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07/07/26

**Free of Cost Copy**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.302  
C.P.(IB)/246(AHM)2025

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Vanshita Transport Through Its Proprietor Mr.Nilesh  
V.Thakkar  
V/s  
Montecarlo Limited

.....Applicant

.....Respondent

**Order delivered on: 06/07/2026**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**  
**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet.



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**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

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**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**Appearance:**

For the Applicant : Mr. Nipun Singhvi, Adv. a.w. Ms. Pragati, Tiwari, Adv.  
For Respondent : Mr. Parth J Contractor, Adv.

**JUDGEMENT**

1. This application is filed under Section 9 of IBC 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authorities Rules, 2016) in Form 5 as provided in Sec 8 of IBC 2016 by the Operational Creditor on 23.06.2025. The applicant is a sole proprietor having his registered office at F, F-4, Himali Tower, Nr Kenyug Apartment, Shyamal Cross Road, Satellite, Ahmedabad 380015. The said firm is stated to be incorporated on 26.09.2017 and a copy of the GST certificate in name of sole proprietor is attached. The respondent Corporate Debtor is Montecarlo Limited, is a company incorporated under Companies Act 1956, on 20.03.1995 bearing CIN U40300GJ1995PLC025082 with its registered office at Montecarlo House, Sindhu Bhavan Road, Bodakdev, Ahmedabad, Gujarat India 380058.



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2. It is submitted that the applicant is engaged in the business of transportation of cement and has carried out work orders based on the business relationships to the respondent CD at the site mentioned for which relevant sales invoices are enclosed pertaining to period from 08.11.2022 to 25.11.2024. It is submitted that the respondent is due to pay an amount of Rs.1,47,83,503 (including interest of Rs.6,87,298) as per the enclosed ledger statement communicated via Form 4 dated 19.12.2024. The applicant issued a demand notice dated 19.12.2024 to the respondent under the IBC code 2016 demanding unpaid operational debt at the registered address of the respondent CD. The demand notice issued in Form 3 & 4 dated 19.12.2024 to the respondent does mentions the first date of default as 23 11.2024 (15 days from invoice), it mentions charging of an interest @ 24% p.a enclosing a list of invoices pending from the first date of invoice is mentioned as 8.11.2022 and last date of invoice being 25.11.2024 total amounting to Rs.1,40,96,205, demanding the payment within 10 days. The relevant invoices mention that the delivery have been made to Kunal Structure Private Limited, Talcher, Odisha



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and signed by the sole proprietor only. The applicant has also enclosed the filing of default with the Information Utility. The applicant has also enclosed the relevant work order, which mentions that if the parties on any dispute or differences in connection with the work order (effective from 1 April 2024) will be resolved through sole arbitrator appointed by the company in accordance with the provisions of the Arbitration and Conciliation Act, 1996 with jurisdiction at Ahmedabad. The applicant has submitted total 20 bills which are stated to be unpaid of which there are 5 bills amounting to sum of Rs.473,899 which pertain to the period prior to this work order. There is no provision for interest in the work order.

3. The respondent CD in its reply by affidavit submitted that the application is gross abuse of process of law submitted for an alleged debt which is not only disputed but also tainted with fraud and criminality. It is submitted that the petitioner was engaged that the applicant was engaged for two projects, pursuant to work orders dated 11.07.2022 and 01.04.2024. It is submitted that the respondent came to know in an internal audit of a conspiracy between the

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petitioner and one of a former employee of the CD to defraud the company through inflated work order for long and a police complaint has also been filed in Police Station Bodakdev, Ahmedabad on 24.12.2024, much before the petitioner's notice dated 1.1.2025. It has produced certain data on its financial health, net profit and hence a disputed debt should not be used to push a company in to insolvency. It is also submitted that in its reply dated 1.1.2025 to the applicant's demand notice the following issues were communicated:

- a) The market rate for transportation at the relevant time was Rs.1.69 per km/MT however the petitioner in conspiracy with the company's employee charged Rs.1.90/km/MT initially and subsequently Rs.2.25/KM/MT.
- b) Fraudulently and in collusion with the ex-employee of the company obtained work order for inflated distances and got payment of the bills, while the actual distances as per Google Maps and physical verification were significantly lesser.



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- c) The said fraudulent act resulted in loss of Rs 491.07 lakhs.
- d) The concerned employee has been terminated for misconduct for acting in tandem with petitioners and other vendors resulting in loss to the company.

It is submitted that these are suppressed material facts. Further it is submitted that the respondent company had already initiated criminal proceedings against its ex-employee under relevant provisions of CRPC seeking registration of FIR wherein these facts are mentioned and matter is pending.

Further, the dispute between the parties is civil dispute on the facts of disputed rates of transportation, disputed distances claimed in bills, allegations of conspiracy and fraud and admission by co-conspirator employee and quantification of losses suffered by the company. Hence these require expert evidence on prevailing market rates, technical evidences on actual distances, examination of bills and supporting documents, cross examination of witnesses



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including the employee who admitted to conspiracy and forensic audit.

4. The respondent has further submitted that as per the work order/s dated 11.07.2022 and 01.04.2024, the clause 16 of the order specifically provides for arbitration as the mode of dispute resolution. Hence it mandates that existence of such clause results in disputes to be resolved through mediation and cannot be by passed through filing an application under IBC which is not a tool for recovery. Also the respondent asserts that it has never defaulted in genuine obligations to any of the creditors and has impeccable track record of timely payments. The respondent has paid many of the genuine bills raised by applicant prior to discovery of fraud in internal audit resulting in filing a police complaint. There exists a pre-existing dispute which was communicated to the petitioner including the payment of Rs.491.07 lakhs for the loss caused to the respondent which is a counter claim on the applicant. The counter claim arises out of loss due to inflated rates amounting to Rs. 250.31 lakhs and loss due to excess distances amounting to Rs.240.76 lakhs. It is also submitted that any



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claim for bills raised prior to June 2022 would be barred by limitation and admitting an application filed with malafide intention would result to huge loss to the company and its stake holders, which include the employee, share holders, financial creditors and government bodies to whom the projects are executed by the respondent company.

5. The respondent filed an additional affidavit dated 20 April 2026 that in pursuant to the complaint dated 14.12.2024 before the police station, an official of the respondent along with the applicant accompanied by a police inspector covered the distance/s on 17.02.2025 to verify the facts as per work order and terms and found that the actual distance covered and recorded was far less than the distance claimed by the applicant. An independent verification through GPS tracking data was also done to corroborate the distance. The respondent has also preferred a petition under Sec 11 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Gujarat High Court seeking appointment of a sole Arbitrator in terms of Work Orders to resolve the dispute between the parties, a copy is enclosed.

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6. The applicant filed his rejoinder by affidavit submitted that all through the subsistence and existence of the work orders dated 11.07.2022 and 01.04.2024 nor through out the billing cycle during the said period, the respondent had not raised any objections with regard to measurement of distances and genuineness of invoices. The Petitioner while acknowledging the he received a communication only on 13.01.2025 in response to its demand notice dated 01.01.2025 disputing the payment, hence there was no pre-existing dispute. As regards the counter claim placed by the Respondent for Rs. 4.91 cores it is belated, malafide and baseless fabrication. The debts were not time barred as the respondent had acknowledged the liabilities and it's not sustainable.
7. Both parties have filed the written submissions alongwith judgments cited during arguments and additional submissions.

- i. *Mobilox Innovations pvt Ltd. vs. Kirusa software Pvt Ltd*  
(2018) 1 SCC 353
- ii. *Hon'ble Supreme Court in Innovative Industires Ltd vs*  
*ICICI bank*

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- iii. *Hon'ble NCLAT Chemical suppliers India Private Limited vs GLS films Industries Private Limited*
- iv. *Hon'ble Supreme Court K Kishan Vs Vijay Nirman Company Pvt Ltd (2018) 17 SCC 662*
- v. *Hon'ble NCLAT in Hasan Shafiq vs CT Technologies Pvt Ltd in CA(AT) (Ins.) No. 802 of 2020*
- vi. *Hon'ble supreme Court Indus Biotech Pvt Ltd Vs Kotak India venture (offshore) fund & Ors.*

8. Observations & Conclusions:

- a) The Applicant is a sole proprietor and MSME and is complaint of applicable regulations of GST. The applicant and respondent have relied upon two work orders dated 11.07.2022 and 01.04.2024.
- b) From the work order clause 2.8 we observe that in case of any discrepancy is found in a RA bill placed by the contractor, the company shall pay undisputed amount of RA bill and hold on disputed amount till discrepancy is resolved with the contractor.
- c) Even though the work order provides a termination provision in clause 5.20, the contract has not been



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terminated for whatever reason the respondent has defended non-payment of debt.

- d) The work order in clause 16 provided for arbitration, which was not invoked till the application was filed and was done after the issue of notice in the matter to the respondent.
- e) The respondent submits to have proceeded against its own employee Mr Pragneshkumar Manubhai Patel who is accused in the police complaint at Bodakdev Police station for an investigation which appears to be an inter disciplinary action (disciplinary committee) of the respondent and is not a valid cause to state that there was prior dispute on the orders executed by the applicant as it is also not a party in the matter as accused, nor any notice issued. Hence this is not a valid defence by the respondent.
- f) The dispute arising is mainly on the distance covered by the applicant to deliver the goods from origination to destination ordered by the respondent and the rates charged comparing the same with some market rate as per the reply to demand notice of applicant but these

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are not covered in the work order and seems to be open to the respondent company to place any order. An irregularity of an employee to have placed such orders might have committed the company, but no reason why the debt should not be paid when there is a continuance of business and the clause(s) of the work order establishes firm business relationship between parties.

g) The respondent has filed an appeal under Rule 11 of Arbitration and Conciliation Act after the applicant has filed this application, but the rights of the applicant in filing the application is protected in terms of Sec 238 of IBC 2016 as there was neither a pre-existing dispute(valid record) produced, and the respondent has filed the appeal after the matter is listed, notices issued, hence is no valid reason to stall the process of IBC 2016.

h) We rely on the judgment of Honble NCLAT in Company Appeal 905 of 2024 in case of Peanence Commercial Private Limited Vs Rolta Private Limited which held that initiation of arbitration by CD is malafide act to

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prolong CIRP. Also the respondent has defied its own work order clause by not arriving at the cost payable with dispute as the delivery has been made in terms of contract and debt has arisen if the rates quoted are on higher side. If the same has not been objected even after delivery based on invoices, the same is noted as acceptance by the respondent.

- i) Even though the invoices and work order do not specify the interest to be charged, the applicant is MSME and is eligible as per regulations to claim interest and the principal amount is more than the threshold amount permissible under IBC 2016 and the demand notice issued is within limitation period.
- j) According to the Applicant, the CD has vaguely alleged about filing a police complaint, but despite repeated requests, the complaint has not been supplied to them. The Respondent has clearly stated in its written submissions as well as in its reply that it has filed criminal complaints against its previous employee, who had, in collusion with the Applicant, committed certain frauds. Thus, it appears that no criminal



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complaint has been filed against the Applicant. The Applicant also placed on record the certificate of NeSL evidencing the operational debt and default committed by the CD.

k) The Applicant further submits that it has conclusively established the existence of operational debt and the occurrence of default by the CD. It is pertinent to note that the CD has never denied the delivery of goods and the other material placed on record, except the charges of transportation services.

l) The CD relied upon the object and various provisions of the IBC and stated that it is a going concern having many projects and is a highly profitable company. According to the CD, as criminal proceedings have been initiated, the matter requires detailed evidence, which cannot be taken by this Tribunal, and therefore, the application should be dismissed.

m) It appears that though a criminal complaint was filed and allegations of fraud have been levelled, no complaint has been filed against the Applicant. It has only been filed against the former employee of the CD.

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Therefore, this defence of the CD is not relevant in the present matter.

n) The CD is consistently saying that there is a pre-existing dispute. However, it has itself admitted that before the issuance of the demand notice, no dispute was raised by the CD. The dispute was raised by the CD only in the reply sent to the demand notice issued by the Applicant. Therefore, it cannot be treated as a pre-existing dispute. It was the duty of the CD to raise the dispute, if any, before receiving the demand notice under Section 8 of the IBC for it to be considered a pre-existing dispute within the meaning of the provisions of the IBC. Hence, this defence cannot be accepted, as the debt and default are proved. The application is liable to be admitted. In view of the above, we pass following order:

**ORDER**

(i) The Application bearing  
CP(IB)/246/(AHM)/2025 filed by Vanshita  
Transport through its Proprietor Mr. Nilesh V

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Thakkar (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Montecarlo Limited (Corporate Debtor) is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (a) *the institution of suits or continuation of pending suits or proceedings against the Respondent/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 Respondent/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 Respondent/Corporate Debtor in respect of its property including any action under the*



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*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  
Respondent/Corporate Debtor.*
- (ii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under subsection (1) of the Section 31 or passes an order for liquidation of Respondent/Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.
- (iii) We hereby appoint **Mr. Sanjay Jitendralal Shah** having Registration No. IBBI/IPA-001/IP-P-01915/2020-2021/13096 to act as an IRP under section 13(1) (c) of the Code. He shall conduct the Corporate Insolvency



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Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder.

- (iv) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (v) This Adjudicating Authority directs the IRP

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to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

- (vi) The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (vii) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (viii) It is further directed that the supply of goods/services to the Corporate Debtor Company if continuing, shall not be terminated or suspended, or interrupted

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during the moratorium period.

- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- (x) The Operational Creditor is directed to pay an advance of Rs. 2,00,000/- (Rupees Two Lacks Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.
- (xi) The Registry is directed to communicate a copy of this order to the Operational Creditor, the Corporate Debtor and to the Interim Resolution Professional and the



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concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

- (xii) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- (xiii) Accordingly, CP(IB) 246 of 2025 is allowed and stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

DR. V.G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)

CHITRA HANKARE  
MEMBER (JUDICIAL)

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Prepared by Bhenik  
Signature [Signature]  
Date 07/07/26

Certified to be True Copy of the Original

Raj Vaibha  
Assistant Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad  
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