



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.154/ALD/2024

(An application filed 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:

Aarti Industries Limited,
Plot No. 801/23, G.I.D.C Estate, Phase III,
Vapi-396 195, Dist.-Valsad, Gujarat, India.

... Operational Creditor

Versus

Magma Industries Limited
C-24 to 28, UPSIDC Industrial Area,
Muzzafarnagar, Uttar Pradesh, India-251203

...Corporate Debtor

Order Pronounced on:09.04.2026

Coram:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

Appearances:

Sh. Arjun Sheth with Sh. Rishabh Shah, Advs. : *For Operational Creditor*

Sh. Prakash Chandra, Adv. : *For the Corporate Debtor*

ORDER

1. The present Application has been filed on 30.10.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “the

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Code/IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as “the Rules”) by M/s Arti Industries Limited (hereinafter referred as "Applicant/Operational Creditor") to initiate the Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against M/s Magma Industries Limited (hereinafter referred as "Corporate Debtor") due to its failure to pay the total outstanding operational debt of Rs. 8,21,04,743/- comprising of Principal Amount: Rs. 6,04,92,541/- and Interest Amount: Rs. 2,16,12,203/- (24% interest calculated till 25.07.2024) as stated in part-IV of the application.

2. It is stated that Applicant Operational Creditor is engaged in the manufacturing and supplying of speciality chemicals.
3. As stated, the Corporate Debtor for the purpose of business approached the Applicant for supply of the Para Nitro Chloro Benzene ["PNCB"], Ortho Chloro Nitro Benzene ["ONCB"] & PNCB flakes (collectively referred to as "Goods") to the Corporate Debtor. For the same, the Corporate Debtor raised the following purchase orders:
 - i. P.O No. 095/2022-2023 dated 04.07.2022.
 - ii. P.O No. 124/2022-2023 dated 02.08.2022
 - iii. P.O No. 154/2022-2023 dated 29.8.2022
 - iv. P.O No. 200/2022-2023 dated 07.10.2022

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- v. P.O No. 306/2022-2023 dated 07.01.2023, (collectively referred to as the "Purchase Orders") for the supply of Goods, to be supplied from time to time to the Corporate Debtor.
4. Copies of Purchase orders issued by the Corporate Debtor have been annexed as Annexed as Annexure-D with the Application.
 5. Accordingly, the Operational Creditor supplied the materials as per the purchase orders to the Corporate Debtor and the same has been received by the Corporate Debtor. Copies of Tax Invoices along with the e-way bills, and delivery notes have been annexed as Annexure-E with the Application.
 6. It is submitted that as per the terms of the tax invoices, the Corporate Debtor had to pay the amount within the period of 90 days. However, the Corporate Debtor failed to comply with the terms of the tax invoices and defaulted in payment of due amount. The Applicant states that the Corporate Debtor has received all the goods and had never raised any objections with regard to the quality of the supplied Goods.
 7. As submitted, the Operational Creditor had time and again reminded the Corporate Debtor by way of emails to pay the outstanding amount. However, the Corporate Debtor failed to pay the outstanding amount, and therefore committed default. Copies of the email communications have been annexed as Annexure-F with the application.

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8. The Applicant states that after sending various reminders, the Corporate Debtor issued cheques bearing no. "068786" dated 16.09.2022 and cheque no. "068790" dated 28.09.2022 and cheque no. "000068" dated 30.01.2023 and the same were dishonoured due to insufficient funds, the same have been annexed along with the memo as Annexure-G (Colly) with the application.
9. Due to the failure to repay the outstanding amount, the Operational Creditor issued the demand notice under Section 8 in Form-3 and Form-4 of the Code on 31.07.2024. Copies of the Demand notice in Form-3 and Form-4 dated 31.07.2024 have been annexed as Annexure-H Colly with the application.
10. In response to the aforesaid demand notice the Advocate for the Corporate Debtor vide an email replied to the demand notice. Copy of the reply of the Corporate Debtor 10.08.2024 has been annexed as Annexure-I with the application.
11. It is submitted that due to an inadvertent error in the table of the computation in the demand notice dated 31.07.2024, the Operational Creditor vide letter dated 14.09.2024, withdrew the demand notice and issued fresh demand notice dated 14.09.2024 under Form-3 and Form-4. Copy of the letter dated 14.09.2024 along with the fresh demand notice with its receipt and delivery report has been annexed as Annexure-J with

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the application. The Operational Creditor also sent the fresh demand notice dated 14.09.2024 through an email dated 17.10.2024.

12. In view of the aforesaid circumstances, the applicant operational Creditor proceeded with filing the instant application under section 9 for initiating CIRP against the Corporate Debtor herein. No reply to this demand notice has been filed by the Corporate Debtor.
13. In the reply filed against the first demand notice, the Corporate Debtor disputed the amount mentioned in the demand notice denying any liability to pay the amount demanded alleging delay in supply resulting into loss to the Corporate Debtor.
14. The Operational Creditor has also placed on record, Record of Default issued by the NeSL in 'Form D' attached as Annexure-A with the pursis dated 16.12.2024. The details of which are enumerated below: -

FORM D
Record of Default

S. No.	Particulars	Details
(a)	Name of the Submitter	M/s AARTI INDUSTRIES LIMITED
(b)	Schedule-2 Bank (Y/N)	N
(c)	Name of Corporate Debtor	M/s MAGMA INDUSTRIES LIMITED

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(d)	Unique Debt Identifier Number	AABCA2787L_1.1
(e)	Registered Address	PLOT NO 801/23, GIDC ESTATE, PHASE III, VAPI, GJ 396195, IN
(f)	Total Outstanding Amount	₹ 8,21,04,743.00
(g)	Default Amount	₹ 8,21,04,743.00
(h)	Date of Default	31-10-2022
(i)	Status of Authentication of Default	DEEMED TO BE AUTHENTICATED
(j)	Date of Last Acknowledgement of Debt (AoD)	Not Available

Filing of Default (Submission ID No.) (1)	Submitted on 14-10-2024 20:19:07	Status of Authentication (Authenticated /Disputed/Deemed to be authenticated) *DEEMED TO BE AUTHENTICATED Colour Code :YELLOW	Authentication completed on 15-11-2024 00:06:59
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15. On filing of above application, a notice was issued to the Corporate Debtor to file counter affidavit. However, despite giving several opportunities to the Corporate Debtor to file reply, no reply has been filed, therefore, during the course of hearing of the present matter, this Tribunal vide order dated

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24.09.2025 struck off right to reply of the Corporate Debtor after granting various opportunities, however, no reply was filed thus, Respondent Corporate Debtor was *set-exparte*. The relevant part of the order dated 24.09.2025 is reproduced below: -

“ ...

1. As per the previous order dated 27.08.2025 also, we have observed that the reply has not been filed despite last opportunity having already been granted to the Corporate Debtor, even though, on one of the earlier occasion i.e. on 16.07.2025, there was a representation on behalf of the Corporate Debtor.

2. Since, no reply has been filed on behalf of the Corporate Debtor, therefore the right to file reply stands struck off and the Respondent/ Corporate Debtor is therefore set ex-parte.

... ”

16. Subsequently, IA No. 106 of 2026 was filed, which was disposed of vide order dated 16.02.2026, whereby this Tribunal, noting that the written submissions had not been filed within the time earlier granted, granted a further extension of time for filing the same.

Written Submissions on behalf of the Respondent/Corporate Debtor.

17. The Respondent/Corporate Debtor filed written submissions dated 21.02.2026 and submitted as follows:

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- a. It is submitted that the application fails to point out any record of default, which is mandatory as per the relevant provisions set out under the Code.
- b. It is submitted that the present Application is liable to be rejected at the threshold, since the Applicant has approached this Tribunal with unclean hands in order to fraudulently and maliciously initiate insolvency proceedings against the Respondent, with no interest in insolvency resolution and in violation of Section 65 read with Section 75 of the Code.
- c. It is also submitted that the demand for outstanding amounts of Rs. 8,21,04,743/- (Eight crore twenty-one lakh four thousand seven hundred and forty-three rupees), is wholly frivolous and in fact mala fide, entirely devoid of any proof and selective disclosure of facts.
- d. It is submitted that the Corporate Debtor relied on the assurances and representation provided by the Operational Creditor that it can provide high quality raw materials the Corporate Debtor. However, as submitted the purchase orders raised by Corporate Debtor were delayed for more than twelve weeks and was pointed to the concerned logistics department of Operational Creditor. It is only after believing the assurances given by Operational Creditor, the Corporate Debtor raised the purchased orders to provide the raw materials, however the supply was delayed for months, thereby adversely impacting the output and operations of the Corporate Debtor.
- e. It is submitted that in addition to the difficulty in Operations, the delay caused due to lackadaisical approach of the Operational Creditor has resulted further in cost escalation. For instance, the consignment dated P.O. No. 306/2022-23 dated 07.01.2023 was placed by the Corporate

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Debtor for purchase of Para Nitro Chloro Benzene 150000 kgs @ Rs. 110. However, the first delivery was made on 09.02.2023 of quantity 25000 kg (delay by more than one month) at the rate of Rs. 97/kg. Thereafter, the second delivery of 30000 Kgs was made on 02.03.2023 (delay by 2 months) at the rate of Rs. 90/kg. The third delivery was of 30000 kgs was made on 15.03.2023 (delay by more than 2 months) at the rate of Rs. 90/kg. Ultimately the fourth delivery of 30000 kgs was made on 24.03.2023 (delay by 2.5 months) at the rate of Rs. 88/kg and fifth delivery of 30000 kgs was made 05.04.2023 (delay by 3 months) at the rate of Rs. 83/kgs. As a result of which, the Corporate Debtor has incurred heavy loss due to nonavailability of raw materials.

- f. It is further submitted that as per the Hon'ble Apex court in *Indus Biotech Private Limited v Kotak Indian Venture (Offshore) Fund* (2021 6 SCC 436), other factors apart from the default also have to be taken into consideration to prevent an aptly running company to be pushed into insolvency.

Written Submissions on behalf of the Applicant/Operational Creditor

18. The Applicant/Operational Creditor filed written submissions dated 13.11.2025 and 26.02.2026 and submitted as follows:
- a. It is submitted that the contentions raised by the Corporate Debtor are denied as merely an afterthought which are not backed by any supporting documents and the same are devoid of any merits and substance.
- b. As regards the contention raised by the Corporate Debtor that the Petitioner has approached this Tribunal with unclean hands and that

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the petition is in violation of Section 65 of the Code, it is submitted that such allegation is baseless and without any supporting documents. Further, the Petitioner states that it has submitted the Form-D issued by the NeSL dated 16.12.2024 before this Tribunal, which provides that the said default is "Deemed to be Authenticated", hence the contention that the record of default is not produced on record is false and misleading.

- c. It is denied that the Corporate Debtor has attempted to raise objections to the principle and interest portion of the total debt as enumerated in the Part - IV of the petition, by submitting that the said objections are mere denial without any actual grounds to deny or to object such debt, further no communications or documents are relied by the Corporate Debtor for substantiating the said objections.
- d. As regards the allegation regarding the delay in the delivery of goods in respect of the purchase order, it is submitted that the same is meritless and an afterthought, for a reason that at no time any dispute/ objection/ issue was ever raised by the Corporate Debtor at the time of the delivery of the good, further to add no communication/record is even relied upon by the Corporate Debtor to substantiate the claim of dispute as to the delay in delivery of the goods, further it is submitted that the Corporate Debtor had accepted the said goods and the said goods are even consumed by the Corporate Debtor and hence the Corporate Debtor is legal liable to pay the debt in question which is arising from the supply of said goods.
- e. In relation to the Purchase Order No. 306/2022-23 dated 07.01.2023, it is submitted that no delivery schedule was ever decided between the parties in the said purchase order. Furthermore, as submitted, the

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deliveries were made on 09.02.2023, 02.03.2023, 15.03.2023, 24.03.2023 and 05.04.2023 for which the delivery receipts and e-way bills are produced on record by the Petitioner and qua the same it is humbly submitted that no dispute/ objection/ issue was every issued or raised by the Corporate Debtor at the time of the delivery of the said goods neither at the time of the delivery, nor after that time till the filing of the Written Submissions by the Corporate Debtor.

- f. It is submitted that the decision in *Indus Biotech Private Limited Vs. Kotak Indian Venture (offshore) Fund* (supra) is in relation to inter play between the Petition filed under Section 7 of the Code and an Application for referring the parties to the Arbitration filed under Section 8 of the Arbitration and Conciliation Act, which is not applicable to the facts of the present case.
- g. Further, it is also submitted that the Corporate Debtor was declared to be ex-parte by this Tribunal after granting enough opportunity to defend the case, which has not been challenged and has attained finality, hence, it is submitted by the Applicant that the attempt of the Corporate Debtor to raise all such allegations at this stage without any supporting documents or evidences are meritless and devoid of merits.

FINDINGS AND ORDER

- 19. We have heard the arguments of Learned Counsels appearing for both Applicant Financial Creditor and Respondent Corporate Debtor and perused the pleadings, records, written submissions and exhibits/annexures marked thereto in respect of the present application. On perusal of the records, exhibits/annexures and after considering arguments advanced by

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respective Learned Advocates, the issue which are before us to be decided in respect of the present Application.

20. Before delving into the specific issues concerning the admission or rejection of the present application, it is noted that the application under Section 9 of the Code was filed before this Tribunal on 30.10.2024, with the date of default stated as mentioned in the computation table annexed as Annexure M with the present application and also mentioned as date of default in Form D record of Default by NeSL is 31.10.2022, i.e., 90 days from the date when the first invoice dated 02.08.2022 which was only partly paid became due. Accordingly, the application being filed on 30.10.2024, is well within the limitation period of three years from the date of default.
21. Further, on perusal of the records, exhibits/annexures, and after considering the argument advanced by respective Learned Counsel, we find that the following issue is for consideration to be decided for admissibility or otherwise of this Application u/s 9 of the Code.
- i. Whether there is a Debt and Default
 - ii. Whether there is any Pre Existing Dispute
 - i. **Whether there is debt and default.**
22. As regards the first issue, it is stated that as per purchase orders issued by the Corporate Debtor as stated in para no.3, the Operational Creditor

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supplied the goods i.e. Para Nitro Chloro Benzene (PNCB), Ortho Chloro Nitro Benzene (ONCB), and PNC flakes and all the goods were received by the Corporate Debtor as per the purchase orders.

23. Then, the Operational Creditor proceeded with issuance of Tax invoices dated 02.8.2022, 06.8.2022, 14.8.2022, 12.8.2022, 27.8.2022, 01.9.2022, 06.09.2022, 12.9.2022, 01.10.2022, 17.10.2022, 09.2.2023, 02.3.2023, 15.03.2023, 24.03.2023 and 05.4.2023. As per the payment terms of the tax invoices issued by the Operational Creditor, the payment was to be made within the period of 90 days of date of invoice. As against the first invoice dated 02.08.2022 amount of Rs. 53,39,200/-, was due and the Corporate Debtor paid only Rs. 44,95,625/-. However, no further payments were made by the Corporate Debtor in accordance with the payment terms specified in the Tax invoices, thereby leading to a default. It is also evident that the Corporate Debtor had issued post-dated cheques bearing no. 068786, 068790 amounting to Rs. 72,86,220/- and 000068 amounting to Rs. 15,50,299/- respectively in favour of the Operational Creditor. However, these cheques were returned by the bank on 09.12.2022, 26.12.2022 and 31.01.2023 as the said cheques were dishonoured due to insufficient funds in the Corporate Debtor's bank account constituting defaults occurred.

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24. Meanwhile, it is noted that several discussions ensued between Operational Creditor and the Corporate Debtor, resulting in the admission of the default by the Corporate Debtor towards its outstanding liability through emails dated 19.12.2022 stating to clear the outstanding dues of the Corporate Debtor by sending post-dated cheques in place of the ones which were not cleared. The relevant excerpts of the emails dated 19.12.2022 is as follows:-

“From: Arpit Rajvanshi aarpitrajvanshi@magmaindustries.in

Sent: 19 December 2022 23:57

Subject: Re: Payment

I had already told you that account has been declared collection account by the rbi norms. So we had sent you new cheques on place of those cheques so the same which you have can not be cleared

On Mon, 19 Dec 2022, 22:58 Vijay MAmania, vijay.manmania@Aarti-industries.com wrote:

Cheques recived one payment of MCB is short by Rs. 17/- lacs

We have deposited ICICI cheque of Rs. 42/- lacs please clear the same

YOU PROMISED 1 cr payment for last week, but the same is not yet received

In last 40 days you have given only 25 lacs

Please inform what should I do now

On Mon, 19 Dec 2022, 2:12 PM, Dr. Lalit Shah lalit.shah@aarti-industries.com wrote:

SIR,

THIS CHEQUE NOT RECD-BILL NO-GK2022000268-amo-4284014-mcb

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kindly release this pdc.”

25. Subsequently, due to failure in paying the operational debt, the Operational Creditor issued demand notice under section 8 dated 31.07.2024 and due to some inadvertent error in the computation table, Operational Creditor again issued demand notice on 14.09.2024 and withdrew the earlier demand notice dated 31.07.2024 vide letter dated 14.09.2024. The computation of debt is given below in the table:-

Date	Ref. No.	Invoice Amount (INR)	Pending Amount (INR)	Due on	Overdue by days	Interest @ 24%	Total Due Including Interest	Cut out date
02.08.2022	V62022000167	52,39,200	7,43,571	31-10-2022	633	3,09,489	10,53,059.51	25-07-2024
06.08.2022	V62022000172	50,26,800	50,26,800	04-11-2022	629	20,79,029	71,05,829.39	25-07-2024
14.08.2022	V62022000188	50,26,800	50,26,800	12-11-2022	621	20,52,587	70,79,387.05	25-07-2024
21.08.2022	V62022000195	50,26,800	50,26,800	19-11-2022	614	20,29,450	70,56,249.99	25-07-2024
27.08.2022	V62022000209	50,26,800	50,26,800	25-11-2022	608	20,09,618	70,36,418.24	25-07-2024
01.09.2022	V62022000213	50,26,800	50,26,800	30-11-2022	603	19,93,092	70,19,891.77	25-07-2024
06.09.2022	V62022000221	45,66,600	45,66,600	05-12-2022	598	17,95,612	63,62,212.14	25-07-2024
12.09.2022	V62022000228	45,66,600	45,66,600	11-12-2022	592	17,77,596	63,44,195.97	25-07-2024
01.10.2022	V62022000274	45,66,600	45,66,600	30-12-2022	573	17,20,545	62,87,144.75	25-07-2024
17.10.2022	V62022006657	20,94,170	20,94,170	15-01-2023	557	7,66,982	28,61,152.04	25-07-2024
09.02.2023	V62022000504	32,45,000	32,45,000	10-05-2023	442	9,43,095	41,88,094.79	25-07-2024
02.03.2023	V62022000563	38,94,000	38,94,000	31-05-2023	421	10,77,945	49,71,944.55	25-07-2024
15.03.2023	V62022000590	38,94,000	38,94,000	13-06-2023	408	10,44,659	49,38,658.85	25-07-2024
24.03.2023	V62022000617	38,94,000	38,94,000	22-06-2023	399	10,21,615	49,15,614.90	25-07-2024

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05-04-2023	V62023000016	38,94,000	38,94,000	04-07-2023	387	9,90,890	48,84,889.64	25-07-2024
		6,04,92,541				2,16,12,203	8,21,04,743.59	

26. It is observed that the first invoice dated 02.8.2022, amounting to Rs. 52,39,200/-, was only partly paid by the Corporate Debtor, with the remaining Rs. 7,43,570/- being in default. Subsequently, Operational Creditor sent various emails, made phone calls and messages for payment of outstanding dues, which are annexed as Annexure-F page no. 81-114 of the present application. However, no payment was made by the Corporate Debtor, resulting in the issuance of a statutory demand notice dated 14.09.2024 under Section 8 of the Code for Rs. 8,21,04,743/-, demanding the payment within 10 days from the date of receipt of the notice.
27. The default has also been recorded under Form D, Record of Default by National E-Governance Services Limited (NeSL) which is mentioned in para no. 14 of this order.
28. After considering the above facts and circumstances of the case, we are of the view that the admission of liability by the Corporate Debtor through its email dated 14.12.2022, 19.12.2022 and 04.02.2023, as well as the part payment made towards invoice dated 02.08.2022 of Rs. 44,95,629/-, collectively establish the existence of a legally enforceable debt. The failure to make payments towards the invoices raised by the Operational Creditor confirms the occurrence of default which is further corroborated

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by the Record of Default issued by the NeSL in 'Form-D' as 'deemed to be authenticated'. Debt has also been admitted by the Corporate Debtor in its email dated 04.02.2023. The relevant excerpts from email dated 04.02.2023 are reproduced below:

“On Sat, 4 Feb, 2023 at 18:36, Accounts Department accounts@magmaindustries.in wrote:

Dear Sir/Mam,

Please provide revised Proforma invoice with 90 day payment terms and we will provide PDC for the same. Further, We have transferred Sum of Rs. 32,45,000.00 vide UTR No. KKBKR12023020400678400 and balance Rs. 6,00,000.00 will be transferred on Monday as per agreed terms which has to be adjusted against the old outstanding.”

29. As per section 4 of the Code, the minimum threshold for initiating a CIRP application is Rs. 1 Crore. In the present case, the Applicant has placed sufficient documents to show that a debt of more than Rs. 1 crore, as also mentioned in Part IV of the Application, is due and that there has been a default in payment on the part of the Corporate Debtor. Therefore, we are satisfied that there is a debt of more than Rs. 1 Crore and also a default has occurred on the part of the Respondent to pay this debt.

b. Whether there is any Pre-Existing Dispute

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30. With regard to pre-existing dispute, it is significant to examine whether the reply dated 10.08.2024 to the demand notice dated 31.07.2024 can be taken as a pre-existing dispute within the meaning of Section 8(2) of the Code. The Ld. Counsel for the Applicant has submitted that it is humbly submitted by the Petitioner herein that neither there exists any pre-existing dispute between the parties, nor any pendency of a suit or arbitration proceedings which is brought on record by the Respondent Corporate Debtor and no supporting documents have been placed on record by the Respondent Corporate Debtor to prove existing of any pre-existing dispute.
31. In the present case, we need to examine as to whether the facts as pleaded in the reply to demand notice dated 10.8.2024 can be read to mean as existence of dispute. In this regard, we refer to the judgment of Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353*. The Hon'ble Supreme Court in the above case had occasion to examine Section 8(2)(a) i.e. existence of dispute. In Para 34, the Hon'ble Supreme Court laid down following:

“34. 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)

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(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 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.”

32. Explaining the existence of dispute, the Hon’ble Supreme court laid down that it has to be examined whether there is plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. In Para 51 of the judgement following has been laid down:

“51. 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

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notice of the 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 requires 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. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

33. When we look into the facts of the present case, it transpires that no dispute with reference to services and quality of goods was raised by the Corporate Debtor before the issuance of demand notice. Even the emails correspondence exchanged between the parties indicate that Corporate Debtor has time and again agreed to issue post-dated cheques to the Operational Creditor. Further, Corporate Debtor has also paid Rs. 44,92,629/- against the invoice dated 02.08.2022 without raising any dispute. It is pleaded in the reply notice in para no. 5, 6, 7 and 8 that the Respondent Corporate Debtor has raised dispute regarding delay in supply

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of raw material which led to escalation of costs and the client of the Corporate Debtor suffered heavy loss. It has also been disputed that there is deficiency in quality of goods supplied by the Applicant Operational Creditor. The relevant paras of the notice of dispute dated 10.8.2024 are reproduced below: -

“ ...

5. As a pharmaceutical manufacturer, Our Client relies heavily on the consistent and reliable supply of high-quality raw materials to ensure the safety and efficacy of our products. That on the basis of your client's assurances and representation that they have expertise in speciality and bulk raw materials for pharmaceutical intermediaries and can provide high quality raw materials. As a result, our client has been purchasing raw materials from your client directly or through agents.

6. Our client, believing on your client's assurances to provide them with the raw materials that meet strict quality criteria, however the same was not case and the supply was delayed for months, thereby adversely impact on our client's operations. In addition to the difficulty in operations, the delays (which your client is duly aware) have resulted in further cost escalation and was pointed to the concerned logistics department of your client by our client on numerous occasions. For instance, the consignment dated P.O. No. 306/2022-23 dated 7.1.2023 placed by our client for

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purchase of PNCB 150000 kgs @ Rs. 110. However, the first delivery was made on 9.2.2023 of quantity 25000kg (delay by more than one month) price was Rs97/kg on that day. Thereafter, the second delivery of 30000 kgs was made on 2.3.2023 (delay by 2 months), price was Rs90/kg. The third delivery was of 30000 kgs was made on 15.3.2023 (delay by more than 2 months) price was Rs.90/kg. Ultimately the fourth delivery of 30000 kgs was made on 24.3.2023 (delay by 2.5 months) price was Rs88/kg and fifth delivery of 30000 kgs was made 5.4.2023 (delay by 3 months) price was 83/kg. As a result, our client has incurred heavy loss, and the complete plant was shut down due to non-availability of raw materials. Having left with no other choice, our client to procure the material from other supplier at higher price to continue the plant due to urgent requirement. Needless to say, it has been a case of harassment as well as embarrassment for Our Client, apart from incurring double cost and expenses.

7. As such, you have been ill-advised while the sending the captioned notice, inasmuch as the captioned demand notice has deliberately failed to disclose the aforesaid fact which clearly establishes dispute within the meaning of Section 5(6) of the Act, pending prior to the intimation of the instant frivolous demand notice. In fact, your client, despite acknowledging the aforesaid deficiencies has chosen to send the captioned demand notice. Therefore, the Demand Notice to the extent it seeks payment of further amounts from Our

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Client is ill-advised and specious and appears to be motivated with the sole desire to extort monies by threatening initiation of CIR Process under the Code.

8. In light of the abovementioned facts and narrative and the conduct of your client, it is more than apparent that there is no default in paying the amounts as stipulated in the frivolous demand notice. The Demand Notice to the extent that it seeks payment of further amounts from our client is misguided and specious and appears to be motivated with the sole desire to extort monies by threatening initiation of CIR Process under the Code.

...”

34. While examining this issue, we noticed that as per the contention of the Corporate Debtor raised in the aforesaid reply, first delivery was made on 09.02.2023, second delivery was made on 02.03.2023 and the third delivery was made on 15.03.2023. However, till the issuance of demand notice dated 31.7.2024, the Corporate Debtor never raised any dispute regarding the quality of goods supplied and delay in delivery of raw materials as raised in the notice of dispute. Moreover, Corporate Debtor made a payment of Rs. 44,92,629 without raising any dispute. After this Corporate Debtor also issued revised post-dated cheque which is evident from the email dated 20.02.2023 reproduced below:-

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“On Mon, Feb 20, 2023 at 3:51 PM Vijay Mamania vijay.mamania@aarti-industries.com wrote:

Dear Sir/Madam,

Only 2 cheques??

On Mon, Feb 20, 2023 at 15:49, Accounts Department accounts@magmaindustries.in wrote:

Sir,

Please find the attached revised PDC.

Thanks,

On Mon, Feb 20, 2023 at 11:30, Vijay Mamania vijay.mamania@aarti-industries.com wrote:

Dear Sir/Madam,

Change ‘All cheques together

On Mon, Feb 20, 2023 at 11:29, Accounts Department accounts@magmaindustries.in wrote:

We will provide you by today,

Thanks

On Mon, Feb 20, 2023 at 11:16, Vijay Mamania vijay.mamania@aarti-industries.com wrote:

Tusharji

As per talks with Dineshji, please send revised cheques without date

If we do not get the revised cheques by tomorrow, we-shall deposit the said cheques

On Thu 16 Feb 2023 at 11:30, Vijay Mamania vijay.mamania@aarti-industries.com wrote:

Dear Sir/Madam,

Following cheques are getting expired as bellows

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We need either payments on revised cheques without dates”

35. Also, there is no evidence of any outright denial of the liability to pay based on the documents placed on record by the Corporate Debtor. Furthermore, we notice that the Corporate Debtor while admitting the outstanding debt had also admitted that they were working to clear outstanding liability by issuing post-dated cheques which were later on returned on the ground of insufficient funds in the bank account. Therefore, we find that the alleged disputes claimed by the Corporate Debtor are feeble and not supported by credible evidence. Hence, no real pre-existing dispute is discernible as there is no sufficient ground to establish any real and substantial pre-existing dispute which can thwart the admission of section 9 application against the Corporate Debtor.
36. The Respondent Corporate Debtor has defaulted in the payment of operational debt which amount had clearly become due and payable above the threshold limit, and further in the absence of any credible or plausible pre-existing dispute, we find all requisite conditions necessary to trigger CIRP under Section 9 stands fulfilled with operational debt having been acknowledged and default committed thereto and there being no real pre-existing disputes discernible from given facts. In view of the foregoing, we are of the view that the application of the Operational Creditor filed under Section 9 of the Code deserves to be admitted.

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37. Thus, in view of our aforesaid findings and analysis, the Applicant / Operational Creditor has proved that there is a 'debt' and 'default' on the part of the Corporate Debtor and outstanding debt is more than the threshold limit of Rs. 1 crore. The application is also filed within limitation period and complete in all respect. The registered office of the Corporate Debtor is located in Muzaffarnagar, and hence this Tribunal has jurisdiction to decide the matter. Accordingly, the present application under Section 9, has been found fit fulfilling all the conditions for admissions of the Application and initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor i.e. M/s Magma Industries Limited, and hence this Tribunal allow this application and order to initiate the CIRP against the Corporate Debtor.
38. We note that the Financial Creditor has not proposed the name of an Insolvency Professional to be appointed as Insolvency Resolution Professional ('hereinafter referred as '*IRP*') in Part-III of the Application. Therefore, we appoint Mr. Rajesh Srivastava as IRP having Registration Number: IBBI/IPA-001/IP-P-01998/2020-2021/13138, Email ID: rajesh1701@gmail.com R/o- A3/302, Tower 3, Silver City Purvanchal, Sector-93, Noida, Uttar Pradesh, 201304. The Law Research Associate of this Tribunal, Ms. Akshita Singh, has checked the credentials of Mr. Rajesh Srivastava, and found that there are no disciplinary proceedings pending

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against the proposed Insolvency Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that Insolvency Professional holds valid authorization till 31.12.2026. After considering these details, we appoint Mr. Rajesh Srivastava having registration No. IBBI/IPA-001/IP-P-01998/2020-2021/13138, as Interim Resolution Professional (IRP).

39. Accordingly, this application is admitted u/s 9 of the Code, 2016, under the following terms and conditions.

- i.** The Application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e., M/s Magma Industries Limited. is hereby admitted.
- ii.** We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the Code.
- iii.** This Adjudicating Authority hereby appoints Mr. Rajesh Srivastava to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 38 above.
- iv.** The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

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- v. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 has commenced from the date of this order prohibiting the following:
- a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor 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 Corporate Debtor 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 Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- vi. Apart from above prohibitions in respect of the corporate debtor, it is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- vii. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

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- viii.** The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.
- ix.** The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.
- x.** The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor and to constitute a Committee of Creditors (hereinafter referred as "COC") and shall file a report certifying the constitution of the COC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the COC within seven days of filing the report of the constitution of the COC.
- xi.** As the IRP appointed herein is proposed by this Tribunal, he will ensure that his written consent in Form-2 shall be duly submitted before this Tribunal.
- xii.** The COC in its first meeting shall appoint a Resolution Professional (hereinafter referred as "RP") as per the provision of section 22(2) and file an application before this Tribunal for confirmation of the appointment of the RP.

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- xiii.** The Suspended Board of Directors of the corporate debtor is directed to give to IRP/RP complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the IRP/RP all the information regarding maintaining the Backup and regarding service provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the service provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case, accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs.
- xiv.** The Statutory Auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI.
- xv.** The IRP/RP is directed to take custody and control of all the records of information relating to assets of the Corporate Debtor, its Books of Account in physical form or the computer systems storing the electronic records at the earliest in accordance with the provision of Regulation 3A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "CIRP Regulations, 2016").

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- xvi.** The Operational Creditor and its personnel shall also provide necessary assistance to IRP/RP in obtaining the necessary information about the Corporate Debtor as envisaged in Regulation 3A and 4(3) of the CIRP Regulations, 2016.
- xvii.** In case of any non-cooperation by the Suspended Board of Directors or the Statutory Auditors, IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for the retrieval of relevant information from the systems of the corporate debtor.
- xviii.** The IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench/IBBI/MCA for this purpose.
- xix.** The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances.
- xx.** The IRP/RP is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.
- xxi.** The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities'/institutions/others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings.
- xxii.** The IRP/RP is directed to approach all the concerned Government Departments and authorities as discernible from the books of

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account of the Corporate Debtor requesting them to file claims if any amount is outstanding against the Corporate Debtor.

- xxiii.** The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIR Proceedings as per law.
- xxiv.** The IRP/RP shall collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the Corporate Debtor.
- xxv.** The IRP/RP is further directed to send regular progress reports to this Tribunal every month.
- 40.** We direct the Operational Creditor to deposit a sum of Rs. 1,00,000/-with the Interim Resolution Professional, to meet out the expenses 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.
- 41.** A certified copy of the order shall be communicated to both the Applicant Operational Creditor and the Respondent Corporate Debtor. The learned counsel for the Applicant Operational Creditor shall deliver a certified copy of this order to the IRP forthwith. The Registry is also directed to send a certified copy of this order to the IRP at his e-mail address forthwith.

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42. List **CP (IB) 154/ALD/2024** on 11.05.2026 for filing of the progress report/further proceeding.

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**(Ashish Verma)
Member (Technical)**

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**(Praveen Gupta)
Member (Judicial)**

Date: 09.04.2026