

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 186/MB /2024

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016.

In the matter of

Mr. Rajender Kedia

...Operational Creditor/Applicant

Versus

Nirav Metals Private Limited

CIN: [U27100MH1991PTC063319]

...Corporate Debtor/Respondent

Order Delivered on 03.10.2024

Coram:

Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).

Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor

For the Corporate Debtor

: Mr. Rohit Gupta, Adv.

: Mr.Nausher Kohli,Adv. Ms.

Payal Gupte,Advocate i/b

Todur Law Associates

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ORDER

Per: Virendrasingh G. Bisht, Member (Judicial)

1. This Petition CP (IB) 186/MB /2024 is filed by Mr.Rajender Kedia (hereinafter referred as '**Applicant**'/'**Operational Creditor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the **Code/IBC**') seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Nirav Metals Private Limited (hereinafter referred as '**Respondent**'/'**Corporate Debtor**') for non-payment of Operational Debt of Rs. **3,63,07,924.89/-** (Indian Rupees Three Crores Sixty-Three Lakhs Seven Thousand Nine Hundred Twenty-Four and Eighty-Nine Paisa Only), inclusive of interest payable on outstanding.
2. The date of default as per Part IV of the Application is 31.03.2022. The record of financial information in Form-C, filed with NeSL, the Information Utility, indicates that the date of default is recorded as 31.03.2022.
3. The Registered office of the Operational Creditor is at M/s J.M. Steels Plot No.9,Ground Floor,Jindal Vihar,Jai Maa Jagdambe Enclave,Industrial Area,Delhi Road,Hissar,Haryana-125005.
4. The Registered office of the Corporate Debtor is at Plot No.74,274/90, S.V.P Road, Lehri Building, Mumbai, Maharashtra-400004. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

Submissions made by the Operational Creditor/Petitioner:

5. The Operational Creditor is a sole proprietorship firm with operations across two states: Haryana and the National Capital Territory (NCT) of Delhi.The firm operates three distinct branches—one in Hissar

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(Haryana), one in Sonipat (Haryana), and one in the NCT of Delhi. The company specializes in the distribution of iron materials.

6. The Corporate Debtor is involved in Manufacture of Basic Iron & Steel. The Corporate Debtor approached the Operational Creditor for the supply of iron materials and to expand their client base. The Corporate Debtor i.e., Nirav Metals Private Limited, proposed to the Operational Creditor i.e., Mr. Rajender Kedia sole proprietor of J.M. Steels, that they will provide Iron Material' ("Material") to the Operational Creditor on the advance payment of order of material and the material will reach to the Operational Creditor within 15 (fifteen) days of making the payment. These terms were agreed between the parties.
7. The Operational Creditor placed the initial order for the required iron material (hereinafter referred to as the "**material**") on 28.12.2021 and made the payment on the same day. Pursuant to the order placed on 28.12.2021, the Operational Creditor fulfilled its obligations under the agreement to the satisfaction of the Corporate Debtor and the material was supplied. In total, the Corporate Debtor generated 50 invoices aggregating ₹10,13,59,246.11 (Rupees Ten Crores Thirteen Lakhs Fifty-Nine Thousand Two Hundred Forty-Six and Eleven Paise only), towards the material supplied to various branches of the Operational Creditor. The material supplied by the Corporate Debtor was duly received by the Operational creditor, to its complete satisfaction. The confirmation of receipt of goods by the Operational Creditor was also duly acknowledged.
8. Till 14th January, 2022, the Operational Creditor was receiving the goods within the stipulated time but from 17th January, 2022 to 24th January, 2022 the Corporate Debtor issued 7 (Seven) invoices through which the Operational Creditor was about to receive material worth Rs. 1,11,65,598.00/- (Rupees One Crore Eleven Lakhs Sixty-Five

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Thousand Five Hundred and Ninety Eight only) in which 238.930 metric ton of material was to be received.

9. On 05.02.2022, the Operational Creditor placed an order for ₹2,50,00,000 (Rupees Two Crores and Fifty Lakhs only) with the Corporate Debtor and made the payment in advance on the same day, in accordance with the agreement.
10. The Operational Creditor further inquired about the seven trucks, to which the Corporate Debtor responded that, due to unforeseen circumstances, the trucks were experiencing a delay in the delivery of the materials.
11. As the business relationship between the parties was proceeding smoothly, the Operational Creditor had no reason to doubt the intentions of the Corporate Debtor. The Corporate Debtor further assured the Operational Creditor that the materials would be delivered by 31.03.2022.
12. The Corporate Debtor supplied material to the Operational Creditor on March 14, 2022. However, to the Operational Creditor's dismay, the material corresponding to the seven invoices was not delivered. A copy of the ledger account, which records the transactions maintained by the Operational Creditor for the Corporate Debtor, is attached with the Application. The details of these invoices are outlined as follows:

Bill No.	Date	Quantity in MT	Amount In (Rs.)
435/21-22	17.01.2022	34.300	Rs. 14,86,205.00/-
436/21-22	17.01.2022	29.240	Rs. 12,66,958.00/-
445/21-22	21.01.2022	58.230	Rs.33,35,938.00/-
450/21-22	21.01.2022	29.350	Rs. 12,71,724.00/-
453/21-22	22.01.2022	29.210	Rs. 12,65,658.00/-

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458/21-22	24.01.2022	29.280	Rs. 12,68,691.00/-
459/21-22	24.01.2022	29.320	Rs. 12,70,424.00/-
TOTAL=		238.930	Rs.1,11,65,598.00/-

13. Upon further inquiry with the Corporate Debtor regarding the order placed on 05.02.2022, it was discovered that they neither transported the material for which the advance was received nor refunded the amount to the Operational Creditor's account.
14. Under these circumstances, from 31.03.2022, to the present, the Operational Creditor has repeatedly urged the Corporate Debtor to settle the outstanding dues, warning that legal proceedings would be initiated if payment was not made. Despite these efforts, the Corporate Debtor has failed to respond or make the necessary payments, demonstrating a clear disregard for settling the outstanding amounts.
15. Despite repeated demands from the Operational Creditor, there has been no response from the Corporate Debtor. It is clear that the Corporate Debtor has failed and/or neglected to pay a total of ₹3,63,07,924.89 (Rupees Three Crores Sixty-Three Lakhs Seven Thousand Nine Hundred Twenty-Four and Eighty-Nine Paise Only) in principal amount due representing the advance amount given for supply of goods.
16. Under these circumstances, the Operational Creditor issued a demand notice to the Corporate Debtor on December 26, 2023. The Corporate Debtor was in receipt of the Demand Notice dated 26.12.2023 and replied to the abovementioned Demand Notice on 03.01.2024. The Corporate Debtor was in receipt of the Rejoinder dated 24.01.2024 to the Reply of the Demand Notice.

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17. The Operational Creditor submits that there is no dispute which had been raised or intimated by the Corporate Debtor as regards to the Operational Debt which is admittedly due and payable, and there is a clear default in payment of the same till date.

Submissions made by the Corporate Debtor:

18. The Respondent is a Private Limited Company incorporated under the Companies Act of 1956. It has been engaged in the metal trading business for over 40 years, specializing primarily in stainless steel. Its products include coils, sheets, plates, round bars, welded and seamless pipes, and scrap, all available in various grades, specifications, and variants.
19. It is submitted that the Corporate Debtor has merely acted as a mercantile agent between the Operational Creditor and Orbit Electromech India Pvt. Ltd.
20. The Corporate Debtor submits that they dispute the existence of any unpaid Operational Debt as alleged by the Petitioner, and which has mentioned in the Petition.
21. It is submitted that the Respondent has also been compelled to file a short cause suit, bearing number 6173 of 2024, before the Hon'ble City Civil Court in Mumbai. This suit addresses various disputes and differences raised by both parties through multiple correspondences regarding the Operational Debt and the claim of the Operational Creditor in the present Petition. In light of this, the present Petition should be dismissed as it is not maintainable according to Corporate Debtor.
22. The Respondent contends that the Petitioner has deliberately omitted material and pertinent facts that demonstrate no debt is due or payable,

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and/or that the alleged debt is contested. Furthermore, the Petitioner has attempted to mislead this Hon'ble Tribunal by failing to disclose the Agreement dated 17.01.2022, executed between the Respondent and Orbit Electromech India Pvt. Ltd. This Agreement delineates Orbit Electromech India Pvt. Ltd's obligation to refund any advance payments. The Respondent had duly informed the Petitioner of this Agreement on the same date, January 17, 2022.

23. In December 2021, an individual named Mr. Aviral Choubey, who is well-acquainted with both the Petitioner and the Respondent, facilitated an introduction to Mr. Anil Rajdayal Rai, the promoter and director of a company called Orbit Electromech India Pvt. Ltd. Mr. Anil Rai was presented as an authorized dealer for Steel Authority of India Ltd., Bhilai, and it was represented that he possessed substantial access to various grades of steel, including scrap, and was procuring these materials at highly competitive rates. Consequently, Mr. Aviral Choubey proposed that a lucrative business opportunity existed for both the Petitioner and the Respondent.
24. The Petitioner sought for the Respondent to serve as a mercantile agent to facilitate transactions between the Petitioner and Mr. Anil Rai of Orbit Electromech India Pvt. Ltd. Indeed, the Petitioner exerted considerable pressure on the director of the Respondent to fulfill this role, driven by the Petitioner's intent to effectuate a substantial acquisition of Mild Steel consignment from Orbit Electromech India Pvt. Ltd. The Petitioner's insistence on engaging the Respondent as the mercantile agent stemmed from the director's esteemed reputation within the steel industry.
25. Consequently, owing to the long-standing, trustworthy, and amicable relationship between the director of the Respondent and the proprietor of the Petitioner, the Respondent Company undertook the role of

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mercantile agent to facilitate transactions between the Petitioner and Orbit Electromech India Pvt. Ltd. This arrangement resulted in the first supply of 992.610 metric tons of Mild Steel wire being executed on a rate-to-rate basis. The transaction, conducted as a trial order, was successfully completed. It is submitted that the Petitioner realized a substantial profit from this trial order, without providing any remuneration or service charges to the Respondent.

26. The Corporate Debtor submits that after earning a profit from the initial transaction, the Petitioner, driven by greed, insisted that the Respondent continue as a mercantile agent for further dealings with Mr. Anil Rai of Orbit Electromech India Pvt. Ltd. Despite initial reluctance, the Respondent, influenced by their longstanding relationship, agreed to a nominal service charge, only to later discover that Mr. Anil Rai's representation as an authorized vendor of SAIL was fraudulent.
27. The Respondent informed the Petitioner that the later should formalize the business arrangements. Consequently, the Respondent issued a letter on 17.01.2022, outlining the terms and conditions with Mr. Anil Rai of Orbit Electromech India Pvt. Ltd. This letter, detailing the business terms, was subsequently circulated to the Petitioner via a WhatsApp message on the same date.
28. The relevant Clause No. 6 of the aforementioned Letter/Agreement dated 17.01.2022, between the Respondent Company and Orbit Electromech India Pvt. Ltd., which was communicated to the Petitioner via WhatsApp message on the same date, is reproduced below for convenience:

“That it will also be Orbits responsibility to return any advance payment made to Orbit in regards of any consignment if such consignment is stuck up accidental or any other such reasons be it legal or force majeure”

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29. That thereafter upon the Petitioner Company being fully cognizant about the terms and conditions in Letter Agreement dated 17th January 2022 which stipulated that it was the sole responsibility of Mr. Anil Rai of "Orbit Electromech India Pvt. Ltd." to procure the materials, arrange for logistics to transport and deliver the materials to the door steps of their clients after receiving the payments of money in advance.
30. The Petitioner, Respondent, and other buyers placed orders under the genuine belief that Mr. Anil Rai of Orbit Electromech India Pvt. Ltd. was an authorized SAIL vendor. Consequently, a WhatsApp group named "MS Trading" was created, including Mr. Anil Rai.
31. Orders placed through the "MS Trading" WhatsApp group were primarily handled directly between the Petitioner's son and Mr. Anil Rai of Orbit Electromech India Pvt. Ltd. After 17.01.2022, Mr. Anil Rai issued invoices and e-way bills directly to the Petitioner, listing the Respondent as the buyer and the Petitioner as the consignee, only after receiving 100% advance payment through the Respondent. All transactions were completed without any complaint, except for those addressed in this Petition.
32. After the initial supply, Mr. Anil Rai began delaying deliveries but continued to demand 100% advance for steel materials. Meanwhile, driven by urgency and greed, the Petitioner's proprietor began directly negotiating with Mr. Anil Rai, reaching an informal agreement to receive materials directly from the Delhi yard to allegedly save Rs. 3 per kg in transportation costs.
33. The Respondent's Director warned the Petitioner against making large advances without receiving the ordered materials due to ongoing delays. Despite this, the Petitioner, driven by the belief that Mr. Anil Rai's

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representation of sourcing the material directly from SAIL, Bhilai in Chhattisgarh, offered competitive prices, continued to advance funds recklessly, hoping to fix the purchase price. These advances were promptly transferred to Mr. Anil Rai's account by the Respondent, as reflected in the Respondent's balance sheet for the financial year 2023-24. Copies of the Chartered Accountant certificate and the balance sheet are annexed as Exhibit F and Exhibit G.

34. According to the Respondent's ledger, out of a total order of 2046.832 metric tons of MS steel, the Petitioner received 1807.902 metric tons. Seven truckloads of materials, totaling 238.930 metric tons worth Rs. 1,11,65,698, were not delivered as agreed by Mr. Anil Rai, despite full payment being made.
35. Despite being cautioned by the Respondent not to advance further payments until the seven truckloads were delivered, the Petitioner placed new orders and received materials worth Rs. 2 crores on February 02.02.2022, making the payment on the same day. Consequently, the Respondent issued invoices to the Petitioner for this amount.
36. Despite the pending delivery of seven truckloads, the Petitioner placed a fresh order worth Rs. 2 crores and received the materials. Additionally, the Petitioner advanced Rs. 2.5 crores on 05.02.2022, to procure further goods, driven by greed and ignoring the unresolved issue of the seven truckloads.
37. The Corporate Debtor submits that Rs. 2.5 crores which was advanced by the Petitioner did not ensure the delivery of the promised goods from Mr. Anil Rai of Orbit Electromech India Pvt. Ltd. The amounts received by the Respondent on 02.02.2022 05.02.2022, totaling Rs. 2 crores and Rs. 2.5 crores, were duly transferred to Mr. Anil Rai's account, as evidenced by the bank statement annexed to the Petition.

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38. The Respondent discovered that Mr. Anil Rai of Orbit Electromech India Pvt. Ltd. had provided incorrect truck numbers on invoices and e-way bills, as the numbers corresponded to vehicles like cars and scooters rather than trucks. Despite receiving a total advance of Rs. 81,312,184.34 (including Rs. 2.5 crores and Rs. 1,11,65,698), Mr. Rai failed to deliver the goods. The Respondent also found that Mr. Rai had a history of similar fraudulent activities across various states in India, where he would initially offer competitive prices to gain trust, then demand full advance payments before absconding, often disguising the issue as a civil litigation.
39. The Corporate Debtor submits that it was revealed to the plaintiff about Mr. Anil Rai of Orbit Electromech India Pvt. Ltd. who was arrested by the police in District in Raipur in an identical case of fraud for not supplying the steel materials. The Respondent having no option realized the facts and antecedents of Mr. Anil Rai, had to file F.I.R. against the director Mr. Anil Rai of Orbit Electromech India Pvt, Ltd." and others on 11.02.2022.
40. After FIR was filed against Mr. Anil Rai he has admitted from police custody that materials worth Rs. 2.5 crores paid on 05.02.2022, were loaded for delivery. While Mr. Kedia confirmed this, the delivery was not completed. During Mr. Rai's custodial interrogation, it was revealed that one truckload was located and delivered on March 14.03.2022. The Respondent will refer to the invoice and e-way bills for this delivery.
41. On April 11, 2022, the Corporate Debtor emailed the Operational Creditor to confirm a balance of Rs. 3,63,7,924.89, which included Rs. 2,50,00,000 for non-supplied seven truckloads and advances made. The material received on March 14, 2022, was deducted, but reconciliation was pending due to weight variances and other issues. The defendant

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requested balance confirmation from the plaintiff under these circumstances.

42. The Respondent states that a Criminal complaint filed by the Petitioner on July 1, 2023, with the Superintendent of Police, Hissar, Haryana, was based on suppressed facts. During the investigation, the Respondent's director was interrogated, and following a review of the evidence, the Hissar police dismissed the complaint. Correspondence and notices from the Hissar police indicate that the case was closed against the Respondent and its directors.
43. Respondent's promoter, Mr. Vijay Jha, filed a complaint with Amanaka Police Station, Raipur, leading to FIR No. 0043/2022 against Mr. Anil Rai of Orbit Electromech India Pvt. Ltd. for cheating under IPC. The investigation commenced on 11.02.2022, but the Operational Creditor failed to cooperate with police summons. Mr. Anil Rai was arrested and released on bail with the condition to deposit Rs. 3,35,08,958.91 within four months, a condition he failed to meet, resulting in his re-arrest. The matter is now ongoing in court.
44. In a surprising twist, despite knowing about the FIR filed in Raipur regarding the invoices, the Petitioner, in collusion with Mr. Anil Rai of Orbit Electromech India Pvt. Ltd., filed a new complaint (No. 818 dated 01/07/2023) with the Economic Offences Wing in Hissar. This complaint targets the Respondent's promoter for the same invoices, suggesting a scheme to extort money and raise suspicion of conspiracy with Mr. Anil Rai, whom the Respondent has already pursued criminally.
45. That however it is pertinent to note that in respect of the complaint bearing no. 818 dated 01/07/2023 filed by the Petitioner, upon recording the statement of the Respondent Company's Promoter i.e.

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M. Vijay Kumar Jha, the Superintendent of Police at Hissar, Haryana has filed a report recommending closure of the said complaint recording therein thus:

“In view Of the facts brought on file the matter in hand has already been reported and a case in this regard is already registered at Police station Amanake Raipur (FIR 43 Of 2022 u/s 420/409/34/IPC) also as per the statement Of Mr. Vijay Kumar Jha (M/s. Nirav metals) the amount whatever payable to M/s. JM Steels would be paid once the matter as recorded under FIR 43/2022 is decided by the Hon'ble Court. Accordingly, the matter in hand is recommended for filing.”

46. Under the circumstances, it is evident that the Corporate Debtor is not liable for the delivery of goods or for any amounts claimed by the Petitioner regarding the invoices. The Respondent's payments were made as per agreements with Orbit Electromech India Pvt. Ltd., and any claim by the Petitioner is fraudulent, arising from collusion with Mr. Anil Rai. The Petitioner's claim, if any, should be directed at Orbit Electromech, not the Respondent. Given the fraudulent nature of the transactions and the pre-existing dispute, the Petition is untenable and should be dismissed with costs.
47. The Corporate Debtor asserts they have timely addressed the Petitioner's Demand Notice dated 26.12.2023 with a reply on 03.01.2024. Despite this, the Petitioner filed the present Petition on 26.02.2024, omitting crucial details and documents, particularly the agreement dated 17.01.2022, which the Petitioner was aware of.
48. The Petitioner egregiously failed to disclose a critical document, the Agreement dated 17.01.2022, which explicitly assigns the liability for advance refunds to Orbit, not the Respondent. Consequently, the Respondent is not liable for the operational debt claimed by the Petitioner.

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49. Petitioner has also suppressed factum of disputes and differences which exist in respect of Operational Debt which ultimately culminated in filing of Short Cause Suit bearing number 6173 of 2024 filed by Respondent before the Hon'ble City Civil Court at Mumbai which renders this present Petition not maintainable and liable to be dismissed with costs.

Findings:

50. Heard learned Counsel for both the parties and have duly perused the documents on record.
51. We note that the instant application is filed by Mr Rajendra Kedia Sole Proprietor of J.M. Steels under Section 9 of the Insolvency and Bankruptcy Code, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Nirav Metals Private Limited for non-supply of material against advance payment of Operational Debt of **3,63,07,924.89/-** (Indian Rupees Three Crores Sixty-Three Lakhs Seven Thousand Nine Hundred Twenty-Four and Eighty Nine Paise Only), inclusive of interest payable on outstanding.
52. The Corporate Debtor has pleaded pre-existence of dispute, which was pleaded at first instance while responding to the demand notice issued by the Operational Creditor. It is case of the Respondent that it acted merely as an agent for procurement of supply of material from Orbit Electromech India Pvt. Ltd. for its failure to supply the material against the money advanced by Corporate Debtor to it out of advance for supply received from Operational Creditor. The Corporate Debtor has also pleaded that an amount in excess of the amount claimed to be outstanding advance due to the Operational Creditor is pending with Orbit Electromech India Pvt. Ltd., for which it is to make supplies to it including Operational Creditor. We find that 7 consignments are stated

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to be not received by the Operational Creditor, though an invoice was raised against these purported supplies. These consignments are stated to have been dispatched between 17.01.2022 to 24.01.2022 and despite having not received these supplies, the Operational Creditor further advanced a sum of Rs. 2.50 crores to the Corporate Debtor on 05.02.2022 which is stated to have been paid to Orbit Electromech India Pvt. Ltd. by the Corporate Debtor. The Corporate Debtor has raised the issue of non-reconciliation of accounts and negligence on part of the Operational Creditor to have delivery from Orbit Electromech India Pvt. Ltd. updated in its accounts before making further advance to further supplies from Orbit Electromech India Pvt. Ltd. The Corporate Debtor has produced an Agreement dated 17.01.2022, executed between the Respondent and Orbit Electromech India Pvt. Ltd. whereby Orbit Electromech India Pvt. Ltd. is obligated to refund any advance payments, for which no supply is made, to the Operational Creditor and the Respondent had duly informed the Petitioner of this Agreement on the same date, January 17, 2022, the date from which 7 consignments alleged to be not received are stated to be dispatched

53. The Police authorities, after investigation into the complaint of Operational Creditor against the Corporate Debtor, closed the complaint after returning the finding that *“In view of the facts brought on file the matter in hand has already been reported and a case in this regard is already registered at Police station Amanaka Raipur (FIR 43 of 2022 u/s 420 f409/34/IPC) also as per the statement of Mr. Vijay Kumar Jha (M/s. Nirav metals) the amount whatever payable to M/s JM Steels would be paid once the matter as recorded under FIR 43/2022 is decided by the Hon’ble court, accordingly, the matter in hand is recommended for filing.”*
54. Prima-facie, these facts leads us to conclusion that the Corporate Debtor was merely acting as an agent between the Operational Creditor and Orbit Electromech India Pvt. Ltd. and the advance paid to the Corporate

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Debtor was recoverable from Orbit Electromech India Pvt. Ltd. in case of failure to supply goods. The categorical finding of Hissar Police authorities on the basis of statement of Mr. Vijay Kumar Jha (M/s Nirav Metals) clearly demonstrates that the amounts, in question, were to be paid by the Corporate Debtor after recovery thereof from Orbit Electromech India Pvt. Ltd.

55. In view of these facts, we are of considered view that there exists prima-facie dispute and this Tribunal can not adjudicate upon such dispute in the present proceedings. Hence, the debt in question can not be said to be undisputed debt. Accordingly, the present petition is not maintainable and liable to be dismissed.

Order

- a. In the above circumstances the Petition bearing **CP(IB) 186/MB/C-I/2024** filed by Mr. Rajendra Kedia Sole Proprietor of J.M. Steels, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Nirav Metals Private Limited, the Corporate Debtor, is **dismissed**.

Sd/-
PRABHAT KUMAR
Member (Technical)

Sd/-
JUSTICE V.G BISHT
Member (Judicial)