NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1295 of 2025

[Arising out of the Impugned Order dated 11.06.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench in C.P. (I.B.) No. 205/KB/2023]

IN THE MATTER OF:

M/S AIRTECH AIRCONDITIONERS
Through Mr. Arshad Shah, Proprietor Ashiana Building, adjoining Daryacha Building, Hauz Khas Village, New Delhi 110016 **...Appellant(s)**

Versus

KAMLADITYYA CONSTRUCTION PRIVATE LIMITED
Having its registered office at: Kamla Awas, 201, Co-Operative Colony Bokaro Steel City, Bokaro Jharkhand – 827001
E-mail: kcpl19@gmail.com, kcplkanpur01@gmail.com **...Respondent(s)**

Present:

For Appellant	**:**	Mr. Vipul Ganda, Ms. Nitu Barik, Mr. Gyanesh Tiwary, Advocates.
For Respondents	**:**	Mr. Ketan Madan, Mr. Puneet Kumar, Mr. Utkarsh Singh, Advocates

O R D E R
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present Appeal, filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**'IBC'** in short) arises from the Impugned Order dated 11.06.2025 (hereinafter referred to as the **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) in C.P. (I.B.) No. 205/KB/2023. By the said Impugned Order, the Adjudicating Authority

has declined to admit the Section 9 application preferred by the Appellant/Operational Creditor-M/s Airtech Airconditioners seeking initiation of Corporate Insolvency Resolution Process (‘**CIRP’** in short) against the Respondent/Corporate Debtor-Kamladityya Construction Private Limited in respect of purported operational debt due and payable to the Appellant. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Introducing the facts of the case and making their submissions as pleaded in the appeal, the Ld. Counsel for the Appellant submitted that it was engaged in the business of providing firefighting and Heating Ventilation and Air Conditioning (‘**HVAC’** in short) services on contractual basis and had established a business relationship with the Respondent/Corporate Debtor-Kamladityya Construction Pvt Ltd, for execution of firefighting and HVAC works in their infrastructure projects. The Respondent had awarded contractual works in four separate projects to the Appellant in 2018 viz. Industrial Model Township, Rohtak in Haryana; Maharani Laxmi Bai Medical College, Jhansi in Uttar Pradesh; MSME Project, Kanpur in Uttar Pradesh and NICF Campus, Ghitorni in New Delhi. It was submitted that pursuant to the work orders issued by the Respondent, the Appellant had duly executed the contractual works and maintained running accounts in terms of the agreed payment mechanism. The Appellant accordingly raised invoices and RA bills for the services rendered from time to time and the total unpaid operational debt under the invoices raised by them amounted to Rs. 2,53,04,702.00. Assertion was also made that apart from the invoiced amounts, the Appellant had also rendered additional services and

incurred substantial expenditures in the execution of the projects for which also unbilled amounts remained due which were all acknowledged in the running account maintained between the two parties. While the projects remained under execution, it is contended that the Respondent had never raised any contemporaneous dispute with regard to the quality of services, workmanship, or delay and to the contrary not only accepted the work as executed by the Appellant but also released part payments under several invoices, thereby unequivocally admitting the existence of operational debt and liability to pay the balance amounts. However, when subsequent requests to the Respondent for release of the outstanding dues did not fructify, the Appellant issued a Section 8 Demand Notice on 21.10.2022 for a sum of Rs. 7.91 Cr together with interest at the rate of 18% per annum. The Respondent admittedly sent their reply on 03.11.2022 denying their liability to pay and allegedly raised vague allegations regarding quality issues as an afterthought to evade repayment of legitimate dues. Since no further payment was forthcoming, it was submitted that the Appellant filed an application under Section 9 of the IBC before the Adjudicating Authority on 09.09.2023 seeking initiation of CIRP against the Respondent. However, despite their being clear documentary evidence showing admitted liability and no evidence of any pre-existing dispute, the Adjudicating Authority vide impugned order dated 11.06.2025 erroneously dismissed the Section 9 application on grounds of pre-existing dispute even though no such disputes were raised prior to service of the Section 8 demand notice. Further the Adjudicating Authority had wrongly relied upon the provisions of Section 10A of IBC to reject the Section 9 petition without appreciating that even after excluding

the invoices falling during the Section 10A period, the Appellant had established an admitted default of Rs. 2.19 Cr. which was sufficiently above the threshold limits for admission of the Section 9 application. Thus, the reliance placed by the Adjudicating Authority on Section 10A to dismiss the Section 9 application is wholly misplaced. Assailing the impugned order for having caused miscarriage of justice, the Appellant has preferred the present appeal.

3. Per contra, supporting the findings returned by the Adjudicating Authority and strongly opposing the arguments canvassed by the Appellant, the Ld. Counsel for the Respondent submitted that the Section 9 application has been rightly rejected on grounds of the Appellant having added unbilled amount to the alleged operational debt with respect to work which was never asked to be done nor ever done by them; pre-existing disputes with regard to work executed by the Appellant which had been communicated to the Appellant on umpteen occasions even prior to the Section 8 Demand Notice; wrongful inclusion of defaults which were covered by the Section 10A period by the Appellant as well as irregularly clubbing together of the four separate contracts to cross the threshold limits.

4. We have heard the Ld. Counsel for both parties and perused the records carefully.

5. It is the case of the Appellant that the rejection of the Section 9 application by the Adjudicating Authority is wholly unsustainable in law and on facts as the Adjudicating Authority failed to appreciate the extensive documentary evidence placed on record by the Appellant establishing the existence of an operational debt and the default committed by the Respondent including work-orders,

invoices, certified RA bills, completion certificates, e-mail correspondence and even communications from government authorities such as Central Public Works Department which clearly demonstrated that proper services had been rendered by the Appellant which had been accepted by the Respondent without protest which was further substantiated by the fact that part- payments made by the Respondent constituted acknowledgment of debt. The alleged disputes were raised only after the filing of Section 8 Demand Notice which shows that the disputes raised by the Respondent were not genuine pre-existing disputes but fabricated defence raised subsequent to the demand notice and that too based on mere bald assertions of the Respondent.

6. Before we return our findings, we may quickly recapitulate the statutory scheme as outlined under Section 8 and 9 of the IBC. Section 8 of the IBC requires the Operational Creditor on occurrence of a default to deliver a Demand Notice for payment of unpaid Operational Debt. Section 8(2) provides that Corporate Debtor within a period of 10 days of the receipt of the Demand Notice is required to bring to the notice of the Operational Creditor existence of dispute, if any. Thus, the existence of dispute and its communication to the Operational Creditor by the Corporate Debtor is statutorily provided for in Section 8 of the IBC. Looking forward, under Section 9(1) of the IBC, if the Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Section 8(2), he may file an application under Section 9(1) of the IBC before the Adjudicating Authority. However, Section 9(5)(ii) contemplates that Adjudicating Authority shall reject the application if notice of dispute has been

received by the Operational Creditor or there is record of dispute in the Information Utility. Section 9(5)(ii) reads as follows:

> *"(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—*
> *(i).....*
> *(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—*
> *(a) the application made under sub-section (2) is incomplete;*
> *(b) there has been [payment] of the unpaid operational debt;*
> *(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;*
> *(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or*
> *(e) any disciplinary proceeding is pending against any proposed resolution professional:*
> *Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days(i) of the date of receipt of such notice from the adjudicating Authority."*

7. Present is a case where we find that the Corporate Debtor in its reply on 03.11.2022 to the Section 8 notice dated 21.10.2022 has categorically denied the claim raised by the Operational Creditor on the grounds that they are not legally due or payable besides disputing the debt amount that has been claimed. The above reply by the Corporate Debtor to the Section 8 demand notice is therefore clearly a notice of dispute. Section 9(5)(ii)(d) of the IBC contemplates rejection of an application when a notice of dispute is received by the Operational Creditor and in the present case, undisputedly the Section 8 demand notice issued by the Operational Creditor had been replied to by the Corporate Debtor and this notice of dispute clearly attracted Section 9(5)(ii)(d) of the IBC.

8. Additionally, we find that the Adjudicating Authority has noticed at Paras 9.2.1 and 9.2.2, emails/correspondences dated 28.09.2021 and 20.07.2021 which were clearly prior to issue of Section 8 notice wherein the Corporate Debtor has time and again raised disputes by pointing out deficiencies/defects in the performance of Operational Creditor. Since these communications have been extracted out in the impugned order, we do not feel the need to reproduce them again. Further we also find that the Appellant on 02.03.2021 had admitted the delay caused by them in execution of the MSME Kanpur project as is placed at page 221 of the Appeal Paper Book. Such correspondences are illustrative of the ongoing disputes between the two parties. In the face of such disputes having been communicated by the Respondent to the Appellant well before the Section 8 Demand Notice dissipates all force in the contention of the Appellant that these disputes were an after-thought premised on vague and unsupported allegations by the Corporate Debtor without any credible evidence to avoid admission of the Section 9 petition.

9. At this stage it may be useful to have a look at the reply to the Section 8 Demand Notice at page 169 of the Appeal Paper Book which has been construed as a notice of dispute by the Adjudicating Authority. The relevant excerpts are as follows:

> *"5. That the present notice is issued by clubbing/consolidating all the sub-contracts only to invoke jurisdiction of Hon'ble NCLT since the amount involved in all contracts individually does not fall under the ambit of IBC, 2016 and only to pressurize and is a tactic to extort money from our client, all the sub-contracts have been clubbed together and the present notice has been issued which itself shows that the present notice is untenable, unsustainable and needs to be withdrawn forthwith. Even otherwise, there*

is pre-existing dispute between the parties with respect to commissioning of work by your client and payments thereof for all the sites.

6. It is stated that the present notice is completely false, wrong and without any basis. The present notice is totally baseless, false and untenable as there is a pre-existing dispute between the parties with respect to commission of work by your client and transaction in question, which has been raised time and again by our client on many occasions through emails, whatsapp messages and personally. As such, the present notice is issued completely against the principles of provisions of the Insolvency and Bankruptcy Code."

(Emphasis supplied)

In subsequent paragraphs of the above reply as at para 8, project- wise disputes have been outlined separately by the Respondent under the heading of "Deficiencies/Defects/Non-completion". It is therefore patently clear that disputes had been raised by the Corporate Debtor both in the reply to the Section 8 Demand notice and even in communications prior to that with regard to the implementation of all the four projects.

10. The object and purpose of IBC is to reorganize and revive the Corporate Debtor and Section 9 application cannot be leveraged as a tool to decide disputes between the parties regarding the operational dues. It is well settled that in a Section 9 proceeding, there is no need to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt. What has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court. The law on the subject has been categorically laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353*** where the following has been laid down:

> *"51…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 fats unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."*

11. Thus, all that the Adjudicating Authority is to see at this stage is whether there is a plausible dispute which requires further investigation and that the purported dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has no choice but to reject the application. If we apply the above cited test laid down in ***Mobilox judgement*** to the facts of the present case, it becomes clear that the nature of dispute raised by the Corporate Debtor in the present factual matrix both in terms of emails/correspondences as well as in the notice of dispute cannot be construed as a patently feeble legal argument or an assertion of facts unsupported by evidence and would require adjudication by the competent court. The present is not a case where there is an undisputed debt for which insolvency can be initiated against the Corporate Debtor. Even if for argument's sake we agree that the invoices raised by the Appellant were not barred by Section 10A of IBC, it does not detract from the fact that the Corporate Debtor had raised disputes on the operational debt and denied all liability. Where operational creditor seeks to initiate insolvency process against a Corporate

Debtor, it can only be done in clear cases where no real dispute exists between the two which is not so borne out given the facts of the present case. In sum, the defence taken by the Appellant that the Corporate Debtor was trying to manufacture disputes fails to succeed. The defence raised by the Corporate Debtor cannot be held to be moonshine, spurious, hypothetical or illusory.

12. In view of the foregoing reasons, we find the Appeal to be devoid of merit. The impugned order dismissing the Section 9 application is affirmed. The Appeal is dismissed without costs. We however make it clear that it will remain open to the Appellant to resort to other remedies that may be available to it under any other law. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date : 06.05.2026
Sheetal