



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - V**

**C.P. (I.B) No.60/MB/2024**

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

*In the matter of*

**Fraser and Company Limited**

Having its registered address at Shop No.75, Building No.75, B Wing, Evershine Helio CHS Limited, MP, Thakur Village, Kandivali (E), Mumbai 400 101.

**... Operational Creditor**

Vs

**Shraddha Equinox LLP**

Having its registered address at Manisha Height, Commercial Gronud Floor, Bina Slik Mills, Balrajeshwar Road, Opp.Mulund West, Mumbai- 400 080

**... Corporate Debtor**

**Order Dated: 06.01.2025**

**Coram:**

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

**Appearances: Physical/ VC**

**For the Petitioner:** Adv. Devul Dighe (VC)

**For the Respondent:** Adv. Sr. Counsel Mr. Gaurav Joshi, Piyush Raheja, Samarth Patel, Shavez Mukri (PH)



## **ORDER**

***Per: Madhu Sinha Member (Technical)***

1. This Company Petition is filed by **Fraser and Company Limited** (hereinafter referred as “**the Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Shraddha Equinox LLP** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a total Operational Debt of **Rs.1,50,81,471 /-** (One Crore Fifty Lakhs Eighty One Thousand , Four Hundred And Seventy One Only)

### **BRIEF FACTS OF THE CASE:-**

2. It is submitted that the Operational Creditor i.e., Fraser and Company Limited is engaged in the Business of trading and / or supply of various building materials and raw materials used for the purpose of construction of infrastructural projects.
3. **Shraddha Equinox LLP** Referred to as the “Corporate Debtor”) is engaged in the Business of undertaking and executing real estate projects particularly residential and commercial projects. The Operational Creditor being the manufacturer and supplier of the various building materials and raw materials, the corporate debtor placed order with the operational creditor for the supply of AAC Blocks, Joint Mortar, Cement, TMT Bars, Binding Wires and other materials (hereinafter refer as ‘**goods**’) through various orders from time to time.



4. Pursuant to the said orders the Operational Creditor sold and Supplied the goods to the Corporate Debtor from the year 2022 and raised various invoices upon the Corporate Debtor.
5. The clause of the invoices raised by the Operational Creditor clearly contained provision and an agreement between the parties that goods once sold will not be taken back and are not refundable. The invoices also contained a provision that in the event payment is not made within the due date the Operational Creditor shall be entitled to charge interest at the rate of 24% per annum on the outstanding due under the Invoice.
5. The Operational Creditor raised various invoices upon the Corporate Debtor from time to time. The invoices became due and payable after expiry of credit period as stipulated under each invoices which used to be typically a period of 60 days.
6. Furthermore, the Operational Creditor stated that as against sale and /or supply of various goods has an outstanding amount of **Rs.1,50,81,471 /-** (One Crore Fifty Lakhs Eighty-One Thousand, Four Hundred And Seventy One Only) which is duly admitted by its issuing balance confirmation letter to this effect.
7. The Operational Creditor issued and duly served Demand Notice in prescribed Form-3 dated 16<sup>th</sup> October 2023 u/s 8 of the IBC, for an amount of Rs.1,50,81,471 /- (One Crore Fifty Lakhs Eighty-One Thousand, Four Hundred and Seventy One Only).Despite the receipt pf Demand Notice, the Corporate Debtor has failed to make payment of its outstanding debt owed to operational Creditor.
8. In light of these facts, the Petitioner respectfully requests that the Hon'ble Court acknowledge the admission of liability by the CD.
9. Hence this Petition.



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**REPLY OF THE RESPONDENT**

- 10.** The Corporate Debtor had filed their Affidavit in Reply (“**Reply**”) dated 20.04.2024 and has denied each and every statement, contention and allegation made by the Petitioner.
- 11.** The Corporate Debtor submitted that The Petitioner has approached this Hon'ble Tribunal with unclean hands, engaging in *suppressio veri* (suppression of the truth) and *suggestio falsi* (suggestion of falsehood). The Petitioner has willfully concealed vital and material facts, including the arrangements and understandings between the parties, and relevant documents, despite being fully aware of them. Furthermore, the Petitioner has manipulated and distorted the factual matrix to mislead this Tribunal and improperly benefit from the provisions of the Insolvency and Bankruptcy Code, 2016.
- 12.** The Corporate Debtor submitted that the Respondent Company, a subsidiary of the Shraddha Group, engaged in real estate under its parent, Shraddha Landmark, entered into a business arrangement with the Petitioner, a supplier of construction materials. The Petitioner, introduced to various suppliers by the Respondent's parent company, agreed to procure materials from these suppliers and supply them to the Respondent on a commission basis. The Respondent guaranteed payment to these suppliers in case of the Petitioner's default, as outlined in the Petitioner's letter dated October 9, 2019, and further formalized in a Memorandum of Understanding (MOU) dated May 29, 2018.
- 13.** In May 2019, the Respondent group, Shraddha Landmark, discovered that the rates quoted by the Petitioner for Ready-Mix Concrete (RMC) were 16-18% higher than market rates. This concern was communicated to the Petitioner via a letter dated May 9, 2019 (Exhibit "D"), requesting revised quotations with a maximum margin of 5% above market rates. In response, by a letter dated May 10, 2019



(Exhibit "E"), the Petitioner clarified that the higher rates were due to an extended credit facility of 6 months, as per Clause 3 of the Memorandum of Understanding (MOU) dated May 29, 2018, which also stipulated no interest would be charged. The Petitioner acknowledged the agreement and acted in accordance with the terms.

14. Subsequently, due to the COVID-19 pandemic and the resulting national lockdown, which severely impacted the real estate business, the parties entered into a Revised Memorandum of Understanding (Revised MOU) dated December 3, 2021. The Revised MOU reaffirmed several terms, including an extended credit period from 60 days to 6 months, a waiver of interest on outstanding dues, and the adjustment of outstanding amounts against flats in any available projects of the Respondent's group companies. The relevant extract of the Revised MOU, are reproduced hereunder:

*“3. Hereby agreed party of the Second part, payment terms of Six months credit period given to the First part. It is mutually agreed and understood in between the parties hereto that the First Party shall enjoy the time period concession. The First Party fails to make the payment within the stipulated time and according to the terms and conditions, the party of the second part have shall never charge any interest.*

*“4. It is mutually understood and agreed in between the parties hereto if the First party fail to make payment in schedule time in future or any circumstances arise/ create to stop business between both the parties, that situation second party must agree and settle the outstanding payment against Flats in any available projects as per market rate. Which was agreed by both of the parties.”*

15. The parties were conducting business smoothly under the MOUs until October 10, 2022, The Respondent received a letter dated October 10, 2022, from one group of directors of the Petitioner, through their Advocate, alleging siphoning and misappropriation of funds exceeding ₹8 crores by the Petitioner Company. Consequently, criminal



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complaints were filed, and the Respondent was requested to withhold payment to the Petitioner Company.

16. Subsequently, the Respondent received another letter dated October 13, 2022, from the Petitioner Company's Advocate, alleging that the Shivare group (Mr. Omkar R. Shivare and Mr. Vaibhav R. Shivare) engaged in fraudulent legal actions to pressure the company and obstruct legal proceedings. The Petitioner requested the Respondent to disregard the October 10 letter and proceed with the payment .
17. Furthermore, the Respondent received a letter dated August 14, 2023, from Mrs. Slesha Ghosh and Mrs. Beatrice Antony, former directors of the Petitioner Company. They claimed removal from their positions effective December 12, 2022, asserting that the new management manipulated the EGM voting process to oust them. They advised the Respondent to withhold payments until the ongoing police investigation and court proceedings are resolved .
18. Due to the ongoing disputes and confusion, the Respondent ceased business transactions with the Petitioner. Notably, before the management change, the Petitioner did not demand any outstanding payments, acknowledging the agreement that in the event of default, payments would be settled through flats in Shraddha Group projects. The Petitioner had received over ₹100 crores from the Shraddha Group.
19. To the Respondent's surprise, a Demand Notice/Invoice dated October 16, 2023, was received from the Petitioner, claiming ₹1,50,81,471/- under the Insolvency and Bankruptcy Code, 2016. This claim was related to invoices for materials supplied . The Respondent responded to the Demand Notice on December 8, 2023, disputing the claim and referencing the MOU terms regarding waiver of interest and non-initiation of litigation.
20. The Respondent asserts that the Petitioner's claim is based on MOUs that outline settlement terms, specifically that payments should be



settled with flats at market rates. This understanding precludes the initiation of insolvency proceedings. The Petitioner's claim does not qualify as "operational debt" under the Code as it pertains to a contractual arrangement rather than a claim for goods or services. The claim arises from the MOU dated May 29, 2018, and the revised MOU dated December 3, 2021, which provides for specific performance remedies under the Indian Contract Act and Specific Relief Act. Thus, any dispute should be resolved in a civil court, not before this Tribunal.

- 21.** The Supreme Court has repeatedly held that insolvency proceedings are not a recovery mechanism and that "operational debt" should not be broadly interpreted to include claims covered by specific contractual arrangements. Therefore, the petition is not maintainable under the Insolvency and Bankruptcy Code, 2016, and should be dismissed with costs.
- 22.** Without prejudice to the aforementioned contentions, the Respondent asserts that the Petitioner's invoices are invalid, as they were issued unilaterally by the Petitioner without Respondent's approval. The Petitioner did not provide quotations, proforma invoices, or proof of delivery for the goods. The Petitioner has failed to produce any correspondence or purchase orders from the Respondent concerning the invoiced goods.
- 23.** The Respondent repeatedly objected to the quality, quantity, and rates of the goods supplied by the Petitioner and requested quotations, which were not provided. The Petitioner exploited the cordial business relationship to meet their sales targets by supplying materials without proper authorization. Since the Respondent never agreed to the invoiced rates and the invoices are thus deemed faulty, void, and invalid, the Respondent is not liable to make the payments claimed in the petition.



**24.** Due to the guarantee and responsibility assumed by the Respondent Group for the Petitioner's outstanding payments to introduced suppliers, the Respondent Group is liable for clearing dues amounting to ₹5,58,92,279 as per the MOU. Various suppliers have pressured the Respondent's parent company to settle these liabilities, which is deemed unfair. According to the MOU terms, the Petitioner Company cannot initiate a corporate insolvency resolution process against the Respondent Company for any outstanding amounts. The relevant clause No.10 of the said MOU reproduced herein below:-

*"10. Party of the Second Part agreed and confirm that if any dispute arisen respect of the terms and conditions of this M.O.U. or any matter connected thereto in that event the First Party and Second Part shall not take any legal action or approach to the arbitration proceedings anywhere".*

**25.** The Respondent submits to this Hon'ble Tribunal that Clause No. 4 of the Memorandum of Understanding dated February 3, 2021, provides that any amounts owed by the Respondent to the Petitioner are to be settled through flats at market rates, as mutually agreed. Consequently, the Petitioner's claim in this petition is not maintainable under the MOU's terms. hereto the clause no 4 read as follows :

*"4. It is mutually understood and agreed in between the parties hereto, if First Party fail to make payment on schedule time in future or any parties that situation second party must agree and said outstanding payment against flats in any available project market rate which was agreed by both of the parties"*

**26.** The Respondent asserts that, as the dispute involves an MOU, any grievances should be addressed through specific performance under the Indian Contract Act and Specific Relief Act. Thus, the current petition under the Insolvency and Bankruptcy Code is not





maintainable and should be dismissed with costs. The parties previously conducted business smoothly according to the MOU, with no disputes over payments or interest. The current dispute has arisen due to the new management's actions, who are allegedly filing frivolous claims to evade the contractual obligations of the former directors. The Respondent contends that the new management is attempting to avoid the contractual commitments made by the previous directors.

27. The Respondent Company argues that the petition is not maintainable because the transaction does not involve an operational debt. A review of the MOU terms shows that any payments due do not qualify as operational debt.
28. The Respondent submits that in **Mr. Maulik Kirtibhai Shah vs. United Telecoms Ltd.** (Company Appeal (AT) (CH) (INS.) No. 268/2023 IA No. 834/2023), the Hon'ble NCLAT held that claims arising from a Settlement Agreement cannot be considered operational debt.

*“The Tribunal ruled that the Insolvency and Bankruptcy Code is not intended as a recovery mechanism, which supports the argument that the current petition is not maintainable. In paragraph 14, following has been held:*

*“14. From the aforesaid it is evident that the Petition filed in respect of claims arising under the aforementioned Settlement Agreement [even if disputed herein] does not Rise come within the definition of ‘Operational Debt’]. Time and again, the Hon'ble Apex Court in a catena of Judgments held that the IBC is not a ‘recovery mechanism’. Even if the Settlement Agreement is taken into consideration, this ‘Tribunal’ is of the earnest view that the claims arising under the ‘MOU’ lost the character of ‘Operational Debt’ and became a debt simpliciter. In respect of” in the*



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*definition of Operational Debt cannot be interpreted widely so as to include any agreement between the parties which does not specifically pertain to the supply of goods or services. A wide interpretation would only the scope. and objective of the code. Keeping in view, Spirit of the Code, this Tribunal is of considered view that at " best, the claims are contractual claims for which appropriate civil proceedings may lie."*

**29. The Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. vs. Union of India***

*"held that the Insolvency and Bankruptcy Code (IBC) focuses on the revival and continuation of the corporate debtor, rather than serving merely as a recovery mechanism for creditors".*

**30. The Respondent states that the Hon'ble NCLAT in *Trafigura India Pvt. Ltd. vs. TDT Copper Ltd.* (Company Appeal (AT) Insolvency No. 742 of 2020) upheld the dismissal of a Section 9 application, ruling that**

*"debts arising from settlement agreements do not constitute operational debt under Section 5(21) of the IBC."*

Similarly, the NCLT, New Delhi Bench in ***Prodalim B.V. vs. Agson Global Pvt. Ltd.*** (C.P. (IB) No. 535/ND/2022) found that such debts do not fall under the definition of operational debt.

**31. In the present case, the MOU specifies payment via flats, which cannot be classified as operational debt. The Respondent further states that the Petitioner is not entitled to claim interest as per the MOU terms. The Petitioner's attempt to charge interest and inflate the claim amount, as evidenced by their letter dated May 10, 2019, is seen as a**



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deliberate attempt to mislead and unjustly bring the matter before this Tribunal.

- 32.** In view of the above facts, the Respondent Company submits that the Company Petition is false, void, and invalid, and should be dismissed with costs. The Petitioner's claims are unjustified and contrary to legal provisions, and appear to be an attempt to misuse the resolution process under the IBC for pressure tactics to recover purported debts.

### **FINDINGS**

- 33.** We have heard the Ld. Counsels for the parties and perused the documents available on the record with their able assistance.
- 34.** The present petition reveals that the Operational Creditor claims an outstanding debt of ₹1,50,81,471/- due from the Corporate Debtor. The petition is based on the invoices issued for goods supplied to the corporate debtor during the course of business. The petitioner further submitted that demand notices were sent to the corporate debtor under Section 8 of the *Insolvency and Bankruptcy Code, 2016*, which were not responded to satisfactorily, leading to the initiation of the CIRP petition.
- 35.** The Corporate Debtor has challenged the maintainability of the petition, asserting that the claim does not qualify as "operational debt" under the Insolvency and Bankruptcy Code, 2016 (IBC), as it arises from a contractual arrangement governed by Memoranda of Understanding (MOUs) rather than goods or services provided. Additionally, the CD argued that disputes under the MOUs fall within the domain of civil courts.
- 36.** The Tribunal notes that under Section 5(21) of the IBC, an "operational debt" means a claim in respect of goods or services, including employment or a debt arising under a statute. Here, the invoices raised by the Operational Creditor pertain to the supply of



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construction materials, which falls squarely within the definition of "goods."

**37.** Upon examining the invoices provided by the petitioner and the communications exchanged between the parties, the tribunal finds that the petitioner has prima facie demonstrated the existence of an operational debt. The claim has been supported by various invoices, the last invoice which was issued in 06.09.2022 is within limitation period.

**38.** Furthermore, the demand notices under Section 8 of the IBC have not been met with any substantial evidence by the respondent to refute the existence of such debt. While the respondent raises the issue of inflated claims, no documentary evidence has been provided to demonstrate discrepancies in the invoicing or payment process that could challenge the petitioner's claim. Relying on ***Innovative Industries Ltd. V. ICICI Bank*** [(2018) 1 SCC 407],

*"the Hon'ble Supreme Court reiterates that once a default is established, the tribunal is bound to admit the petition under Section 9 unless there is a valid dispute or evidence of payment".*

**39.** The respondent has placed significant reliance on the MoUs, asserting that they deferred payment obligations and altered the terms of debt repayment. The respondent contends that these MoUs were executed in good faith and reflect a genuine pre-existing dispute, making the initiation of insolvency proceedings inappropriate under Section 9 of the IBC.

**40.** The respondent relies on two Memoranda of Understanding (MoUs), dated 29.05.2018 and 03.12.2021, asserting that payment obligations were deferred or settled through an arrangement involving the exchange of flats. These MoUs were executed by Shraddha Landmark Pvt. Ltd., which is a part of the same group of companies as the corporate debtor, Shraddha Equinox LLP.



Therefore, while the MoUs are not between entirely separate legal entities, they are still part of the same group and could have an impact on the relationships between the entities within the group.

41. The Respondent contended that payments owed were covered by an **MOU** dated **29th May 2018** and **3rd December 2021**, where the settlement of dues was supposed to occur through an exchange of flats. The Tribunal finds that the existence of an MOU does not bar the initiation of proceedings under the IBC. This finding is supported by the Supreme Court's decision in "**Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.**" [(2019) 4 SCC 17], where it was held that

*"the IBC overrides contractual agreements to the contrary when the insolvency process is triggered".*

Moreover, the optional clause for settlement through flats does not extinguish the Petitioner's right to recover operational debts through legal recourse under the IBC.

42. The Respondent relies on **Clause 10** of the **Memoranda of Understanding**, which specifies that in case of a dispute arising in relation to the terms and conditions of the MoUs, or any matter connected thereto, neither party (the first party nor the second party) shall take any legal action or approach arbitration proceedings. This clause effectively mandates that in the event of a dispute, the parties are prohibited from initiating legal proceedings, including invoking the arbitration process.
43. While **Clause 10** seeks to prevent legal actions, including arbitration, between the parties, it cannot override the statutory rights provided under the IBC. The IBC is a **statutory mechanism** designed to resolve disputes related to defaulted debts through the initiation of Corporate Insolvency Resolution Process. *Section 9* of the IBC allows an operational creditor to approach the tribunal if there is an



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undisputed debt, irrespective of any contractual agreement that may restrict the initiation of legal proceedings.

- 44.** The Respondent has also raised the issue of an arrangement where, in case of default, the Corporate Debtor (CD) would provide **flats** as a form of settlement for the outstanding dues. The Respondent relies on **Memoranda of Understanding** dated **29th May 2018** and **3rd December 2021**, which allegedly contain provisions for the settlement of dues through the exchange of flats.
- 45.** The exchange of flats arrangement, as agreed upon in the MoUs, does not preclude the Petitioner from initiating insolvency proceedings. The *IBC* provides a remedy to creditors for the recovery of operational debts through the CIRP process, regardless of the private arrangements between the parties. Moreover, the Tribunal finds that the terms of the MoUs do not explicitly satisfy the debt owed, as the arrangement involving flats is optional and not a binding settlement method.
- 46.** In light of the above, the Tribunal finds that the MoUs relied on by the respondent cannot be considered as valid agreements binding the petitioner or the present corporate debtor.
- 47.** The Tribunal also notes an inconsistency in the Respondent's position. While the Respondent claims to have an arrangement involving flats, there is no evidence that this arrangement has been fulfilled or that it was legally binding in a way that would discharge the debt owed. Moreover, the balance confirmation letter signed by the Corporate Debtor acknowledges the debt and contradicts the assertion that the payment through flats was a valid or exclusive remedy.
- 48.** The Respondent has placed reliance on a letter dated **14.08.2023**, written by **Mrs. Slesha Ghosh** and **Mrs. Beatrice Antony**, the former directors of the Petitioner Company. This letter claims that both individuals were removed from their positions as directors on



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December 12, 2022, and they assert that the new management manipulated the voting process at the Extraordinary General Meeting to remove them from office. The letter further instructs the Respondent to withhold payments until the ongoing police investigation and court proceedings concerning the removal of the directors are resolved.

- 49.** The Tribunal notes that the claims made by the former directors do not constitute a valid legal reason to withhold payments owed to the Petitioner. The letter fails to establish any legal dispute regarding the debt itself or the existence of a valid defense to the outstanding invoices. While the former directors' grievances regarding their removal from office may be a separate issue, they do not alter the legal obligation of the Respondent to settle the operational debt owed to the Petitioner.
- 50.** The Tribunal observes that the police investigation and court proceedings referenced in the letter relate to internal corporate governance issues concerning the removal of the former directors. These issues, although potentially important to the internal management of the Petitioner Company, do not absolve the Respondent from its obligation to pay for the goods supplied under the valid invoices. There is no legal provision under the Insolvency and Bankruptcy Code, or any other applicable law, that allows a debtor to withhold payments based solely on disputes over internal management or ongoing legal proceedings unrelated to the debt in question.
- 51.** Despite the claims made by the former directors, the Tribunal finds no substantial evidence that would suggest a legitimate dispute regarding the outstanding debt owed by the Respondent. The documents, including the invoices, GST records, and e-way bills, have not been challenged with valid documentary evidence to demonstrate that the Respondent is not liable for the debt. The



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Respondent has not substantiated its claim with regard to withholding payments due to internal governance issues or ongoing legal proceedings, which do not affect the Petitioner's right to seek recovery for the operational debt.

52. The Respondent raised the argument that it had provided a **guarantee** for third-party suppliers and that this entitles it to withhold payments from the Petitioner. The Tribunal notes that no documentary evidence has been provided by the Respondent to support this claim of guarantee. The balance confirmation signed by the Corporate Debtor further contradicts this claim.
53. The Respondent has argued that there exists a bona fide pre-existing dispute regarding the amount and terms of the operational debt. The respondent points to the MoUs as evidence of an alternate payment arrangement, suggesting that these documents demonstrate a legitimate dispute between the parties.
54. The tribunal is guided by the ruling in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.**, which clarified that the  
*“existence of a genuine dispute must be substantial, bona fide, and not spurious, hypothetical, or illusory.”*
55. In the present case, while the respondent relies heavily on the MoUs to demonstrate a pre-existing dispute, the tribunal has already held that these documents lack legal validity. Moreover, the letter dated August 10, 2023, submitted by the petitioner, wherein the respondent acknowledges receipt of goods and makes no reference to any ongoing dispute, further weakens the respondent's claim of a pre-existing dispute. The timing of the respondent's objections and the lack of substantial evidence presented by the respondent lead the tribunal to conclude that no genuine pre-existing dispute exists between the parties.





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56. The Respondent's challenge regarding the invoice rates holds no merit as no documentary evidence supporting this claim has been provided. Hence, the Tribunal holds the invoices as valid.
57. The respondent claims that the petitioner is misusing the insolvency process as a debt recovery mechanism and that the present proceedings are not maintainable due to the existence of a dispute.
58. The tribunal acknowledges that the IBC is not intended to be a mere debt recovery mechanism but a process aimed at resolving insolvency. However, in this case, the respondent has failed to provide sufficient evidence of a pre-existing dispute or any reasonable defense against the operational debt claimed by the petitioner. The petition has been filed following proper procedure, and the demand notice under Section 8 was duly served and remains uncontested on substantive grounds.
59. Given the absence of a genuine dispute and the respondent's failure to discharge its liability, the initiation of CIRP is a legitimate remedy in the present case. The tribunal does not find any misuse of the IBC process by the petitioner.
60. Upon examining the submissions, this Tribunal observes that the petitioner submitted a rejoinder without seeking prior permission from the court. The respondent contends that this unauthorized submission amounts to a procedural irregularity. The Counsel for the respondent strongly contests the admissibility of such unauthorized written submissions, arguing that it undermines the principles of fair procedure and could prejudice the Corporate Debtor. Consequently, vide order dated 17.05.2024 this Tribunal rejects the unauthorized rejoinder and has only considered the originally filed documents and oral arguments presented during the hearings.
61. After considering and perusing the facts and circumstances of the present case, we are of the considered view that the Petitioner has been able to establish that there is an existence of **"operational debt"**
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which was due & payable and there is a “**default**” committed by the Corporate Debtor. The Respondent vide reply to the petition dated 10.06.2024 has admitted its liability without disputing the debt. The Date of default is 05.11.2022 and the Petition was filed on 16.02.2024 therefore, the Petition is well within the period of Limitation.

- 62.** This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
- 63.** Accordingly, the above Company Petition is 60 of 2024 with the following:

- a.** The above Company Petition No.60/IBC/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Shraddha Equinox LLP** and Mr. Rikenkumar Navinchandra Vira, having registration NO. IBBI/IPA-001/IP-P-02918/2024-2025/14491, having email Id- [rikenvira2002@Gmail.com](mailto:rikenvira2002@Gmail.com), having address 703, Ace Florence, ,B P Cross Road No 4, Neelkanth Nagar ,Near Devidayal Garden, Mulund West ,Mumbai Suburban, Maharashtra ,400080, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- b.** The Operational Creditor shall deposit an amount of Rs. **2 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- c.** That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment,



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decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- d.** That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- e.** That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- f.** That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- g.** That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- h.** During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all



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documents in their possession and furnish every information in their knowledge to the IRP/RP.

- i. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- j. Accordingly, CP 60 of 2024 is **Admitted**.

Sd/-

**Madhu Sinha**  
**Member (Technical)**

/priyanka/

Sd/-

**Reeta Kohli**  
**Member (Judicial)**