NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-3

C.P. (IB)/894/MB/2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **12.01.2026**

NAME OF THE PARTIES**:** **InCred Value Plus Private Limited**

Vs.

Atum Capital 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. A detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//AS//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/894/MB/2025

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

INCRED VALUE PLUS PRIVATE LIMITED

[CIN No.: U66301MH2023PTC413554]

1203, 12th Floor B-Wing, The Capital,

BKC, Bandra (East), Mumbai – 400051.

…Operational Creditor

V/s

ATUM CAPITAL PRIVATE LIMITED

[CIN No.: U67110MH2019PTC323855]

B-404, Building No. 17, Stalag CHS Ltd.

Tilak Nagar, Chembur, Mumbai – 400089.

...Corporate Debtor

Pronounced: 12.01.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Rohan Rajadhyaksha, Adv. Varuna Bhanrale, Adv. Gaurav Jain, Adv. Tanya Hasija, Adv. Dhaval Bhothra, Adv. Adv. Mihir Dalwai i/b Trilegal

For Respondent: Adv. Chaitri Kashyap, Adv. Yashita Bhardwaj i/b MZM Legal LLP

ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This C.P. (IB) No. 894 of 2025 (Application) was filed on 26.08.2025 by M/s InCred Value Plus Private Limited, the Operational Creditor (OC) having CIN No.: U66301MH2023PTC413554, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Atum Capital Private Limited, the Corporate Debtor (CD), having CIN No.: U67110MH2019PTC323855.

1.2 As per Part IV of the Application, the amount claimed to be in default is Rs.3,42,24,312.75/- (Three Crores Forty-Two Lakhs Twenty-Four Thousand Three Hundred Twelve Rupees and Seventy Five Paise). The date of default is stated to be 02.05.2025.

1.3 The Applicant has proposed AAA Insolvency Professionals LLP, having Registration No. IBBI/IPE-0002/IPA-1/2022-23/50001, to act as the Interim Resolution Professional (IRP) in case the Application is admitted.

2. CONTENTIONS OF APPLICANT (OC)

2.1 The Applicant is a distributor engaged in the business of buying and selling unlisted shares.

2.2 The Applicant and the CD entered into a Share Purchase Agreement dated 08.02.2025 (“SPA”) for the sale of 50,000 equity shares (“Sale Shares”) of National Stock Exchange of India Limited (“NSE”) by the CD to the

Applicant, for a total consideration of Rs.7,95,00,000/- ("Sale Consideration") at a price of Rs.1,590/- per share.

2.3 Under the SPA, the CD agreed to sell, transfer, and deliver the Sale Shares free from all encumbrances upon receipt of the Sale Consideration from the Applicant. The transfer of the Sale Shares was conditional upon receipt of a No Objection Certificate ("NOC") from NSE and was required to be completed immediately upon receipt of such NOC.

2.4 In accordance with the SPA, the Applicant duly remitted the entire Sale Consideration, including amounts towards tax collected at source (TCS) and stamp duty ("Full Sale Consideration"), to the CD in two tranches, namely:

a) Rs.2,38,77,428/- on 07.02.2025, and

b) Rs.5,57,13,997/- on 19.02.2025.

The aforementioned remittances were duly acknowledged by the CD *via* emails dated 18.02.2025 and 19.02.2025, respectively.

2.5 Pursuant to a notification dated 21.03.2025 issued by NSE regarding activation/unfreezing of the ISIN of NSE with effect from 24.03.2025, the requirement of obtaining a NOC from NSE for transfer of the Sale Shares ceased to apply. Accordingly, the Sale Shares became freely transferable with effect from 24.03.2025.

2.6 Despite receipt of the Full Sale Consideration and the Sale Shares becoming freely transferable from 24.03.2025, the CD failed to transfer the Sale Shares to the Applicant. Consequently, a conference call was held on 15.04.2025, during which the CD committed to transfer the entire 50,000 Sale Shares to the Applicant on or before 23.04.2025, failing which the Full Sale Consideration would be refunded by the said date.

2.7 The CD failed to transfer any Sale Shares by 22.04.2025. Accordingly, the Applicant, *vide* email dated 22.04.2025, sought an update from the CD regarding the status of the transfer of the Sale Shares.

2.8 In response, the CD, *vide* email dated 23.04.2025, acknowledged its obligation to transfer the Sale Shares and committed to transfer the same in three to four tranches on or before 02.05.2025, as detailed below:

a) 25.04.2025 – 10,000 to 15,000 Sale Shares

b) 28.04.2025 – 10,000 to 15,000 Sale Shares

c) 30.04.2025 – 10,000 to 15,000 Sale Shares

d) Balance Sale Shares, if any, before 02.05.2025

2.9 In the same email dated 23.04.2025, the CD offered to issue a post-dated cheque for Rs.7,95,00,000/- ("PDC") as a guarantee for the fulfilment of its obligation to transfer all Sale Shares. The CD further stated that in the event the Sale Shares were not delivered on or before 02.05.2025, the Applicant would be entitled to encash the PDC towards refund of the Sale Consideration. Accordingly, the CD furnished a PDC dated 02.05.2025 to the Applicant on 23.04.2025.

2.10 Thereafter, the CD transferred 28,500 Sale Shares in various tranches on different dates as stated below:

Date	**No. of Sale Shares received**
25 April 2025	4,000
28 April 2025	10,000
08 May 2025	3,000

09 May 2025	2,500
12 May 2025	3,000
14 May 2025	4,000
16 May 2025	2,000
Total	**28,500**

2.11 In respect of the remaining 21,500 Sale Shares ("Pending Sale Shares"), the CD, during a telephonic conversation held on 25.05.2025, informed the Applicant that it would not be able to deliver the Pending Sale Shares. The CD acknowledged its liability and committed to refund the residual amount of Rs.3,42,24,312.75/- ("Default Amount") within 5 days, i.e., by 30.05.2025.

2.12 Owing to the CD's repeated failure to honour its contractual obligations and commitments, the Applicant, in terms of Clause 9.3(i) of the SPA, terminated the SPA *vide* email dated 27.05.2025 ("Termination Email"). The Termination Email recorded the telephonic conversation dated 25.05.2025, called upon the CD to provide a payment schedule ensuring payment of the Default Amount on or before 03.06.2025, and stated that the CD would be liable to indemnify the Applicant for all direct losses incurred due to non-delivery of the Sale Shares.

2.13 Thereafter, the CD, through WhatsApp communications dated 27.05.2025, further committed to refund the Default Amount on or before 10.06.2025.

2.14 The Applicant continued to follow up with the CD *vide* emails dated 03.06.2025, 06.06.2025, and 10.06.2025, seeking refund of the Default Amount. However, the CD failed to make payment within the agreed timelines.

2.15 In view of the CD's continued failure to either transfer the Pending Sale Shares or refund the Default Amount, despite repeated admissions of liability, the Applicant presented the PDC for encashment on 17.06.2025. The PDC was dishonoured, with the bank citing "signature mismatch" as the reason for dishonour.

2.16 Subsequently, the Applicant issued a legal notice dated 19.06.2025, demanding refund of the Default Amount along with compensation for loss of goodwill, damages, and legal costs. The CD neither refunded the Default Amount, whether wholly or partly, nor disputed the contents of the legal notice dated 19.06.2025.

2.17 Consequently, the Applicant issued a demand notice dated 24.07.2025 in Form 3 under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the CD to clear its outstanding debt, i.e., the Default Amount.

2.18 The CD has failed to respond to the demand notice dated 24.07.2025. However, the CD has repeatedly acknowledged the debt through emails, WhatsApp communications, and conduct, as detailed above.

2.19 Date on which the debt fell due is stated in the Application as follows:

a) 24.03.2025, being the date on which the Sale Shares became freely transferable pursuant to NSE's notification dated 21.03.2025, and were required to be immediately transferred to the Applicant;

b) Without prejudice, 23.04.2025, being the date committed by the CD for transfer of all Sale Shares or refund of the Sale Consideration pursuant to discussions held on 15.04.2025;

c) Further, without prejudice, 02.05.2025, being the final revised date committed by the CD for the transfer of all Sale Shares as per its email dated 23.04.2025.

2.20 Despite having received the Full Sale Consideration in advance, the CD has failed and neglected to transfer all the Sale Shares. As of date, only 28,500 Sale Shares have been transferred to the Applicant, leaving 21,500 Sale Shares undelivered. The CD has also failed to refund the Sale Consideration attributable to the Pending Sale Shares, despite repeated undertakings to do so.

2.21 The Applicant has attached the following supporting documents along with the Application:

a) Master data of the Applicant and the CD.

b) A copy of the board resolution dated 12 December 2024 authorising Mr. Anubhav Sinha.

c) A copy of the written communication dated 6 August 2025 issued by AAA Insolvency Professionals LLP, Insolvency Professional entity, along with certificate of registration issued by the IBBI, and validity certificate.

d) A copy of the Share Purchase Agreement dated 8 February 2025 entered into by the Operational Creditor with the Corporate Debtor.

e) A copy of the bank statement of the Operational Creditor issued by IDFC First Bank for the period between 7 February 2025 and 20 August 2025, as proof of payment of the full sale consideration.

f) Copies of the emails dated 18 February 2025 and 19 February 2025 by the Corporate Debtor, duly acknowledging the receipt of payment of full sale consideration.

g) A copy of the NSE notification dated 21 March 2025.

h) A copy of the emails dated 16 April 2025, 22 April 2025 and 23 April 2025 sent by the Operational Creditor to the Corporate Debtor.

i) A copy of the post-dated cheque dated 2 May 2025 issued by the Corporate Debtor to the Operational Creditor.

j) A copy of the transaction statement issued by Central Depository Services (India) Limited reflecting credit of 28,500 Sale Shares in various tranches.

k) A copy of the termination email dated 27 May 2025 sent by the Operational Creditor to the Corporate Debtor.

l) A copy of the WhatsApp communications held on 27 May 2025 between the Operational Creditor and the Corporate Debtor.

m) Copies of the emails dated 3 June 2025, 6 June 2025, 10 June 2025.

n) A copy of the return memo of the post-dated cheque, dated 18 June 2025.

o) A copy of the legal notice dated 19 June 2025 issued by the Operational Creditor to the Corporate Debtor.

p) A copy of the demand notice dated 24 July 2025 under section 8 of Insolvency & Bankruptcy Code, 2016 in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 issued by the Operational Creditor to the Corporate Debtor (without annexures), along with the tracking report, copies of email service and WhatsApp service of Section 8 notice.

3. CONTENTIONS OF CD

3.1 Affidavit-in-Reply dated 13.10.2025 was filed and affirmed by one Mr. Satish Kumar, who is stated to be a Director and authorized representative of the CD.

3.2 The present Application is wholly misconceived, untenable in law, and liable to be dismissed *in limine*. It is a settled proposition of law, repeatedly affirmed by the Hon'ble Supreme Court of India and various Benches of the Hon'ble National Company Law Tribunal, that the provisions of the IBC cannot be invoked as a mechanism for recovery of disputed or contractual dues. The jurisdiction under the IBC is not a substitute for ordinary civil or contractual remedies. It cannot be used as a tool to exert commercial pressure upon a solvent entity.

3.3 The proceedings contemplated under the IBC are intended to address genuine insolvency and liquidity distress and not to serve as a coercive instrument in commercial disagreements. Invocation of the insolvency framework against a solvent and financially sound entity such as the CD constitutes an abuse of process and undermines the sanctity of the insolvency regime, which permits initiation only in respect of undisputed, crystallised, and legally cognisable debts.

3.4 The disputes raised in the present Application are *ex facie* civil and contractual in nature, arising out of alleged claims under a private Share Purchase Agreement. The allegations relate to breach of contract and consequential restitutionary claims that require detailed factual examination, appreciation of evidence, and adjudication of disputed issues, which cannot be undertaken within the summary insolvency jurisdiction of this Hon'ble Tribunal. The proper forum for adjudication of such disputes

lies before a competent Civil Court or Arbitral Tribunal in accordance with the contractual framework.

3.5 The Applicant forms part of the larger InCred Group, a diversified financial services conglomerate engaged in investment, wealth management, asset management, and lending activities, and is primarily engaged in financial and investment services falling under “Other Financial Activities”. The CD is engaged in providing diversified financial and investment services, including advisory and execution services in relation to bonds, mutual funds, portfolio management, private equity, unlisted and pre-IPO investments, fixed deposits, insurance, and debt syndication, and represents itself as a comprehensive wealth management and investment solutions provider.

3.6 In or around February, 2025, the CD procured certain unlisted equity shares of the National Stock Exchange of India Limited through its seller and offered a portion thereof for sale to the Applicant. Pursuant thereto, the parties entered into a Share Purchase Agreement under which the CD agreed to sell 50,000 unlisted NSE shares to the Applicant at a price of Rs.1,590/- per share, aggregating to Rs.7,95,00,000/-, with an indicative understanding that the transfer would be completed within approximately six months from execution of the agreement.

3.7 Under the Share Purchase Agreement, the Applicant was required to pay the consideration and complete all formalities for dematerialisation and credit of shares, while both parties were obligated to cooperate in securing statutory approvals and ensuring compliance. The agreement stipulated that completion of all tranches was to occur within 195 days from the

execution date or such later date as mutually agreed, failing which the agreement would stand terminated.

3.8 In the last week of March, 2025, pursuant to an NSE notification dated 21.03.2025, the NSE revised its share transfer mechanism from a delayed settlement cycle of 5-6 months to an instantaneous delivery system, thereby requiring sellers to deliver shares immediately upon receipt of consideration. As a result of this regulatory change, the Applicant and other clients exerted pressure on the CD for immediate delivery of NSE shares.

3.9 Due to such pressure and logistical difficulties faced by the CD's own seller, the CD transferred 28,500 NSE shares out of the agreed 50,000 shares, leaving 21,500 shares pending. Between April, 2025 and June, 2025, the CD and the Applicant held multiple meetings in Mumbai and exchanged email communications in an attempt to explain the situation and arrive at an amicable settlement.

3.10 The contemporaneous correspondence exchanged between the parties demonstrates that the alleged default did not arise from any wilful omission or deliberate failure on the part of the CD, but from intervening regulatory developments and logistical constraints affecting delivery timelines. The CD acted in good faith and remained in continuous dialogue with the Applicant, including communicating its commitment to honour the transaction in full and seeking reasonable time to resolve the pending delivery.

3.11 Subsequent communications between the parties throughout May, 2025 and June, 2025 further demonstrate ongoing settlement discussions and the CD's willingness to either complete delivery of the remaining shares or refund the proportionate consideration within mutually agreed timelines.

3.12 The CD continues to engage with its seller to procure the remaining 21,500 shares or alternatively to refund the amount attributable to such shares and has, in furtherance of settlement efforts, offered alternative collateral by way of unlisted shares of another company.

3.13 In the aforesaid circumstances, the alleged default, if any, arises purely out of a commercial transaction impacted by unforeseen regulatory changes and logistical constraints and does not constitute a wilful or admitted default. At best, the dispute is contractual in nature and incapable of being characterised as an operational debt so as to justify invocation of Section 9 of the IBC.

3.14 The Petition proceeds on an erroneous assumption that the Applicant's claim constitutes an operational debt within the meaning of Section 5(21) of the IBC and that the Applicant qualifies as an operational creditor under Section 5(20). The entire claim arises out of a private share purchase transaction under which the Applicant, acting as a purchaser, paid consideration towards acquisition of shares and now seeks refund of a portion thereof. Such a claim is purely contractual and restitutionary and does not fall within the statutory contours of an operational debt.

3.15 An operational debt must arise from the provision of goods or services, including employment, or from statutory dues payable to governmental authorities. The Applicant has admittedly not supplied any goods or rendered any services to the CD. The relationship between the parties is that of buyer and seller under a capital transaction, and not that of service provider and recipient as contemplated under the IBC.

3.16 Courts and tribunals have consistently held that advances paid under share purchase, investment, or capital transactions cannot, by their very nature, constitute operational debt, even where such payments are sought to be recovered on account of alleged breach or non-performance. The IBC is not intended to serve as a forum for recovery of contractual advances or for adjudication of commercial disputes relating to share-sale transactions.

3.17 The substance of the transaction must prevail over its form. In the present case, the substance of the arrangement is a private share sale governed by commercial law, and any claim for refund remains a contractual restitutionary claim incapable of being elevated to the status of a statutory debt under the IBC.

3.18 Mere accounting entries, refund demands, or unilateral assertions cannot alter the fundamental character of the transaction or transform a private commercial dispute into an insolvency event. The Applicant, not being a supplier of goods or services, does not fall within the definition of an operational creditor, and the statutory prerequisites for invoking Section 9 of the IBC are not satisfied.

3.19 The IBC has been enacted to resolve genuine insolvency in a time-bound manner and to maximise the value of assets, and not to operate as a recovery mechanism for disputed commercial claims. The Hon’ble Supreme Court has repeatedly held that the IBC is not a recovery legislation and cannot be used prematurely or for extraneous considerations.

3.20 The Applicant’s attempt to cloak a contractual refund claim as an insolvency default amounts to misuse of the IBC and defeats its object and spirit, particularly when the CD is a solvent and financially viable entity.

3.21 The contemporaneous correspondence and conduct of the parties clearly establish the existence of a bona fide and pre-existing dispute relating to performance timelines, regulatory constraints, and settlement modalities, all of which predate the issuance of the demand notice under Section 8 of the IBC.

3.22 The CD has at all times expressed its readiness and willingness to perform its obligations, refund or adjust consideration in accordance with the contractual framework and evolving regulatory regime. The parties were actively engaged in negotiations, thereby negating the existence of any undisputed or crystallised debt.

3.23 The existence of such a genuine and pre-existing dispute disentitles the Applicant from invoking the summary insolvency jurisdiction under Section 9 of the IBC. The issues raised are incapable of resolution in an insolvency forum and require adjudication before an appropriate civil or arbitral forum.

3.24 In view of the foregoing, the present Petition is *ex facie* not maintainable and constitutes an abuse of the process of this Hon'ble Tribunal. The CD therefore humbly prays that the Petition be dismissed *in limine* with exemplary costs, in the interests of justice, equity, and good conscience.

3.25 The CD has attached the following supporting documents along with the Reply:

a) A copy of the Board Resolution dated 12.08.2025 authorising Mr. Sathish Kumar (DIN: 08416557), Director of the CD, on its behalf, to depose and affirm the present Affidavit.

b) A Copy of the Share Purchase Agreement dated 08.02.2025.

c) A copy of the email correspondence dated 23.04.2025.

d) A copy of the email correspondence dated 12.05.2025 and 10.06.2025.

e) A copy of the email correspondence dated 24.09.2025.

4. REJOINDER

4.1 Rejoinder dated 24.10.2025 was filed and affirmed by one Mr. Rajesh Patwardhan, authorised representative of the Applicant, by way of Board Resolution dated 12.12.2024.

4.2 The CD contends that the transaction arises from a private share purchase agreement dated 08.02.2025, under which the Applicant allegedly acted as a purchaser making advance payments towards the acquisition of shares. On this basis, the CD asserts that the Applicant was not a supplier and that the claim is contractual or restitutionary in nature, falling outside the scope of an "operational debt." It is further argued that amounts paid towards the acquisition of shares constitute an investment and are excluded from the definition of "operational debt" under Section 5(21) of the IBC. These contentions are denied in their entirety.

4.3 The CD has sought to mischaracterise the transaction by adopting an unduly restrictive interpretation of Section 5(21) of the IBC, contrary to legislative intent and settled law. Section 5(21) defines "operational debt" as a claim "*in respect of the provision of goods or services*." Regulation 7(2)(b)(i) and (ii) of the CIRP Regulations, 2016 permits an operational creditor to substantiate its claim either through a contract for the supply of goods or services or by production of an invoice. These provisions establish that the decisive requirement is a nexus between the claim and the provision of goods or services, without mandating that the claimant must be the

supplier. The phrase "*in respect of*" has consistently been interpreted broadly to include all claims arising from the provision or receipt of operational goods or services.

4.4 In the present case, the Applicant sought goods in the form of 50,000 equity shares of National Stock Exchange of India Limited from the CD under a share purchase agreement. The agreement constituted a contract for the supply of goods, namely the said shares, by the CD. Upon breach, the advance paid crystallised into a refund claim, giving rise to an operational debt in favour of the Applicant. Accordingly, the Applicant qualifies as an operational creditor under Section 5(20) of the IBC, and the CD's defence is liable to be rejected at the threshold.

4.5 The CD's attempt to portray the transaction as a capital investment is untenable in view of Section 2(7) of the Sale of Goods Act, 1930, which expressly includes stocks and shares within the definition of "goods." The CD's obligation was therefore to supply identified goods (50,000 NSE shares) for consideration within a defined timeline.

4.6 Under the agreement, the CD agreed to sell and deliver 50,000 NSE shares for a total consideration of Rs.7,95,00,000/- within 195 days. The Applicant paid the entire consideration in two tranches in February 2025, acknowledged by the CD. However, the CD transferred only 28,500 shares, that too belatedly, up to 16.05.2025, and thereafter admitted its inability to transfer the balance shares. In terms of Clause 9.2 of the agreement, the CD undertook to refund the proportionate consideration. A crystallised money claim thus arose in respect of the non-supply of goods, justifying the present application under Section 9 of the IBC.

4.7 Accordingly, the Applicant's claim of Rs.3,42,24,312.75/-, attributable to the undelivered 21,500 NSE shares, constitutes an operational debt under Section 5(21) of the IBC.

4.8 The CD has alleged that the proceedings are a misuse of the IBC as a recovery mechanism. This allegation is baseless. The application has been filed bona fide for insolvency resolution, as is evident from the record.

4.9 Correspondence between the parties demonstrates the Applicant's consistent good faith. The CD acknowledged receipt of Rs.2,38,77,428/- on 18.02.2025 and Rs.5,57,13,997/- on 19.02.2025, aggregating to Rs.7,95,91,425/-, being the full consideration for 50,000 shares.

4.10 By email dated 16.04.2025, the CD undertook to either transfer all shares by 23.04.2025 or refund the entire amount. Despite this assurance, the CD failed to perform and transferred only part of the shares. The Applicant granted a further extension until 02.05.2025 by email dated 23.04.2025, which was also not honoured. In May 2025, through emails, telephonic and WhatsApp communications, the CD admitted its inability to deliver the remaining shares and undertook to refund Rs.3,42,24,312.75/- within 5 days. This admitted liability remains unpaid.

4.11 Consequently, the Applicant terminated the agreement by email dated 27.05.2025 in accordance with Clause 9.2. Even thereafter, the CD sought extensions and proposed alternative arrangements, none of which materialised. The CD's persistent failure to fulfil its obligations despite receipt of full consideration evidences financial and managerial incapacity. Reports also suggest that the CD has defaulted on similar obligations to third parties, which the Applicant reserves the right to place on record.

4.12 The CD is thus demonstrably incapable of meeting its financial commitments, making this a fit case for initiation of CIRP. The application under Section 9 has been invoked *bona fide* and not as a recovery proceeding.

4.13 The plea of pre-existing dispute is wholly misconceived and a moonshine defence. There was never any dispute regarding the quantity of shares, the refundable amount, or the obligation to refund. On the contrary, the CD repeatedly admitted delay, assured performance, and acknowledged liability. The email dated 23.04.2025 constitutes a clear acknowledgement of debt.

4.14 Further, by email dated 24.09.2025, the CD expressly admitted its inability to deliver the shares or refund the balance amount, satisfying the definition of “default” under Section 3(12) of the IBC. Requests for time or settlement proposals cannot convert an admitted default into a dispute; rather, they reinforce acknowledgement of debt.

4.15 The CD’s contention that regulatory changes caused the default is irrelevant. The obligation to deliver the shares or refund the consideration was absolute and independent of external factors. Regulatory issues cannot negate an admitted liability.

4.16 Accordingly, the plea of pre-existing dispute is an afterthought raised to evade the IBC. The record conclusively establishes that the debt was admitted, due, and unpaid prior to issuance of the demand notice, warranting initiation of CIRP against the CD.

4.17 The contents of Paragraph 9 of the reply are denied. The claim clearly qualifies as an operational debt arising from non-delivery of goods under

Section 5(21) of the IBC, read with Section 2(7) of the Sale of Goods Act, 1930.

4.18 The contents of Paragraphs 11 and 12 of the reply are also denied. No dispute exists. The emails dated 23.04.2025 and 24.09.2025 unequivocally acknowledge delay, inability to perform, and inability to refund, satisfying Section 3(12) of the IBC. The default is apparent on the face of the record and squarely within the jurisdiction of this Hon'ble Adjudicating Authority.

5. ANALYSIS AND FINDINGS

5.1 We have perused the documents as placed before us and heard both the Ld. Counsels for the Applicant and the CD.

5.2 The undisputed facts before us are that the Applicant paid the entire sale consideration of Rs.7,95,91,425/- under a Share Purchase Agreement dated 08.02.2025 for the purchase of 50,000 NSE shares, of which only 28,500 shares were delivered by the CD. It is also admitted that the CD acknowledged receipt of payments, failed to provide the remaining 21,500 shares, issued a post-dated cheque dated 02.05.2025, admitted inability to perform, undertook to refund Rs.3,42,24,312.75/-, and failed to do so.

5.3 The CD disputes the maintainability of the application on the ground that the transaction is contractual and investment-based, that no operational debt exists, and that there is a pre-existing dispute arising from regulatory changes and logistical constraints.

5.4 At the threshold, the jurisdiction of this Adjudicating Authority under Section 9 of the IBC is limited to examining whether (i) there exists an operational

debt, (ii) the debt is due and payable, (iii) default has occurred, and (iv) there exists a real pre-existing dispute.

5.5 The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*** [(2018) 1 SCC 353] has authoritatively held that "*40. …Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. …"* The Court further clarified that a defence which is "*spurious, hypothetical or illusory*" cannot defeat admission of a Section 9 application.

5.6 The contention of the CD that the Applicant is not an operational creditor is founded on a narrow and erroneous interpretation of Section 5(21) of the IBC. The definition includes the expression "*a claim in respect of the provision of goods or services*." The Hon'ble Supreme Court in ***Consolidated Construction Consortium Limited v. Hitro Energy Solutions Private Limited*** [(2022) 6 SCC 401] held that the phrase "*in respect of*" "*has to be interpreted in a broad and purposive manner in order to include all those who provide or receive operational services from the corporate debtor, which ultimately lead to an operational debt."* The Court observed that once a claim bears a nexus with the provision of goods or services, it falls within the ambit of operational debt. The statute does not require that the applicant must necessarily be the supplier; what is material is the nature and source of the claim. Neither Section 5(20) nor Section 5(21) requires that the operational creditor must necessarily be the supplier

of goods or services. What is required is that the claim must arise "*in respect of*" goods or services.

5.7 The shares forming the subject matter of the transaction are "goods" within the meaning of Section 2(7) of the Sale of Goods Act, 1930, which expressly includes "stocks and shares". The SPA obligated the CD to sell, transfer, and deliver identified movable goods (50,000 NSE shares) for consideration within a stipulated timeframe. The failure to supply a part of the contracted goods resulted in a refund obligation, which directly arises from the non-provision of goods. Once goods are not supplied, the amount paid becomes an operational debt, and the refund thereof is actionable under Section 9 of the IBC.

5.8 The CD's contention that the transaction is a capital or investment transaction is unsustainable when tested against the substance of the agreement. The IBC is concerned with the real nature of the transaction and not its nomenclature. In the present case, the Applicant did not invest in the CD nor acquire any equity interest therein; it merely contracted to purchase certain shares of NSE which were to be supplied by the CD. A commercial purchase of shares for onward sale cannot be equated with an equity investment in the seller entity.

5.9 The correspondence relied upon by the CD does not disclose any dispute regarding liability, quantum, or obligation. On the contrary, the emails dated 23.04.2025, WhatsApp communications dated 27.05.2025, and subsequent assurances unequivocally acknowledge the debt and merely seek time for performance or refund. A request for time, settlement discussions, or

proposals for alternative arrangements do not constitute a “dispute” under the IBC and hence, do not negate the admitted liability.

5.10 The issuance of a post-dated cheque for the entire consideration, followed by its dishonour, further evidences acknowledgement of debt and default. It is a settled principle that acknowledgement of liability through conduct and documents is sufficient to establish default under the IBC.

5.11 The CD in its Reply has not raised any defense that it is registered as a financial service provider and hence we record that provisions of IBC, 2016 are applicable on the CD.

5.12 As regards the occurrence of default, Section 3(12) of the IBC defines default as non-payment of debt when the whole or any part of the amount has become due and payable. In the present case, default occurred, at the latest, on 02.05.2025, being the final date committed by the CD for transfer of shares or refund of consideration. The Demand Notice under Section 8 was issued thereafter and duly served. The CD failed to respond by raising any dispute within ten days as required under the IBC.

5.13 In view of the admitted receipt of full consideration, partial delivery of shares, unequivocal acknowledgements of liability, dishonour of the post-dated cheque, and failure to refund the crystallised amount despite issuance of the demand notice, this Adjudicating Authority is satisfied that an operational debt exists, default has occurred, and no pre-existing dispute subsists between the parties.

5.14 We find that all pre-requisites of Section 9 of the IBC are fulfilled and, accordingly, we are satisfied that the instant Application is fit for admission

under Section 9 of the IBC. The Applicant has attached all the documents as required, and therefore the Application is complete.

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

ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) No. 894/MB/2025 filed under Section 9 of IBC, 2016, by InCred Value Plus Private Limited, the Applicant (OC) for initiating CIRP in respect of Atum Capital Private Limited, the CD, is **admitted.**

We further declare a moratorium under Section 14 of IBC, 2016 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 the 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;

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 IBC 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 immediately as specified under Section 13 of the IBC 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 **AAA Insolvency Professionals LLP,** having **Registration No. as IBBI/IPE-0002/IPA-1/2022-23/50001**, and **e-mail address info@aaainsolvency.com**, (perusal of the IBBI website reveals that the AFA of the proposed IRP is valid till **31.12.2026**) as the IRP to carry out the functions under the IBC.

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 IBC. The officers and managers of the Corporate Debtor are directed to provide all 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 IBC read with Rule 11 of the NCLT Rules for any violation of law.

VIII. That the IRP/IP shall submit to this Tribunal monthly 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 Operational Creditor is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) 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 Operational Creditor on priority upon the funds becoming 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. The IRP is directed to issue notice of admission upon all the statutory authorities of the Corporate Debtor without fail.

XII. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

XIII. The Registry is directed to immediately communicate this Order to the Operations Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.

XIV. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//AS//