NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

3.IVN.P /159/2025C.P. (IB)/638(MB)2024

IN THE MATTER OF

Apkon Ventures Private Limited
Vs
JAS Toll Road Company Limited

U/s 9 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 05.11.2026

CORAM:
SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant in

C.P. (IB)/638(MB)2024: Adv Mahek Saudagar i/b Adv Yahya Batatawala (VC)

For the Respondent: Adv Mahek Saudagar i/b Adv Yahya Batatawala (VC)

ORDER

IVN.P /159/2025: The above IVN.P /159/2025 is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

//Tausif//

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

2.IA/5339/2025C.P. (IB)/638(MB)2024

IN THE MATTER OF

Apkon Ventures Private Limited
Vs
JAS Toll Road Company Limited

U/s 9 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 05.11.2026

CORAM:
SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant in

C.P. (IB)/638(MB)2024: Adv Mahek Saudagar i/b Adv Yahya Batatawala (VC)

For the Respondent: Adv Mahek Saudagar a/w Adv Yahya Batatawala (VC)

ORDER

IA/5339/2025 & C.P. (IB)/638(MB)2024: The above IA/5339/2025 and C.P. (IB)/638(MB)2024 are listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

//Tausif//

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - V

C.P.(IB)/638/MB/C-V/2024
(Under Section 9 of Insolvency and Bankruptcy Code)

IN THE MATTER OF

M/S Apkon Ventures Private Limited
Garden House, Garden Road, Tumkur, Karnataka - 572010.

...Financial Creditor/Petitioner

Versus

M/s JAS Toll Road Company Ltd

39, Ambari Layout, Nagpur, Maharashtra - 440010

...Corporate Debtor/Respondent

Along with

I. I.A(I.B.C)/5339/2025

(Under Section 60(5) r/w Section 65 of the Insolvency and Bankruptcy Code.)

National Highways Authority of India,
Through its Project Director
PIU – Tumkur,
Sri Rakshe, 80 ft. Road, Mahalakshmi Nagar, Near Krishna College Batawadi, Tumkur - 572103

...Applicant

Versus

1. **M/S Apkon Ventures Private Limited**
   Garden House, Garden Road, Tumkur, Karnataka - 572010.
2. **M/s JAS Toll Road Company Ltd**

39, Ambari Layout, Nagpur, Maharashtra - 440010

...Respondents

Along with

II. IVN.P(I.B.C)/159/2025

(Under Section 60(5) r/w Section 65 of the Insolvency and Bankruptcy Code.)

National Highways Authority of India,
Through its Project Director
PIU – Tumkur,
Sri Rakshe, 80 ft. Road, Mahalakshmi Nagar, Near Krishna College Batawadi, Tumkur - 572103

...Applicant

Versus

1. **M/S Apkon Ventures Private Limited**
   Garden House, Garden Road, Tumkur, Karnataka - 572010.
2. **M/s JAS Toll Road Company Ltd**
   39, Ambari Layout, Nagpur, Maharashtra - 440010

...Respondents

Order Delivered on: 05.11.2026

Coram:

Sh. Vinay Goel, Member (Judicial)

Sh. Charanjeet Singh Gulati Member (Technical)

Appearances:

For Applicant: NHAI: Adv. Abhay Gupta, Adv. Arpit Sharma and Adv. Anshuli

For the Operational Creditor:	Adv. Mahek Saudagar i/b Adv. Yahya Batatawala
For the Respondent in IVN.P/159/2025, IA/5339/2025:	Adv. Yahya Batatawal a/w Adv. Mahek Saudagar
For the Respondent in IVN.P/159/2025:	Adv. Omkar Deosthale a/w Ms. Nisha Kaba, Adv. Abhijit Singh (R2)

ORDER

1. Since C.P. (IB)/638/MB/2024, I.A. (I.B.C.)/5339/2025 and IVN.P. (I.B.C.)/159/2025 are interlinked, they were heard and reserved for orders together and are accordingly being disposed of by this common order.

C.P.(IB)/638/MB/C-V/2024

2. The present Petition has been filed by Apkon Ventures Private Limited, ("**the Operational Creditor/ Petitioner**"), under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**IBC/the Code**"), seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, M/s Jas Toll Road Company Ltd.

Facts as per the Petition, in brief:

3. The Operational Creditor filed this petition under Section 9 of the Code on 26.04.2024 against M/s Jas Toll Road Company Ltd. ("Corporate Debtor"). It claims Rs. 1,06,49,476.70/- with interest at 12% p.a. from 31.03.2022 (Rs. 25,62,876.80/- till 31.03.2024), totalling Rs. 1,32,12,353.50/-. The date of default is stated to be 31.03.2022.

4. The Corporate Debtor holds the four-laning project on the Nelamangala–Tumkur section of NH-4. It engaged the Applicant for overlay works with 40 mm thick bituminous concrete (Km 29+500 to 62+000) under a Supply and Service Contract dated 01.03.2019. The work was completed by March 2021, invoices were raised, and the Corporate Debtor issued a Work Completion Certificate dated 31.03.2021.

5. The Applicant sought release of its dues, including the retention money, by letters dated 02.04.2021 and 16.04.2021. By letter dated 19.04.2021, the

Corporate Debtor cited the second wave of Covid-19 and asked that payment be made at the end of the Defect Liability Period. The Applicant agreed, but no payment followed after the Defect Liability Period lapsed on 31.03.2022, despite a reminder dated 04.04.2022.

6. The Applicant relies on its ledger of the running account between the parties, a legal notice dated 06.03.2023, and a Demand Notice dated 03.08.2023 under Section 8, delivered on 05.08.2023 and not replied to.

7. The Applicant submits that, under Clause 17 of the Contract, 5% of the Contract Price was retained as security deposit/retention money. Of this, 2.5% was payable upon completion of the work and the balance 2.5% upon expiry of the 12-month Defect Liability Period. That period expired on 31.03.2022, whereupon the balance retention amount became due and payable. Despite repeated requests, Rs. 1,06,49,476.70/- remained unpaid, and the Corporate Debtor raised no dispute.

8. The Applicant submits that the limitation objection overlooks Clause 17. The balance retention became payable only on 31.03.2022, so the petition filed on 26.04.2024 is within three years of the date the amount became due. The correspondence shows that the Applicant repeatedly sought payment, while the Corporate Debtor asked for deferment on account of Covid-19 without disputing the claim.

9. The Applicant submits that there is no pre-existing dispute under Section 9. The Corporate Debtor did not reply to the Demand Notice. Before receiving it, the Corporate Debtor had not disputed the work executed, challenged its completion, or questioned the Applicant's entitlement to the retention amount. The Work Completion Certificate confirms completion, and the letter dated 19.04.2021 sought only deferment, without raising any issue on quality or completion. The objections raised later do not establish a genuine pre-existing dispute.

10. The Applicant submits that the Corporate Debtor's challenge to the 12% interest, on the ground that it has no contractual or legal basis, cannot defeat the principal debt of Rs. 1,06,49,476.70/-. Without prejudice to its claim for

interest, the principal independently satisfies the requirements for initiating CIRP, and interest, if any, may be determined separately in accordance with law.

11. The Applicant submits that the record establishes the contractual relationship, completion of the work, the obligation to release the retention on 31.03.2022, and continued non-payment despite repeated demands. The Corporate Debtor's failure to honour it corroborate the subsisting liability, and the bank statements (Annexure A-5) show no payment after 31.03.2022. The Applicant therefore prays that CIRP be initiated against the Corporate Debtor.

12. The Applicant has through its Written Submission dated 08.10.2026 submits that the Corporate Debtor's reliance on *Unique Tobacco Company v. Pelican Tobacco (India) Pvt. Ltd.* is misplaced. The amount claimed is not an independent security deposit. It is a contractually retained portion of the consideration for services rendered, payable on fulfilment of the conditions in Clause 17, and is therefore operational debt under the Code.

13. Vide order dated 04.02.2025, this Tribunal observed that the Petitioner and the Corporate Debtor have entered into a settlement and has placed on record the consent terms dated 19.01.2025. The Corporate Debtor had agreed to pay an amount of Rs. 1,20,00,000/- i.e., the full and final amount in six instalments for which the PDCs have already been handed over to the Petitioner. In view of the settlement having been arrived at between the parties, the CP was disposed of as having been withdrawn and the petitioner was granted liberty to get the CP revived in case of default by the Corporate Debtor.

14. Further, IA/2927/2025 was filed by the Applicant seeking restoration of the main Petition since the Corporate Debtor had defaulted on payment of the settlement amount. On 09.10.2025, in the matter of IA/2927/2025, this Tribunal noted the Applicant's submission that despite entering into the settlement, the post-dated cheques which were given have bounced and thereby the Corporate Debtor has defaulted on the payment of the any

amount of settlement as per the settlement agreement and accordingly allowed IA/2927/2025. Thereby reviving the main Company Petition.

Submissions of the Corporate Debtor, in brief:

15. The Corporate Debtor has submitted that Section 9 petition is not maintainable in law or on facts. The Operational Creditor has not established a present, legally enforceable and undisputed operational debt, which Section 9 requires.

16. Disputed claim**:** The Corporate Debtor does not dispute the Supply and Service Contract dated 01.03.2019, or the Work Completion Certificate dated 31.03.2021. It submits that the certificate, by itself, is not an admission that the amount claimed is a presently payable operational debt. It has specifically denied any admitted or undisputed debt, and the existence of a contract is not synonymous with the existence of an undisputed operational debt. The Operational Creditor must independently show that the amount was due and payable on the date of filing, and that a default occurred.

17. Limitation**:** The Operational Creditor itself relies on completion of the work and the certificate dated 31.03.2021, but the petition was filed only on 26.04.2024, beyond the three-year period under the Limitation Act, 1963. Relying on *B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates ((2019) 11 SCC 633)*, the Corporate Debtor says a time-barred claim cannot be brought within the Code by calling it an "operational debt". Subsequent correspondence cannot revive it unless it legally satisfies the requirements for extension of limitation, and no such basis is pleaded or shown.

18. Interest: There is no contractual stipulation, statutory entitlement or other legal basis for the claim of interest at 12% p.a. The Operational Creditor cannot unilaterally impose an interest liability by making a demand, so the interest cannot form part of a crystallised operational debt.

19. Recovery, not Insolvency: Relying on *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. ((2018) 1 SCC 353)* and *Transmission Corporation of Andhra Pradesh Ltd. v. Equipment Constructions Ltd. ((2019) 12 SCC 697)*, the Corporate Debtor submits that the Code is not a substitute for a recovery

forum for disputed contractual claims. Adequate remedies are available for adjudication of such claims, and the delay in approaching this Tribunal itself shows the claim was not being pursued as a crystallised insolvency debt.

20. SPV structure and handover**:** The Corporate Debtor was incorporated as an SPV solely to execute the Nelamangala–Tumkur Road Project (NH-4, Km 29+500 to Km 62+000). It has no revenue source beyond the Project's toll collections, and no independent surplus liquidity. The Project was handed over to NHAI in November 2022, and the Corporate Debtor no longer holds operational control. Any claim relating to the Project arising after handover should be directed to NHAI and cannot be treated as a subsisting operational debt of the Corporate Debtor.

21. Additionally, through its Written Submission dated 08.10.2026, the Corporate Debtor submits that the security deposit/retention money is not an "Operational Debt". It relies on *Unique Tobacco Company v. Pelican Tobacco (India) Pvt. Ltd.*, which it says holds that a security deposit is not an operational debt. The question whether the retention amount had become payable, and on what conditions it was to be released, requires determination and cannot be assumed in the Operational Creditor's favour. Further, the Corporate Debtor submits that the Operational Creditor has failed to establish the essential ingredients under Section 9 (an undisputed operational debt, default, and compliance with statutory requirements). It prays that the petition be dismissed at the threshold, with costs.

I. I.A(I.B.C)/5339/2025

22. This application has been filed by National Highways Authority of India, ("**the Applicant/NHAI**"), under Section 60(5) read with Section 65 of the Insolvency and Bankruptcy Code, 2016 ("**IBC/the Code**"), seeking dismissal of the Petition bearing C.P. (IB) No. 638 of 2024 ("**main Petition**") filed by Apkon Ventures Private Limited ("**Respondent No.1/ Operational Creditor**") against Jas Toll Road Company Limited ("**Respondent No.2/ Corporate Debtor**") and seeking imposition of cost upon the Respondents.

Facts as per the Application, in brief:

23. The Applicant submits that under a Concession Agreement dated 28.06.2001 ("**Concession Agreement**"), the Corporate Debtor was to widen Km 29.5–62 of NH-4 (Nelamangala–Tumkur, Karnataka) on a BOT basis, and could retain the toll until expiry of the Concession Period. That period expired on 20.07.2021 (19 years from the Appointed Date of 22.06.2002, plus 29 days extended by NHAI) ("**Concession Period**"). The Corporate Debtor's alleged Service Agreement dated 01.03.2019 with the Operational Creditor relates only to this project.

24. Prior to the expiry of the Concession Period certain dispute arose between the parties and consequently the Respondent No.2 invoked the Arbitration clause as stipulated in the Concession Agreement. The disputed claim raised consisted of monetary claims and claims related to the extension of the Concession period. By a Final Arbitral Award dated 31.12.2020 ("**impugned Award**"), the Arbitral Tribunal extended the Concession Period by 474 days (Claim 2: 45 days; Claim 4: 414 days; Claim 5: 15 days). The said extension details are summarised below:

Claim no.	Claim Details	Extension granted by AT
2	Extension of Concession Period due to a) transport strike from 13 April 2003 to 24-04-2003; and b) heavy rain in Oct'2003 (relates to the construction period)	45 days
4	Extension of Concession Period due to alleged concession provided to LPT (Local Personal Traffic) and LCT (Local Commercial Traffic) by Claimant, pursuant to Supplementary Agreement dated 10.07.2006	414 days
5	Extension of Concession Period due to a) Transport strike in the Aug'2004, b) Sand lorry strike in June'2005 and c) Kaveri Water issue between Tamil Nadu and Karnataka	15 days
	TOTAL	**474 days**

25. NHAI challenged the impugned Award under Section 34, in OMP (COMM) 185/2021 which was pending, meanwhile by an order dated 25.05.2021 in OMP (ENF)(COMM) 90/2021, the Hon'ble Delhi High Court enforced the said

impugned Award. The Corporate Debtor therefore collected tolls until 06.11.2022, when the highway was handed over to NHAI.

26. By judgment dated 31.07.2023 in OMP (COMM) 185/2021, the Hon'ble High Court set aside the Award as to Claims 4 and 5 (429 days). The Applicant contends that the Corporate Debtor could therefore collect toll only till 03.09.2021. The toll collected from 04.09.2021 to 06.11.2022 is Rs. 114.30 crores (excluding interest), per the Corporate Debtor's own Schedule M statements.

27. Further, NHAI sought restitution of the excess toll in EX. APPL.(OS) 547/2024. By order dated 23.10.2024 the Hon'ble High Court directed the Corporate Debtor to deposit the excess amount within four weeks. The Corporate Debtor's SLP (C) 4288/2025 against that order was dismissed on 24.02.2025. On the Corporate Debtor's non-compliance, NHAI filed Contempt Petition CCP(O) 117/2024. By order dated 23.05.2025, the Hon'ble High Court issued show-cause notice to the Corporate Debtor's directors and directed their personal appearance. On 16.09.2025 it gave ten days to comply, failing which contempt action would follow. On 15.10.2025 it directed three directors/additional directors (Mr. Manoj Kumar Jayaswal, Mr. Munnan Kumar Jaiswal and Mr. Siddharth Jaiswal) to file an affidavit explaining why they should not be proceeded against.

28. The Corporate Debtor's stay application (CM Appl. 70776/2024, in FAO (OS)(COMM) 273/2023) claimed that the excess toll was invested in perpetual securities, non-redeemable for 10 years. Its counsel stated on 04.12.2024 that the securities were worth about Rs. 80 crores, and the application was then withdrawn. In EX. APPL.(OS) 2004/2024, the Corporate Debtor filed a reply dated 09.07.2025 annexing an "Agreement of issuance of Perpetual Securities" dated 04.04.2023. NHAI alleges that this document is forged, discloses no investment of toll money, and that the Corporate Debtor is not even a party to it. In its July 2025 reply to the contempt proceedings, the Corporate Debtor stated that surplus funds of Rs. 96,58,88,807/- were lent to an NBFC.

29. The sequence of the insolvency proceedings before this Tribunal which are means to thwart the proceedings pending before the Hon'ble High Court, are as follows:

a. The Operational Creditor filed the Section 9 petition on 26.04.2024, the day after the High Court dismissed the Corporate Debtor's application for early listing of its appeal, FAO (OS)(COMM) 273/2023, on 24.04.2024. This was less than three weeks after the High Court's order of 05.04.2024, which required the excess toll to be deposited as security.

b. The Corporate Debtor did not disclose the insolvency proceedings to the High Court. NHAI learnt of them only on 23.10.2024.

c. NHAI filed IA 314/2025 under Section 65 of the Code. After the main petition was withdrawn on an alleged amicable settlement, that said IA was disposed of as infructuous by order dated 04.02.2025.

d. The Operational Creditor then filed IA 2927/2025 for revival of the petition, which led NHAI to file the present application.

30. The Applicant alleges collusion of the Respondents in the main Petition on the following grounds:

e. The Service Agreement concerned a 40 mm bituminous overlay. The Independent Engineer (MSV International) rejected that work by letter dated 12.06.2021. The Arbitral Tribunal's Award dated 22.08.2024 upheld the rejection and allowed NHAI's counter-claims of Rs. 323,38,35,462/- and Rs. 35,77,610/-. The Corporate Debtor has not challenged that Award. Yet it never disputed the Operational Creditor's demand and did not respond to its notices.

f. The Demand Notice dated 03.08.2023 gave ten days to pay. The petition was filed about eight months later, only after the High Court's deposit directions in order dated 23.10.2024 in EX. APPL.(OS) 547/2024.

g. The invoices issued by the Respondent no.1 to the Respondent no.2 bear no GST number, and there is no proof of GST deposit or of the work executed. The letter dated 19.04.2021 is allegedly back-dated, with no proof of dispatch or receipt.

h. A company that claims to have lent over Rs. 96 crores to an NBFC would not consent to insolvency over a debt of about Rs. 1.20 crores. The Applicant submits that the main petition is meant to shield the Corporate Debtor and its directors from contempt action.

i. The Corporate Debtor was an SPV with no other revenue source after the handover. The source of any settlement payment is undisclosed. The Applicant submits that the settlement, withdrawal and revival were designed to render its IA 314/2025 filed u/s 65 of the Code as infructuous and to get the petition admitted behind its back. It also points to the revival application having been filed in June 2025, after the High Court's show-cause order of 23.05.2025 in Contempt Petition CCP(O) 117/2024, and to the Corporate Debtor's apparent lack of objection to the restoration and admission**.**

Reply of the Respondent No.1, in Brief:

31. The Respondent No.1 submits that the contents of the Application pertain strictly to disputes between NHAI and the Corporate Debtor (Respondent No. 2), with which Respondent No. 1 has no privity or concern.

32. The underlying petition was filed by Respondent No. 1 (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") seeking initiation of the CIRP against Respondent No. 2 for default in repaying an admitted operational debt of Rs. 1,06,49,476.70/- along with interest at 12% per annum from March 31, 2022, until payment.

33. The Respondent No.1 submits that the proceedings under Section 9 of the Code constitute a summary remedy strictly confined to the Operational Creditor and Corporate Debtor. The Applicant's bald allegation that the petition is "collusive" is vehemently denied as false, baseless. The Applicant has failed to place on record any document, communication, or prima facie circumstance demonstrating collusion, and parallel contractual disputes between NHAI and the Corporate Debtor do not entitle NHAI to levy such allegations.

34. Adjudication under Section 9 is strictly limited to determining (i) whether an operational debt exists, (ii) whether a default has occurred, and (iii) whether the application is complete and maintainable. Third-party claims or extraneous disputes cannot be imported into a Section 9 petition; if the Applicant has claims against the Corporate Debtor, it is at liberty to submit them before the Resolution Professional post-admission.

35. Proceedings under Section 9 are strictly *in personam* at the pre-admission stage, involving solely the Operational Creditor and the Corporate Debtor. The proceedings attain an *in rem* character binding all stakeholders only upon formal admission by the Adjudicating Authority. Consequently, third-party interference prior to admission is legally impermissible and unwarranted.

36. The operational debt arises from a valid Supply and Service Agreement dated March 1, 2019, for highway works on the Nelamangala–Tumkur Section of NH-48, executed under the supervision of the Independent Engineer (M/s. MSV International Tech Pvt. Ltd.) as well as NHAI itself. Satisfactory completion of the works was certified by Respondent No. 2 via a Work Completion Letter dated March 31, 2021.

37. During the pendency of the petition, the parties executed a Settlement Agreement dated 09.01.2025, for Rs. 1,20,00,000/-, leading to the conditional withdrawal of the petition on February 4, 2025, with liberty to revive upon default. Upon the Corporate Debtor defaulting as post-dated cheques bounced, the Adjudicating Authority restored the Section 9 petition vide Order dated October 9, 2025 in I.A. No. 2927 of 2025, thereby conclusively establishing both debt and default.

38. Dismissal of the main Petition filed u/s 9 requires the applicant to establish (a) a fraudulent intent, (b) a demonstrable sham transaction, or (c) a contrived default—none of which have been established by the Applicant.

39. The Applicant's own assertion that the Corporate Debtor owes approximately Rs. 114.30 Crore to NHAI establishes severe financial distress and insolvency of the Corporate Debtor, reinforcing the necessity for admitting the Section 9 petition.

40. Respondent No. 1 is a small contractor pursuing a legitimate operational claim of approximately Rs. 1 Crore. Allowing third-party interference would cause irreparable prejudice, obstruct statutory remedies, and defeat the IBC's core objective of time-bound insolvency resolution. The present Application is a collusive attempt between NHAI and the Corporate Debtor to delay adjudication and obstruct statutory remedies, deserving outright dismissal as mala fide

Rejoinder by the Applicant, in brief:

41. The Applicant (NHAI) filed a Rejoinder dated 04.02.2026 to the Short Affidavit in Reply dated 12.12.2025 of Respondent No. 1. Through the said Rejoinder, the Applicant has submitted that Section 65 empowers this Tribunal to examine whether "any proceeding" was instituted fraudulently or with malicious intent for a purpose other than insolvency resolution. The availability of other remedies before the High Court is no bar, because the restitution/contempt proceedings and the Section 65 application are complementary. Thus the plea that Section 9 proceedings are *in personam*, and that a third party cannot intervene pre-admission, is misconceived.

42. The Operational Creditor relies on a "Work Completion Certificate" dated 31.03.2021, issued by the Corporate Debtor itself, which the Applicant calls self-serving. The Independent Engineer, by letter dated 12.06.2021, rejected the overlay work and directed it to be re-done. The Arbitral Award dated 22.08.2024 records that the work was rejected, was not re-done, and left the Corporate Debtor in breach, attracting damages for 10.02.2019 to 31.08.2021. The Corporate Debtor has not challenged the Award, and never raised a back-to-back dispute against the Operational Creditor.

43. A claim founded on rejected work is therefore said to be a disputed and contrived demand, not an operational debt.

44. The Corporate Debtor also did not disclose the insolvency proceedings to the High Court, and neither party disclosed the rejection of the work or the Award to this Tribunal.

45. The Applicant submits that, in the reply dated 09.07.2025 in CCP(O) 117/2024, the Corporate Debtor said its surplus funds of Rs. 96,58,88,807/- were lent to an NBFC (Augment Finvest Pvt. Ltd.). The loan was later converted into unsecured perpetual securities, held through its wholly-owned subsidiary Interstellar Buildcon Ltd. By order dated 12.11.2025, the High Court recorded this, and the Corporate Debtor's directors' (contemnors 3, 4 and 5) no objection to liquidation. It directed that the securities be liquidated through M/s Ajitnath Steels Pvt. Ltd., with the proceeds deposited with the Registrar General, Delhi High Court, and kept the order on sentence in abeyance. The Applicant says this amount is yet to be liquidated. It argues that a debtor holding such funds would not accept insolvency and settlement default over an alleged debt of about Rs. 1.20 crores, and that the only reasonable inference is a concerted arrangement to use insolvency as a shield against restitution and contempt orders.

II. <u>IVN.P /159/2025</u>

46. This Intervention Application has been filed by the Applicant i.e. NHAI against the Respondents I.e. M/S Apkon Ventures Private Limited and M/s JAS Toll Road Company Ltd, seeking to intervene in the main Company Petition.

47. Since the facts and submissions of IVN.P/159/2025 is similar to that of the I.A(I.B.C)/5339/2025, therefore for the sake of brevity the same is not reproduced herein.

48. Further, the Affidavit-in-Reply of the Respondent No.1 is similar to its submissions in reply to I.A(I.B.C)/5339/2025, and therefore for the sake of brevity the same is not reproduced here.

<u>The Respondent No.2 has vide Affidavit-in-Reply dated 23.06.2026, submitted that</u>:

49. Disputes between Respondent No. 2 and the NHAI concerning the Nelamangala–Tumkur Project were referred to arbitration, culminating in an Arbitral Award dated 31.12.2020, which substantially allowed Respondent No. 2's claims and awarded Rs. 3,31,53,482/- with interest. The award was

partly set aside by the Delhi High Court on 31.07.2023, and Respondent No. 2's appeal under Section 37 of the Arbitration and Conciliation Act, 1996, remains pending.

50. Respondent No. 2 contends that, after handing over the Project Highway to NHAI in November 2022, it ceased its revenue-generating operations. Its surplus funds of approximately Rs. 96.58 crore were invested in unsecured perpetual securities through its wholly owned subsidiary, resulting in liquidity constraints. Attachment of its bank accounts by the Enforcement Directorate further aggravated its financial difficulties.

51. Respondent No. 2 submits that the Settlement Agreement dated 09.01.2025 was entered into bona fide, anticipating recovery under the pending proceedings against NHAI. The settlement could not be honoured because the anticipated recovery did not materialise and funds were not readily available.

52. The Respondent submits that, by order dated 12.11.2025, the Delhi High Court directed liquidation of the perpetual securities and deposit of the realised proceeds with the Registrar General of that Court. Respondent No. 2 contends that the said directions adequately protect the Applicant's interests and negate any apprehension of dissipation of assets.

53. Respondent No. 2 maintains that the Operational Creditor is an independent third party whose claims arise from genuine commercial transactions and work actually executed for the Project Highway. The Corporate Debtor had also participated in the Section 9 proceedings. Accordingly, the allegations that the proceedings are sham, collusive or fraudulent are baseless, and the Intervention Application deserves to be dismissed with costs.

The Applicant has through its rejoinder dated 10.07.2026, submitted that:

54. The Applicant/NHAI submits that Respondent No. 2 has deliberately avoided specifically denying the material allegations of collusion, fraud, non-disclosure and the circumstances surrounding the filing, withdrawal and restoration of the Section 9 Petition. Such selective denial reinforces the

Applicant's case that the proceedings are collusive and intended to frustrate the Applicant's pending restitution proceedings.

55. The alleged operational debt is based on a Work Completion Certificate dated 31.03.2021, despite the Independent Engineer's rejection of the overlay work by letter dated 12.06.2021 and the adverse findings recorded in the Arbitral Award dated 22.08.2024. Respondent No. 2 has failed to explain how the same work could form the basis of an undisputed operational debt, thereby strengthening the apprehension of collusion between the Respondents.

56. Respondent No. 2's plea of financial hardship is untenable, as it admittedly holds surplus funds of approximately Rs. 96.58 crore through its wholly owned subsidiary, invested in unsecured perpetual securities redeemable only after ten years. Its failure to utilise available funds or seek release of the amount deposited before the Delhi High Court, coupled with the unexplained investment of funds, indicates an attempt to evade its liabilities towards the Applicant.

57. The reliance on the Delhi High Court's order dated 12.11.2025 is misplaced, as the direction to liquidate the perpetual securities remains unimplemented. The said order also records prima facie wilful and mala fide non-compliance with the restitution directions. The pendency of the Section 37 appeal or the alleged attachment of bank accounts does not justify Respondent No. 2's conduct or establish genuine financial incapacity.

58. The timing of the Settlement Agreement dated 09.01.2025, withdrawal of the Section 9 Petition on 04.02.2025 and its subsequent restoration, without disclosure to NHAI, raises serious concerns regarding the bona fides of the proceedings. Respondent No. 2 has also failed to produce contemporaneous material substantiating its alleged settlement efforts or liquidity constraints.

59. In view of the foregoing, the Applicant submits that the Short Affidavit in Reply fails to rebut the allegations of collusion and abuse of process. The Intervention Application therefore deserves to be allowed to prevent misuse of the insolvency process to frustrate binding judicial directions and the Applicant's restitution claims.

Analysis and Findings

60. We have heard the Ld. Counsels for the Parties and perused the documents available on record.

61. It is noted that the Main Petition bearing No. C.P.(IB)/638/2024 has been filed under section 9 seeking initiation of CIRP against the Corporate Debtor on 26.04.2024. The Application No.5339/2025 has been filed by the Applicant seeking dismissal of the main Petition. Further, IVN.P. No.159/2025 has been filed by the Applicant seeking intervention in the main Petition raising similar contentions as in IA No.5339/2025. The underlying facts, issues and submissions/ contentions of the parties are *pari materia,* and therefore, these matters were heard together and are being taken together for decision. Here, we deem it appropriate to first deal with IA No.5339/2025.

62. It is the Applicant's contention in IA No.5339/2025 that the Section 9 petition is a collusive Petition, instituted and revived not for resolution of insolvency but to shield the Corporate Debtor and its directors from the restitution and contempt proceedings pending before the Hon'ble Delhi High Court. In support of its contentions, it *inter alia* relies on the petition being filed within days of adverse High Court orders, the Corporate Debtor's silence to the Demand Notice and its non-disclosure of the CIRP to the High Court, the settlement, withdrawal and revival of the main Petition following NHAI's filing of present applications, and the Corporate Debtor's admitted holding of about Rs. 96.58 crore, which is inconsistent with consenting to insolvency over a debt of about Rs. 1.20 crore. It is also contended that the availability of other remedies before the High Court is no bar for proceeding with IA No.5339/2025, because the restitution/contempt proceedings and the Section 65 application are complementary and that the Section 9 petition is liable to be dismissed with costs.

63. Per contra, Respondent No. 1 submits that the dispute between NHAI and the Corporate Debtor is no concern of the Operational Creditor, that a Section 9 proceeding is *in personam* before admission and a stranger cannot interfere, that the scope of enquiry is confined to debt, default and completeness, that the debt is admitted by the Work Completion Certificate and the Settlement

Agreement dated 09.01.2025, that the restoration order dated 09.10.2025 conclusively establishes debt and default. Respondent No. 2 submits that the settlement was bona fide, that default arose from liquidity constraints.

64. Based on the aforesaid submission, the following issues arise for consideration:

I. *Whether NHAI, not being a party to the Section 9 petition, can maintain an application under Sections 60(5) and 65 of the Code at the pre-admission stage?*

II. *Whether the Petition filed under Section 9 is collusive in nature?*

Determination as to Issue No. I

65. With regard to the locus of the NHAI, the Operational Creditor has submitted that proceedings under Section 9 are strictly *in personam* at the pre-admission stage, and third-party interference prior to admission is legally impermissible and unwarranted. In support of the said contention the reliance has been placed on *DEB Kumar Majumder & Ors. v. State Bank of India, CA (AT) (Insolvency) No. 44 of 2019*, *L&T Infrastructure Finance Company Ltd. v. Gwalior Bypass Project Ltd., (2019) ibclaw.in 394 NCLAT* and *Vekas Kumar Garg v. DMI Finance Pvt. Ltd. and Anr., Company Appeal (AT)(Insolvency) No. 113 of 2021.*

66. For dealing with the said contention, it is necessary to refer to section 65(1) of the code under which the present application has been filed:

> ***"Section 65-Fraudulent or malicious initiation of proceedings:***
>
> *(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."*

67. Section 65 of the Code empowers this Tribunal to impose a penalty where insolvency resolution or liquidation proceedings are initiated fraudulently or

with malicious intent for a purpose other than resolution of insolvency or liquidation. The provision seeks to prevent misuse of the insolvency process for collateral purposes and safeguard the integrity of the Code.

68. With respect to issue regarding the interpretation of the word '*initiates*' as used in Section 65 of the Code, the Hon'ble NCLAT has made the following observations in ***Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 701 of 2020***, which was also upheld by the Hon'ble Supreme Court:

> *"From the scheme of these legislative provisions, it is manifestly clear that CIRP is initiated by the Financial Creditor, Operational Creditor or Corporate Debtor itself by filing an application in the prescribed format and the Adjudicating Authority upon being satisfied that the default in respect of debt has occurred, shall admit such application. Sub-section (6) of Section 7, sub-section (6) of Section 9 and sub-section (5) of Section 10 provide in unambiguous terms that the CIRP shall "commence" from the date of admission of the application in each case.* ***The commencement of CIRP in each case falling within the purview of Sections 7, 9 & 10 would thus, be from the date of passing of order of admission of application by the Adjudicating Authority. Same appears to be the position recognised in definition of 'Insolvency Commencement Date' as defined under Section 5(12) which provides as under:***
>
> > ***"5.Definition.-..... (12)"insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be"***
>
> *12. However, 'initiation date' in respect of CIRP in regard to Corporate Debtor is different from the 'Insolvency Commencement Date'. Section 5(11) defines 'initiation date' as under:*
>
> > ***"5. Definition.- .....(11) "initiation date" means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process;"***

> *13. It is manifestly clear that 'initiation date' for CIRP is the date on which the Financial Creditor, Operational Creditor or Corporate Applicant (for short "eligible applicant") makes an application to the Adjudicating Authority for initiating such process.* ***Thus, it is crystal clear that "initiation date" is different from "commencement date" of CIRP in respect of the Corporate Debtor. Reading the two definition clauses in juxtaposition, it emerges that while the first viz. 'initiation date' is referable to filing of application by the eligible applicant, the later viz. 'commencement date' refers to passing of order of admission of application by the Adjudicating Authority. The 'initiation date' ascribes a role to the eligible applicant whereas the 'commencement date' rests upon exercise of power vested in the Adjudicating Authority.***
>
> **[Emphasis supplied]**

69. In addition to the above, the Hon'ble NCLAT in the matter of ***Ashmeet Singh Bhatia v. Sundrm Consultants Pvt. Ltd. & Anr., (2023) ibclaw.in 204 NCLAT***, held as under:

> *"11. We have heard Counsel for the parties and perused the record with their able assistance.*
>
> ***12. The issue involved in this case is as to whether an application filed under Section 65 of the Code is maintainable after the filing of the application under Section 7, 9 or 10 of the Code or could be maintainable only after the admission of such an application?***
>
> *13. As a matter of fact, the Learned Tribunal has taken a decision, while interpreting Section 65 of the Code, that the application under Section 65 of the Code would be maintainable only once the application under Section 7, 9 or 10 is admitted and the CIRP is initiated.* ***However, in our considered opinion the view taken by the Learned Tribunal is totally erroneous as it has not looked into the basic provisions much less the definitions provided under Section 5(11) and 5(12) of the Code and has been unnecessarily influenced with the word "initiates" used under Section 65 to observe that it would mean that when the CIRP is initiated i.e. after the admission.***
>
> ***14. In this respect, regard may be had to the decision of the Hon'ble Supreme Court in the case of Ramesh Kymal (Supra) in which the Hon'ble Supreme Court has held***

> ***that the date of initiation of CIRP is the date on which the Financial Creditor, Operational Creditor or Corporate Applicant makes an application with the Adjudicating Authority for the initiation of the process and the insolvency commencement date is the date of the admission of the application.***
>
> *15. The application under Section 65 has been filed at the stage of initiation of the proceedings for the purpose of CIRP and is not maintainable after the admission of the application as has been held by the Learned Tribunal.*
>
> *16. Thus, in view of the aforesaid discussion, the question posed herein before, is answered in favour of the Appellant and against the Respondents.* ***It is hereby held that in case where application is filed under Section 65 of the Code, it would be maintainable after the application is filed either under Section 7, 9 or 10 of the Code."***
>
> ***17. The view taken by the Learned Tribunal that the said application would be maintainable only after admission and initiation of the CIRP proceedings is totally fallacious and is hereby overruled."***
>
> ***[Emphasis supplied]***

70. The aforesaid judgments clarify the distinction between the dates of commencement and initiation, as defined under Section 5 of the Code. The Hon'ble NCLAT in the above matters has held that the term 'initiation' refers to the filing of an application under Sections 7, 9 or 10 of the Code. Accordingly, an application under Section 65 of the Code is maintainable even after the filing of an application under Sections 7, 9 or 10, and is not required to await the admission of such application.

71. Further, in regard to the contention of the Applicant that application filed under Section 9 are strictly *in personam* at the pre-admission stage, it is noted that an objection alleging collusion or malicious intent is not necessarily confined to the Corporate Debtor, a person whose legal rights are affected may bring the relevant facts to the notice of this Tribunal. Such an objection may also be examined at the pre-admission stage, where the material on record warrants consideration of whether the proceedings under section 9 of the Code have been initiated fraudulently or with malicious intent for a purpose other than insolvency resolution, as contemplated under Section 65 of the

Code. This enables the Tribunal to address alleged abuse of the insolvency process at the threshold, without permitting the proceedings to advance merely because the petition has not yet been admitted. In the circumstances, it is relevant to take note of the judgment of Hon'ble NCLAT in ***Anil Singh v. SREI Equipment Finance Ltd. and Anr, Company Appeal (AT) (Insolvency) No. 1069 of 2025***, has held that:

> *"17. The present is a case where application was filed under Section 65 of the IBC alleging fraudulent and malicious intent for initiation of Section 7 application. The Applicants were not only seeking intervention in Section 7 application but prayed for dismissal of Section 7 application under Section 65. Learned Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in Beacon Trusteeship Ltd. vs. Earthcon Infracon Pvt. Ltd. & Anr. – (2020) SCC OnLine SC 1233, where Section 65 of IBC came for consideration. The Hon'ble Supreme Court held that it is necessary for the Adjudicating Authority in case such an allegation is raised to go into the same. After noticing Section 65 of the IBC, following has been observed in paragraphs 7 and 8:*
>
> > *"7. Considering the provision of section 65 of the IBC, it is necessary for the Adjudicating Authority in case such an allegation is raised to go into the same. In case, such an objection is raised or application is filed before the Adjudicating Authority, obviously, it has to be dealt with in accordance with law. The plea of collusion could not have been raised for the first time in the appeal before the National Company Law Appellate Tribunal or before this court in this appeal. Thus, we relegate the appellant to the remedy before the Adjudicating Authority.*
> >
> > *8. In case, a proper application is filed, aspect whether the proceedings have been initiated in collusive manner will be looked into, in accordance with law and the appropriate orders have to be passed, considering the facts and circumstances of the case. We have made it clear that we have not commented on the merit of the case. We set aside the impugned order passed by the National Company Law Appellate Tribunal [See Beacon Trusteeship Ltd. v. Earthcon Infracon P.Ltd., (2020) 10 Comp Cas-OL 551(NCLAT).] and dispose of the appeal in accordance with the aforesaid direction."*

....

26. ....We have noticed relevant observation of the Adjudicating Authority in the impugned order. The Adjudicating Authority has not proceeded to consider Section 65 application, it has only observed that the Appellant has no locus, it being neither proper nor necessary party in Section 7 application. ***Insofar as, Section 7 proceedings are concerned, there can be no quarrel to the observation that an Intervenor, who may not be necessary party or proper party, cannot intervene, but in a case where prayer of the Applicant under Section 65 regarding pleading to initiation of CIRP with fraudulent and malicious intent, the Adjudicating Authority ought to have looked into the allegations carefully. The IBC clearly prohibits any malicious or fraudulent initiation of CIRP and when in an application, it has been brought into notice by the stakeholders, the said application deserves consideration on merits. Rejection of the application only on the ground that Applicant has no locus, is unsustainable.***

....

28. Learned Counsel for Respondent No.1 further contended that it is open for the CD to raise the issue pertaining to fraudulent initiation of CIRP, which can be considered by the Adjudicating Authority. It is further submitted that allegations, which have been made by the CD, are the same, which are being sought to be raised by the Appellant/ Applicant. Be that as it may, the Appellant, who are stakeholders and workers of the Kitply Industries Ltd., when have raised the issues by filing Section 65 application, the said issues need consideration, as has been held by the Hon'ble Supreme Court in Beacon Trusteeship Ltd. (supra). It is not a case that Adjudicating Authority has returned any finding that Intervention Application has been filed to derail the CIRP. ***It was open for the Adjudicating Authority to consider the application under Section 65 on merits even at the time of hearing of Section 7 application.***

29. In view of the foregoing discussions and our conclusions, we are of the view that order impugned cannot be sustained. In result, the impugned order dated 10.06.2025 rejecting Intervention Petition (IBC)/1/GB/2024 is set aside. The

Intervention Petition (IBC)/1/GB/2024 is revived, which may be heard by the Adjudicating Authority and decided in accordance with law. ***It shall be open for the Adjudicating Authority to hear the Intervention Petition (IBC)/1/GB/2024 simultaneously with CP (IB)/8/GB/2024****."*

[Emphasis supplied]

72. In light of the above judgement, it is noted that in the present case, the Applicant need not invariably await admission of the insolvency petition. If material is placed before the Adjudicating Authority at the pre-admission stage indicating that the proceedings have been instituted fraudulently or with malicious intent, the locus of the Intervener is not required to be proper and the Tribunal may examine the objection while considering whether the petition should proceed. This enables the Tribunal to prevent misuse of the insolvency process at the earliest stage, rather than allowing proceedings to advance where their very initiation is alleged to be tainted by collusion. Thus, the question no.(I) in para no.64 is answered in **affirmative**.

Determination as to Issue No. II

73. Before we proceed to deal with the case on merits, it is relevant to take note of the undisputed chronology of events, which for the sake of convenience are noted herein below:

Date	Event
28.06.2001	Concession Agreement (BOT, NH-4 Km 29.5–62)
2017	Corporate Debtor invoked arbitration against NHAI/Applicant
01.03.2019	Service Agreement between Respondents
31.12.2020	Arbitral Award extending Concession Period by 474 days
31.03.2021	Work Completion Certificate issued by Corporate Debtor
25.05.2021	Delhi High Court in OMP(ENF)(COMM)90/2021 enforces impugned Award; toll collection continues
20.07.2021	The scheduled expiry of the concession period

04.04.2022	The Operation Creditor issued demand letter to the Corporate Debtor
06.03.2023	The Operation Creditor issued legal notice to Corporate Debtor
31.07.2023	High Court in OMP (COMM) 185/2021 set aside impugned Award dated 31.12.2020 on Claims 4 and 5 (429 days)
03.08.2023	The Operation Creditor issued Section 8 Demand Notice
2024	NHAI filed an application bearing no. EA(OS) 547/2024 before Hon'ble High Court seeking restitution of the excess toll amount of Rs. 114 cr. Collected by the Corporate Debtor
05.04.2024	High Court directed the Corporate Debtor to deposit the excess toll amount collected
26.04.2024	The Operational Creditor filed Section 9 petition
23.10.2024	Hon'ble High Court in EA(OS) 547/2024 directed the Corporate Debtor to deposit excess toll in four weeks
16.12.2024	The Applicant preferred EX. Appl. (OS) No. 2004/2024 seeking disclosure of securities as mentioned in CM. Appl. 70776/2024. Accordingly, Hon'ble High Court directed the Corporate Debtor to disclose securities.
04.01.2025	I.A. 314/2025 filed by the Applicant under Section 65 of the Code.
09.01.2025	Settlement Agreement for Rs. 1.20 crore.
04.02.2025	Main Petition was withdrawn with liberty to revive, NHAI's IA 314/2025 disposed of as infructuous
23.05.2025	In CCP (O) No. 117/2024 filed by the Applicant before the Hon'ble Bombay High Court against the disobedience of the order dated 23.10.2024 by the Corporate Debtor. Accordingly, the Court issued show-cause notice to the directors of the Corporate Debtor

22.06.2025	IA 2927/2025 filed for revival of the main Petition by the Operational Creditor
16.09.2025	Hon'ble High Court observed that in case the order dated 23.10.2024 is not varied/modified/altered/stayed, the same shall be complied with within 10 days from this date
09.10.2025	This Tribunal allowed IA 2927/2025 and restored the main Petition
15.10.2025	Hon'ble High Court directed the directors to explain why they should not be punished for offence under the Contempt of Courts Act, 1971;
12.11.2025	Hon'ble High Court directs liquidation of securities and deposit with Registrar General.

74. Upon perusal of the chronology of events, it is noted that there is a gap of more than one year between the Operational Creditor's demand letter dated 04.04.2022 and the demand notice issued under Section 8 of the Code on 03.08.2023. It is further noted that the Corporate Debtor did not raise any dispute either prior to or after the issuance of the statutory demand notice.

75. It is also observed that the Section 9 Petition was filed on 26.04.2024, after a considerable lapse of time, and shortly after the order dated 05.04.2024 passed by the Hon'ble High Court in OMP (COMM) No. 185/2021, directing the Corporate Debtor to furnish security for the excess toll amount collected. The timing of the filing, when considered alongside the preceding delay, raises a question as to the circumstances in which the Operational Creditor chose to institute the insolvency proceedings.

76. While the main Petition was pending, the Applicant filed I.A. No. 314/2025 under Section 65 of the Code on 04.01.2025. Thereafter, the parties entered into a settlement on 09.01.2025 and executed consent terms dated 19.01.2025, pursuant to which the main Petition was withdrawn on 04.02.2025. Subsequently, in CCP (O) No. 117/2024, initiated by the Applicant before the Hon'ble High Court in relation to the alleged disobedience of the order dated 23.10.2024 by the Corporate Debtor, the Hon'ble High

Court issued a show-cause notice to the Corporate Debtor's directors on 23.05.2025. Within three days thereof, the Operational Creditor filed I.A. No. 2927/2025 seeking revival of the main Petition. The repeated proximity between material orders passed by the Hon'ble High Court against the Corporate Debtor and the subsequent steps taken by the Operational Creditor warrants scrutiny while examining the allegation that the seeking to initiate insolvency process is for a collateral purpose.

77. The Corporate Debtor has contended that it is a special purpose vehicle incorporated exclusively for the Nelamangala–Tumkur Road Project and that the project was handed over to NHAI in November 2022. On this basis, it asserts that any claim arising thereafter in relation to the project ought to be pursued against NHAI and does not constitute a subsisting operational debt against the Corporate Debtor. However, this contention must be considered alongside the consent terms dated 19.01.2025, under which the Corporate Debtor agreed to pay Rs. 1.20 crore to the Operational Creditor. It is further noted that, by order dated 12.11.2025 in CCP (O) No. 117/2024, the Hon'ble High Court directed the liquidation of securities valued at approximately Rs. 96,58,88,807 invested in an NBFC and the deposit of the proceeds with the Registrar General of the Delhi High Court.

78. In these circumstances, the settlement warrants closer examination. If, as contended by the Corporate Debtor, it had no funds available and the securities valued at approximately Rs. 96,58,88,807 had not been liquidated before the order dated 12.11.2025, the basis on which it agreed to pay Rs. 1.20 crore under the settlement entered into on 09.01.2025 requires explanation. Considered cumulatively with the chronology of events set out above, these circumstances give rise to a legitimate concern regarding the bona fides of the settlement and warrant examination of the allegation of collusion. However, the inference of collusion must ultimately be assessed on the basis of the material on record.

79. The claim of the Operational Creditor rests on a Work Completion Certificate issued by the Corporate Debtor itself on 31.03.2021. Within about ten weeks the Independent Engineer by letter dated 12.06.2021 rejected that very work

and directed it to be redone. The Arbitral Tribunal found vide award dated 22.08.2024 that it was never redone and held the Corporate Debtor in breach, attracting damages. The Corporate Debtor did not challenge that Award, yet it did not reply to the Demand Notice and did not raise this ground against the Operational Creditor. A debtor facing a genuine claim for work its own principal has rejected would ordinarily dispute it.

80. Further, it is also noted that the Corporate Debtor did not disclose the about the CIRP proceedings to the Hon'ble High Court; NHAI learnt of it only on 23.10.2024. Neither the Corporate Debtor disclosed to this Tribunal the rejection of the work by the Independent Engineer nor the Award dated 22.08.2024. No explanation in this regard has been offered by the Respondents.

81. Lastly, it is observed that the Corporate Debtor did not respond to the Demand Notice, did not oppose restoration, and in its reply to this Application did not specifically deny the allegations of collusion, non-disclosure and timing; the rejoinder records this and we agree. It now argues limitation, absence of interest, and that retention money is not operational debt, all contrary to the settlement it pleads as bona fide. A debtor that signs a settlement acknowledging liability and then resists the claim on merits is not conducting a genuine contest. A party that is serious about resisting an insolvency petition does not stay silent through the notice, the settlement and the restoration, and raise defences only when an intervener appears.

82. In light of the above facts and circumstances, we hold that the Section 9 petition was filed, kept alive through a settlement and withdrawal, and revived by a collusive arrangement between Respondent No. 1 and Respondent No. 2, not for resolution of insolvency but to frustrate the restitution and contempt proceedings pending before the Hon'ble Delhi High Court. Since the main Petition has been instituted with a malicious intent as per section 65 of the Code, such a Petition cannot be entertained. Hence, the Issue No. II in para no. 64 is answered **Affirmative.**

83. Therefore, C.P. (IB)/638/MB/2024, filed under Section 9 of IBC, by the Financial Creditor (Respondent No.1) is hit by Section 65 of the Code.

Accordingly, **I.A. (I.B.C.)/5339/2025** is **allowed**, and **C.P. (IB)/638/MB/2024** is **dismissed**. Consequently, **IVN.P(I.B.C)/159/2025** stands **disposed of as infructuous**.

84. Before parting with the order, we also consider it important to take note of the consequences, in case where the Petition seeking initiation of Insolvency is filed with malicious intent. Considering the amount in the petition, the conduct of the Petitioner and Respondent in C.P. (IB)/638/MB/2024 as bought out above and the pendency of proceedings before the High Court, we deem it appropriate to impose a penalty of Rs. 2,50,000/- (Rupees two lakhs fifty thousand only) on them, to be paid to the **Prime Minister's National Relief Fund** within 2 weeks from the date of this order. Proof of such payment shall be placed on record before this Tribunal, within a week thereafter.

Sd/-

Vinay Goel
Member (Judicial)

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Rashmi, LRA