IN THE NATIONAL COMPANY LAW TRIBUNAL

JAIPUR BENCH

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

**MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER**

CP No. (IB)- 87/9/JPR/2025

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)

IN THE MATTER OF:

VENSYSCO TECHNOLOGIES LIMITED

... Operational Creditor

VERSUS

M/S SAI EDUCARE PRIVATE LIMITED

...Corporate Debtor

MEMO OF PARTIES

CP No. (IB)-87/9/JPR/2025

VENSYSCO TECHNOLOGIES LTD.
7th Floor, Tower-B, Alphathum. Sector 90,
Nepz Post Office, Gautam Buddha Nagar,
Noida, Uttar Pradesh, India. 201305
Also, At:
Flat No: 353/183/4, Tagore Town,
Prayagraj, Uttar Pradesh -211002

...Operational Creditor

Sd/-

Sd/-

VERSUS

M/S SAI EDUCARE PRIVATE LTD.
2nd Floor, RV Tower, A-18, Nityanand Nagar A,
Khatipura, Vaishali Nagar,
Jaipur, Rajasthan-302021

...Corporate Debtor

For the Petitioner	:	Sonal Anand, Adv. Shrikant Samantara, Adv.
For the Respondent	:	Jeetam Kumar Saini, Adv. Bilal Ahmed, Adv. Dolly Sharma, Adv.

Order Pronounced On: 21.07.2026

ORDER

Per: Ms. Kavita Bhatnagar, Technical Member

1. The Present Petition has been preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') by *M/s Vensysco Technologies Limited* ('Operational Creditor'/ 'Petitioner') seeking Corporate Insolvency Resolution Process of *M/s Sai Educare Private Limited* ('Corporate Debtor'/ 'Respondent') on account of debt due and payable of Rs. 12,09,29,629.70/ (Rupees Twelve Crore Nine Lakhs Twenty-Nine Thousand Six Hundred Twenty-Nine only).

Sd/-

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2. The Petitioner is a registered company incorporated under the provisions of the Companies Act, 1956. The registered office at *7th Floor, Tower-B, Alphathum. Sector 90, Nepz Post Office, Gautam Buddha Nagar, Noida, Uttar Pradesh, India. 201305.* The petitioner is engaged in the business of providing infrastructure and manpower to its clients so that their clients can facilitate and conduct online examinations & assessment services for various organizations in India.

3. The Respondent is a Private limited company registered and incorporated under the provisions of the Companies Act, 1956 on 16.11.2012. The registered office of the Corporate Debtor is situated at *2nd Floor, RV Tower, A-18, Nityanand Nagar A, Khatipura, Vaishali Nagar, Jaipur, Rajasthan, India-302021* and functions as an Online Examination Service Provider (OESP), providing end-to-end exam management, security and surveillance, IT support, and data digitization services to its clients. As the company is registered in Rajasthan, hence, it comes under the jurisdiction of this Tribunal.

Facts of the Case

4. The Operational Creditor submits that for enabling and facilitating to conduct computer-based online examinations, the respondent required examination-

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related infrastructure and manpower services ("Services") and accordingly approached the Petitioner for the same.

4.1. On the basis of the Respondent's representations and assurances of timely payment, the parties entered into an MOU dated 1st April 2022, valid for a period of two years up to 31st March 2024. The business relationship continued thereafter on the same terms through email communications, purchase orders, and invoices.

4.2. Pursuant to the said MOU, and on the basis of purchase orders issued by the Respondent from time to time, the Petitioner duly rendered the Services without any delay or defect, and raised invoices accordingly. The said Services were accepted by the Respondent without any demur, dispute, or objection.

4.3. Furthermore, several invoices raised by the Petitioner against the Services rendered since 2024 remain unpaid and outstanding as on 02.07.2025. Particulars of such unpaid invoices are marked and annexed as Annexure -H.

4.4. It is further submitted that against the aforesaid invoices, an amount of Rs. 10,89,71,374/- (Rupees Ten Crore Eighty-Nine Lakh Seventy-One Thousand Three Hundred Seventy-Four only), along with interest at the

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market rate of 18% p.a. amounting to Rs. 1,19,58,254.70/-, remains due and payable as Operational Debt as on 02.07.2025.

4.5. It is further submitted that numerous reminders through telephonic conversations and email communications were made to the Respondent and all queries raised by the Respondent regarding the invoices were duly addressed by the Petitioner, however, the Respondent subsequently stopped responding to communications.

4.6. Furthermore, the Petitioner relies on the TDS deductions amounting to Rs. 27,42,366.28/- that were made by the Respondent for Financial Years 2023-24 and 2024-25 against the unpaid invoices bearing nos. VIPU03124/406 to VIPU24-25/160, which further confirming the dues.

4.7. It is submitted that the petitioner has duly paid GST on the said unpaid invoices, the benefit of which has been availed by the Corporate Debtor.

4.8. In view of the aforesaid facts, the Petitioner issued a Demand Notice in Form 3 under Section 8 of the Insolvency and Bankruptcy Code, 2016, read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, dated 02.07.2025, calling upon the Respondent to make payment of the outstanding dues.

4.9. The aforementioned details, as reflected in Part IV of the Petition, are as follows: -

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Part IV

Sr. No.	Particulars of Operational Debt	
1.	Total amount of Debt,	Total Amount of Debt: Rs.12,09,29,629.7/- as on 02.07.2025., (Principal amount: Rs 10,89,71,374 /- and along with market rate of Interest @18% p.a. i.e. Rs 1,19,58,254.70/-)
2.	Amount claimed to be in default and the date on which the default occurred	The default in respect of the total Operational Debt inclusive of interest occurred 120 or 160 days after the invoices raised between 31.03.2024 and 28.03.2025 wherein the Corporate Debtor failed to pay the outstanding bill as per commitment and mutual understanding to the tune of Rs. 10,89,71,374/- (Rupees Ten Crore Eighty-Nine Lakhs Seventy-One Thousand Three Hundred Seventy-Four rupees only) and along with market rate of interest @18%p.a. of Rs. 1,19,58,254.70 (Rupees One Crore Nineteen Lakhs Fifty-Eight Thousand Two Hundred Fifty-Four Only) Date of Default: 27.05.2025

Reply of the Respondent

5. That the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 is legally untenable and relies on a dispute which exists between the parties.

5.1. The respondent further contends that the entire claim is founded on an alleged MOU dated 01.04.2022, claimed to be valid for two years on the

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basis of email communications; however, no such MOU was ever executed or signed between the parties.

5.2. The Respondent further contends that the document annexed as Annexure-G is merely a Word file bearing no signatures, authentication, execution details, or acknowledgment of either party, and consequently has no evidentiary value as a valid or executed agreement.

5.3. The Respondent further submits that there were deficiencies in the services rendered by the Petitioner including quality, manpower shortages, and technical failures, well before issuance of the Section 8 Demand Notice dated 02.07.2025.

5.4. The Respondent placed its reliance on the penal and deduction clauses embedded in the purchase order, under which the Respondent is contractually entitled to deduct payments for deficiencies, including recorded instances of technical failures such as constant exam terminal and UPS system failures, attracting a penalty per incident.

5.5. Furthermore, the Respondent contends that manpower deficiency exists in the form of failure to provide adequate IT support and technicians, attracting penalties which the Petitioner has failed to reconcile against its invoices.

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5.6. It is further submitted that the Respondent denies liability for interest amounting to Rs. 1,19,58,254.70 calculated @18% p.a., as there being no provision in the invoices or purchase order permitting the Petitioner to charge interest at such rate, or at all.

5.7. The Respondent further submits the authorization relied by the Petitioner suffers from serious defects, raising substantial doubt as to the locus standi of the person instituting the present proceedings. Furthermore, the alleged authorization letter purportedly issued pursuant to a Board Resolution dated 18.06.2025, appears improper, incomplete, and prima facie fabricated, being merely a copy-pasted extract lacking the certification, endorsement, and dating required of a Certified True Copy.

5.8. The Respondent further submits that the invoices referred to in Part-IV, point 1 do not correspond with the ledger account maintained by the respondent, the same invoice numbers being reflected with different values in the ledger produced. Further, the interest claimed @18% p.a. was never agreed upon between the parties, the rate being absent from the purchase orders, invoices, and all correspondence.

5.9. The respondent further submitted that mere deduction of TDS or payment of GST cannot, by itself, be construed as conclusive proof of an admitted

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or undisputed operational debt, such deductions and statutory compliances being routine accounting and tax requirements.

5.10. The respondent further submitted that, he had raised concerns regarding the quality, integrity issues relating to venues, rendered by the petitioner vide email dated 19.12.2023, the Respondent specifically highlighted multiple operational and service-related deficiencies, including delays in response, lack of updates despite repeated follow-ups, and issues concerning the integrity and management of centers arranged by the Petitioner, which adversely affected the Respondent's operational efficiency and project execution.

5.11. Reliance is also placed upon email dated 10.02.2025 concerning complaints received from examination centres regarding outstanding payments. The Corporate Debtor has further relied upon email dated 09.04.2025 stating that while reconciliation discussions were taking place, deduction and penalties were simultaneously proposed against amounts claimed by the Operational Creditor and various deductions on account of manpower shortages and service deficiencies remain unresolved. It is submitted that as account reconciliation was incomplete the final payment amount was never crystalized. The Operational Creditor on the other hand submits that the emails relied upon by the Corporate Debtor merely

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relate to routine operational coordination and do not constitute a dispute concerning debt.

5.12. It is further submitted that Respondent's operational teams had also received frequent complaints from various centers and stakeholders regarding payment-related issues in the Petitioner's region, pursuant to which the Respondent requested the Petitioner to furnish a No Dues Certificate (NDC) in respect of certain engagements, to ensure that vendors associated with the Petitioner had been duly paid and that no claims would be raised against the Respondent.

5.13. It is further submitted that the petitioner had failed to clear payments to its own vendors despite having received funds from the Respondent, as a result of which certain vendors approached the Respondent directly claiming payment for services rendered through the Petitioner, even though the Respondent had already released payments to the Petitioner for the same. The Respondent was accordingly constrained to request NDC from the Petitioner's vendors to avoid exposure to multiple claims or double liability. This conduct of the Petitioner receiving payments from the Respondent but failing to disburse the same to its vendors has resulted in avoidable disputes and exposed the Respondent to unwarranted claims,

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as evidenced by the email communications annexed as Annexure-R1 (Colly).

Analysis and Findings

6. We have heard the counsels and have perused the material on record. The Respondent has contended that the authorization relied upon by the Petitioner suffers from serious defects raising substantial doubts about the locus standi of the person instituting the present proceedings and that the Board Resolution appears in incomplete certifications, regarding enforcement and dating required for a certified true copy. This Tribunal in IA No. 108/JPR/2026 filed by the Respondent had adjudicated in respect of the above contention and found that the Applicant (Respondent) in this case failed to establish that the Operational Creditor lacks the authority to institute proceedings in this case and that what has been pointed out are only deficiencies in the certified copy of the resolution relied upon by the OC which are technical in nature and do not constitute sufficient ground for rejection of the CP. The said IA No. 108/JPR/2026 was accordingly dismissed.

7. From the material placed before us it is evident that the business transactions were carried out between the parties over a substantial period of time and it is

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also evident that the Corporate Debtor has made substantial payments during the course of relationship.

8. The main controversy is whether the dispute raised now by the Corporate Debtor are genuine dispute or merely an afterthought. The Corporate Debtor has relied upon email correspondence dated 19.12.2023 wherein concerns regarding timely response, operational deficiencies, venue payment related issues and NDC requirements were communicated.

9. All these communications preceded demand notice dated 02.07.2025 by a considerable period of time. The Corporate Debtor has also relied upon correspondence made during February, 2025, April, 2025 demonstrating continuing discussions regarding reconciliation, adjustments and deductions. The email dated 09.04.2025 relied upon by both parties record that the ledger reconciliation discussion had taken place and further records proposed deductions, penalties and adjustments.

10. While the Operational Creditor seeks to rely upon the said email as proof of reconciliation the same communication also indicates that the parties were simultaneously discussing deductions, adjustments affecting the final payable amount. The contemporaneous emails relied upon by the Corporate Debtor cannot be said to be manufactured after the issue of demand notice. They demonstrate the concerns relating to performance of services, payment

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adjustments reconciliation and deductions having been raised prior to commencement of insolvency proceedings. The Corporate Debtor has also produced material indicating disputes regarding vendor payments and NDC requirements.

11. The dispute therefore cannot be characterized as a mere moonshine defense and it is equally true that the Operational Creditor has relied upon TDS deductions and GST compliance and reconciliation emails. These may be relevant in a civil action for recovery or for adjudications of contractual claims. However, once a genuine pre-existing dispute is evident, the Adjudicating Authority cannot enter into a detailed examination of rival claims and counter claims. The judgment of the Hon'ble Supreme Court in ***M/s S.S. Engineers vs. Hindustan Petroleum Corporation Ltd.***, also reiterates that the IBC is not intended to be used as a substitute for adjudication of disputed contractual claims.

Conclusion

12. Accordingly, this Tribunal is of the opinion that in this case genuine dispute requiring further investigation existed prior to issuance of the demand notice. The dispute cannot be characterized as spurious / hypothetic within the meaning of ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd***.

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13. Therefore, the present company petition is not maintainable. Hence, **CP (IB) No. 87/9/JPR/2025 is dismissed.**

Sd/-

REETA KOHLI
JUDICIAL MEMBER

Sd/-

KAVITA BHATNAGAR
TECHNICAL MEMBER

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

IA No. 108/JPR/2026
In CP No. (IB)- 87/9/JPR/2025

(Under Section 151 of the Code of Civil Procedure, 1908, read with Order VII Rule 11 and NCLT Rules, 2016)

IN THE MATTER OF:
VENSYSCO TECHNOLOGIES LIMITED

... Operational Creditor

VERSUS

M/S SAI EDUCARE PRIVATE LIMITED

...Corporate Debtor

MEMO OF PARTIES

IA No. 108/JPR/2026

M/S SAI EDUCARE PRIVATE LTD.
2nd Floor, RV Tower, A-18, Nityanand Nagar A,
Khatipura, Vaishali Nagar,
Jaipur, Rajasthan-302021

...Applicant / Corporate Debtor

VERSUS

VENSYSCO TECHNOLOGIES LTD.
7th Floor, Tower-B, Alphathum. Sector 90,
Nepz Post Office, Gautam Buddha Nagar,
Noida, Uttar Pradesh-201305
Also, At:
Flat No: 353/183/4,
Tagore Town. Prayagraj,
Uttar Pradesh -211002

Sd/-

...Non-Applicant / Operational Creditor

Sd/-

For the Applicant	:	Jeetam Kumar Saini, Adv. Bilal Ahmed, Adv. Dolly Sharma, Adv.
For the Respondent	:	Sonal Anand, Adv. Shrikant Samantara, Adv.

Order pronounced on: 21.07.2026

ORDER

Per: Ms. Kavita Bhatnagar, Technical Member

1. The present Interlocutory Application has been filed by the Applicant/Corporate Debtor under Section 151 of the Code of Civil Procedure, 1908 read with Order VII Rule 11 CPC and Rule 11 of the National Company Law Tribunal Rules, 2016, seeking rejection of Company Petition (IB) No. 87/9/JPR/2025 instituted by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("the Code").

2. The principal contention of the Applicant is that the Section 9 petition and the statutory demand notice issued under Section 8 of the Code were not authorized by a valid resolution of the Board of Directors of the Operational Creditor. According to the Applicant, the certified copy of the alleged Board Resolution filed by the Operational Creditor is undated, does not disclose the date of the meeting, and contains only a mechanically reproduced signature. It is, therefore, contended that the proceedings have been initiated without lawful authority and are liable to be rejected at the threshold.

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3. Since the objection relates to the maintainability of the main Company Petition, this Interlocutory Application is being decided along with CP (IB) No. 87/9/JPR/2025. Through the present application, the Applicant has prayed for the following reliefs: -

> *"a) Dismiss the C.P. No. (IB) 87/9/JPR/2025 as not maintainable, for want of valid Board Resolution and proper authorization;*
> *b) Hold that the Demand Notice under Section and Form-3 are illegal, void and non-est;*
> *c) Impose exemplary costs upon the Applicant for abusing the process of law;*
> *d) Pass any other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

4. The Applicant submits that the Company Petition has been instituted without any lawful authority from the Board of Directors of the Operational Creditor. It is asserted that no valid Board Resolution authorizing institution of the insolvency proceedings has been placed on record.

5. According to the Applicant, the document annexed by the Operational Creditor as Annexure-E, purporting to be a certified true copy of the Board Resolution, does not disclose the date on which the alleged meeting of the Board of Directors was held. It is further submitted that the document itself is undated and therefore lacks legal sanctity. Copy of the Borad Resolution filed is as below: -

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ANNEXURE E

VENSYSCO TECHNOLOGIES LIMITED

(Regd. Office:7th Floor, Tower B, Alphathum, Sector-90, Nepz Post Office
Gautam Buddha Nagar, Noida, Uttar Pradesh - 201305)
CIN: U74999UP2016PLC084311
Email: admin@vensysco.in Tel: 9305411511

COPY OF RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF BOARD OF DIRECTORS OF VENSYSCO TECHNOLOGIES LIMITED IN THEIR 04/2025-26 MEETING HELD ON 18TH JUNE, 2025 AT THE REGISTERED OFFICE OF THE COMPANY AT BHUTANI ALPHATHUM, TOWER B, 7TH FLOOR, SECTOR 90, NOIDA (UP) – 201305

INSTITUION OF LEGAL PROCEEDINGS AGAINST SAI EDUCARE PVT LTD, JAIPUR.

The Chairman briefly apprised the Board of the back ground of the case of M/s Sai Educare Pvt Ltd of Jaipur, one of the parties who had earlier dealt with the Company for quite some time. The Company intends to file legal proceedings against that Company for recovery of its dues to the tune of Rs. 10.89 crores plus interest.

The Board after discussions, authorised Mr. Vikash Kumar Dubey to take further action in this regard and also if required to file advised petition before NCLT, Jaipur subsequently.

In this connection, the following resolution was also passed by the Board :

"RESOLVED that M/s Srikant Samantha, law firm of Advocate Mr. Srikant be and is hereby appointed and engaged for filing legal proceedings including issue of prescribed notice to the defaulting party M/s Sai Educare Pvt Ltd of Jaipur for recovery of dues from them to the extent of Rs. 10.89 crores plus interest updated and that such attorney is also authorised to file petition before the National Company Law Tribunal at Jaipur against the above named party and also generally to attend to all other issues incidental to or connected with the process of recovery from the above named party and that Shri Vikash Kumar Dubey, Managing Director and /or Mr. Neeraj Kumar, Director be and are hereby severally authorised to sign pleadings, affidavits or any other legal document as may be required for and on behalf of the Company from time to time and to put appearance if required before the NCLT including for settlement of claim(s) with the above named party mutually as may be required".

Certified True copy
For Vensysco Technologies Limited

Vikash Kumar Dubey	**Neeraj Kumar**
Director	**Director**
DIN: 07498809	**DIN: 09764829**

True Copy

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6. It is further alleged that the signature appearing on the certified copy is merely a mechanically reproduced or copied signature and is neither authenticated nor supported by any certification demonstrating that it was approved by the Board of Directors. On this basis it is contended that the document cannot confer authority upon any person to institute proceedings under the Insolvency and Bankruptcy Code.

7. It is further contended that, in the absence of a valid Board Resolution, the filing of the Section 9 petition itself constitutes an abuse of the process of law. According to the Applicant, permitting such proceedings to continue would seriously prejudice the Corporate Debtor since initiation of insolvency proceedings has significant civil and commercial consequences.

8. The Applicant further states that the objection regarding lack of authorization had already been specifically raised in its reply filed in the main Company Petition. Despite the said objection having been brought to the notice of the Operational Creditor, no valid Board Resolution or other document curing the alleged defect has been produced. It is therefore argued that the proceedings continue without lawful authority.

9. The Applicant further submits that issuance of a demand notice under Section 8 of the Code is not an empty procedural formality but is a mandatory statutory requirement which must necessarily emanate from a duly authorized person acting pursuant to a valid Board Resolution. It is

contended that if the demand notice itself has not been issued under proper authority, every subsequent proceeding founded thereon is rendered unsustainable.

10. It is also stated that actions taken without authorization of the Board of Directors are null, void and non-est in law. According to the Applicant, such an inherent defect goes to the very root of the Tribunal's jurisdiction and therefore cannot be treated as a curable irregularity.

11. The Applicant has further pleaded that Form-3 issued under Section 8 neither enclosed nor referred to any Board Resolution authorizing the issuance of the demand notice. It is accordingly submitted that the statutory demand notice itself stands vitiated.

12. In support of the above contentions, reliance has been placed upon by the Applicant on the following judgments: -

Hon'ble NCLAT in ***Palogix Infrastructure Pvt. Ltd. v. ICICI Bank Ltd., (2017) SCC online NCLAT 266 (Para-36).***

Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353 (Para-40).***

Hon'ble Supreme Court in ***Shankar Finance & Investments v. State of Andhra Pradesh, (2008) 8 SCC 536 (Para-12).***

Hon'ble NCLAT in ***Uttam Galva Steels Ltd. v. DF Deutsche Forfait AG, (2017) ibclaw.in 36 NCLAT (Para-33).***

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The Applicant submits that these judgments establish that proceedings initiated without proper corporate authorization are liable to be rejected.

13. Lastly, it is alleged that the Operational Creditor has abused the insolvency process by initiating proceedings without proper authority, and that the present Company Petition deserves to be rejected at the threshold with exemplary costs.

Analysis & Findings

14. We have heard the counsels and have perused the documents on records. The main issue of the Respondent is that the certified copy of the Board Resolution given by the Operational Creditor is undated and does not disclose the date of Board Meeting and contains only a mechanically reproduced signature. According, to the Applicant these defects invalidates both the statutory demand notice under Section 8 of the Code and the subsequent Company Petition.

15. We have carefully perused Annexure-E which is the certified copy of the Resolution passed by the Board of Directors of the Operational Creditor. The Resolution records that the meeting of the Board of Directors was held on 18.06.2025 at the registered office of the Company. The subject placed before the Board specifically relates to the institution of legal proceedings

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against the Corporate Debtor, namely *M/s Sai Educare Private Limited, Jaipur* for recovery of the outstanding dues.

16. The Resolution further records that after deliberations, the Board authorized Mr. Vikash Kumar Dubey to take further action in the matter and if required to institute proceedings before the NCLT Jaipur. It also expressly approves the engagement of the advocate concerned for initiating legal proceedings including issuance of the prescribed statutory notice to the Corporate Debtor, filing of the petition before the NCLT, appearing in the proceedings and taking all consequential steps in connection therewith. The Resolution additionally authorizes Shri Vikash Kumar Dubey, Managing Director and / or Mr. Neeraj Kumar, Director to sign pleadings, affidavits and other legal documents on behalf of the Company.

17. From the plain reading of the Resolution, it is evident that the Board has consciously considered the dispute with the present Corporate Debtor and has expressly authorized initiation of legal notice, filing of the petition before the NCLT Jaipur and execution of all pleadings and affidavits connected therewith. Thus, the authority is neither general nor vague but is specifically relatable to the present proceedings.

18. The Applicant has contended that the Resolution is invalid on the ground that it is undated, does not disclose the date of the meeting and is supported only by reproduced signatures. We are unable to accept the said contention.

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The Resolution itself specifically records that it was passed in the meeting of the Board of Directors held on 18.06.2025, identifies the meeting, the venue and subject matter considered. The certified copy also bears certification by the Directors of the Company. Merely, because the Applicant disputes the authenticity of the signatures or questions the form of certification no material has been produced to establish that the Resolution was fabricated, unauthorized or not in fact passed by the Board of Directors. Bald allegations unsupported by any cogent material, cannot displace a document produced on record in the ordinary course of corporate proceedings.

19. It is an established law procedure that the proceedings under Section 8 and 9 of the Code undoubtedly have to be initiated by person duly authorized to represent the Operational Creditor and it should be duly authorized by Board of Directors. But there is a distinction between absence of authority on the one hand and an alleged irregularity in the mode of proving such authority on the other. A proceeding instituted by a complete stranger having no authority what so ever stands on an entirely different footing from a proceeding where authority is being questioned only because of alleged deficiencies in the form or contents of the documents evidencing such authority. In the present case the Applicant has not produced any material showing that the person who issued the statutory demand notice or instituted

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Company Petition was a stranger to the affairs of Operational Creditor or acted contrary to its wishes. The objection is that there are alleged deficiencies in the certified copy of the Board Resolution. Such deficiencies do not by themselves lead to the conclusion that the Operational Creditor had not been authorized to initiate the Section 9 proceedings. As a matter of fact, the proceedings have been continued throughout in the name of the Operational Creditor itself. In such circumstances mere objections regarding the format or contents of the certified copy of the resolution cannot automatically be elevated to the status of a jurisdictional defect.

20. Hence, we are unable to accept the contention that as the certified copy of the Board Resolution which has no date and has mechanically reproduced signature should be rejected at threshold. The maintainability of the insolvency proceedings cannot be determined solely by examining every procedural detail relating to the documentary proof of authorization has been recorded in a particular manner. What is important is whether the proceedings have in substance been instituted on behalf of Operational Creditor through a person competent to represent it.

21. The Code does not contemplate dismissal of otherwise maintainable proceedings merely because objections of a technical or procedural character is raised with respect to the documentary evidence of corporate

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authorization unless such objections strike at the very existence of authority itself.

22. The law consistently recognizes that procedural requirement exists to facilitates administration of justice and not to defeat substantive adjudication. Merely imperfections in the documentary proof of authorization ought not to result in rejection of proceedings at the threshold, particularly where the proceedings have through out been prosecuted by the company in whose name they have been instituted.

23. The Applicant has relied upon the following judgments: -

23.1 The Applicant has relied upon the decision of the Hon'ble NCLAT in ***Palogise Infrastructure Pvt. Ltd. Vs. ICICI Bank Ltd., (2017) SCC online NCLAT 266*** to contend that the present Company Petition is liable to be rejected for want of proper authorization. We are unable to accept the said contention. The decision in *Palogise Infrastructure Pvt. Ltd. Vs. ICICI Bank Ltd.*, recognizes the principle that a company, being a juristic person, must act through a person duly authorized by its Board of Directors. The said judgment also distinguishes between a person duly authorized by the company and a mere Power of Attorney holder acting without appropriate corporate authority. In the present case, however, the Operational Creditor has placed on record a specific Board Resolution passed by

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its Board of Directors authorizing initiation of proceedings against the present Corporate Debtor, issuance of the statutory notice, engagement of counsel and filing of proceedings before this Tribunal. Therefore, the requirement of corporate authorization recognized in *Palogise* stands satisfied. Consequently, the said judgment does not advance the Applicant's case.

23.2 The Applicant has also relied upon the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353***. The principal issue before the Hon'ble Supreme Court in that case was the scope of Section 8 and 9 of the IBC particularly the existence of a pre-existing dispute and the parameters governing admission of an application under Section 9. The observations made therein regarding compliance with the statutory scheme cannot be read as laying down that every alleged defect in the documentary proof of corporate authorization necessarily renders a petition non-maintainable. The issue involved in the present application is entirely different. Accordingly, the ratio of *Mobilox* does not support the preliminary objections raised by the Applicant.

23.3 Reliance has further been placed upon the decision of the Hon'ble Supreme Court in ***Shankar Finance & Investments Vs. State of***

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Andhra Pradesh (2008) 8 SCC 536. The said decision arose in an entirely different statutory context concerning the institution of criminal proceedings under the Negotiable Instruments Act and the competency of complaint instituted through an authorized representative. The Hon'ble Supreme Court recognized that a juristic entity necessarily acts through natural persons who are duly authorized to represent it. In the present case, the Board Resolution placed on record specifically authorizes the institution and prosecution of proceedings against the Corporate Debtor. Therefore, the principle laid down in *Shankar Finance* regarding the necessity of proper authorization is fully satisfied in this case. The said judgment, therefore does not assist the Applicant.

23.4 The Applicant has lastly relied upon the judgment of the Hon'ble NCLAT in ***Uttam Galva Steels Ltd. vs. DF Deutsche Forfait AG., (2017) ibclaw.in 36 NCLAT*** The said decision also reiterates the requirement that proceedings under the IBC should be instituted by a person competent and duly authorized to act on behalf of the creditor. However, the said judgment does not lay down that a petition invariably be rejected despite the existence of a specific Board Resolution authorizing institution of proceedings. In the facts of the present case, the Board Resolution specifically authorizes the

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filing of proceedings before the NCLT Jaipur, besides authorizing issuance of a statutory demand notice and execution of pleadings. Consequently, the ration of *Uttam Galva Steel* is distinguishable on facts and does not support the relief sought in the present application.

23.5 The judgments relied upon by the Applicant do not persuade us to take a different view. They cannot be read as laying down an inflexible proposition that every alleged irregularity in the form of Board Resolution, irrespective of its nature or effect necessarily renders insolvency proceedings *ab initio* void. Each case necessarily turns upon its own facts.

24. The following judgment of the Hon'ble Supreme Court is also relevant in this case as under: -

United Bank of India Vs. Naresh Kumar & Others 1996 6SCC660.

The Hon'ble Supreme Court in *United Bank of India vs. Naresh Kumar & Others*, while dealing with the institution of proceedings by a corporate body, recognized that a company acts through resolution of its Board of Directors and through persons authorized by the Board. The Court further observed that procedural objections relating to the manner in which authority is proved should not ordinarily defeat substantive proceedings where the company has in substance authorized the institution and prosecution of the litigation. The principle underlying the said decision is

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that Courts should examine the existence of corporate authority in substance rather than reject proceedings on technical objections relating to the mode of proof. Applying the said principle to the preset case, this Tribunal finds that the specific Board Resolution produced by the Operational Creditor sufficiently authorizes the institution and prosecution of the present proceedings.

25. Applying the above principle to the present case, we find that the Applicant has failed to establish that the Operational Creditor lacked the authority to institute the Section 9 proceedings in this case. What has been pointed out are only alleged deficiencies in the certified copy of the resolution relied upon by the Operational Creditor which are technical in nature and do not constitute sufficient ground for rejection of the Company Petition at the threshold.

Conclusion

26. We are also unable to accept the contention that the provision of Section 151 of the Code of Civil Procedure read with Order VII Rule 11 CPC can be invoked in the facts of the present case so as to reject the Company Petition. The inherent powers given under Rule 11 of the NCLT Rules, 2016 are intended to secure the ends of justice and prevent abuse and process and are not be exercised for terminating proceedings on the basis of technical

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objections which do not go the root of the jurisdiction of the Adjudicating Authority.

27. Hence, we are of the view that the Applicant has failed to establish any legal ground warranting rejections of CP (IB) No. 87/9/JPR/2021 at the threshold. Consequently, **IA No. 108/JPR/2026 stands dismissed**.

Sd/-

REETA KOHLI
JUDICIAL MEMBER

Sd/-

KAVITA BHATNAGAR
TECHNICAL MEMBER