IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI

CP IB NO. 411/(ND)/2025

An Application 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:

M/s Metro Infratech
Through its Partner Lucky Kumar
S/O Sh. Lachman Dass
Registered Address
Shop No. 62, New Grain Market
Mansa, Punjab-151505
Email Id: metroinfraco@gmail.com

...Applicant/Operational Creditor

Versus

Jaishnavi Eminence Pvt. Ltd.
(Formerly known as Jakson Eminence Pvt. Ltd.)
Registered Address:
55, 2nd Floor, Lane-2, Westend Marg, Saidullajab
Near Saket Metro Station, Gadaipur
South West Delhi, Delhi- 110030
1. 7th Floor, I.T. Tower,
Plot No. 29, Sector-142,
Noida, Uttar Pradesh-201301
Email Id: eminence@eminence-infra.co.in

...Respondent/Corporate Debtor

Order Delivered on: 20.11.2026

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

MS. REENA SINHA PURI,
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Petitioner : Mr. Karan Gandhi, Mr. Sikhar Tiwari, Ms. Vidhika Kapoor, Ms. Riya Jain, Advs.

For the Respondents : Mr. Anish Kashyap, Mr. Upendra Patel, Mr. Manish Rohilla, Mr. Pradeep Kumar Yadav, Advs.

ORDER

1. The present Petition has been filed by M/s Metro Infratech, the Operational Creditor, through its partner Lucky Kumar, under Section 9 of the IBC[1], seeking initiation of CIRP[2] against Jaishnavi Eminence Pvt. Ltd., the Corporate Debtor, in respect of an alleged operational debt of Rs. 3,47,63,938.93. The amount is stated to be due against several invoices raised in pursuance to the work orders executed between the Operational Creditor and Corporate Debtor, for providing and laying Granular Sub-Base and Wet Mix Macadam.

2. The Operational Creditor states that the parties transacted on the basis of work orders dated 21.09.2020 and 15.03.2021; pursuant to which several invoices amounting to Rs. 70,84,29,620 were raised by the Operational Creditor. It is stated that majority of these invoices were cleared by the Corporate Debtor, leaving Rs. 4,13,604.93 outstanding as of 23.05.2022, after deducting Retention money and withholding certain amounts towards royalty, in terms of the work order dated 15.03.2021. An amount of Rs.

[1] Insolvency and Bankruptcy Code, 2016
[2] Corporate Insolvency Resolution Process

82,79,009 remains outstanding towards royalty; and an amount of Rs. 2,61,11,564 remains outstanding against retention money as on 15.05.2024.

3. It is stated that after regular follow ups for payment, two cheques were issued by the Corporate Debtor, one of which was returned due to certain defects; and another one was dishonoured with remark 'account blocked', resulting in filing of a complaint under Section 138 of the Negotiable Instruments Act, 1881; which is still pending adjudication.

4. Eventually, a demand notice dated 13.01.2025 was issued by the Operational Creditor under Section 8 of the IBC. The Corporate Debtor responded to the said demand notice on 29.01.2025 wherein it is stated that all the dues have been settled in the year 2023 itself and no further dues remain outstanding. As per submissions, invoices have still not been cleared by the Corporate Debtor, resulting in the filing of the present Petition on 20.05.2025. The Part IV of the Petition states 23.05.2022 as the date of default.

5. The Corporate Debtor in its reply submits that the Operational Creditor was operating through three of its entities namely Metro Infratech, Welkin Yash JV, and Krishna Contractor, with the Corporate Debtor. The dues were settled on a consolidated basis in the entity of the Operational Creditor's choice. Further it is submitted that all the outstanding dues were amicably settled between the parties in 2023, including retention money and royalty amount. It is thus denied that any amount towards retention money or royalty remains outstanding.

6. It is further stated that the Operational Creditor failed to execute the works in accordance with the quality standards and used substandard material for execution of the work, which caused losses to the Corporate Debtor. Further, it is stated in the reply that the present Petition is not maintainable as the proceedings under the IBC are for the resolution of companies in distress, which is not the case with the Corporate Debtor. Also, Clause 22 of the Work Order dated 21.09.2020 has been relied upon which specifies that Courts situated in Haryana shall have jurisdiction to decide the disputes arising out of and relating to the said Work Order. It is also stated that reliance on Section 138 Negotiable Instruments Act, 1881 proceedings is misconceived as the cheques were issued as security during the course of business transactions and not towards any legally enforceable debt.

7. In its short note, the Operational Creditor submits that the outstanding amount arises directly from the supply of goods and services and also exceeds the statutory threshold provided in Section 4 of the IBC, so it constitutes an operational debt under Section 5(21) of the IBC and makes the present Petition maintainable. The Operational Creditor has also relied upon our order dated 19.02.2026, wherein the admission of liability by the Corporate Debtor has been recorded, to pray that the present Petition be admitted.

8. The Corporate Debtor on the contrary submits in its short note that no operational debt remains due and payable to the Operational Creditor after the settlement of project liabilities, whereby the Main Contractor, Welspun, directly disbursed Rs. 1,88,00,000 into the bank account of the Operational

Creditor, Metro Infratech. It is stated that to mirror this pass-through payment across the commercial chain, back-to-back cross-debit notes were systematically issued down the contractual ladder, from Welspun to Jakson Ltd. (former name of Corporate Debtor), from Jakson Ltd. to the Corporate Debtor, and finally from the Corporate Debtor to the Operational Creditor. Upon executing this mandatory contractual accounting adjustment, no liability survives on the part of the Corporate Debtor, as per the submissions.

ANALYSIS AND FINDINGS

9. We have heard the learned counsels and considered the pleadings and documents on record. Since the registered office of the Corporate Debtor is situated in New Delhi, this Adjudicating Authority has jurisdiction over the present matter.

10. We note that the Operational Creditor has claimed an amount of Rs. 3,47,63,938.93 in Part IV of the Application, which comprises of three components i.e., amount of Rs. 4,13,604.93 against the last sale invoice dated 20.05.2022; retention money of Rs. 2,61,11,564; and royalty of Rs. 82,79,009. On the contrary, the Corporate Debtor has argued that the accounts were amicably settled between the Operational Creditor and Corporate Debtor, and so no amount remains payable.

11. This brings before us the limited issue of whether there exists any debt due and payable in terms of the provisions of IBC.

12. Firstly, no amount towards royalty can be claimed by the Operational Creditor in terms of Clause 8 of the Work Order dated 15.03.2021, which

provides that royalty shall be deemed to be included in the quoted rates of the contractor and no claim in relation to it shall be entertained subsequently. The relevant extract of Clause 8 is hereinunder:

> *"Except CGST/SGST/IGST, all other taxes, duties levies, labour cess royalties or any other statutory obligation shall be deemed to be included in the quoted rates of the contractor. No claim on this account will be entertained or allowed at any stage subsequently. CGST/SGST/IGST, if applicable, shall be payable as per prevailing norms and certification by Client. Taxes shall be deducted as applicable at sources in accordance with the statutory requirement from all payments including advances."*

In view of the above, we are of a considered view that royalty amount has been wrongly claimed by the Operational Creditor from the Corporate Debtor.

13. Secondly, we note that retention money has also been deducted by the Operational Creditor, in terms of Work Order dated 15.03.2021. Upon perusal of Clause 16 of the said Work Order, we note that the deducted retention money was to be refunded to the Operational Creditor (referred to as Contractor in the Work Order), after completion of the defect liability period, which is 24 months from the certified date of completion of work, as stated in Clause 17 of the Work Order. The extract of Clauses 16 and 17 are hereinunder:

> *"**16. <u>Retention Money</u>***
> *Retention Money shall be deducted from the Contractor's Tax Invoice @ 5% of the value work paid in every tax invoices. The Retention Money shall be refunded to the Contractor after satisfactory completion of the Defect liability period.*
>
> ***17. <u>Defect Liability Period</u>***

The 'Defect Liability Period' shall mean a period of 24 (Twenty Four) months, reckoned from the certified date of Completion of Work/ Final Bill."

14. Upon perusal of Part IV of the present Petition, we observe that the work was completed on 15.05.2022, marking 15.05.2024 as the 'defect liability period', in terms of Clause 17 of the Work Order dated 15.03.2021. Thus, in terms of Clause 16 of the Work Order dated 15.03.2021, the retention money became due and payable only upon completion of the defect liability period i.e., 15.05.2024.

15. The date of default is stated to be 23.05.2022, while the retention money, which is one of the components of the claimed default amount became due almost two years later i.e., on 15.05.2024. In view of this, we are of a view that the retention money has also been wrongly included in the default amount so claimed, in the present Petition.

16. In view of the foregoing, the royalty and retention money has been wrongly included in the total debt amount claimed. This leaves the balance debt amount of Rs. 4,13,604.93, claimed against the invoice dated 20.05.2022. The same is below the statutory threshold as prescribed under Section 4 of the IBC.

17. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited*[3] has laid down the principles governing admission or rejection of an application under Section 9 of the IBC. One of the requirements is that there must exist an operational debt exceeding the threshold prescribed under

[3] *Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353*

Section 4 of the Code. In the present matter, the default amount is below the statutory threshold of Rs. 1 Crore on the date of default, which renders the present Petition non-maintainable.

18. In view of the foregoing, we do not find it imperative to further go into the merits of the case.

19. In view of the above, the present Petition is liable to be rejected.

Accordingly, **CP IB No. 411/ND/2025** stands dismissed.

20. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

SD/-	**SD/-**
(REENA SINHA PURI)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**