



**NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH**

CP(IB) No. 23/CB/2025

(An application under Section 9 of The Insolvency & Bankruptcy Code, 2016 read with Rule 6 The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of:

PATNAIK STEEL INTERNATIONAL LIMITED

Represented through its Authorized Signatory,
Mr. Sameer Kumar Rath, Registered Office
At- Apartment No. 2-A, 215,
Sarat Bose Road, Kolkata
West Bengal-700029
And Having its Corporate Office
At: A/22, Falcon House, Cuttack Road,
Bhubaneswar, Dist. Khorda, Odisha-751006.
Email- hr@psil.co.in

..... APPLICANT/OPERATIONAL CREDITOR

Vs.

SSAB ENERGY AND MINERALS LIMITED

Represented through its Director, Swadesh Pritam Swain,
Registered Office at: Plot No. 404/612 and
406/613, 2nd Floor, Madhapur,
In Front of Ankita Hotel, Keonjhar,
Dist. Keonjhar, Odisha-758001.
Email: ssab.rkl@gmail.com (As per MCA Master Data)

..... RESPONDENT/CORPORATE DEBTOR

ORDER PRONOUNCED ON: 10.03.2026

CORAM: DEEP CHANDRA JOSHI, HON'BLE ACTING PRESIDENT

BANWARI LAL MEENA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

FOR APPLICANT: MR. SASWAT K. ACHARYA, ADV.

MS. SUSHREE PHOLGU, ADV.

MR. ABHIJEET AGARWAL, ADV.

MR. SUBHAM AGRAWAL, ADV.

MR. JAISH JOSHI, ADV.

MR. KRUTIBASH MOHAPATRA, ADV.

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MR. DHIREN CHAUDHURY, ADV.

FOR RESPONDENT: MR. SUPRIYO GOLE, ADV.

ORDER

PER: BANWARI LAL MEENA, MEMBER (TECHNICAL)

1. The present application has been filed by one Patnaik Steel International Limited under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**Code**") read with Rule 6 The Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against one SSAB Energy and Minerals Limited seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") for a default of **Rs.1,31,90,803/-**.

SUMMARY OF PLEADINGS

CONTENTIONS BY APPLICANT:

2. The Applicant/Operational Creditor in its application has made inter alia the following averments:

a. The Applicant is an Operational Creditor (hereinafter referred to as "**OC**"), Patnaik Steel International Limited (hereinafter referred to as "**PSIL**") engaged in the business of trading of Iron Ore and the Respondent is the Corporate Debtor (hereinafter referred to as "**CD**"), SSAB Energy and Minerals Limited (hereinafter referred to as "**SEML**"), engaged in the business of manufacturing of refined petroleum products.

b. Pursuant to the purchase order dated 31.12.2021, issued by CD to OC for the supply of 7,700 MT of Iron Ore Fines at a rate of Rs. 3,200/- per MT. PSIL subsequently supplied the materials through invoices dated 17.01.2022, and 04.02.2022 to SEML amounting to Rs. 1,43,45,213/- and Rs. 1,43,45,590/- respectively totalling a gross value of INR 2,86,90,803/- (Rupees Two Crore Eighty-Six Lakh Ninety Thousand Eight Hundred and Three only).

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- c. It is averred by the Applicant that out of the total invoice amount of Rs. 2,86,90,803/-, the CD made partial payments totalling Rs. 1,55,00,000/- through bank transfers. Despite receiving and accepting the full supply of Iron Ore Fines, the CD failed to repay the outstanding balance of Rs. 1,31,90,803/-. The Applicant submits that this remaining debt has been due and outstanding since 13.05.2022, marking the date of continued default.
- d. In view of the continued default, the OC issued a statutory demand notice in Form-3 dated 03.02.2025. The Applicant/OC averred that the said notice was served upon the CD via e-mail on 04.02.2025 and through Speed Post on 05.02.2025, with delivery confirmed on 07.02.2025 and 10.02.2025. Despite receipt of the notice, the Applicant contends that the CD failed to clear the outstanding operational debt, thereby establishing a clear instance of default under the Code.
- e. Upon receipt of the demand notice, the CD issued a reply dated 12.02.2025, raising several contentions to dispute the claim. The CD alleged that a Memorandum of Understanding (“**MOU**”) existed between the CD and one Gleancore Minerals Private Limited (GMPL) dated 31.12.2021, under which GMPL was purportedly responsible for all procurement liabilities and raw material expenses. Furthermore, the CD challenged the validity of the Purchase Order, claiming it was issued by an unauthorized person, and raised a plea that the claim is barred by the laws of limitation.
- f. In response to the aforesaid contentions raised by the CD, the Applicant has dealt with the same as follows:
- i. The Applicant submitted that neither the CD nor GMPL ever intimated or informed the Applicant/OC about the existence of the alleged MOU dated 31.12.2021. The Applicant further contended that the Purchase Order was issued by the CD on its own letterhead and was expressly communicated to the

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OC without any caveat or condition stating that the payment obligations would be borne by GMPL.

- ii. The invoices for the supplies were raised in favour of the SEML and the GST input was deposited in favour of SEML.
- iii. Out of the total invoice amount of Rs. 2,86,90,803/-, the CD has paid Rs. 1,55,00,000/- through bank transfers, which implies the CD was aware of the supply of goods and had made payments for such supply.
- iv. Regarding the payment of Rs. 25,00,000/- from GMPL on 13.05.2022, the Applicant stated that initially, the OC was not aware of the source. However, based on subsequent communications, the said amount was credited into the ledger of the CD, for which the OC issued a letter to the CD confirming the receipt of such payment.
- v. Regarding the Corporate Debtor's plea that the claim is barred by limitation, the Applicant submitted that the invoices were issued on 17.01.2022 and 04.02.2022, and subsequent payments were received on 02.02.2022, 03.03.2022, 29.04.2022, and 13.05.2022. The Applicant contended that these payments serve as an acknowledgment of debt under the Limitation Act, 1963. Consequently, it is averred that the three-year limitation period is applicable from the date of the last payment, making both the Demand Notice and the present application well within the prescribed period of limitation.
- g. The Applicant averred that a total operational debt of Rs. 1,31,90,803/- is due and payable by the Corporate Debtor. It is submitted that this amount has remained outstanding since 13.05.2022, which is the date of the last partial payment. In compliance with the statutory requirements of the Code, the Applicant has filed an affidavit under Section 9(3)(b) affirming that no notice of dispute was received from the Corporate Debtor

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regarding the unpaid operational debt prior to the issuance of the Demand Notice. Furthermore, the Applicant has placed on record certificates from Federal Bank, Barbil Branch, to demonstrate that the claimed debt remains unpaid.

REPLY BY RESPONDENT:

3. The submission by the Respondent/Corporate Debtor are summarised herein:

- a. The Respondent submitted that it is the sole owner of an Iron Ore Benefaction Plant with an approved capacity of 8,00,000 MTPA. It is averred that the CD entered into a MOU dated 31.12.2021 with one M/s. Gleancore Minerals Private Limited (GMPL) to jointly use the said unit on a "Contract Operation Basis". Under the terms of this MOU, which was for a five-month period from 31.12.2021 till 30.05.2022, GMPL was solely responsible for managing operations and providing funds for all raw materials and related expenses. The Respondent specifically contended that according to the MOU, all statutory and other liabilities arising during this agreement period were to be borne by GMPL. Consequently, the Respondent stated that it has no relation to the transaction in dispute and that the Operational Creditor should hold GMPL responsible for the outstanding dues of Rs. 1,31,90,803/-.
- b. The Respondent averred that it has not issued any Purchase Order to the Operational Creditor, asserting that the signature of the "Authorised Signatory" appearing on the purported Purchase Order is not an authorized signature of the Corporate Debtor. It is further submitted that the purported invoices were never received or acknowledged by the Respondent. The Respondent contended that where there is no acknowledgment of liability, the mere raising of invoices in the name of the Corporate Debtor does not create a right to payment or a remedy under the law.

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Furthermore, the Respondent stated it is not aware of any delivery or supply of goods made during the Contract Period, as GMPL was responsible for the operation and management of the unit at that time.

- c. The Respondent submitted that Torque along-with GMPL has assured payment to the OC. It is averred that the Director of Torque as well as GMPL executed an affidavit dated 20.03.2025 before the Sub-Registrar, Keonjhar, stating that by virtue of various agreements *dated 30.04.2021, 31.08.2021, 31.12.2021 and registered agreement dated 16.08.2022 vide document number 1002201400* with the CD, he had procured Iron Ore fines from different suppliers. In the said affidavit, the Director of Torque/GMPL acknowledged that an amount of Rs. 1,31,90,803/- is outstanding and payable by him to the Applicant. The Respondent further contended that the present application cannot be filed against the CD, who has no relation to the purported transaction. It is averred that since Torque along-with GMPL has assured to make the entire payment, the OC should demand the said amount from them and not the purported CD. Additionally, the Respondent pointed out that the last payment of Rs. 25,00,000/- made on 13.05.2022 was received from GMPL, which was acknowledged by the OC via a letter dated 11.11.2022.
- d. The Respondent contended that the last payment made by the CD was on 28.04.2022 for an amount of Rs. 30,00,000/-, and thereafter, subsequent payments were made by GMPL. Consequently, the Respondent submitted that the three-year limitation period for filing the application expired on 27.04.2025. It is further averred that although the application was purportedly filed on 09.04.2025, it was only duly registered on 01.05.2025, which is beyond the limitation period. The Respondent emphasized that limitation should be calculated up

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to the "date of registration" rather than the "date of filing," rendering the present application bad in law and time-barred.

- e. The Respondent contended that the application is liable to be dismissed on the ground of misjoinder of parties. It is averred that pursuant to the agreements and arrangements between the CD and Torque along-with GMPL, it was GMPL that had agreed to pay various suppliers, including the OC. The Respondent submitted that the OC failed to make Torque along-with GMPL a necessary party to the application and has instead wrongfully filed the petition against the CD, who has no relationship or association with the alleged transaction. It is further stated that all raw materials supplied by the OC were utilized by Torque along-with GMPL, and as such, they are the rightful entities responsible for any unpaid dues. The Respondent emphasized that an affidavit has been provided by the Director of Torque and GMPL confirming that the outstanding amount is payable by them and not the CD. Consequently, the Respondent asserted that the application is bad in law and should be dismissed in limine as the CD is not connected with the transaction in question.
- f. The Respondent stated that the OC has failed to annex a record of default from an Information Utility, which is a mandatory requirement under the Code as per the notification dated 03.04.2023. It is submitted that Regulation 20(1A) of the IBBI (Information Utilities) Regulations, 2017, necessitates the filing of such information before initiating CIRP under Section 9. The Respondent contended that the absence of this record makes the present application defective and liable to be dismissed.
- g. The Respondent further averred that the Adjudicating Authority cannot be used as a recovery forum, as the primary objective of the Code is the revival of the CD. It is stated that the CD is an active and compliant company and that sending it into CIRP for

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a debt it is not liable to pay would be unjustified. The Respondent contended that the OC has filed the present application as an arm-twisting tactic to recover an alleged outstanding amount that is properly the liability of Torque along-with GMPL.

- h.** The Respondent submitted that the filing of GST returns by the OC does not prove the existence of an operational debt. It is averred that there must be unimpeachable proof of delivery of goods to establish such a debt. The Respondent stated that it does not have access to the OC's GST portal and, therefore, cannot verify the veracity of the information contained therein.
- i.** Without prejudice to its preliminary objections, the Respondent specifically denied that an outstanding amount of Rs. 1,31,90,803/- is due and payable by the CD. The Respondent reiterated that it cannot be held liable for the said amount, as Torque along-with GMPL have submitted an affidavit admitting full responsibility for the payment of the claimed debt. The Respondent denied the Applicant's assertion regarding lack of notice of the MOU, pointing out that the OC's acceptance of a payment from GMPL on **13.05.2022** indicates awareness of GMPL's involvement in the transaction.
- j.** It is further contended that the payment of Rs. 1,55,00,000/- by the CD does not constitute an admission of liability for the total supply, as the Respondent was not privy to the specific dealings between GMPL and the OC. The Respondent emphasized that the proceedings under the Code are summary in nature and the Adjudicating Authority lacks the scope to adjudicate upon complex factual disputes or oral contracts, which should be referred to a civil court. In conclusion, the Respondent submitted that the total amount claimed and the date of default are strictly disputed, and as the application is devoid of merit, it should be dismissed with costs.

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REJOINDER BY APPLICANT:

4. In response to the contentions raised by the Corporate Debtor in its reply, the Applicant/Operational Creditor filed its rejoinder, making inter-alia the following averments:

- a. The Applicant, in its rejoinder, denied the preliminary objections raised by the Respondent and averred that the application is not barred by limitation, nor is it bad for misjoinder of parties. It is contended that the Respondent's reliance on MOU dated 31.12.2021 is entirely misplaced, as the Applicant was never a party to, nor informed of, any such arrangement. The Applicant submitted that the Purchase Order dated 31.12.2021 was issued directly by the CD on its own letterhead and the goods were supplied and invoiced to the CD alone. Consequently, the Applicant maintained that the private contractual arrangements between the CD and GMPL cannot supersede the direct contractual relationship and the resulting liability of the Respondent to settle the outstanding operational debt.
- b. The Applicant contended that the alleged MOU between the CD and GMPL is *res inter alios acta*, meaning a matter between others which cannot affect the rights of the OC. It is averred that the Applicant was neither a party to nor had any knowledge of such an internal arrangement at the time of supply. The Applicant submitted that as a matter of settled law, a debtor cannot unilaterally absolve itself of a debt by entering into a private agreement with a third party. Consequently, the Applicant maintained that it is not bound by the said MOU and the CD remains the primary entity responsible for the discharge of the operational debt.
- c. It is further averred by the Applicant that the CD's conduct in making substantial part payments totalling Rs. 1,30,00,000/- even after the execution of the alleged MOU constitutes an unequivocal acknowledgement of the debt. The Applicant

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contended that under the doctrine of estoppel, the Respondent is prevented from denying liability or knowledge of the transaction after having voluntarily made such payments. The Applicant submitted that the delivery of goods to the Respondent's premises and the subsequent payments recorded in bank statements establish a direct contractual relationship that the CD is now unable to discharge.

- d.** In response to the Respondent's denial of the Purchase Order, the Applicant asserted that the document dated 31.12.2021 clearly bears the letterhead of the CD and contains all specific terms of supply. The Applicant further highlighted that the GST returns on record reflect the supply made to the Respondent's GSTIN. It is specifically contended that the Respondent has availed the benefit of Input Tax Credit (ITC) for these transactions, which further substantiates the validity of the debt and the receipt of goods.
- e.** The Applicant averred that the affidavit dated 20.03.2025, executed by Mr. Sitesh Kumar Pradhan, pertains to an internal arrangement between the CD, Torque and GMPL, to which the OC was not a party. It is submitted that the OC had no knowledge of such arrangements at the time of supply and is not bound by the same. The Applicant contended that the execution of this affidavit occurred only after the issuance of the Demand Notice on 03.02.2025. It is further maintained that the CD remains liable for the unpaid operational dues, and the production of a third-party assurance does not absolve the Respondent of its primary obligation to pay for the goods received.
- f.** The Applicant averred that the letter dated 11.11.2022, which acknowledged the receipt of Rs. 25,00,000/- from GMPL/Torque, does not establish that the debt was shifted from the CD to any third party. It is submitted that the said receipt was merely for the adjustment of the CD's dues and cannot be construed as an

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acceptance of the internal arrangements between the Respondent and GMPL. The Applicant contended that the letter categorically stated the payment was received "on behalf of the CD", which demonstrates that the OC has consistently recognized the liability as belonging solely to the Respondent under the original Purchase Order.

- g.** The Applicant averred that the Respondent's claim of being unaware of the delivery or supply of goods is fundamentally contradicted by its own conduct in making sequential payments from its bank accounts and availing GST input tax credit. It is contended that a party unaware of a transaction would not make multiple payments without objection, and such a payment history constitutes an admission that the supplies were received and accepted. The Applicant further submitted that the alleged MOU itself authorized GMPL to procure materials "on behalf of the CD," which squares with the fact that invoices were raised in the name of the Respondent with the consignee specified as the Respondent's plant.
- h.** In response to the contentions regarding limitation, the Applicant denied that the present petition is time-barred. It is submitted that the limitation period must be calculated from the "date of filing" of the application rather than the date of its registration, as supported by established judicial precedents. The Applicant averred that since the last payment was made on 28.04.2022, the filing of the present petition on 09.04.2025 is well within the prescribed three-year period.
- i.** In response to the plea of misjoinder, the Applicant submitted that the application is correctly filed against the entity that issued the purchase order and received the goods. It is contended that the Code does not provide for filing a single application against multiple parties for a single debt, and any internal arrangement between the Respondent and third parties does not absolve the

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Respondent of its direct liability towards the OC. The Applicant maintained that the Respondent is free to recover amounts from third parties as per their internal arrangements, but this is not a valid ground for the dismissal of the present insolvency resolution process.

- j. The Applicant averred that the Respondent's denial of any relationship or association with the transaction is directly contradicted by the presence of invoices, GST returns, and records of payments made from the CD's own bank accounts. It is contended that the Respondent's admission of making payments for the supplies while simultaneously denying any contractual relationship reflects an intention to obscure the existence of the debt.
- k. In response to the contention regarding the Information Utility, the Applicant submitted that a certificate from the Information Utility is not a mandatory requirement for filing an application under Section 9 of the Code. The Applicant **relied** on the decision of the Hon'ble NCLAT in ***Vijay Kumar Singhania vs. Bank of Baroda (Company Appeal (AT)(Ins.) No. 1058 of 2023***, asserting that the Information Utility Certificate is not mandatory for proving default. Furthermore, the Applicant **cited** the order of this Hon'ble Tribunal in ***Sidhgiri Holdings Pvt. Ltd. vs. Bhilai Jaypee Cement Ltd. (C.P.(IB) No. 51/CB/2024***, maintaining that such a certificate is directive in nature and not mandatory.
- l. Regarding the contention that the Tribunal is being used as a recovery forum, the Applicant averred that the present case involves a clear operational debt that became due and payable with no genuine dispute existing at the time of the demand notice. The Applicant contended that the Respondent raised the alleged disputes for the first time only in response to the demand notice, indicating there was no pre-existing dispute. It is further submitted that the acknowledgment of debt through substantial

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payments made by the CD itself demonstrates that the application is filed for insolvency resolution and not mere recovery.

- m.** In response to the contention that GST filings do not prove the existence of an operational debt, the Applicant submitted that GST returns, when considered alongside invoices, purchase orders, and bank statements, collectively establish the existence of the debt. It is averred that GST invoices issued to and acknowledged by the CD serve as valid evidence of debt, supported by a catena of judicial precedents holding that GST returns are valid grounds for proof of operational debt. The Applicant highlighted that the Respondent has neither disputed the GST returns nor denied availing the benefit of ITC for the said transactions. Furthermore, the Applicant relied on Regulation 2B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which mandates the furnishing of Form GSTR-1 and GSTR-3B to prove the acknowledgment of debt and verify the genuineness of the transaction.
- n.** In response to the contentions regarding the nature of the debt, the Applicant submitted that the outstanding amount arises from the specific supply of Iron Ore Fines to the CD. It is averred that the debt is due and payable because the Respondent placed the orders, duly accepted the material, and made sequential payments from its own bank accounts for the said supplies. The Applicant contended that the debt and default are further established by the Respondent's own conduct in creating a purported MOU with a third party. It is maintained by the Applicant that this arrangement was an attempt to shift the Respondent's liability and convert a valid operational debt into a bona fide dispute.
- o.** In response to the Respondent's contention of not being privy to the transactions between the OC and GMPL, the Applicant

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averred that such a claim is directly contradicted by the CD's own bank statements. The Applicant submitted that it is standard business practice that a party unaware of a transaction does not make deliberate payments totalling Rs. 1,30,00,000/- or avail the benefit of ITC for said transactions. It is further contended that the Respondent cannot simultaneously deny knowledge of the supply while producing its own ledger entries proving and remitting these payments. The Applicant highlighted that in its reply to the demand notice, the CD admitted that GMPL was authorized "on behalf of" the CD. Consequently, the Applicant maintained that the Respondent's attempt to use the MOU to shift liability for materials procured during the contract period is inconsistent with its own acknowledgment of payments made to the OC.

- p. The Applicant averred that the Respondent has failed to raise any specific or genuine pre-existing dispute apart from its reliance on an internal arrangement with GMPL. It is submitted that the Respondent's attempt to characterize this arrangement as a "dispute" is an afterthought, as the payments made by the Respondent and the receipt of goods were never questioned prior to the demand notice. The Applicant contended that the internal disputes or liabilities between the CD and its third-party contractors (GMPL/Torque) cannot be used as a shield to deny the operational debt owed to the Applicant. It is further maintained that the responsibility for the payment of the operational debt rests solely with the CD, which has admitted to its inability to discharge the same by attempting to shift the burden to a third party.
- q. The Applicant averred that the Respondent has failed to raise any specific or genuine dispute in its reply, and the contentions raised therein are a mere afterthought. It is denied that there is any merit in the Respondent's defence regarding the internal

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arrangements with third parties. The Applicant maintained that all other allegations and contentions made by the CD in its Reply, which are not specifically admitted by the Applicant, are denied as being false and baseless.

ANALYSIS AND FINDINGS

5. We have heard the Learned Counsels for both the parties and perused the documents available on record including the written submissions made by both the parties. To adjudicate an application filed under Section 9 of the Code, this Adjudicating Authority is required to determine:

- (i) Whether there exists an "operational debt" and a subsequent "default" as defined under the Code;
- (ii) Whether the said debt exceeds the threshold limit of Rs. 1 Crore as stipulated under Section 4 of the Code;
- (iii) Whether there exists any "pre-existing dispute" between the parties prior to the issuance of the Demand Notice; and
- (iv) Whether the application is within the period of limitation.

6. Adverting to the first and second issues regarding the existence of debt and the pecuniary threshold, it is observed from the record that the Applicant supplied Iron Ore Fines to the CD pursuant to the Purchase Order dated 31.12.2021. To substantiate the claim, the Applicant has placed on record two invoices dated 17.01.2022 and 04.02.2022. The total value of the transactions as per the ledger stands at Rs. 2,86,90,803/-, against which the CD has made part-payments totalling Rs. 1,55,00,000/- on various dates between 02.02.2022 and 13.05.2022. The resulting principal outstanding amount of Rs. 1,31,90,803/- (Rupees One Crore Thirty-One Lakh Ninety Thousand Eight Hundred and Three only) clearly satisfies the threshold limit of Rs. 1 Crore as mandated under Section 4 of the Code.

7. Regarding the third issue of the occurrence and date of default, the Applicant has initially designated **11.02.2022** as the primary date of default in the Petition. This calculation is rooted in the terms of the

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Purchase Order dated 31.12.2021, which stipulates that payment for the supplied Iron Ore Fines was to be remitted within 7 days of the invoice date. Given that the final invoice was raised on 04.02.2022, the debt became due and payable upon the expiry of the credit period on 11.02.2022.

However, it is observed from the record, specifically the ledger account and bank statements, that the CD continued to make intermittent part-payments towards the outstanding invoices well after the initial date of default. The record reflects that while payments were made on various dates, the last significant credit toward the principal debt was received on 28.04.2022. Under the Scheme of the Code, a "default" occurs when the debt becomes due and payable and is not paid. Since the CD failed to clear the remaining principal balance of Rs. 1,31,90,803/- following the last payment, the updated date of default is effectively shifted to 28.04.2022. We find that as the default exceeds the statutory threshold and occurred prior to the issuance of the Demand Notice dated 03.02.2025, the requirements of Section 9 of the Code are satisfied.

8. The fourth issue pertains to whether the application is barred by limitation. During the course of the proceedings, it is noted that the CD had initially raised a preliminary objection regarding the limitation period. However, as per the **Interim Order dated 10.02.2026**, the Ld. Counsel for the Respondent explicitly stated that they **would not be pressing the point of limitation**. Upon perusal of the record, it is observed that the last part-payment towards the operational debt was made by the CD on **28.04.2022**. Since the present application was filed on **09.04.2025**, which is within a period of three years from the date of the last payment, we find that the application is well within the period of limitation and is maintainable.

9. The Respondent asserted that it has no relationship with the transaction in dispute and contended that pursuant to an internal MOU dated 31.12.2021, a third party GMPL, was solely responsible for

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managing plant operations and providing funds for all raw materials. The Respondent further relied on an Affidavit of Mr. Sitesh Pradhan (Director of GMPL) dated 20.03.2025, wherein the third-party purported to acknowledge the debt as its own.

The Applicant submitted that there exists a direct, binding, and enforceable privity of contract between the Applicant and the CD. The Applicant relied on the fact that the Purchase Order was issued by the Corporate Debtor on its own letterhead and the invoices were raised specifically in the name of the Respondent. The Applicant further cited the judgments of the Hon'ble NCLAT in ***Rahee Jhajharia E to E JV v. MB Power (Madhya Pradesh Ltd.) [2025 SCC OnLine NCLAT 565]*** and ***Harrish Khurana v. One World Realtech P. Ltd. [2021 SCC OnLine NCLAT 5547]***, which establish that a direct contractual relationship between the OC and the CD is an essential prerequisite for a Section 9 petition.

The existence of a direct privity of contract between the Applicant and the Respondent is clearly established by the documentary evidence on record. A Section 9 petition is founded on the contractual relationship between the supplier and the recipient of goods. In the present case, every primary document i.e. the Purchase Order, the Invoices, and the Consignee details points exclusively to the CD.

10. The Applicant (PSIL) brought to the attention of this Tribunal that the Respondent (SEML) is a habitual litigant raising identical, "moonshine" defences to evade operational debts. The Applicant relied on the judgment passed by this Bench in ***Meghraj Logisales Pvt. Ltd. v. SSAB Energy & Minerals Ltd. [CP(IB) No. 11/CB/2025]***, dated 12.06.2025. In that matter, this very CD raised the exact plea currently before us: that the liability belonged to a third party (**Torque Minerals Pvt. Ltd.**) by virtue of an internal agreement and an affidavit from Mr. Sitesh Kumar Pradhan.

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The Applicant further highlighted a significant discrepancy and an apparent attempt to mislead this Tribunal regarding the quantum of debt. In **Meghraj Logisales (Supra)**, the petition was dismissed on the technical ground that the defaulted debt was **Rs. 25,45,787/-**, which fell below the statutory threshold of Rs. 1 Crore. However, in the present proceedings, the Respondent has placed on record an Affidavit of Mr. Sitesh Pradhan dated 20.03.2025, which admits that as of 28.02.2025, the liability of the CD towards **Meghraj Logisales (Supra)** was actually Rs. 2,34,16,238/-. This categorical admission in the affidavit contradicts the defence taken by the CD in the previous litigation and demonstrates a pattern of inconsistent and *mala fide* pleadings designed to stall insolvency proceedings.

11. The Respondent's conduct in the present matter mirrors the strategy rejected in the **Meghraj Logisales (Supra)**. The use of an identical affidavit from Mr. Sitesh Pradhan executed only after the Section 8 Demand Notice was served, serves no purpose other than to create an artificial dispute. The CD cannot be permitted to use the same third-party "shield" repeatedly to deny admitted operational debts, especially when its own bank statements and GST filings confirm the receipt of goods and part-payment to the Applicant. Consequently, following the ratio in **Meghraj Logisales (Supra)**, we hold that the internal arrangements between the Respondent and GMPL/Torque Minerals have no bearing on the Applicant's right to seek insolvency resolution against the CD.

12. The next issue for consideration is whether there exists any "pre-existing dispute" between the parties prior to the issuance of the Demand Notice dated 03.02.2025. The Respondent has primarily relied upon a MOU dated 31.12.2021, executed between the CD and a third party, GMPL. The Respondent contends that as per the terms of this MOU, the liability for payment towards the supplied Iron Ore Fines was transferred to GMPL, and therefore, no debt is owed by the CD to the Applicant.

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Upon a careful perusal of the record, it is observed that the Purchase Order dated 31.12.2021 was issued by the CD directly to the Applicant. Furthermore, the invoices dated 17.01.2022 and 04.02.2022 were raised in the name of the CD and were duly accepted without any protest or demure. Most significantly, the CD has made substantial part-payments totalling **Rs. 1,30,00,000/-** directly to the Applicant's bank account. We find that a "dispute" under Section 5(6) of the Code must be a genuine and substantial dispute, and not a moonshine defence. The conduct of the CD in issuing the Purchase Order, accepting the invoices, and making part-payments directly to the Applicant contradicts lack of privity or a pre-existing dispute.

13. Furthermore, it is a settled position of law that a dispute, to be considered "pre-existing", must have been raised by the CD prior to the issuance of the Demand Notice under Section 8 of the Code. In the present case, the Respondent failed to produce any correspondence or communication addressed to the Applicant prior to 03.02.2025 that would indicate any dissatisfaction with the quality of goods or the existence of a counter-claim. The reliance on an internal MOU with a third party, to which the Applicant was not a signatory, does not constitute a "dispute" in relation to the operational debt owed to the Applicant. Consequently, we find that there is no pre-existing dispute in the eyes of the law.

14. The Respondent contended that the liability for the operational debt was shifted to **GMPL** by way of an MOU dated 31.12.2021, thereby constituting a novation of the original contract. To support the argument that a substituted agreement discharges the original liability, the Respondent relied on:

- ***BSNL v. BPL Mobile Cellular Ltd. (2008) 13 SCC 597***
- ***Nagendra Kumar Brijraj Singh v. Hindustan Salts Ltd., 2000 GLH (3) 402***

The Respondent's reliance on these cases is fundamentally misplaced. In *BSNL (Supra)*, the Court dealt with the interpretation of existing

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contractual terms between the parties, not the unilateral substitution of a debtor without the creditor's consent.

15. In the case of *Nagendra Kumar Brijraj (Supra)*, the Petitioner had been offered a new employment contract at a lower pay scale due to the company's financial difficulties. Crucially, the Petitioner there had **accepted the new offer unconditionally** and of his own volition. The Court held that by such unconditional acceptance, the parties had entered into a new contract by **mutual agreement**, thereby discharging the old one.

In the present case, there is no such "unconditional acceptance" or "mutual agreement" by the Applicant. Unlike the petitioner in *Nagendra Kumar* who chose to sign a new contract, the Applicant here never signed the MOU nor agreed to substitute the Respondent with GMPL. Therefore, the ratio of *Nagendra Kumar (Supra)* which hinges on **mutual volition and acceptance** cannot be applied to a situation where a debtor unilaterally attempts to shift its burden to a third party without the creditor's consent.

16. The Applicant submitted that a unilateral transfer of liability by the CD to a third party, without the express consent of the Creditor, is legally impermissible and unenforceable. In support of this contention, the Applicant relied on the judgment of the Hon'ble NCLAT in ***Chetan Sharma v. Jai Lakshmi Solvents Pvt. Ltd. [2018 SCC OnLine NCLAT 240]***, wherein the Appellate Tribunal considered an identical defence involving an MOU executed between a CD and a third party.

Relevant paragraphs of this judgment are as follows:

"17. ...The creditor can always transfer its assets (debt) to an assignee but the borrower cannot transfer its liability of debt to a third party. Therefore, the appellant cannot take advantage of agreement of transfer of liability of debt of the 'corporate debtor' to Mr. Dinesh Arora."

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“18. The alleged memorandum of understanding was never signed by the “operational creditors”. It is not the case of the appellant that the memorandum of understanding was signed on behalf of the “corporate debtor”; in fact, the memorandum of understanding relied upon was signed as an inter se agreement between shareholders of the “corporate debtor” with Mr. Dinesh Arora, which has no binding effect on the ‘operational creditors’.”

“19. ...Who received the supply on behalf of the ‘corporate debtor’ is an inter se dispute amongst the directors and the staff officers or the employees of the ‘corporate debtor’. In absence of privity of contract between the ‘operational creditors’ and Mr. Dinesh Arora, the ‘operational creditor’ could not have made any claim against him based on an agreement reached between two shareholders of the ‘corporate debtor’.”

“20. ...If there is any fraud played by one or other shareholders or ex shareholders of the ‘corporate debtor’, the aggrieved shareholder may take appropriate step against the other shareholder but that will not absolve the ‘corporate debtor’ of its liability of payment to the ‘operational creditors’.”

The ratio laid down in **Chetan Sharma (supra)** is applicable to the facts of the present case. The Respondent’s defence is predicated on an internal MOU dated 31.12.2021 executed with GMPL. It is an admitted fact that the Applicant is not a signatory to this MOU. Applying the principle established by the Hon'ble NCLAT, such an agreement is *res inter alios acta*, i.e. a matter between others which cannot affect the rights of the OC. The Respondent cannot unilaterally transfer its liability of debt to a third party.

17. We find that the plea of Novation raised by the Respondent lacks the essential legal ingredient of tripartite consent. Under Section 62 of the Indian Contract Act, 1872, a contract is only novated when all

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parties to the original contract agree to the substitution. The Respondent's reliance on the MOU dated 31.12.2021 is a unilateral attempt to shift liability to a third party, GMPL, which is legally impermissible in the absence of the Creditor's consent.

The law on this point is squarely settled by the Hon'ble Supreme Court. In **Lata Construction & Ors. v. Dr. Rameshchandra Ramniklal Shah [(2000) 1 SCC 586]**, the Apex Court at **Paragraph 10** observed as follows:

"10. One of the essential requirements of 'novation', as contemplated by Section 62, is that there should be complete substitution of a new contract in place of the old. It is in that situation that the original contract need not be performed. Substitution of a new contract in place of the old contract which would have the effect of rescinding or completely altering the terms of the original contract, has to be by agreement between the parties. A substituted contract should rescind or alter or extinguish the previous contract."

This principle has been recently reaffirmed by the Hon'ble Supreme Court in **Catalyst Trusteeship Ltd. v. Ecstasy Realty (P) Ltd. [2026 SCC OnLine SC 300]**. At **Paragraph 18**, the Court held:

"18. We may also note that Section 62 of the Contract Act, 1872, speaks of novation of a contract when the parties to that contract agree to substitute a new contract for it, i.e., all the parties to such contract must be in consensus as to such substitution....."

18. In the present matter, the Applicant (PSIL) was not a party to the MOU dated 31.12.2021 between the Respondent and GMPL. A contract cannot be novated "behind the back" of the creditor to discharge the original debtor without the creditor's explicit agreement to accept a new debtor in their place. Following the ratio in **Chetan Sharma (Supra)**, any inter se agreement between a CD and a third party has no binding effect on the OC. Consequently, the original contract, evidenced by the

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Purchase Order dated 31.12.2021 and subsequent invoices issued to the Respondent, remains valid and enforceable. We, therefore, hold that no novation of contract took place, and the Respondent remains primarily liable for the outstanding operational debt.

19. The Respondent raised a defence under **Section 41 of the Indian Contract Act, 1872**, contending that the Applicant is precluded from seeking the debt from the CD. The Respondent argued that by accepting a payment of Rs. 25,00,000/- from a third party i.e. **GMPL**, on 13.05.2022, the Applicant has accepted the performance of the promise from a third person. The Respondent's contention is that once the promisee (Applicant) accepts performance from a third person, the promisor (Respondent) stands discharged from the liability. ***It is pertinent to note that this specific argument regarding Section 41 was not part of the pleadings raised by the Respondent in its Reply and was introduced subsequently in later stage of proceedings.***

20. The Respondent's interpretation of Section 41 is legally unsustainable in the context of the present facts. Section 41 requires that the performance accepted from the third party must be in total discharge of the obligation. In this case, the total debt amounted to Rs. 2,86,90,803/-. **The acceptance of a solitary part-payment from a third party cannot be construed as an acceptance of that third party as a substitute for the primary debtor for the entire outstanding balance, especially when the CD itself remained the primary entity making substantial payments from its own accounts.**

21. The Applicant strongly rebutted this plea, first noting that this argument was not pleaded in the initial Response and was only raised orally during arguments on 10.02.2026. Substantively, the Applicant contended that Section 41 applies only when a contract is **fully performed** by a third party, and not merely performed in part. The Applicant relied on the following precedents:

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- **Chandrasekhara Hebbar v. Vittala Bhandari [1965 SCC OnLine Kar 54]**
- **BRS Ventures Investments Ltd. v. Srei Infrastructure Finance Ltd. [(2025) 1 SCC 456]**

22. The Applicant's reliance on these authorities is relevant to the present facts. In **Chandrasekhara Hebbar (Supra)**, the Hon'ble High Court of Karnataka held at **Paragraph 10** that:

"10. Although the Privy Council did not say in so many words that the contract should have been performed in full, the clear meaning of what was said is that the contract must have been fully performed, its performance in part being not enough."

Similarly, the Hon'ble Supreme Court in **BRS Ventures (Supra)** held at **Paragraph 44.1** that:

"44.1. Payment of the sum of Rs.38.87 crores to the 1st respondent financial creditor under the resolution plan of the corporate guarantor-ACIL will not extinguish the liability of the 2nd respondent-principal borrower/corporate debtor to pay the entire amount payable under the loan transaction after deducting the amount paid on behalf of the corporate guarantor in terms of its resolution plan;"

These precedents confirm that a partial payment by a third party, such as the Rs. 25,00,000/- paid by GMPL here, does not discharge the Corporate Debtor from the balance liability of Rs. 1,31,90,803/-.

23. The plea of discharge under Section 41 is legally unsustainable in the present facts. The core requirement of Section 41 is that the promisee must accept the third party's act as a substituted performance of the original promise. The law on this point is settled by the Hon'ble Supreme Court in **Lala Kapurchand Godha v. Mir Nawab Himayatalikhan Azamjah [(1963) 2 SCR 168]**. In this landmark judgment, the Apex Court observed at **Paragraph 8** as follows:

"8. ...In India, however, the words of Section 41 of the Contract Act leave no room for doubt, and when the appellants have accepted

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performance of the promise from a third person, they cannot afterwards enforce it against the promisor, namely, the respondent."

While the Respondent relies on this principle, the facts of *Lala Kapurchand Godha (Supra)* are clearly distinguishable. In that case, the creditor had recorded "received payment in full" and endorsed full satisfaction on all promissory notes after accepting a sum from a Government Committee. The Court found that the creditor had accepted the money on the condition that it was in full satisfaction of the claim.

In the case at hand, there is no such "full satisfaction" recorded by the Applicant. On the contrary, the Applicant's letter dated 11.11.2022 explicitly states the payment was received "**on behalf of the Corporate Debtor,**" and the remaining debt was consistently demanded from the Respondent. Merely accepting a part-payment from a third party without an express agreement to discharge the principal debtor does not satisfy the "acceptance of performance" required under Section 41. As per the ratio in *Chandrasekhara Hebbar (supra)*, performance in part is not enough to invoke the section. Therefore, we hold that the Respondent remains liable for the balance operational debt.

24. The Respondent raised a preliminary objection regarding the maintainability of the application, contending that the Applicant failed to annex a record of default from an Information Utility (NeSL). The Respondent submitted that as per the notification dated 03.04.2023 and Regulation 20(1A) of the IBBI (Information Utilities) Regulations, 2017, the production of such a Certificate is a mandatory requirement for initiating CIRP under Section 9 of the Code. The Applicant rebutted this contention by stating that the requirement to furnish an Information Utility certificate is directory and not mandatory for proving default under Section 9 of the Code. In support of this legal position, the Applicant relied on the following judicial precedents:

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- **Vijay Kumar Singhania v. Bank of Baroda [Company Appeal (AT)(Ins.) No. 1058 of 2023]**: Wherein the Hon'ble NCLAT held that an Information Utility Certificate is not mandatory for proving the existence of a default.
 - **Sidhgiri Holdings Pvt. Ltd. v. Bhilai Jaypee Cement Ltd. [C.P.(IB) No. 51/CB/2024]**: Wherein this Adjudicating Authority, vide order dated 15.10.2024, held that the requirement for such a certificate is directory in nature.

While the Information Utility (NeSL) serves as an efficient record of default, its absence is not a fatal defect that warrants the dismissal of a Section 9 application, provided the default is otherwise established through “unimpeachable” documentary evidence. In the present case, the Applicant has placed on record the Purchase Order, Invoices, Bank Statements, and GST Returns, which collectively provide a clear trail of the operational debt and the subsequent default. Following the ratio laid down in **Vijay Kumar Singhania (Supra)** and our own earlier findings in **Sidhgiri Holdings (Supra)**, we hold that the Information Utility Certificate is directory in nature. Since the existence of the debt and the default is substantiated by other statutory records, the objection raised by the Respondent on this ground is rejected.

25. In light of the aforesaid analysis, we are of the considered view that the Applicant has successfully established the existence of an operational debt exceeding the statutory threshold of Rs. 1 Crore and a subsequent default by the CD. The defences raised by the Respondent concerning the lack of privity, novation under Section 62, and third-party performance under Section 41 of the Indian Contract Act are found to be legally unsustainable and "moonshine" in nature.

26. As the Application is complete in all respects and no pre-existing dispute has been established prior to the issuance of the Demand Notice, the Application filed by the OC under Section 9 of the Code

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hereby stands **ALLOWED** and SSAB Energy and Minerals Ltd. is **admitted** into CIRP.

27. A moratorium is declared under Section 14 of the Insolvency and Bankruptcy Code, 2016, prohibiting the following actions in terms of Section 14(1) of the Code:

- a. The institution of suits or continuation of pending suits or proceedings against the CD, including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the CD any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the CD in respect of its property, including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD.
- e. The moratorium shall remain in force from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves a resolution plan under section 31(1) of the code or passes an order for liquidation of the CD under Section 33 of the Code, whichever is earlier.

28. We hereby appoint **Mr. Suresh Chandra Pattanayak**, having Registration No. **IBBI/IPA-002/IP-N00759/2018-19/12384**, as the Interim Resolution Professional (IRP) in terms of Section 16(4) of the Code. The IRP has filed his written consent in Form-2 and has affirmed that no disciplinary proceedings are pending against him.

29. The IRP shall be appointed separately in accordance with the provisions of the Code and the rules and regulations made thereunder, subject to confirmation of possession of a valid Authorisation for Assignment in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

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30. The IRP so appointed shall make a public announcement of the initiation of the CIRP and call for submission of claims in terms of Section 15 read with Section 13(1)(b) of the Code.
31. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated, suspended, or interrupted during the moratorium period. The CD shall extend full assistance and co-operation to the IRP in discharge of his duties as and when he takes charge of the assets and management of the CD.
32. The IRP shall perform all its functions as contemplated, inter alia, by sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with CD, its Promoter or any other person associated with the management of the CD are under a legal obligation under Section 19 of the Code to extend every assistance and co-operation to the IRP. Where any personnel of the CD, its Promoter, or any other person is required to assist or co-operate with IRP, but does not assist or co-operate, the IRP is at liberty to make an appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
33. The IRP shall be under a duty to protect and preserve the value of the property of the CD and manage the operations of the CD as a going concern as a part of the obligation imposed by Section 20 of the Code.
34. The IRP/RP shall submit periodic progress reports before this Adjudicating Authority in accordance with the provisions of the Code and the regulations framed thereunder.
35. The OC shall deposit an initial amount of Rs.2,00,000/- (**Rupees Two Lakhs only**) within **3 days** (Three days) from the date of receipt of this order towards the expenses of the CIRP. Proof of such deposit shall be filed before this Adjudicating Authority along with the first progress report. The IRP shall be at liberty to seek further interim finance, as required, in accordance with law.

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36. Further, the Registry is directed to communicate a copy of this order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the concerned Registrar of Companies within seven working days and upload the same on the website of this Tribunal immediately after pronouncement.

37. The IRP shall also serve a copy of this order upon statutory authorities including the Income Tax Department, GST authorities, State commercial Tax Department, Provident Fund authorities and such other authorities as may have claims against the CD, as well as employees or workmen associations, if any.

38. The Corporate Insolvency Resolution Process shall commence from the date of this order.

39. The Resolution Professional shall submit reports and compliances before this Adjudicating Authority strictly in accordance with the timelines prescribed under the Code and the regulations made thereunder.

40. The application bearing **CP(IB) No. 23/CB/2025** stands **ALLOWED.**

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BANWARI LAL MEENA
MEMBER (TECHNICAL)

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DEEP CHANDRA JOSHI
ACTING PRESIDENT