NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.206
RCP(IB)/3(MP)2025
(Old Case)
CP(IB)/23(MP)2025
Restored on 10-11-2025

Order under Section 9 IBC

IN THE MATTER OF:

Marvel Industries & Services Pvt Ltd ....**Applicant**
V/s
Flexituff Technology International Ltd ....**Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 09/09/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/- **Sd/-**

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

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IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

RCP(IB)/3(MP)2025

(Old Case) CP(IB)/23(MP)2025

Restored on 10-11-2025

[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:

MARVEL INDUSTRIES AND SERVICES PRIVATE LIMITED

Having Its Registered Office At: A-40, Rajouri Garden,
New Delhi - 110027. Email: Cs@Marvelvinyls.Com

...Applicant / Operational Creditor

Versus

FLEXITUFF TECHNOLOGY INTERNATIONAL LIMITED

Having Its Registered Office At:
C 41-50, Sector - III, Sez Industrial Area,
Pithampur, Dhar, Madhya Pradesh – 454775

...Respondent / Corporate Debtor

CORAM:

HON'BLE SH. BRAJENDRA MANI TRIPATHI, MEMBER (JUDICIAL)

HON'BLE SH. MAN MOHAN GUPTA, MEMBER (TECHNICAL)

Order Pronounced on: 09.09.2026

Appearance:

For the Applicant: Mr. Aryan Gupta, Adv (Online)

For the Respondent: Adv. Mr. Akshat Agrawal

O R D E R

1. The present Company Petition, registered as RCP(IB)/3(MP)2025 (Old Case) CP(IB)/23(MP)2025 Restored on 10-11-2025, has been filed by **M/s Marvel Industries and Services Private Limited** (hereinafter, the "Operational Creditor" or the "Applicant") under **Section 9 of the Insolvency and Bankruptcy Code, 2016** (hereinafter, the "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, the "AA Rules"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against **M/s Flexituff Technology International Limited** (hereinafter, the "Corporate Debtor" or the "Respondent"), on account of an alleged default in payment of an operational debt of **Rs. 1,14,70,580/- (Rupees One Crore Fourteen Lakhs Seventy Thousand Five Hundred and Eighty Only)**, inclusive of interest, said to be due and payable as on the date of the statutory demand notice.

2. The debt in question is traced by the Applicant to a **Memorandum of Understanding dated 08.09.2022** ("MOU") executed between the Applicant and M/s Flexituff Ventures International Limited ("FVIL"), a company stated to be associated with the Corporate Debtor, under which the

Applicant acted as an export intermediary for FVIL. The Applicant asserts that upon reconciliation, a sum of Rs. **1,92,95,580/-** was found due from FVIL, and that this liability came to be expressly assumed by the Corporate Debtor vide Letter dated 09.09.2024, part-paid to the extent of Rs. 78,25,000/-, and secured by four post-dated cheques for the balance, three of which were dishonoured. It is on this basis that the present Application under Section 9 of the Code has been preferred.

<u>FACTS OF THE CASE</u>

3. **On perusal of Part I of Form 5** annexed to the Petition, it is noted that, Applicant/Operational Creditor - M/s Marvel Industries and Services Private Limited, having registered office at A-40, Rajouri Garden, New Delhi – 110027, Acting through it authorised representative - Mr. Laxman Rawat, vide Board Resolution dated 12.03.2025.

4. **On perusal of Part II of Form 5,** it is noted that Respondent/Corporate Debtor - **M/s Flexituff Technology International Limited**, CIN - U25209MP2017PLC068433, Having registered office at C41-50, Sector – III, SEZ Industrial Area, Pithampur, Dhar, Madhya Pradesh – 454775, its Authorised / Paid-up Share Capital is Rs. 2,60,00,000/- / Rs. 98,78,880/-.

5. **On perusal of Part III of Form 5**, it is noted that the Operational Creditor has not proposed the name of any

Interim Resolution Professional ("IRP") and has left the same to the discretion of this Tribunal.

6. **On perusal of Part IV of Form 5** and the Demand Notice dated 18.02.2025 (Form 3), the particulars of the debt and default, as pleaded by the Applicant, are noted in tabular form:

Particulars	Details
Total amount claimed in default	Rs. 1,14,70,580/- (inclusive of interest, as on the date of demand notice)
Sum admitted as payable by Corporate Debtor (Letter dated 09.09.2024)	Rs. 1,92,95,580/-
Paid by Corporate Debtor on 07.09.2024	Rs. 40,00,000/-
Realised on 30.11.2024 (Cheque No. 000200)	Rs. 38,25,000/-

<u>SUBMISSIONS OF THE OPERATIONAL CREDITOR / APPLICANT</u>

7. It is submitted by the Operational Creditor that by way of the MOU dated 08.09.2022, it entered into a business arrangement with FVIL, represented by Mr. Saurabh Kalani, one of its Directors, whereunder the Operational Creditor was to act as an intermediary between FVIL and certain overseas

customers identified in Schedule 1 to the MOU, procuring goods from FVIL for onward supply to such customers.

8. It is further submitted that in the course of business transactions under the said MOU, a sum of Rs. 2,36,31,377/- (Rupees Two Crores Thirty-Six Lakhs Thirty-One Thousand Three Hundred and Seventy-Seven) came to be due and payable by FVIL to the Operational Creditor. A Debit Note dated 29.07.2024 bearing No. HR/24-25/DN001 was accordingly raised, which came to be duly acknowledged over email, and after due reconciliation of accounts, the sum payable stood revised to Rs. 1,92,95,580/- (Rupees One Crore Ninety-Two Lakhs Ninety-Five Thousand Five Hundred and Eighty Only)

9. It is submitted that in September 2024, Mr. Saurabh Kalani represented to the Operational Creditor that the FIBC business of FVIL had been taken over by the Corporate Debtor, assuming all the receivables and payables, including but not limited to the claim of Rs. 1,92,95,580/- of the Operational Creditor.

10. It is submitted that giving effect to this understanding, the Corporate Debtor remitted Rs. 40,00,000/- on 07.09.2024 and, thereafter, vide Letter dated 09.09.2024 issued under the signature of its authorised signatory, confirmed that after adjustment of the debit balance, the net payable amount was Rs. 1,92,95,580/-, of which Rs. 40,00,000/- had already been transferred as part of the settlement. The Letter further

recorded that the FIBC business of Pithampur had been purchased by the Corporate Debtor with all receivables and payables, and that four post-dated cheques bearing Nos. 000200 to 000203 were enclosed towards the admitted balance.

11. It is submitted that contemporaneously, Mr. Saurabh Kalani addressed a separate communication dated 09.09.2024, confirming that in the event the Corporate Debtor failed to honour any of the cheques or defaulted on its payment obligations in any manner, he would remain personally liable for the entire outstanding amount, in addition to the liability of the Corporate Debtor.

12. It is submitted that Cheque No. 000200 was first dishonoured on 31.10.2024 for the reason Funds Insufficient, and realised only on 30.11.2024. The three subsequent cheques were never honoured: No. 000201 on 02.12.2024, No. 000202 on 31.12.2024, and No. 000203 on 01.02.2025.

13. It is submitted that despite its own written admission, part-payment and issuance of post-dated cheques, the Corporate Debtor failed and neglected to clear the balance, compelling the Operational Creditor to issue a Demand Notice dated 18.02.2025 under Section 8 of the Code, calling upon the Corporate Debtor to pay Rs. 1,14,70,580/- within ten days. The Notice was received at the Okhla address on 19.02.2025.

yet no payment was made and no notice of dispute was raised within the statutory period.

14. It is accordingly submitted that the Corporate Debtor stands in continuing default of Rs. **1,14,70,580/-,** that the debt exceeds the threshold under Section 4 of the Code, that no pre-existing dispute exists, and that the Application deserves admission.

REPLY / SUBMISSIONS OF THE CORPORATE DEBTOR /RESPONDENT

15. By way of preliminary submissions, the Corporate Debtor denied each and every allegation, submission and averment made in the Petition, unless specifically admitted, and stated that any non-traversal would be treated as a denial, while reserving the right to file a detailed para-wise reply and raise further grounds during arguments.

16. It is submitted that the Petition is replete with factual and legal perversity, is neither maintainable nor tenable, and is an abuse of process of law filed with the intention of extracting money from the Corporate Debtor and exerting pressure on it to meet an illegal and unlawful demand of the Applicant.

17. It is submitted that the basic question for consideration is whether the Corporate Debtor was under any obligation to make payment to the Applicant under the MOU, which was entered between the Applicant and FVIL, and that the

manner of calculation of the outstanding amount was disputed, such that the amount of default could not possibly be determined. Reliance was placed on the definition of default under Section 3(12) of the Code, and it was contended that the Applicant had failed to state the date of default in Part IV of the application, rendering it liable to be dismissed on this ground alone.

18. It was submitted that the applicant has based its claim on MOU dated 08.09.2022 which was executed between the Applicant and FVIL, under which the Applicant was to act as intermediary between FVIL and its overseas customers, **procuring material from FVIL after making payment based on purchase orders** placed by the customer from aboard and supply the same to the customers. Applicant had to review the payment from the customers against the supply and was required to get the credit insurance for exports at the cost of FVIL.

19. It was contended that the Applicant had not produced any document to demonstrate the transactions between the Applicant, FVIL and customers and how much amount is outstanding from the customers and whether the amount has been received from the credit insurance for export taken by the applicant, rendering the Application incomplete and not in accordance with Rule 6(1) of the AA Rules, which was reproduced and relied upon. It was further submitted that the Applicant had failed to establish any business relation

between the Applicant and the Corporate Debtor for which any operational debt could be said to be due and payable.

20. It was submitted that the Applicant itself in its mail correspondence admitted that there exists dispute with regard to the amount allegedly due and payable by FVIL. In view of the admitted dispute the application itself is not maintainable and deserves to be and may kindly be dismissed.

21. It is further contended that the Applicant had received the entire payment of the bills raised to the customers, either from the customers or from the credit insurance (ECGC) for exports, and that nothing was due and payable, and that the Letter dated 09.09.2024 had been obtained from the Corporate Debtor by coercion and by suppression of the fact that payment had already been received from the customers or the ECGC claim, which later surfaced and on account of which the balance payment was not honoured.

22. It is submitted that the customers abroad had confirmed that payments had been duly made to the Applicant against the purchase orders, that the Applicant had failed to substantiate the outstanding amount claimed with supporting documents, and that, in any event, under the MOU the Applicant was only entitled to receive amounts from the customers or the ECGC, and not from FVIL.

23. It was submitted that copies of the statement of account certified under the Bankers' Books Evidence Act had not been filed, rendering the Application defective, incomplete, vague and inaccurate, and not in accordance with the Code and Rules, and liable to be rejected on this ground as well.

24. It was submitted that initiation of CIRP is a decision requiring commercial acuity, and that admitting the Application would subject a healthy Corporate Debtor to the rigours of CIRP and jeopardise the interests of persons unaware of the proceedings. It was further submitted that the Code was not intended to be a substitute for a recovery forum, and that the Petition, being a malicious attempt to coerce the Corporate Debtor into payment, was an inappropriate substitute for recovery of money.

25. The Corporate Debtor accordingly prayed that the Application under Section 9 of the Code be rejected, with costs, or that such other order as deemed fit and necessary be passed.

SUBMISSIONS IN REJOINDER OF THE OPERATIONAL CREDITOR

26. By way of preliminary submissions, the Operational Creditor craved leave to rely on the contents of the main Petition without repetition, for the sake of brevity, and denied all claims, contentions and averments raised in the Reply in toto, save what stood specifically admitted.

27. It was submitted that the defence raised in the Reply is nothing but a collection of bald averments without any supporting document, and that apart from vague and unsubstantiated allegations, the Respondent had placed nothing on record to support what was contended.

28. Addressing the objection as to privity, it was submitted that the MOU dated 08.09.2022 was executed between the Applicant and Flexituff Ventures Private Limited, and that the payment obligation was nonetheless assumed by the Respondent by virtue of the Letter dated 09.09.2024, issued because the FIBC business of Flexituff Ventures Private Limited had been purchased by the Respondent, being its holding company. In support, reliance was placed on the Respondent's own Annual Report for 2023-24, said to evince Flexituff Ventures Private Limited as its wholly owned subsidiary, annexed as Annexure-1 to the Rejoinder.

29. **On the objection regarding non-mention of the date of default**, it was submitted that the omission was merely typographical, that the date of default was clearly mentioned in the Demand Notice, which substantially complied with the requirements of the Code, and that it is a settled position in law that such an omission does not affect the merits of a case where the date is otherwise ascertainable from the pleadings and documents.

30. Another defence set-up by the Respondent is that the Applicant has not produced **any document to demonstrate**

the transactions between the Applicant, FVIL and customers, amount which has been received from the customers or from the credit insurance. At the very outset, even if this contention is to be countenanced, it deserves to be noted that had it been the case that the Applicant had received some money from the customers and was attempting to unjustly enrich itself, the Respondent still went ahead and issued the Letter dated 09.09.2024 and admitted and acknowledged a debt of Rs. **1,92,95,980/- and made part-payments in furtherance thereof**. More so, this ingenious plea has come to be raised for the first time only to defeat the lawful rights of the Applicant herein. Even otherwise, it is a settled position in law that there cannot be an evidence contrary to the contents of the written document. As such, Respondent cannot be permitted to contend anything contrary to the contents of Letter dated 09.09.2024.

31. The Respondent has contended that it is privy to the information that the Applicant has received entire payment of the bills raised to the customers either from the customers or from the credit insurance (ECGC) for exports and as such, nothing is due and payable in accordance with law. Despite raising such a serious allegation, bordering on perjury, there is not even a shred of evidence, documentary or otherwise, to remotely suggest what has been contended by the Applicant herein. The Applicant be put to strict proof thereof.

32. **On the coercion defence**, it was submitted that it defied logic that the Respondent, despite claiming to have acted under coercion, took no subsequent action to have the Letter declared null and void, nor initiated any recovery proceedings against the Applicant, and that a further part-payment of Rs. 38,25,000/- was made on 30.11.2024, two months after the Letter, suggesting that any alleged coercion had, at best, lasted only that long before the Respondent became aware of its rights and stopped making payments.

33. On the contention that overseas customers had confirmed payment to the Applicant, it was submitted that this too was a bald averment, unsubstantiated by any material, and deserved to be rejected at the threshold.

34. It was accordingly prayed that the Application be allowed and CIRP initiated against the Corporate Debtor.

OBSERVATIONS AND ANALYSIS

35. We have heard the learned counsel for the parties and perused the pleadings and documents placed on record.

36. The principal objection is that the Corporate Debtor was a stranger to the MOU dated 08.09.2022, which was executed between the Applicant and FVIL, and owed no obligation to the Applicant. This objection does not survive as the Corporate Debtor's own Letter dated 09.09.2024, by which it admitted a net payable sum of Rs. **1,92,95,580/-,** paid Rs. 40,00,000 and for the balance amount issued four post-dated cheques for the

balance. A debt so admitted, part-paid and secured by cheques of the Corporate Debtor's own hand is a duly acknowledged debt of the Corporate Debtor, whatever the position between the Applicant and FVIL may have been at the outset.

37. It is accordingly not necessary for this Tribunal to go into the further explanation offered in the Rejoinder as to whether the Corporate Debtor is the holding company of FVIL. Since it has no bearing on the finding that the debt is the Corporate Debtor's own admitted debt.

38. The objections that the **date of default** was not stated in Part IV of the application, that no bank statement certified under the Bankers' Books Evidence Act was filed, and that the application is incomplete under Rule 6(1) of the AA Rules, are matters of form rather than substance. The date of default is clear from the Demand Notice dated 18.02.2025 and from the Corporate Debtor's own Letter dated 09.09.2024 and the cheques enclosed with it, and the debt and default stand independently proved by that Letter and by the dishonoured cheques, regardless of the absence of a bank certificate. These objections do not affect the maintainability of the Application.

39. The remaining objections that the Applicant's own correspondence admitted a dispute, that the Applicant had already been paid by its customers or through ECGC, and that the Letter dated 09.09.2024 was obtained by coercion — are bald assertions, unsupported by any document, email or proceeding. Notably, the Corporate Debtor made a further

payment of Rs. 38,25,000/- on 30.11.2024, two months after the Letter it now says was coerced, and never took any step to have the Letter set aside or to recover the amount already paid under it. Applying the well-settled test in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, (2018) 1 SCC 353** — that a defence must be real and supported by evidence, and not a moonshine defence raised only to defeat the application — these objections do not amount to a pre-existing dispute.

40. On the above, this Tribunal concludes that: (a) an operational debt of Rs. 1,14,70,580/- exists and is due from the Corporate Debtor; (b) the Application, filed on 27.03.2025, is well within the three-year period of limitation, computed from the default in October 2024; (c) the debt stands duly acknowledged by the Corporate Debtor's own Letter dated 09.09.2024, part-payment and cheques; and (d) no pre-existing dispute within the meaning of Section 5(6) read with Section 8(2)(a) of the Code has been made out. The Application is accordingly fit for admission.

ORDER

41. For the reasons recorded above, this Tribunal is satisfied that: (i) an operational debt exceeding the threshold under Section 4 of the Code exists; (ii) default has occurred; (iii) the Demand Notice under Section 8(1) was duly served and has remained unanswered by any notice of dispute; (iv) the application is complete in Form 5 under Rule 6 of the AAA Rules; None of the

grounds for rejection under Section 9(5)(ii) of the Code are attracted. Accordingly, it is ordered as follows:

i. **RCP(IB)/3(MP)2025 (Old Case) CP(IB)/23(MP)2025 Restored on 10-11-2025** is hereby ADMITTED, and Corporate Insolvency Resolution Process is initiated against **M/s Flexituff Technology International Limited, CIN - U25209MP2017PLC068433**.

ii. Moratorium is declared in terms of Section 14(1)(a) to (d) of the Code, prohibiting: institution or continuation of suits/proceedings against the Corporate Debtor; transferring, encumbering, alienating or disposing of any asset or legal right/beneficial interest of the Corporate Debtor; any action to foreclose, recover or enforce any security interest; and recovery of any property occupied by or in possession of the Corporate Debtor.

iii. The order of moratorium under section 14 of the Code shall come to 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 section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.

iv. However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.

v. Since the applicant has not proposed any IRP, we hereby appoint Ms. **Apeksha Kekre** (IBBI Regn. No. IBBI/IPA-002/IP-N01279/2023-2024/14358), AFA Valid till 31.012.2026, email id: apekshakekre@gmail.com is hereby appointed as **Interim Resolution Professional**, to perform all functions under Sections 15 to 21 of the Code, including making a public announcement of the CIRP within three days of this order, calling for submission of claims, and constituting the Committee of Creditors.

vi. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. she 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. The Board of Directors of the Corporate Debtor shall stand suspended and its powers shall vest in the Interim Resolution Professional; officers and managers of the Corporate Debtor shall extend full cooperation to the Interim Resolution Professional under Section 19 of the Code.

ix. The Operational Creditor shall deposit a sum of Rs. **50,000/-** (Rupees fifty thousand only) with the Interim Resolution Professional within one week of this order, to meet immediate CIRP costs, to be treated as part of the Insolvency Resolution Process Costs and reimbursed in accordance with the Code and Regulations.

x. The Corporate Insolvency Resolution Process shall be completed within the period prescribed under Section 12 of the Code.

xi. The Registry shall communicate a copy of this order to the Applicant, the Respondent, the Interim Resolution Professional.

42. Accordingly, **RESTORED COMPANY PETITION (IBC)/3(MP)2025 (Old Case) CP(IB)/23(MP)2025** is allowed. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-	**Sd/-**
MAN MOHAN GUPTA	**BRAJENDRA MANI TRIPATHI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Chandni L.R.A.