

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P2.

C.P. (IB)/417(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **28.11.2025**

NAME OF THE PARTIES: **Rexel India Private Limited**

Vs

Proto D Industries Private Limited

Under Section 9 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//VM//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.417/MB/2025

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

IN THE MATTER OF:

REXEL INDIA PRIVATE LIMITED

[CIN: UT4120PN2012FTC156759]

Office No. 407 to 414, 4th Floor

Insignia, 46, Sassoon Road

Pune - 411001, Maharashtra.

...Operational Creditor/Applicant

V/s

PROTO D INDUSTRIES PRIVATE LIMITED

[CIN: U29309PN2021PTC206768]

Spine Road Javal, G-14 Lakshadweep.Co. Hou. Soc,

Secno 3 PCNDTA, Bhosari,

Pune - 411026, Maharashtra.

...Corporate Debtor

Pronounced: 28.11.2025

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Siddha Pamecha a/w Adv. Ms. Garima Mehrotra i/b
Garima Mehrotra.

Corporate Debtor: Adv. Ms. Anita Patil.

ORDER

[PER: BENCH]

1. BACKGROUND

1.1 This is an Application bearing C.P. (IB) No.417/MB/2025 filed on 10.07.2024 by Rexel India Private Limited, the Applicant (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “the AAA Rules”). The Application is signed by Mr. Suraj Alhat authorised *vide* Board Resolution dated 24.01.2024 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Proto D Industries Private Limited, the Corporate Debtor (CD).

1.2 The Applicant is a Private Limited Company by shares which is incorporated on 24.01.2012, under the Companies Act, 1956, and in the business of a long range of sustainable and innovative products, services and solutions in the field of technical supply, automation and energy management for industrial, residential, non-residential spaces. The CD is a company incorporated under the provisions of the Companies Act, 1956.

1.3 The Applicant has relied on the following documents:

- i. Copy of Master Data of the CD
- ii. Copy of Board Resolution dated 24.01.2024
- iii. Copies of orders placed by CD to the Applicant.
- iv. Copy of unpaid Commercial Invoices
- v. Copy of Statement of Account of unpaid invoices
- vi. True copies of cheques along with return memos given by CD to the Applicant.
- vii. Copy of undertaking issued by CD duly admitting the debt.

- viii. Copy of Demand Notice dated 12.04.2024 i.e. Form No.3 issued by the Applicant upon the CD demanding the payment of the outstanding dues along with postal receipt and its tracking report.
- ix. Affidavit in support of the application in accordance with the Insolvency & Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016
- x. Affidavit u/s (9)(3)(b) of IBC to the effect that no notice has been given by the Corporate Debtor relating to the dispute of the unpaid Operational Debt.

2. AVERMENTS OF THE APPLICANT

2.1 As per Part-IV of the Application the total amount claimed to be in default by the Applicant is Rs. 5,82,19,776 /- (Five Crore Eighty-Two Lakh Nineteen Thousand Seven Hundred Seventy-Six Rupees). The details of the outstanding as well as the dates of defaults with respect to each pending invoice are attached as Annexure E on page no. 58 of the Application. The same is reproduced hereunder:

rexel

Date : 07/09/2023

From:
 REXEL INDIA PRIVATE LIMITED
 Office No 407, 4th Floor,
 Insignia Building, 46 Sassoon Road,

To: CUS13976
 PROTO D INDUSTRIES PRIVATE LIMITED
 Plot No 57/357, Waghjainagar
 Kharabwadi Chakan, Tal-Khed

PUNE
 IND

PUNE
 IND
 Payment Terms : 45 days (PDC)

Re: Repeated Reminders - Overdue Invoice

Dear Sir / Madam,

Greeting from Rexel India.

We are repeatedly following-up and drawing your kind attention regarding over-due receivables. The over-due amount as on date is Rs. 58219776.37/- and what concerns us that to date we have neither heard back from you nor received the payments so far.

Invoice Number	Invoice Date	Due Date	Invoice Amt	Balance Amt	Status	Due Days
2023/CIBR00049	14/04/2023	29/05/2023	3,535,944.10	2,441,116.82	Due	101
2023/CIBR00050	14/04/2023	29/05/2023	436,951.03	436,951.03	Due	101
2023/CIBR00047	14/04/2023	29/05/2023	1,108,598.70	1,108,598.70	Due	101
2023/CIBR00048	14/04/2023	29/05/2023	52,745.68	52,745.68	Due	101
2023/CIBR00095	28/04/2023	12/06/2023	1,199,036.94	1,199,036.94	Due	87
2023/CIBR00096	28/04/2023	12/06/2023	498,538.70	498,538.70	Due	87
2023/CIBR00097	28/04/2023	12/06/2023	620,398.10	620,398.10	Due	87
2023/CIBR00098	28/04/2023	12/06/2023	1,481,276.13	1,481,276.13	Due	87
2023/CIBR00099	28/04/2023	12/06/2023	1,445,771.87	1,445,771.87	Due	87
2023/CIBR00100	28/04/2023	12/06/2023	4,469,361.58	4,469,361.58	Due	87
2023/CIBR00101	28/04/2023	12/06/2023	2,822,866.80	2,822,866.80	Due	87
2023/CIBR00102	28/04/2023	12/06/2023	1,112,883.13	1,112,883.13	Due	87
2023/CIBR00103	28/04/2023	12/06/2023	1,823,014.25	1,823,014.25	Due	87
2023/CIBR00104	29/04/2023	13/06/2023	786,670.36	786,670.36	Due	87
2023/CIBR00106	29/04/2023	13/06/2023	335,910.84	335,910.84	Due	87
2023/CIBR00106	30/04/2023	14/06/2023	770,091.13	770,091.13	Due	85
2023/CIBR00107	30/04/2023	14/06/2023	323,627.82	323,627.82	Due	85
2023/CIBR00108	30/04/2023	14/06/2023	1,652,172.28	1,652,172.28	Due	85
2023/CIBR00109	30/04/2023	14/06/2023	494,148.60	494,148.60	Due	85
2023/CIBR00134	09/05/2023	23/06/2023	1,676,684.46	1,676,684.46	Due	76
2023/CIBR00135	09/05/2023	23/06/2023	187,884.62	187,884.62	Due	76
2023/CIBR00136	09/05/2023	23/06/2023	629,949.96	629,949.96	Due	76
2023/CIBR00137	09/05/2023	23/06/2023	174,162.69	174,162.69	Due	76
2023/CIBR00138	09/05/2023	23/06/2023	44,210.53	44,210.53	Due	76
2023/CIBR00139	09/05/2023	23/06/2023	1,588,140.92	1,588,140.92	Due	76
2023/CIBR00183	22/05/2023	06/07/2023	713,573.55	713,573.55	Due	63
2023/CIBR00184	22/05/2023	06/07/2023	368,125.90	368,125.90	Due	63
2023/CIBR00185	22/05/2023	06/07/2023	1,791,888.09	1,791,888.09	Due	63
2023/CIBR00186	22/05/2023	06/07/2023	1,043,268.03	1,043,268.03	Due	63
2023/CM/000000004	24/05/2023	08/07/2023	20,000.00	20,000.00	Due	61
2023/CIBR00202	24/05/2023	08/07/2023	364,195.20	364,195.20	Due	61



Rexel		Date: 07/09/2023				
2023/CIBR00206	25/05/2023	09/07/2023	2,751,461.93	2,751,461.93	Due	60
2023/CIBR00210	26/05/2023	10/07/2023	185,346.61	185,346.61	Due	59
2023/CIBR00211	26/05/2023	10/07/2023	407,330.57	407,330.57	Due	59
2023/CIBR00212	26/05/2023	10/07/2023	193,812.64	193,812.64	Due	59
2023/CIBR00213	26/05/2023	10/07/2023	1,333,189.07	1,333,189.07	Due	59
2023/CIBR00214	26/05/2023	10/07/2023	2,495,582.35	2,495,582.35	Due	59
2023/CIBR00215	26/05/2023	10/07/2023	1,533,462.13	1,533,462.13	Due	59
2023/CIBR00216	26/05/2023	10/07/2023	99,336.24	99,336.24	Due	59
2023/CIBR00217	26/05/2023	10/07/2023	145,784.28	145,784.28	Due	59
2023/CIBR00227	29/05/2023	13/07/2023	6,285,169.33	6,285,169.33	Due	56
2023/CIBR00228	29/05/2023	13/07/2023	3,353,600.59	3,353,600.59	Due	56
2023/CIBR00237	30/05/2023	14/07/2023	4,574,065.51	4,574,065.51	Due	55
2023/CIBR00238	30/05/2023	14/07/2023	165,603.91	165,603.91	Due	55
2023/CIBR00239	30/05/2023	14/07/2023	110,280.79	110,280.79	Due	55
2023/CIBR00240	30/05/2023	14/07/2023	262,854.38	262,854.38	Due	55
2023/CIBR00241	30/05/2023	14/07/2023	91,364.92	91,364.92	Due	55
2023/CIBR00242	30/05/2023	14/07/2023	1,774,306.41	1,774,306.41	Due	55
Overdue Total				58,219,776.37		
Becoming due				0.00		
We must receive payment immediately to keep your credit in good standing with us.						
We sincerely hope and expect that your payment be on its way so that there is no disruption to our business partnership.						
We request you to kindly RTGS / NEFT all payments of our outstanding bills to our account as per Bank						
Yours Faithfully			Bank Details			
Rexel India Pvt. Ltd.			Account Name: Rexel India Pvt Ltd			
Email : accounts.receivables@rexel.co.in			Bank Name: HSBC			
Contact No. : +91-9011322401			Bank Account : 105879290001			
			IFSC Code: HSBC0411002			



2.2 The dates of default are mentioned as 29.05.2023 onwards as per details given above.

The date of default is based on agreed 45 days credit period.

2.3 The Tribunal vide interim order dated 01.04.2025 directed the Applicant to file additional affidavit on the request of the Applicant to satisfy the Tribunal regarding service of demand notice upon the CD.

2.4 The Applicant complying with the above directions of the Tribunal filed an Additional Affidavit dated 09.04.2025 and submitted the following: -

- i. The official website of the CD mentions the Plot No. 57/357, Waghjai Nagar, Kharabwadi, Chakan, Khed, Pune – 410501 as the Headquarter address of the CD. Copy of the extract of the official website of the CD is annexed as Exhibit-A to the Additional Affidavit.

- ii. The Purchase Orders issued by the CD were also from the said address of the CD. The Applicant had delivered the goods at the said address of the CD and the service has been properly effected on the CD.

3. CONTENTIONS OF CORPORATE DEBTOR

- 3.1 The CD has filed the Affidavit-in-Reply dated 19.09.2025. The same is affirmed by Mr. Dipakkumar Ramdas Shinde – Director of the CD.
- 3.2 The CD in its reply denies the contents of the Applicant. The CD submits that the Application suffers from defect of gross suppression of facts since material facts have been concealed and disclosed facts have been distorted to suit the claim made in the Application. On this ground alone, the Applicant ought to be dismissed.
- 3.3 There are sufficient triable issues in the matter, which warrant relegating the parties to a Civil/Criminal Court(s) to establish the claim, if any, by leading evidence in the matter.
- 3.4 The CD submits that undertaking between the parties was given by the CD under business pressure and for maintaining further congenial relations between the parties. The Applicant has already initiated proceedings under the Negotiable Instruments Act against the CD vide Case No. 107218/2023 that is currently being tried before the Hon'ble Judicial Magistrate, First Class (JMFC) Court at Pune. The case filed before the JMFC, Pune is based on the same claims and amount as the present Application and in accordance with the doctrine of Res Judicata, this Tribunal is not obligated to entertain this present suit in the interest of justice.
- 3.5 The CD further placed the findings contained in the case bearing no. CP(IB)/68/MP/2020 as follows:

(vi) Proceeding initiated under section 138 of NI Act is pending, and in view of pendency of such case, application under section 9 of the Code is not maintainable as per the Doctrine of Election.”

3.6 Furthermore, Section 238 of the Code is as follows:

“238. Provisions of this Code to override other laws – The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

3.7 In accordance with section 238 of the Code that deals with prevention of parallel proceedings on the same issue, the present application before this Tribunal cannot be permitted as the CD is currently being tried for the same claim before another court i.e the JMFC, at Pune. The Court has also issued process against the accused in the same case.

3.8 The CD submits that there is a pre-existing dispute over the total debt amount and also as regards the actual dealings and transactions between the parties.

4. REJOINDER

4.1 The CD has failed to produce any material on record to establish that there in-fact existed a pre-existing dispute between the parties prior to issuance of the Demand Notice dated 12.04.2024, which in true sense is the real test to allege the contention of pre-existing dispute. Merely raising such an issue and using it as an afterthought is nothing but a delay tactic by the CD.

4.2 It is submitted that the allegation that the undertaking was given under business pressure and to maintain congenial relations between the parties is wholly

misconceived, self-serving and devoid of merit. It is submitted that these allegations are an afterthought to avoid the consequences of default under the Code.

4.3 It is settled law that the remedies available under the said Code and The Negotiable Instruments Act, 1881 operate in independent spheres. The proceedings under these statutes are not mutually exclusive. Proceedings under The Negotiable Instruments Act, 1881 are quasi-criminal in nature intended to impose penal consequences for the dishonour of the cheques. In contrast, the proceedings under the said Code are civil in nature aimed at the resolution of insolvency in a time bound manner through a structured and statutory framework.

5. WRITTEN SUBMISSIONS OF CORPORATE DEBTOR

5.1 The CD has relied on the following judgments:

- i. Hon'ble Supreme Court in Kaushik Cooperative Building Society v. N. Parvathamma, (2017) 13 SCC 138, Order dated 11.04.2017
- ii. Hon'ble Supreme Court in Bombay Gas Co. Ltd. v. Jagannath Pandurang, (1975) 4 SCC 690, Order dated 12.09.1975
- iii. Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17
- iv. Hon'ble NCLT, Indore in Indian Potash Limited v. Suman Phosphates and Chemicals Limited CP(IB)/68/MP/2020 dated 05.09.2024

6. ANALYSIS AND FINDINGS

6.1 We have heard the Ld. Counsels for the Applicant as well as the CD and have perused the records as placed before us. Our findings in the matter are as under: -

- 6.2 The Applicant has submitted that the CD had defaulted in payment of the invoices details of which are as reproduced in the above para no. 2.1. The total amount in default is Rs. 5.8 Crore. The Applicant has attached purchase orders bearing no. 30,610, 30,611, 30,847, 30886, 30896, 31438 and 31450 dated 15.03.2023, 11.04.2023, 15.04.2023, 02.05.2023, 03.05.2023 and various invoices which were acknowledged by the CD and a comment on the receipt of the invoice stating, “*All goods are received in good condition as per requirement*”.
- 6.3 The claim amount is based on the invoices raised by the Applicant between 14.04.2023 to 30.05.2023 against the CD for the goods supplied by the Applicant. Details of the same are given on page no. 58 of the Application.
- 6.4 On perusal of the invoices we see that the payment term of each invoice was 45 days from the date of each invoice and the same was accepted by the CD, which can be confirmed from the stamp and sign by the CD on the invoice.
- 6.5 Thereafter, the Applicant sent repeated reminders, which can be seen from Exhibit-E dated 07.09.2023 at page no. 58 of the Application but no payments came forth to the Applicant. Further, the CD issued multiple cheques which were returned for the reason – “payment stopped by drawer”. Copies of the cheques along with the return memo are attached on page no.60 to 86 of the Application.
- 6.6 Further, it is observed that an undertaking was executed by the CD dated 24.07.2023 which is reproduced as follows: -

“Undertaking

We, Dipak Shinde and Pradeep Lokhande, Directors of Proto-D Industries Private Limited, Pune (‘Proto-D’) confirm and undertake as below —

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

1. Proto-D owes M/s. Rexel India Private Limited ('Roxel'), a sum of Rs. 6,31,27,094/- (Rupees Six Crores Thirty-One Lakh Twenty Seven Thousand Ninety Four only) against supplies made to us under various invoices raised during March to May 2023.

2. We promise to pay the above-mentioned due amount to Roxel in the following manner: —

Sr. No.	Amount (in INR)	Agreed date of payment
1	28,09,344	20/07/2023
2	33,14,903	22/07/2023
3	35,35,944	25/07/2023
4	11,08,569	25/07/2023
5	2,00,00,000	Divided in 3 equal instalments - 1 st instalment — by 10/08/2023 2 nd instalment — by 20/08/2023 3 rd instalment — by 25/08/2023
6	2,00,00,000	Divided in 3 equal instalments - 1 st instalment — by 10/09/2023 2 nd instalment — by 20/09/2023 3 rd instalment — by 25/09/2023
7	1,23,58,334	Divided in 3 equal instalments - 1 st instalment — by 10/10/2023 2 nd instalment — by 20/10/2023 3 rd instalment — by 25/10/2023

3. We further agree that over and above the aforesaid payments, an interest @ 12% per annum will be paid, from the due date of the invoice(s) till the date of payment, respectively.

4. We promise to adhere to the above-mentioned terms and any non-observance, default of the same will enable Roxel to exercise their lawful rights.

Signed and company seal affixed on **24.07.2023**

For and on behalf of Proto D Industries Ltd.

Dipak Shinde

Pradeep Lokhande

Director

Director "

- 6.7 From this undertaking it is observed that the CD had undertaken to pay a sum of Rs. 6,31,27,094/- against supply made to the CD under various invoices raised during March to May 2023 and agreed to pay an interest at the rate of 12% p.a. from due date of invoice till the date of payment. The timeline of payment is also mentioned in the above chart supplied. Since, no payments were made by the CD, the Applicant sent a Demand Notice dated 12.04.2024 as per Section 8 of the Code demanding the outstanding amount from the CD. A copy of the Demand Notice along with the postal receipts and track consignment reports are attached to the Application as a proof of delivery of Demand Notice to the CD. The CD has not replied to this Demand Notice.
- 6.8 The date of default mentioned by the Applicant is 29.05.2023 onwards, which is the due date of the first invoice dated 14.04.2023. The Applicant has filed the Application within limitation period as the Applicant has filed the Application on 10.07.2024.
- 6.9 Therefore, from the above documents we note that the Applicant had supplied goods to the CD and the CD has never denied or disputed the supply of goods and the outstanding amount.
- 6.10 Further, the NeSL record of default in Form C and Form D have been produced by the Applicant. The NeSL record in Form D shows the status of authentication as "Deemed to be Authenticated" and the outstanding amount mentioned is Rs. 5,82,19,776/- and the date of default as 30.05.2023.
- 6.11 The Applicant has attached the 9(3)(b) Affidavit stating that there is no dispute raised by the CD with regard to the unpaid operational debt.
- 6.12 The CD has raised the contention that the Application filed by the Applicant is not maintainable due to Res Judicata as there are parallel proceedings initiated against the CD under Negotiable Instruments Act, 1881. It is submitted by the CD that the

proceedings under Section 138 of the Negotiable Instruments Act against the CD *vide* Case No. 107218/2023 are currently being tried before the Hon'ble Judicial Magistrate, First Class (JMFC) Court at Pune and therefore the present case falls under the doctrine of Res Judicata.

6.13 Section 11 of the Civil Procedure Code, 1908 reads as follows:

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI .-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.[

Explanation VII .-The provisions of this section shall apply to a

proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

- 6.14 As per Section 11 of the CPC, the essential requirements - namely identity of issues, identity of subject-matter, and adjudication by a court of competent civil jurisdiction— must be satisfied for a case to fall under the doctrine of Res Judicata. It is an established legal position that proceedings under Section 138 of the NI Act are quasi-criminal in nature, aimed solely at determining whether the accused has committed the statutory offence of dishonour of cheque. Such proceedings are penal, quasi-criminal, and are governed by a standard of proof beyond reasonable doubt. They do not adjudicate upon, determine, or declare the civil liabilities, contractual rights, or financial dues between the parties. The scope and object of criminal proceedings are materially distinct from those of proceedings before this Tribunal. This Tribunal, on the other hand, is empowered to determine civil consequences affecting the corporate debtor, its management, creditors, and stakeholders. Owing to this fundamental difference in jurisdiction, object, and standard of proof, the findings or pendency of a criminal prosecution cannot operate as res judicata in subsequent civil or IBC proceedings. Moreover, the proceedings under 138 of NI Act have not attained finality as the CD has failed to bring any adjudication order on record and in view of the same

also said pendency cannot operate as res judicata against the proceedings in the present Application.

- 6.15 Accordingly, the Tribunal is of the considered view that the plea of res judicata is misconceived. The prior criminal proceedings neither bar nor restrict the jurisdiction of this Tribunal to adjudicate the present application on its own merits.
- 6.16 The CD has placed reliance on the judgments of *Hon'ble Supreme Court in Kaushik Cooperative Building Society v. N. Parvathamma, (2017) 13 SCC 138, Order dated 11.04.2017 and Bombay Gas Co. Ltd. v. Jagannath Pandurang, (1975) 4 SCC 690, Order dated 12.08.1975* and by *Hon'ble NCLT, Mumbai in Kotak Mahindra Bank Limited v. India Steel Works Limited, CP(IB)/779/MP/2023*, that principle of Res Judicata is applicable to all cases and not only to matters governed by the provisions of the Code of Civil Procedure. For the reasons stated in para 6.14 and 6.15 especially considering that there is no finality to the Section 138 proceedings, in our view the doctrine of Res Judicata does not apply to the present case and that the judgments referred to above are not applicable.
- 6.17 The CD also relies on the judgment of *Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17* stating that Applicant has misused the provisions of the Code to pressurize the CD. Although, after examining the said judgment it is seen that the Hon'ble Supreme Court has held the following:

"12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery/legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of

its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

6.18 As the Hon'ble Supreme Court has held that the Code is a beneficial legislation to revive the corporate debtors and not a mere recovery mechanism, and hence the Applicant has rightly come to this Tribunal not for making recovery but to revive the CD by way of resolution. Therefore, we are of the view that reliance by the CD on this judgment is misplaced.

6.19 Further, reliance is made by the CD on the order of *Ld. Hon'ble NCLT, Indore Bench in Indian Potash Limited v. Suman Phosphates and Chemicals Limited CP(IB)/68/MP/2020 dated 05.09.2024* stating that the "3. (vi): *Proceeding initiated under section 138 of NI Act is pending, and in view of pendency of such case, application under section 9 of the Code is not maintainable as per the Doctrine of Election*". The Tribunal after examining the said judgment, finds that the Ld. NCLT Indore Bench, has not stated the above findings rather that was the contention of the CD in that case and the Ld. Tribunal had held that, "*The acknowledgement by the corporate debtor by letter dated 21.07.2017, 30.08.2017 and 12.02.2018 extends the limitation period. Accordingly, the present petition is well within the limitation period. As such the petition deserved to be admitted. Accordingly, we allow this petition....*". Therefore, reliance by the CD is grossly misplaced.

6.20 The CD has raised the contention that there is a pre-existing dispute with regard to total debt amount and transactions between the parties. We see that the CD has not

replied to the Demand Notice dated 12.04.2024 sent by the Applicant and has not produced any documents in his reply to prove any dispute prior to the issue of demand notice.

- 6.21 Only bald averments are made qua the dispute, which in our considered view are moonshine in nature.
- 6.22 The Applicant has attached NeSL record of default in Form-D, as per which status of authentication of default is under “Deemed to be Authenticated” stage. Perusal of the same reveals that no dispute was raised before the information utility by the CD and hence, the dispute which is raised in the reply appears to be a moonshine defence.
- 6.23 In view of the above findings, it is clear that the Applicant has placed on record the necessary evidences and materials to demonstrate the existence of the financial debt exceeding the minimum threshold of Rs.1 Crore prescribed under Section 4 of the Code due and payable by the CD as well as the default in repayment thereof by the CD. The Applicant has served the Demand Notice upon the CD, and that the CD has failed to establish the existence of any pre-existing dispute. The Application is complete as all the relevant documents have been attached by the Applicant along with the Application.
- 6.24 The Applicant has not proposed the name of IRP and therefore, this Tribunal has appointed Mr. Rishabh Sethi as an IRP to carry out the functions as mentioned under the Code.
- 6.25 We find that all pre-requisites of Section 9 of the Code are fulfilled and, accordingly, we are satisfied that the instant Application is fit for admission under Section 9 of the Code. The Applicant has attached all the documents as required and therefore the Application is complete.

6.26 We make it clear that at this stage we have not crystalized the amount as claimed in this Application, the same is left to be collated by the IRP.

ORDER

In view of the aforesaid findings, Application bearing C.P.(IB) No. 417/MB/2025 filed under Section 9 of the Code by Rexel India Private Limited Operational Creditor, for initiating CIRP in respect of **Proto D Industries Pvt. Ltd**, the Corporate Debtor is hereby **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below: -

- I. We prohibit-
 - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Rishabh Sethi**, a registered Insolvency Professional having Registration Number **IBBI/IPA-001/IP-P-02842/2023-2024/14377** and e-mail address ip.rishabhsethi@gmail.com having valid Authorisation for Assignment up to 30.06.2026 as the IRP to carry out the functions under the Code.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor the Corporate Debtor is directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.

- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Applicant is directed to deposit a sum of Rs.3,00,000/- (Rupees Three Lakh) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Applicant on priority upon the funds available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XII. The Registry is directed to immediately communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

//VM//

Sd/-

**NILESH SHARMA
MEMBER (JUDICIAL)**