appearance of a new counsel for the Respondent on 22.06.2026.

7. Moreover, it is pertinent to take note of the Order of this Adjudicating Authority dated 28.09.2026. For ease of reference, the same is reproduced as follows:-

> *"In this case vide order dated 27.03.2026 the respondents right to file reply was forfeited. Ld. Counsel for the petitioner has brought to the attention of the Court various orders where Counsel for the Corporate Debtor has tendered appearance and sought time. Subsequently it was informed that the parties were negotiating but ultimately the negotiations failed. The Corporate Debtor was being represented by the Counsel but chose not to file any response. He states that the Corporate Debtor had filed the reply to the notice under Section 8 admitting the debt. Ld. Counsel has also drawn our attention to the Pages 18 to 22 of the petition*

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wherein the ledger account has been sent to the Operational Creditor by the Corporate Debtor itself admitting the debt. In view of the submissions made by the Ld. Counsel for the Petitioner, Reserved for Orders."

The aforementioned Order recorded that the Corporate Debtor chose not to respond despite representation and had previously admitted the debt in its reply to the Section 8 notice.

8. Although the Respondent has raised no objection with regard to the issue of limitation, this Adjudicating Authority deems it appropriate and incumbent upon itself to examine the question of limitation. This course is adopted particularly in light of the fact that the date of default is stated to be 31.12.2015, whereas the present petition has been instituted in April 2025, thereby necessitating a judicial scrutiny of the limitation period to satisfy the statutory mandate.

9. It becomes imperative to refer to the judgment of Hon'ble Apex court in the case of ***B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates [(2019) 11 SCC 633]*** wherein while emphasizing the framework of limitation under the Code, the Hon'ble Supreme Court held in paragraphs 81 and 82 that where an application is filed after a length of time, the applicant must be given an opportunity to explain the delay to ascertain the absence of laches, and crucially, that where there is a continuing cause of action or continuous acknowledgment, the question of rejecting an application on the ground of delay does not arise. For ease of reference, the relevant paras of the aforementioned judgment is reproduced hereunder:-

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> *"81. If there is a delay of more than three years from the date of cause of action and no laches on the part of the applicant, the applicant can explain the delay. Where there is a continuing cause of action, the question of rejecting any application on the ground of delay does not arise.*
>
> *82. Therefore, if it comes to the notice of the adjudicating authority that the application for initiation of "Corporate Insolvency Resolution Process" under Section 7 or Section 9 has been filed after long delay, the adjudicating authority may give opportunity to the applicant to explain the delay within a reasonable period to find out whether there are any laches on the part of the applicant."*

10. In the instant case, a meticulous perusal of the record and annexures, specifically Annexures D to H reveals an unbroken chain of balance confirmations executed and approved by the Corporate Debtor from 31.12.2016 continuously up to 13.07.2024, uniformly reflecting a principal sum of Rs. 1,07,07,595.00 due and payable to the Petitioner. These continuous balance confirmations operate as statutory acknowledgments of debt under Section 18 of the Limitation Act, 1963, effectively refreshing the period of limitation time and again.

11. Furthermore, when the statutory Demand Notice under Section 8 of the Code was issued on 08.02.2025, the Respondent, in its reply dated 17.02.2025, unequivocally admitted the debt and default. Consequently, there exists no legal impediment or bar of limitation against the maintenance of the present petition.

12. At this juncture, it is germane to refer the Judgement of the Hon'ble Apex Court in *Mobilox Innovations Private Limited* wherein in para 25 the

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Hon'ble Supreme Court laid down the guidelines for adjudicating Section 9 Application. The Para 25 is as follows: -

> *"25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*
> *(i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
> *(ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
> *(iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*
>
> *If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."*

13. Keeping in view the facts and circumstances of the case and the judgement of the Hon'ble Apex Court in *Mobilox Innovations Private Limited* the essential required for admission of Section 9 Petition stand satisfied and are as follows:-

a) Existence of operational debt: The Respondent neither supplied the material nor refunded the amount to the tune of Rs. 1,07,07,595/- which was received by the Respondent as advance payment from the Petitioner. In this context, the nature of the transaction being an advance payment made for the supply of goods (i.e., marble tiles) unquestionably constitutes an "operational debt" under the Code. This

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principle has been firmly settled by the Hon'ble Supreme Court in *M/s. Consolidated Construction Consortium Limited v. M/s. Hitro Energy Solutions Private Limited [(2022) 7 SCC 164]*, wherein the Apex Court held in paragraph 43 that a debt which arises out of an advance payment made to a corporate debtor for the supply of goods or services bears a direct nexus with operational requirements and constitutes an operational debt. Hence, this constitutes operational debt within the meaning of Section 5(21) of the Code.

b) Debt exceeds threshold of Rs. 1 Crore.

c) Default occurred- The respondent defaulted in payment of the outstanding dues amounting to Rs. 1,07,07,595/- without interest. The Petitioner issued demand notice on 08.02.2025, clearly calling upon the respondent to discharge the liability. However, even after receipt of demand notice, the Respondent failed to make payment of the outstanding amount. This default constitutes a default within the meaning of Section 3(12) of the Code. Accordingly, the operational debt is admitted, acknowledged and undischarged.

d) Demand Notice dated 08.02.2025 was duly served upon the Corporate Debtor and the CD also filed a reply dated 17.02.2025 admitting the debt. For ease of reference, the reply dated 17.02.2026 is reproduced hereunder:-

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Date: 17/02/2025

To
Mr. Amit Girish Bhai Thakkar
Proprietor, Amit Enterprise
3, Shri Krushna Complex
Bhudar Pura Road, P.O
Ambavadi, Ahmedabad

Subject: Reply to Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016

Dear Sir,

This letter is in response to your demand notice dated 08.02.2025, sent under Section 8 of the Insolvency and Bankruptcy Code, 2016.

I acknowledge that the amount you have mentioned is due and payable. However, I am currently not in a financial position to clear the dues because my business has suffered major losses, and operations have been severely affected. Due to this situation, I am unable to make the payment at this time.

Please understand that I am not avoiding my responsibility. I am trying my best to recover from the current financial difficulties and will keep you informed of any progress or changes in my ability to pay.

I sincerely request your patience and understanding in this matter.

Thank you.

Yours sincerely,

Ravindra Jain
Director
Urvashi Material Trading Company Private Limited

e) No payment has been made towards the Operational Debt.

f) No pre-existing dispute has been established in terms of the Section 8 of the Code.

g) Further, the instant petition is complete with respect to Form-5 i.e., Application of Petitioner to initiate CIRP.

14. Thus, in the present case the existence of debt and default is clearly established from the account statement from the bank/financial institutions maintaining accounts of the ledger account annexed at the page 18-122 of

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the Petition and admission of debt contained in reply dated 17.02.2025 to the demand notice dated 08.02.2025. Hence, all ingredients required for admission of an application under Section 9 of the Code are satisfied. There is no ground for rejection under Section 9(5) of the Code.

15. Accordingly, this Petition is admitted under Section 9 of the Code. CIRP is initiated against the Respondent.

16. In its Company Petition, the Operational Creditor has proposed the name of IRP under sub-section (4) of Section 9 of the Code. Accordingly, this Adjudicating Authority deems it appropriate to appoint Mr. Rajneesh Sharma, having Registration Number IBBI/IPA-002/IP-N01013/2020-2021/13249 and e-mail id *rajneeshsharmacs@gmail.com* duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional.

17. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder. It is directed to the Interim Resolution Professional /Resolution Professional to check the genuineness of the claim while admitting the operational dues of the Petitioner.

18. Consequences of initiation of CIRP shall be inter-alia as follows:

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a. The IRP appointed by the Adjudicating Authority, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.

b. Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate to Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.

c. This Bench also directs for an advance payment of Rs. 1,00,000/- (Rupees One Lakh Only) to be paid by the Petitioner to the Interim Resolution Professional immediately to initiate the CIRP. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the CoC.

d. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

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e. The Registry is directed that this Order shall be communicated within three days from the date of passing of this Order to the Petitioner, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

f. The IRP/ RP is directed to strictly comply with all the provisions of the Code. The IRP/RP shall refrain from filing repetitive progress reports before this Adjudicating Authority unless directed to do so. The IRP/RP is hereby cautioned against treating the present order as a means to delay the timelines of the Corporate Insolvency Resolution Process and is directed to strictly adhere to the timelines stipulated under Section 12 of the Code.

g. Accordingly, *CP No. (IB)-69/9/JPR/2025* is admitted.

REETA KOHLI
JUDICIAL MEMBER

KAVITA BHATNAGAR
TECHNICAL MEMBER

EE/LRA