**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins.) No. 1700 of 2026**

**(Arising out of the Order dated 27.08.2026 passed by the Hon'ble National Company Law Tribunal, Ahmedabad in CP (IB) No.: 252 of 2023)**

**IN THE MATTER OF:**

**Rajesh Harikishan Khandelwal**
**Suspended Management of MIM Petro World Private Limited**
Having its address at- 30, Sainikpuri Society,
Near Chanakyapuri, Sama Road Vadodara,
Gujarat- 390008
Email: associate.nds@gmail.com
hariraj290570@gmail.com **…Appellant**

**Versus**

1. **Jay Ambe Industries Proprietor**
**Through its Authorized Person Rajeshkumar Harkishandas Khemani**
11, Uma Industrial Estate,
Opposite Maya Laxmi Rub- Tex,
Behind Hotel Bhagyoday, Vasna- Iyava Village,
Sanand District; Ahmedabad - 382170
Email- khemanihrajesh@gmail.com **…Respondent No.1**

2. **Mr. Bhavik Haribhai Rupapara**
Interim Resolution Professional of Appellant
Registration no.: IBBI/IPA-001/IP-P-02741/2022-2023/14196
Having its office at: 303, Silver Hill Apartment, Pal Road,
Opp. Sansakar City Apartment, Opp. Ramdhan Ashram,
Mavdi Area Rajkot- Gujarat- 360001
Email- cabhavikr3@gmail.com

**…Respondent No.2**

**Present**

**For Appellant:** Mr. Abhijeet Sinha, Sr. Adv. along with Ms. Natasha Dhruman Shah & Ms. Heena Kocchar, Adv
Mr. Shaurya Kuthiala & Mr. Aniruddha Deshmukh, Adv.

**For Respondent:** Mr. Sahil Rao, Advocate for R1/CoC.
Mr. Ajay Sharma, for R-2.

**J U D G E M E N T**

**(14.10.2026)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

**1.** The present appeal has been filed by the Appellant i.e., Mr. Rajesh Harikishan Khandelwal who is Suspended Management of MIM Petroworld Pvt. Ltd. under Section 61 of the Insolvency and Bankruptcy Code, 2016 **('Code')** against the Order dated 27.08.2026 **("Impugned Order")** passed by the Hon'ble National Company Law Tribunal, Ahmedabad in CP (IB) No.: 252 of 2023.

Jay Ambe Industries Through its Authorized Person Rajeshkumar Harkishandas Khemani is the Respondent No.1 herein.

Mr. Bhavik Haribhai Rupapara who is the Interim Resolution Professional of Appellant, is the Respondent No.2 herein.

**2.** The Appellant submitted that the Respondent had filed the aforesaid Company Petition under Section 9 of the Code claiming an alleged operational debt of Rs. 1,96,00,535/-, comprising principal amount of Rs. 1,77,32,898/- and

interest of Rs. 18,67,637/- calculated at 18% per annum, alleging defaults between 12.01.2023 and 17.01.2023. Prior thereto, the Respondent had issued a demand notice dated 17.08.2023 under Section 8 of the Code, which was duly replied to by the Appellant on 29.08.2023. In the said reply, the Appellant had specifically brought to the Respondent's notice the existence of a pre-existing dispute concerning the inferior and sub-standard quality of goods supplied by the Respondent.

**3.** The Appellant contended that it was engaged in the business of trading Mixed Mineral Hydrocarbon Oil and procuring the same from suppliers for onward supply to its end-customers, who utilised such goods in specialised and heavy vehicles employed in capital-intensive projects. The Appellant had an established business reputation and was regularly servicing its financial obligations. At the relevant time, the Appellant had a turnover of approximately Rs. 12,260.53 lakhs and had maintained financial discipline in its dealings with its suppliers, financial creditors and customers. The Appellant further submitted that it had no outstanding operational creditor other than the disputed claim of the Respondent and that its banking facilities were being regularly serviced.

**4.** The Appellant submitted that the business relationship between the parties was conducted substantially through Mr. Uday Jatin Shah, who represented himself as a partner/person concerned with the day-to-day affairs and decision-making of the Respondent. The material correspondence and business dealings between the parties were conducted through him. Acting upon the Respondent's

representations regarding the quality and supply of Mixed Mineral Hydrocarbon Oil, the Appellant commenced placing orders with the Respondent from January 2022. During Financial Year 2021-22, the Appellant procured goods worth approximately Rs. 16.14 crores and, up to December 2022, goods worth approximately Rs. 54.41 crores in Financial Year 2022-23.

**5.** The Appellant contended that during November and December 2022, the goods supplied by the Respondent were found to be extremely sub-standard and unfit for the purpose for which they had been procured. The use of such material resulted in heavy vehicles and equipment of the Appellant's customers coming to a standstill, which in turn disrupted the functioning of capital-intensive plants and industries. The Appellant immediately communicated the quality issues to the Respondent, whereupon the Respondent assured the Appellant that the consequences would be resolved and that quality goods would be supplied in future. Relying upon such assurances, the Appellant continued its business dealings with the Respondent.

**6.** The Appellant further submitted that notwithstanding the assurances given by the Respondent, further consignments were supplied and again complaints regarding sub-standard material were received from the Appellant's end-customers. The machinery and vehicles using the goods started failing and, ultimately, on 18.12.2022, the machines completely stopped functioning owing to the poor quality of the product. Consequently, the invoice dated 17.12.2022 was returned on 24.12.2022. The Appellant contended that the Respondent had

assured both supply of good quality material and resolution of the earlier quality-related complaints, but neither assurance was honoured.

**7.** The Appellant submitted that the quality complaint was not merely an oral assertion raised subsequently as a defence to the insolvency proceedings. The Appellant had referred the sub-standard batches to laboratory testing agencies, whose reports confirmed that the goods were of inferior quality and had failed the required threshold of usability. The laboratory reports were communicated to the Respondent and were never specifically controverted as to their existence, receipt or substantive contents. The Appellant further submitted that the laboratory material was accompanied by photographs, videography and other contemporaneous material evidencing the condition of the goods.

**8.** The Appellant contended that WhatsApp was the established and accepted mode of business communication between the parties. Orders were placed, deliveries were coordinated, invoices and payment details were communicated and, most importantly, complaints regarding the quality of the goods were raised through WhatsApp. Thus, the WhatsApp communications formed part of the ordinary course of business between the parties and could not have been discarded merely because the communications were not exchanged through formal corporate emails. The Appellant submitted that the quality dispute was communicated contemporaneously and substantially before issuance of the statutory demand notice.

**9.** The Appellant further contended that the Respondent itself acknowledged the quality-related difficulties and sought return/retrieval of the goods. The communications also demonstrated that the Respondent was aware of the complaints received by the Appellant from its customers. The Appellant submitted that despite the Respondent's failure to resolve the issue, the Appellant had continued making payments and had, in the course of business, already paid approximately Rs. 5.5 crores to the Respondent. After the quality dispute was communicated, the Appellant also paid approximately Rs. 76 lakhs, returned goods worth approximately Rs. 30–40 lakhs and incurred approximately Rs. 3–4 lakhs towards logistics costs, thereby demonstrating that the dispute was confined to the defective goods and was not a sham defence to avoid an admitted liability.

**10.** The Appellant submitted that the consequences of the defective supplies were substantial. Heavy-duty vehicles and machinery of its customers suffered breakdowns and the functioning of their plants was affected. The Appellant consequently suffered severe business and reputational losses, while its major customers claimed reimbursement, compensation and other adjustments. The Appellant contended that the losses attributable to the sub-standard goods were substantially higher than the amount claimed by the Respondent in the Section 9 proceedings.

**11.** The Appellant contended that the Respondent did not specifically controvert the existence of the quality dispute or the documents relied upon by the Appellant in its rejoinder. The Adjudicating Authority, by its order dated

08.11.2024, had consequently rejected CP (IB) No. 252 of 2023 after recording a finding that a pre-existing dispute existed between the parties. The Respondent thereafter preferred Company Appeal (AT) (Ins.) No. 2320 of 2024 before this Appellate Tribunal. By order dated 06.04.2026, this Appellate Tribunal remanded the matter for consideration of certain documents which had not been placed on record, while specifically recording several material aspects concerning the quality dispute, WhatsApp communications, laboratory report and Bill-to-Ship arrangement.

**12.** The Appellant submitted that this Appellate Tribunal, in its order dated 06.04.2026, specifically noticed that the plea regarding supply of sub-standard goods and consequential losses had been taken by the Appellant and that laboratory reports had been shared through WhatsApp with the Respondent as well as Mr. Uday Jatin Shah. It was further noticed that the failure of the material in the laboratory test report had not been specifically denied. The Appellant contended that the earlier Appellate Tribunal order also recorded that a communication dated 14.08.2023 referred to by the Adjudicating Authority was not available on record and had not been filed by either party, and that the matter was remanded for the limited purpose of placing the relevant documents on record.

**13.** The Appellant submitted that pursuant to the remand, it was granted liberty on 27.04.2026 to place the relevant documents and communications on record and accordingly filed an Additional Affidavit dated 13.06.2026 containing

enlarged copies of the documents which were already referred to in the earlier pleadings. Despite opportunities granted by the Adjudicating Authority, the Respondent initially failed to file any rejoinder or reply controverting the said affidavit, as recorded in the orders dated 15.06.2026 and 13.07.2026. The Appellant thereafter filed its Additional Written Submissions on 05.08.2026.

**14.** The Appellant contended that despite the aforesaid material having been placed on record pursuant to the remand, the Adjudicating Authority, by the Impugned Order dated 27.08.2026, once again admitted the Company Petition without properly considering the complete pleadings, documents and earlier findings. The Appellant submitted that the Impugned Order is therefore vitiated by non-application of mind and failure to appreciate the material facts and documents placed before the Adjudicating Authority.

**15.** The Appellant submitted that the Adjudicating Authority fundamentally erred in applying a standard of proof akin to final adjudication of the underlying commercial dispute. It was contended that, while considering a Section 9 application, the Adjudicating Authority was required to examine whether a plausible dispute existed which required further investigation and whether the dispute was genuine and not spurious, hypothetical or illusory. The Adjudicating Authority could not have undertaken a detailed trial into the ultimate merits, evidentiary value or conclusiveness of the Appellant's defence regarding the quality of the goods.

**16.** The Appellant further contended that the Adjudicating Authority erred in holding that the quality dispute could not constitute a pre-existing dispute because no specific stipulation concerning quality was contained in the invoices or purchase documents. It was submitted that no formal purchase contract containing such stipulation had been produced by either party and the parties had admittedly conducted their business through an established course of dealing. The absence of a formal contractual clause concerning quality could not, therefore, extinguish a dispute arising from the actual supply of defective goods.

**17.** The Appellant submitted that the Adjudicating Authority further failed to appreciate the admitted Bill-to-Ship arrangement between the parties. Under the established course of business, goods ordered by the Appellant from the Respondent were directly delivered to the Appellant's end-customers. The tax invoices, e-way bills and delivery documents reflected destinations different from the Appellant's registered/business address. Therefore, the fact that the goods were received by end-customers could not convert the quality dispute into a dispute between unrelated third parties. The complaints, debit notes and losses suffered by the end-customers were directly attributable to the goods supplied by the Respondent under the very transactions forming the subject matter of the Section 9 petition.

**18.** The Appellant contended that the Adjudicating Authority also erred in treating the return of only one invoice as undermining the existence of the dispute. The Appellant submitted that the dispute regarding defective goods had been

communicated as early as 19.11.2022, contemporaneously with the relevant period of supply, and therefore clearly pre-dated the demand notice. Further, goods had also been returned through the end-customers under the Bill-to-Ship arrangement. Consequently, the absence of physical return of every consignment could not negate a dispute which had already been raised regarding the quality of the goods.

**19.** The Appellant submitted that the Adjudicating Authority erred in rejecting or discounting the laboratory report on the ground that it did not disclose certain formal particulars such as the name of the testing institution, date or letterhead. It was contended that the material consideration at the Section 9 stage was that the report had been communicated to and received by the Respondent and that the Respondent had never specifically alleged that the report was false, fabricated or incorrect, nor had it asserted that the goods had actually passed the relevant test. The Appellant therefore submitted that the Adjudicating Authority could not, in summary insolvency proceedings, conduct an evidentiary trial into the ultimate veracity of a document whose substantive contents had remained uncontroverted.

**20.** The Appellant further contended that the findings recorded by this Appellate Tribunal on 06.04.2026 had attained finality, particularly since the Respondent had not challenged the said order by any further appeal. According to the Appellant, the Adjudicating Authority, while acting on remand, could not reappreciate and reject the same material in a manner contrary to the findings already recorded by this Appellate Tribunal. The Appellant submitted that the

remand was necessitated by the absence of certain documents from the record and did not authorise a wholesale reconsideration of matters already dealt with in the earlier proceedings.

**21.** The Appellant contended that the laboratory report did not stand in isolation. Its contents were contemporaneously corroborated by photographs, videos and communications concerning the visibly sub-standard condition of the goods. All such material pre-dated the demand notice dated 17.08.2023. The Appellant therefore submitted that the material on record, taken cumulatively, demonstrated the existence of a genuine dispute concerning the quality of the goods and could not have been disregarded on technical or formal grounds.

**22.** The Appellant submitted that the Adjudicating Authority also erred in disregarding the WhatsApp communications. This Appellate Tribunal had already observed that the Respondent had not specifically denied the WhatsApp screenshots and had merely objected that selective chats had been filed. The Appellant contended that such an objection did not amount to a specific denial of the communications themselves. Since WhatsApp constituted the established mode of business communication between the parties, the communications were relevant evidence of the contemporaneous quality dispute.

**23.** The Appellant further submitted that the Adjudicating Authority erred in treating the losses suffered by the Appellant and its customers as consequential losses arising from disputes with third parties. It was contended that the losses were directly and proximately connected with the defective goods supplied by the

Respondent. Since the goods were supplied directly to the Appellant's customers under the admitted Bill-to-Ship arrangement, the complaints and losses of those customers directly corroborated the Appellant's case regarding the defective quality of the goods supplied by the Respondent.

**24.** The Appellant contended that the Adjudicating Authority committed a serious error in drawing an adverse inference on account of the alleged non-production of a communication dated 14.08.2023. The Appellant submitted that this Appellate Tribunal had already recorded in its order dated 06.04.2026 that no such communication was available on record and that it had not been filed by either party. Further, the order dated 06.04.2026 did not mandate the Appellant to produce any communication dated 14.08.2023. The Appellant therefore submitted that the Adjudicating Authority could not have proceeded on the basis of a non-existent document or treated its non-production as a deficiency on the part of the Appellant.

**25.** The Appellant submitted that the Respondent's alleged operational debt was itself neither undisputed nor properly reconciled. The Respondent had failed to account for goods returned by the end-customers, corresponding credit/debit adjustments and consequential GST treatment. No complete reconciliation had been placed on record demonstrating how the alleged outstanding amount had been arrived at after taking into account the returns and adjustments. The Appellant therefore contended that the alleged operational debt could not be treated as an undisputed and crystallised liability warranting initiation of CIRP.

**26.** The Appellant further contended that the Respondent's claim towards interest was itself inconsistent and unsupported by the contractual record. While the Company Petition claimed interest at 18% per annum, the invoices relied upon by the Respondent referred to a different rate, namely 24%, and there was no consistent contractual stipulation supporting the interest component claimed in the Section 9 proceedings. The Appellant submitted that this inconsistency further demonstrated that the alleged operational debt had not been established on an undisputed documentary basis.

**27.** The Appellant submitted that there was also a material inconsistency in the statutory affidavit filed by the Respondent under Section 9(3)(b) of the Code concerning the date of the demand notice. While the demand notice on record was dated 17.08.2023 and was delivered on 21.08.2023, the affidavit referred to the demand notice as having been issued on 25.10.2022. The Appellant contended that such inconsistency went to the correctness and reliability of the statutory material accompanying the Section 9 proceedings and had not been properly appreciated by the Adjudicating Authority.

**28.** The Appellant contended that the Adjudicating Authority failed to consider the settled principles and precedents relied upon by the Appellant and did not provide any cogent reasoning for disregarding or distinguishing the same. The Appellant submitted that the Impugned Order was therefore not merely erroneous in appreciation of facts but also suffered from failure to apply the governing legal

principles applicable to the determination of a pre-existing dispute under Section 9 of the Code.

**29.** The Appellant submitted that the Adjudicating Authority also failed to assign any cogent reason for departing from its own earlier order dated 08.11.2024, whereby the very same Company Petition between the same parties had been rejected upon a finding that a genuine pre-existing dispute existed. The Appellant contended that, particularly in view of the subsequent order dated 06.04.2026 of this Appellate Tribunal and the additional material placed on record pursuant to remand, the Adjudicating Authority ought not to have arrived at a contrary conclusion without properly addressing the earlier findings and the material which remained uncontroverted.

**30.** The Appellant submitted that the cumulative effect of the WhatsApp communications, contemporaneous complaints, laboratory report, photographs and videos, return of goods, debit notes, Bill-to-Ship arrangement, communications with the Respondent, and the Respondent's failure to specifically controvert material portions of the Appellant's case clearly demonstrated that the dispute regarding quality was genuine, substantial and pre-existing. The Appellant therefore contended that the Respondent's claim could not be treated as an undisputed operational debt for the purposes of Section 9 of the Code.

**31.** The Appellant finally submitted that the Insolvency and Bankruptcy Code is not intended to be utilised as a substitute for ordinary recovery proceedings

where the underlying debt is genuinely disputed. The Appellant contended that the Respondent, instead of resolving the commercial dispute concerning the defective goods and the consequential losses, had sought to invoke the insolvency jurisdiction for recovery of the disputed amount. The admission of the Appellant into CIRP, despite the existence of a bona fide pre-existing dispute and despite the Appellant having otherwise maintained financial discipline and serviced its obligations, has caused grave prejudice to the Appellant and its stakeholders.

**32.** Concluding the arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order allow the present appeal.

**33.** Refuting all allegations, the Respondent No. 1 submitted that the Operational Creditor had initiated proceedings under Section 9 of the code for an outstanding operational debt of Rs. 1,96,00,535/-. The Corporate Debtor was initially proceeded against ex-parte and, subsequently, its application for recall was allowed, pursuant to which an opportunity was granted to file its reply after a substantial lapse of time. It is contended that, notwithstanding the opportunities granted to the Corporate Debtor, no cogent material was produced to establish the existence of any genuine dispute which had arisen prior to the issuance of the Section 8 notice.

**34.** The Respondent No. 1 contended that prior to service of the Section 8 demand notice, the Corporate Debtor had not communicated any dispute concerning either the outstanding operational debt or the quality of the goods supplied by the Operational Creditor. According to the Respondent No. 1, the

subsequent attempt of the Corporate Debtor to set up a dispute regarding quality of goods was an afterthought intended to resist initiation of CIRP.

**35.** The Respondent No. 1 submitted that the material supplied on 17.12.2022 under Invoice No. JAY00286/22-23 was returned by the Corporate Debtor on 24.12.2022, and the said transaction did not form part of the operational debt claimed in the Section 9 application. It was specifically submitted that the return of the said material was duly accounted for and, therefore, could not constitute a dispute concerning the debt forming the subject matter of the CIRP proceedings. No other material supplied either before or after the said transaction was returned by the Corporate Debtor, nor was any objection regarding the quality of the goods raised before issuance of the Section 8 notice.

**36.** The Respondent No. 1 further submitted that the Corporate Debtor had availed input tax credit in respect of the GST charged by the Operational Creditor and had not reversed the same. It is contended that, despite alleging that the goods supplied were sub-standard, the Corporate Debtor had not issued any debit note to the Operational Creditor in respect of the alleged quality deficiency. The Corporate Debtor had also failed to produce its ledger account relating to the Operational Creditor demonstrating any debit entry or adjustment on account of defective or sub-standard goods, or any corresponding material on the GST portal evidencing such dispute.

**37.** The Respondent No. 1 contended that the debit notes relied upon by the Corporate Debtor pertained to disputes between the Corporate Debtor and its own

customers and could not, in the absence of any demonstrated nexus, constitute a dispute between the Corporate Debtor and the Operational Creditor. No document had been produced to establish that the goods in respect of which the Corporate Debtor's customers allegedly raised objections were the very goods supplied by the Operational Creditor. It was submitted that the two debit notes relied upon by the Corporate Debtor related to different periods and did not establish any connection with the supplies made by the Operational Creditor.

**38.** The Respondent No. 1 submitted that the debit note issued by Hiltop for the period April-May 2023 could not establish a pre-existing dispute in relation to the Operational Creditor's supplies. The last sale by the Operational Creditor to the Corporate Debtor was on 18.12.2022, whereas the said debit note was dated 22.08.2023, i.e., subsequent to the issuance of the Section 8 notice. According to the Respondent No. 1, the said debit note related to discount on oil purchases and did not establish any dispute concerning the goods supplied by the Operational Creditor.

**39.** The Respondent No. 1 submitted that the WhatsApp communications relied upon by the Corporate Debtor could not establish a legally sustainable pre-existing dispute. The Respondent No. 1 objected to their admissibility in the absence of the requisite certificate under Section 65B of the Indian Evidence Act, 1872, and stated that, owing to a change of mobile device, the Operational Creditor was not in possession of the complete WhatsApp chats and, therefore,

was not in a position to admit or deny selective extracts produced by the Corporate Debtor.

**40.** Without prejudice to the aforesaid objection, the Respondent No. 1 contended that, even assuming the WhatsApp communications to be genuine and admissible, they did not identify any particular invoice or establish any specific dispute regarding the goods supplied by the Operational Creditor. It is submitted that the communications were routine in nature and that the Corporate Debtor continued to make purchases and payments thereafter. The alleged dispute, therefore, did not demonstrate a genuine or substantial dispute existing prior to the Section 8 notice.

**41.** The Respondent No. 1 further submitted that selective WhatsApp communications could not substitute for contemporaneous business records such as debit notes, ledger accounts and GST records which would ordinarily reflect a genuine dispute concerning the quality or value of the goods supplied. The Corporate Debtor had failed to produce such supporting records. Consequently, the Respondent No. 1 contended that the alleged dispute was unsupported by credible documentary evidence and constituted a feeble, spurious and moonshine defence.

**42.** The Respondent No. 1 submitted that the reliance placed by the Corporate Debtor upon communications allegedly exchanged with one Mr. Uday was also misconceived. It is specifically contended that M/s Jay Ambe Industries is a sole proprietorship concern of Mr. Rajesh Khemani, and Mr. Uday has never been its

proprietor, partner, employee or authorised representative. The Adjudicating Authority had also noticed that the communications relied upon by the Corporate Debtor were addressed to Mr. Uday, who was not shown to be the authorised representative or proprietor of the Operational Creditor. Hence, such communications could not, by themselves, establish a dispute attributable to the Operational Creditor.

**43.** The Respondent No. 1 contended that the goods were sold on an ex-factory basis and the responsibility of the Operational Creditor came to an end upon removal of the goods from its factory. The Corporate Debtor had verified the goods before they left the premises of the Operational Creditor, and transportation or subsequent delivery was not the responsibility of the Operational Creditor. Therefore, any subsequent dispute between the Corporate Debtor and its customers concerning the quality of goods could not automatically be converted into a dispute between the Corporate Debtor and the Operational Creditor.

**44.** The Respondent No. 1 submitted that no nexus had been established between the alleged complaints raised by the customers of the Corporate Debtor and the goods actually supplied by the Operational Creditor. In the absence of evidence linking the goods forming the subject matter of the customers' complaints to the supplies made by the Operational Creditor, the Corporate Debtor could not rely upon its disputes with third parties to defeat the Operational Creditor's claim.

**45.** The Respondent No. 1 further submitted that this Appellate Tribunal, while remanding the matter to the Adjudicating Authority, had specifically noticed the absence from the record of two documents, namely, the alleged communication dated 14.08.2023 and the alleged lab test report. The matter was accordingly remanded for consideration after the requisite material was placed on record. However, despite the opportunity so granted, the Corporate Debtor failed to produce the alleged communication dated 14.08.2023. The Respondent No. 1 contended that the subsequent assertion that the reference to the communication was merely a typing mistake could not cure the failure to produce the document when the matter had specifically been remanded for that purpose.

**46.** The Respondent No. 1 submitted that the alleged lab test report was also produced for the first time before the Adjudicating Authority after remand and was not part of the record when the matter was earlier considered by this Tribunal. It is contended that the document did not bear the name of the issuing authority, the qualification of the person who allegedly conducted or issued the report, or the signature and authority of the person responsible for issuing it. According to the Respondent No. 1, the document therefore lacked the foundational particulars necessary to establish that it was a genuine and reliable laboratory report.

**47.** The Respondent No. 1 further submitted that the contention of the Corporate Debtor that the alleged lab report remained uncontroverted was factually incorrect. It is stated that, after remand, the Operational Creditor filed a detailed rejoinder dealing with the additional affidavit and specifically disputed

the contents and evidentiary value of the alleged lab test report. The said rejoinder was served upon the counsel for the Corporate Debtor on 11.07.2026. The Respondent No. 1 therefore contended that the assertion in the appeal that no response had been filed was contrary to the record.

**48.** The Respondent No. 1 submitted that on 13.07.2026, the counsel for the Operational Creditor could not remain personally present owing to personal difficulty and had submitted a leave note. It is contended that, despite the rejoinder having already been served, a submission was made before the Adjudicating Authority that no reply had been filed to the additional affidavit. The Respondent No. 1 stated that, on the subsequent hearing dated 05.08.2026, the filing of the rejoinder was brought to the notice of the Adjudicating Authority and was duly noted. Thus, the allegation that the additional affidavit and lab report had gone uncontroverted was denied.

**49.** The Respondent No. 1 contended that the earlier order dated 08.11.2024 had been challenged before this Appellate Tribunal and was set aside on the ground that it was non-speaking and unreasoned. The matter was thereafter remanded to the Adjudicating Authority, thereby providing the Corporate Debtor an opportunity to place on record the documents which were stated to be material for determination of the alleged pre-existing dispute. According to the Respondent No. 1, the Corporate Debtor failed to produce the documents specifically noticed by this Tribunal, and the Adjudicating Authority thereafter

undertook a detailed examination of the pleadings and material before recording its finding regarding the absence of a pre-existing dispute.

**50.** The Respondent No. 1 submitted that the Adjudicating Authority, after remand, did not mechanically reiterate its earlier conclusion but considered the material placed by both parties, including the alleged WhatsApp communications, the lab test report, the alleged communication dated 14.08.2023, the issue concerning Mr. Uday, the nature of the supplies, the return of goods under Invoice No. JAY00286/22-23, and the documents relied upon by the Corporate Debtor. It is therefore contended that the impugned order was a reasoned order based upon the material available on record.

**51.** The Respondent No. 1 further submitted that the financial condition of the Corporate Debtor could not, by itself, constitute a defence to a Section 9 application. It is pointed out that the Corporate Debtor's own balance sheet disclosed a reduction in profits despite an increase in turnover. However, the Respondent No. 1 contended that the determinative requirements for admission under Sections 8 and 9 of the code are the existence of an operational debt, default and the absence of a genuine pre-existing dispute, and not the mere financial condition or solvency position of the Corporate Debtor.

**52.** The Respondent No. 1 submitted that the replies relied upon by the Corporate Debtor were themselves inconsistent. It is contended that the replies dated 21.08.2024 and 29.08.2023, as relied upon by the Corporate Debtor, were contrary to each other and did not establish a consistent contemporaneous dispute

regarding the quality of the goods supplied. The Respondent No. 1 further submitted that the alleged defences relating to communications dated 01.11.2022 and 14.08.2023 were not supported by the requisite documentary material on record.

**53.** The Respondent No. 1 contended that the Corporate Debtor had repeatedly raised the same issues concerning the alleged sub-standard goods, WhatsApp communications, the role of Mr. Uday and the lab test report, but had failed to substantiate them through reliable documentary evidence. The Respondent No. 1 therefore submitted that these grounds, having already been considered by the Adjudicating Authority, did not disclose any error warranting appellate interference.

**54.** The Respondent No. 1 submitted that the mere fact that the Corporate Debtor had suffered losses or had disputes with its own debtors could not establish a dispute with the Operational Creditor. On the contrary, the alleged losses claimed by the Corporate Debtor were themselves connected with its dealings with third parties and did not establish any deficiency in the goods supplied by the Operational Creditor or any dispute concerning the outstanding operational debt of Rs. 1,96,00,535/-.

**55.** The Respondent No. 1 contended that the Corporate Debtor had been afforded sufficient opportunities to substantiate its defence, including after remand, but had failed to produce the documents necessary to demonstrate a genuine pre-existing dispute. The Respondent No. 1 submitted that the absence

of a debit notes, relevant ledger entry, reversal of input tax credit, contemporaneous correspondence specifically disputing an invoice, or reliable laboratory report materially weakened the defence raised by the Corporate Debtor.

**56.** The Respondent No. 1 submitted that the Corporate Debtor's reliance upon the debit note issued by Hiltop was misplaced for the additional reason that the alleged debit note dated 22.08.2023 related to a period subsequent to the last sale made by the Operational Creditor on 18.12.2022 and was itself issued after the Section 8 notice. It therefore could not demonstrate that a dispute existed between the Operational Creditor and the Corporate Debtor prior to the demand notice.

**57.** The Respondent No. 1 further submitted that the return of the goods covered by Invoice No. JAY00286/22-23 had already been accounted for and did not form part of the debt claimed in the Section 9 application. Thus, the Corporate Debtor could not rely upon the said isolated transaction to contend that the entire operational debt was disputed, particularly when no other goods supplied by the Operational Creditor were returned or specifically rejected before issuance of the Section 8 notice.

**58.** The Respondent No. 1 contended that the appeal contains allegations suggesting that the Adjudicating Authority had failed to consider the material placed before it. Such allegations are contrary to the record, as the impugned order dealt with the material contentions concerning the alleged pre-existing dispute and concluded that the defence raised by the Corporate Debtor was not

supported by sufficient evidence. It is submitted that the appellate jurisdiction ought not to be invoked merely to re-agitate factual issues which had already been considered by the Adjudicating Authority.

**59.** The Respondent No. 1 submitted that the present case falls within the statutory scheme of Sections 8 and 9 of the code, since the Operational Creditor had established an operational debt of Rs. 1,96,00,535/-, whereas the Corporate Debtor had failed to demonstrate a genuine dispute existing prior to the issuance of the demand notice. The Respondent No. 1 therefore contended that the mere raising of a dispute after receipt of the statutory demand notice could not defeat the Section 9 proceedings.

**60.** The Respondent No. 1 submitted that the alleged pre-existing dispute was neither supported by contemporaneous statutory records nor sufficiently connected to the invoices constituting the operational debt. The WhatsApp communications, the alleged customer debit notes, the purported lab test report and the alleged communication dated 14.08.2023, individually or collectively, did not establish a real and substantial dispute existing before the Section 8 notice.

**61.** The Respondent No. 1 accordingly contended that the findings of the Adjudicating Authority regarding absence of a pre-existing dispute were based upon appreciation of the material placed on record and were neither perverse nor unsupported by evidence. The Corporate Debtor, having failed to establish a genuine pre-existing dispute despite the opportunities granted to it, could not seek

to defeat the Section 9 application by relying upon subsequent, incomplete or unsubstantiated material.

**62.** The Respondent No. 1 submitted that the grounds of appeal essentially seek to re-agitate issues which had already been considered by the Adjudicating Authority after remand. The Respondent No. 1 therefore contended that no ground had been made out for interference with the impugned order admitting the Corporate Debtor into CIRP.

**63.** Concluding its arguments, the Respondent No. 1 requested this Appellate Tribunal to dismiss the appeal.

**64.** The Respondent No. 2 submitted that he was appointed as the Interim Resolution Professional ("IRP") of the Corporate Debtor, M/s MIM Petro World Private Limited, by the Adjudicating Authority vide order dated 27.08.2026, which order is under challenge in the present Appeal. He stated that, pursuant to his appointment, he has been discharging his functions in accordance with the provisions of the Code and the applicable regulations.

**65.** The Respondent No. 2 submitted that, in furtherance of the CIRP, he made the Public Announcement on 02.09.2026 in terms of Regulation 6 of the IBBI (CIRP) Regulations, 2016, and the said announcement was duly published in various newspapers.

**66.** The Respondent No. 2 further submitted that, pursuant to the Public Announcement, claims were received from various creditors. ICICI Bank Limited, as a secured financial creditor, submitted a claim of Rs. 2,88,53,015 on

09.09.2026, which amount was provisionally admitted in full. The Federal Bank Limited, also a secured financial creditor, submitted a claim of Rs. 76,28,661.60 on 18.09.2026, which was likewise provisionally admitted in full. It is further submitted that ICICI Bank Limited, in its capacity as a financial creditor, submitted an additional claim of Rs. 20,98,500 on 09.09.2026, which was provisionally admitted in full.

**67.** The Respondent No. 2 stated that Jay Ambe Industries, through its Proprietor Rajeshkumar Harkishandas Khemani, submitted an operational claim of Rs.1,96,00,535 on 19.09.2026. The said claim, being an operational creditor claim other than claims relating to workmen and employees or Government dues, was under verification. He further submitted that the Assistant Commissioner of State Tax, Gujarat, submitted a claim of Rs. 36,87,759 on 08.09.2026 towards Government dues, which was also under verification.

**68.** The Respondent No. 2 contended that, upon receipt and consideration of the claims, he filed an application before the Adjudicating Authority on 19.09.2026 intimating the constitution of the Committee of Creditors under Section 21(1) of the code. He submitted that the Committee of Creditors comprises The Federal Bank Limited, having 19.77% voting share, and ICICI Bank Limited, having 80.23% voting share.

**69.** The Respondent No. 2 further submitted that the first meeting of the Committee of Creditors was convened and held on 29.09.2026, wherein various issues relating to the CIRP were discussed.

**70.** The Respondent No. 2 submitted that the present written submissions have been filed to apprise this Appellate Tribunal of the current status and progress of the CIRP and being an officer of the court, his position is neutral and he requested this Appellate Tribunal to hear the appeal on its own merits.

## ***FINDINGS***

**71.** This appeal is filed by the suspended Director of MIM Petro World Private Limited / the Corporate Debtor. It challenges the order dated 27.08.2026 of the Adjudicating Authority in CP (IB) No. 252 of 2023. By that order, the Adjudicating Authority admitted the Section 9 petition of Jay Ambe Industries/the Operational Creditor/Respondent No. 1 and began the CIRP.

**72.** We have been informed that the Operational Creditor sold Mixed Mineral Hydrocarbon Oil to the Corporate Debtor. We note that the claim is for invoices dated 13.12.2022 to 18.12.2022, totalling Rs. 1,77,32,898, with interest of Rs. 18,67,637 at 18% up to 17.08.2023, making Rs. 1,96,00,535. Payment was due after 30 days, and default is stated as 12.01.2023 to 17.01.2023. Nothing earlier than December 2022 is claimed.

**73.** We further note that the Adjudicating Authority first rejected the petition on 08.11.2024, holding that a quality dispute existed before the notice. By order dated 06.04.2026, this Appellate Tribunal set aside the order in the Operational Creditor's appeal and remitted the matter to the Adjudicating Authority for fresh decision by a reasoned order after hearing both sides. The reason was that the lab

test report and a communication said to be dated 14.08.2023 were not available on record, and the dispute could not be finally decided without them. After the remand, the Corporate Debtor filed an additional affidavit dated 13.06.2026 with WhatsApp chats and the lab report, and the Operational Creditor filed a rejoinder. The Adjudicating Authority then admitted the petition.

**74.** At this stage it needs to be appreciated that an operational creditor can start CIRP only for an operational debt that is due and not disputed. The debtor may, within ten days of the demand notice, bring to the creditor's notice the existence of a dispute, if any in terms of the Section 8(2)(a)) of the code. If the creditor has received a notice of dispute, the application may be rejected in terms of the Section 9(5)(ii)(d)) of the code. Section 5(6) of the code also stipulates that a dispute includes a suit or arbitration relating to the existence of the debt, the quality of goods or service, or breach of a representation or warranty. In ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd***., (2018) 1 SCC 353, the Hon'ble Supreme Court held that the definition is inclusive, so a dispute need not have reached a court or arbitrator. It is enough that a real dispute existed before the notice was received. The test, laid down in Mobilox (supra), is whether there is a plausible contention that requires further investigation, and whether the dispute is genuine and not spurious, hypothetical or illusory. It is settled law by now that the adjudicating authority does not weigh the evidence or decide who will win. It separates the grain from the chaff, and rejects the defence only if it is a patently feeble legal argument or an assertion of fact unsupported by evidence.

**75.** We take into consideration that the Hon'ble Supreme Court applied this test again in ***GLS Films Industries Pvt. Ltd. v. Chemical Suppliers India Pvt. Ltd.,*** 2026 INSC 344. The debtor therefore alleged defective supplies and the need to reconcile accounts. The Adjudicating Authority rejected the Section 9 petition, NCLAT reversed after examining the merits of the defence, and the Supreme Court restored the Adjudicating Authority's order. It held that the authority has only to be satisfied that a plausible pre-existing dispute exists, and that whether the party raising it will succeed is not within the ken of such inquiry.

**76.** We endorse the propositions that Section 9 petition is not a suit for recovery, and a genuinely contested debt cannot be collected through insolvency. Equally, a bare denial does not defeat the petition. The Adjudicating Authority therefore need not to decide whether the goods were defective but to decide whether the record shows a plausible dispute that existed before the notice.

**77.** This Appellate Tribunal vide order dated 06.04.2026 directed fresh adjudication by a reasoned order by the Adjudicating Authority and we did not decide the dispute for either side. The Adjudicating Authority was free to look at the matter afresh with the new documents, and therefore the Adjudicating Authority was not barred from re-appreciating the material. This Appellate Tribunal then noted that the Operational Creditor had not specifically denied the WhatsApp screenshots and had only called them selective; that the lab test report was not specifically denied, though its timing was disputed; and that the debit notes of Hiltop Highrise Pvt. Ltd. appeared relevant while that of Reliable

Industries appeared unrelated. To take a different view, the Adjudicating Authority had to say why, by pointing to what the Operational Creditor had said or shown since. The impugned order refers to none of this and gives no such reason.

**78.** We note that the Operational Creditor itself accepted that the goods under the invoice dated 17.12.2022 were returned on 24.12.2022, a week after supply and nearly eight months before the demand notice. The Operational Creditor submitted that this invoice was not part of its claim. That is an answer on the amount. It does not remove the fact that goods supplied in mid-December 2022 were sent back by the buyer long before any demand. The invoice also falls in the very week of the claimed invoices, and the impugned order records no invoice-wise comparison. The Operational Creditor's own case, noted in paragraph 13(e) of the order, is that the return of material is already accounted for. That is itself an acceptance that returns had to be adjusted before the sum due could be fixed.

**79.** We find that the Adjudicating Authority found in paragraph 13(c) that the WhatsApp chats were dated before the demand notice. They run from November 2022 and carry photographs, videos and the lab report. The Operational Creditor alleges that the dispute was created by bringing in a third party, but it has not shown that the messages were never sent or were altered. Its objections are that they are not invoice-specific, were sent to a third person and lack a certificate under Section 65B. On this issue, we are of the opinion that a complaint of selectivity can be answered by producing the rest of the chat, and the record does

not show that any other chat was placed to show that the complaints were absent or answered. We put a direct query to the Respondent to produce full WhatsApp chat from his record, even at the stage of hearing before us, which he could not do and reasons given is that due to change in mobile, he does not have chats with him. Therefore, we are not in position to accept the contentions of the Respondent on this issue.

**80.** It is noted that the reply of 29.08.2023 was sent in time by the corporate debtor and the Corporate Debtor raised the issue of quality of the goods and is consistent with the chats and the December 2022 return. Thus, we are of prima facie view that it is not a story first told after the notice. It is a notice of dispute under Section 9(5)(ii)(d), resting on events some eight months older. The Operational Creditor claims nothing for the months before December 2022, and by its own account the last sale was on 18.12.2022. No supply followed the return and the complaints. That fits the Corporate Debtor's case that it stopped buying and paying after a bad batch, and gives a plausible reason for withholding payment. The Operational Creditor's answer, that the goods were checked by the Corporate Debtor before leaving its premises and that any dispute lies between the Corporate Debtor and its customers, goes to who is responsible. It does not say that no complaint was made. Responsibility is a question for trial.

**81.** We find that the Adjudicating Authority recorded no finding that any identifiable part of the claim, above the threshold of Rs. 1 crore, stands apart from the dispute. The complaint relates to the November–December 2022 supplies,

which include the invoices claimed. On these facts, we are of view that the contention of the Corporate Debtor is not spurious, hypothetical or illusory. It rests on an admitted return of goods, chats dated before the notice that were not specifically denied, and a reply sent in time. It needs investigation, and that is enough to take the case out of Section 9.

**82.** We have examined the Impugned order and note that the Adjudicating Authority took the opposite view in paragraph 13(a) to (g). None of its reasons can stand for the following reasons.

In para 13 (a), the Adjudicating Authority stated that there was *no quality term in the invoice or contract*. However, we find that the Code does not require a dispute to be foreseen in a contract, and Section 5(6)(b) names the quality of goods itself. No purchase contract was produced by the Operational Creditor either, though it sues on the invoices, so the Corporate Debtor cannot be faulted for not producing what neither side produced. The law also fills the gaps as under Section 16(2) of the Sale of Goods Act, 1930, goods bought by description from a seller who deals in them must be of merchantable quality. A buyer needs no written clause to complain of unusable goods.

In para 13 (b) the Adjudicating Authority mentioned Third-party *disputes*. The order treats the complaints of the Corporate Debtor's customers, and its resulting losses, as matters with third parties, and notes that the e-way bills and invoices name only the Corporate Debtor as recipient. This overlooks the admitted bill-to-ship basis, under which the invoice is raised on the buyer and the

goods go straight to its customer. Naming the Corporate Debtor is exactly what one would expect, and says nothing against the dispute. Goods that never reach the buyer's godown can only be complained of by the people who use them, and the complaint then travels back up the chain. The complaint is still about the Operational Creditor's goods. Whether the Corporate Debtor can recover its losses is separate, and we do not decide it.

Similarly in para 13 (c), the Adjudicating authority stated that *only one invoice was returned*. We are of view that the number of returns bears on the size of the dispute, not on its existence. Under the bill-to-ship model, the goods were with the Corporate Debtor's customers, and it could not be expected to send them back itself.

On examination of para 13 (d), where the Adjudicating authority discussed *the communication of 14.08.2023, the Impugned order* draws an adverse inference because this document was not produced even after the remand. The Appellant explains that the first order of the Adjudicating authority dated 08.11.2024 wrongly refers to the demand notice as dated 14.08.2023, when it is dated 17.08.2023. We find this explanation is plausible and fits the record, and neither side has produced any communication of that date. A document dated three days before the notice could not outweigh the material of November and December 2022 in any case. An adverse inference for not producing a document of doubtful existence cannot take the place of the Mobilox test.

The Adjudicating authority in para 13 (e) discussed the lab test report and held that the report did not show the institution, date or identity. We are of the view that these go to the weight of the report at trial and do not decide whether a plausible dispute exists when the report is one part of a larger picture. The Operational Creditor's challenge, as recorded, is to the form, source and timing of the report, and not that the goods passed any test.

In para 13 (f), the Adjudicating Authority discards the chats because they were addressed to Mr. Uday, who is said not to be an authorized person of the Operational Creditor. The Operational Creditor denies that he is its partner, while the Corporate Debtor says that he dealt with orders, invoices and deliveries. This Appellate Tribunal noted on 06.04.2026 that the complaints were made first to Mr. Uday and then to the Operational Creditor, and the Appellant points to messages addressed to the proprietor himself, which the impugned order does not address. His authority is a disputed fact that cannot be settled in summary proceedings. The Operational Creditor's own acceptance of the December 2022 return suggests that the complaint reached it in some form.

Finally in para 13 (g), the Adjudicating authority noted that the Hiltop Highrise debit note was dated 22.08.2023, after the demand notice, and covers purchases of April–May 2023, long after the last sale on 18.12.2022. The Reliable Industries debit note was noted as unrelated. We place no reliance on either, and our conclusion stands without them.

**83.** Taken together, these reasons show that the Adjudicating Authority in effect tried the defence. It asked whether the Corporate Debtor had proved that the goods were bad, that Mr. Uday had authority, that the lab report was genuine and that its customers' claims were valid, and it held that the Corporate Debtor failed to establish a genuine dispute. We are of the considered view that these are questions for a trial. The Adjudicating Authority did not ask whether there was a plausible contention needing investigation. The Corporate Debtor did not have to prove its case. It had to show that its case was plausible and not an afterthought, and on this record it did.

**84.** We hold that a plausible dispute about the quality of the goods existed before the demand notice was received. It rests on the admitted return of goods on 24.12.2022, the chats of November–December 2022 that were not specifically denied, and the reply of 29.08.2023. The Adjudicating Authority applied a contractual requirement that the Code does not impose, treated a bill-to-ship dispute as a third-party matter, tested the lab report and Mr. Uday's authority as at trial, and drew an adverse inference from a document of doubtful existence. The impugned order dated 27.08.2026 therefore cannot be sustained.

**85.** We find merit in the appeal. The appeal succeeds. The Impugned order is set aside. No order to cost. IA, if any, stands closed. We however would place on record that above findings are confined to the question of pre-existing dispute at the Section 9 stage and we have not expressed any opinion on whether the goods were defective or on the Corporate Debtor's claim of loss, or on the amount due to

the Operational Creditor, all of which would be open to be decided in appropriate proceedings before any other legal forum, in accordance with law, if any party choose to do so.

**[Justice Mohammad Faiz Alam Khan]**
**Member (Judicial)**

**[Mr. Naresh Salecha]**
**Member (Technical)**

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