IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.302 - C.P.(IB)/52(AHM)2023
With
ITEM No.303 - IA/500(AHM)2026

C.P.(IB)/52(AHM)2023

Under Section 9 of IB Code, 2016

IN THE MATTER OF:

Suwarna Buildcon Pvt Ltd ..... **Applicant**
V/s
Sadbhav Engineering Ltd ..... **Respondent**

IA/500(AHM)2026

Under Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Suwarna Buildcon Pvt Ltd ..... **Applicant**
V/s
Sadbhav Engineering Ltd ..... **Respondent**

Order delivered on: 11/05/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

C O M M O N O R D E R
(Hybrid Mode)

The case is fixed for pronouncement of order. The common order is pronounced in the open court, vide separate sheet.

-SD-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT–I, AHMEDABAD

CP(IB) No. 52 of 2023
with
IA No. 500 of 2026
in
CP(IB) No. 52 of 2023

CP(IB) No. 52 of 2023

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

In the Matter of: **Sadbhav Engineering Limited**

Suwarna Buildcon Private Limited
CIN: U45200PN2011PTC139359
Having a registered office at:
3rd Floor, Office No. 309, Shoppers Orbit Building-A,
S. No. 44A/1, Plot No. 1, Alandi Road,
Vishrantwadi, Pune,
Maharashtra – 411015.

...Applicant/Operational Creditor

VERSUS

Sadbhav Engineering Limited
CIN: L45400GJ1988PLC011322
Having a registered office at:
Sadbhav House, Opp-Law Garden Police Chowki,
Ellisbridge, Ahmedabad, Gujarat – 380006.

...Respondent/Corporate Debtor

WITH

IA No. 500 of 2026

(An application filed under Rule 11 of the National Company Law Tribunal Rules, 2016.)

In the Matter of:

IBC Laws | www.ibclaw.in

Suwarna Buildcon Private Limited
CIN: U45200PN2011PTC139359
Having a registered office at:
3rd Floor, Office No. 309, Shoppers Orbit Building-A,
S. No. 44A/1, Plot No. 1, Alandi Road,
Vishrantwadi, Pune,
Maharashtra – 411015.

...Applicant/Operational Creditor

VERSUS

Sadbhav Engineering Limited
CIN: L45400GJ1988PLC011322
Having a registered office at:
Sadbhav House, Opp-Law Garden Police Chowki,
Ellisbridge, Ahmedabad, Gujarat – 380006.

...Respondent/Corporate Debtor

Order Pronounced On: 11.05.2026

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant/OC : Mr. Ankit Pitti, Advocate
For the Respondent/CD : Mr. Ravi Pahwa, Advocate a.w.
: Ms. Gunjan Aggarwal, Advocate

COMMON ORDER
(*Per*: Bench)

1. This Company Petition has been filed on 25.02.2023 by the Applicant- Suwarna Buildcon Private Limited (hereinafter referred to as "Operational Creditor") against the Respondent -Sadbhav Engineering Limited (hereinafter referred to as

'Corporate Debtor') under Section 9 of the IBC, 2016 read with Rule 6 of the IB (AAA) Rules, 2016 for initiation of CIRP, appointment of IRP and declaration of moratorium for default in payment of operational debt of **Rs. 30,12,10,696/-** including interest 12% per annum as on 30.11.2022 till the date of realisation arising from supply of goods/services.

2. On perusal of Part-I of the Form-5 reveals that the Operational Creditor – Suwarna Buildcon Private Limited is a private limited company incorporated under the Companies Act, 1956 having CIN No. U45200PN2011PTC139359 and having its registered office at 3rd Floor, Office No. 309, Shoppers Orbit Building-A, S. No. 44A/1, Plot No. 1, Alandi Road, Vishrantwadi, Pune, Maharashtra – 411015. This Petition is filed through its authorised signatory Mr. Manojkumar Abrol, CEO, who has been authorised by Board Resolution annexed as Annexure-C.

3. On perusal of Part-II of the Form-5 reveals that the Corporate Debtor is Sadbhav Engineering Limited, a public

limited company incorporated on 03.10.1988 under the Companies Act, 1956 having CIN No. L45400GJ1988PLC011322. The Corporate Debtor is having its registered office at Sadbhav House, Opp-Law Garden Police Chowki, Ellisbridge, Ahmedabad, Gujarat – 380006, with authorised share capital of Rs. 20,00,00,000/- and paid-up share capital of Rs. 17,15,70,800/- as per MCA records annexed as Annexure-B.

4. On Perusal of Part-III of Form-5, shows that the Operational Creditor has not proposed any name for the appointment of IRP and sought the appointment of IRP by this Tribunal as per the empanelment list of IBBI made available at the time of the admission of this Petition.

5. On perusal of Part-IV of the Form-5, it is revealed that total operational debt as claimed by the Operational Creditor is of Rs. 30,12,10,696/- including an interest amount of Rs. 5,09,52,347/- at the rate of 12% per annum as on 30.11.2022 along with further running interest at the rate of 12% per annum from 30.11.2022 till the date of realisation. The date of default is stated to be 08.08.2020.

6. Upon perusal of Part-IV and Part-V of Form-5, it is observed that the Operational Creditor has set out the following facts in support of the present petition: -

6.1. It is stated that the present Company Petition has been filed by the Operational Creditor under Section 9 of the Code seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for alleged default in payment of operational dues aggregating to Rs. 30,12,10,696/-, which includes interest amount of Rs. 5,09,52,347/- calculated at the rate of 12% per annum as on 30.11.2022 along with further running interest till realization.

6.2. It is stated that Visvesvaraya Jala Nigam Limited (VJNL), a Government of Karnataka Enterprise, had awarded a contract pertaining to construction of Chitradurga Branch Canal including earthwork excavation, embankment, CC lining using mechanical paver, cross drainage works, road bridges, cart track crossings and allied works to the Corporate Debtor. It is further stated that thereafter, vide work order dated 18.02.2019, the Corporate Debtor sub-contracted canal earthwork including excavation in soil, excavation in soft rock, excavation in hard rock, embankment and CNS layer work within Km. 2.600 to Km. 7.000 and Km. 13.000 to Km. 14.500 along with

structure work between Km. 0.000 to Km. 7.000 in favour of the Operational Creditor.

6.3. It is submitted that pursuant to the aforesaid work order, the Operational Creditor carried out the subcontracted work to the satisfaction of the Corporate Debtor and no dispute or demur was ever raised with respect to the contracted work. It is further submitted that the Operational Creditor raised Running Account Bills from time to time and the said bills were duly verified, approved and accounted for by the Corporate Debtor.

6.4. It is further stated that vide letter dated 27.01.2020, the Corporate Debtor informed the Operational Creditor that Running Account Bills amounting to Rs. 22,90,19,773/- had been duly verified, audited and approved and that there existed no dispute with respect to quantities, measurements, rates and payable amounts. It is stated that the audited bills were approved for payment after all applicable recoveries and deductions. The said letter has been annexed as Annexure-E to the petition.

6.5. It is further contended that thereafter vide letter dated 20.03.2020, the work order was amended and the scope of work was enhanced. It is stated that structure works from 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 10th, 11th, 12th, 13th, 14th, 15th and 16th kilometer

aqueduct along with combined cross regulator at CH: 0.000 km of CBC/TBC Package-IV were allocated to the Operational Creditor. It is also stated that subcontract work for canal lining was additionally allocated to the Operational Creditor. According to the Operational Creditor, the Corporate Debtor further agreed that canal earthwork carried out by the Corporate Debtor would be jointly measured by authorised representatives of both parties in order to ascertain actual quantities of work carried out by the Operational Creditor and to define balance quantities on the stretches tackled, executed or partially executed. It is stated that similar amendment was carried out vide letter dated 20.05.2020. The said documents have been annexed collectively as Annexure-F.

6.6. It is the case of the Operational Creditor that pursuant to the aforesaid amendments, the Operational Creditor carried out work in accordance with the work order and the Corporate Debtor accepted the work executed without raising any dispute or objection.

6.7. It is further stated that thereafter, vide agreement dated 08.07.2020, the Corporate Debtor once again acknowledged its liability towards the work executed by the Operational Creditor to the extent of Rs. 22,17,26,935/-. The said agreement has been annexed as Annexure - G to the petition.

6.8. It is submitted that thereafter the Operational Creditor addressed several reminder letters dated 07.12.2020, 30.03.2021, 05.05.2021, 18.05.2021, 27.05.2021, 05.06.2021, 10.06.2021 and 15.07.2021 requesting the Corporate Debtor to clear the outstanding dues. The said reminder letters have been collectively annexed as Annexure -H.

6.9. It is contended that as per trade practice and mutual understanding between the parties, in the event of delay in payment, the Operational Creditor was entitled to claim interest at the rate of 12% per annum. Accordingly, the Operational Creditor has claimed interest amounting to Rs. 5,09,52,347/- calculated at the rate of 12% per annum as on 30.11.2022. A detailed computation of interest has been annexed as Annexure - I.

6.10. It is further stated that under the aforesaid circumstances, the Operational Creditor issued demand notice dated 27.12.2022 under Section 8 of the Code demanding payment of the outstanding operational debt. It is stated that the said demand notice was served upon the Corporate Debtor through RPAD on 29.12.2022 and through email on 27.12.2022. Copies of the demand notice along with proof of service have been annexed as Annexure - J.

6.11. It is further submitted that the Corporate Debtor issued reply dated 06.01.2023 to the aforesaid demand notice, which according to the Operational Creditor is vague and evasive in nature. The said reply has been annexed as Annexure - K to the petition.

6.12. It is stated that the Operational Creditor has claimed that the default occurred on 08.08.2020 and that the total amount in default is Rs. 30,12,10,696/- including interest calculated up to 30.11.2022 along with further running interest till realization.

6.13. It is the case of the Operational Creditor that the claim arises in respect of goods supplied and services rendered to the Corporate Debtor and therefore constitutes an "operational debt" within the meaning of Section 5(21) of the Code. On the aforesaid basis, the present petition has been preferred seeking initiation of CIRP against the Corporate Debtor.

7. That on issuance of the notice in the Company Petition, the Corporate Debtor appeared through its Counsel and filed a reply on 18.07.2023 through e-mode wherein following contentions have been raised by the Respondent: -

7.1. It is contended by the Corporate Debtor that the entire claim of the Operational Creditor is founded upon settlement agreement dated 08.07.2020 and not upon

any independent operational transaction. According to the Corporate Debtor, the alleged default pertains to breach of terms of the settlement agreement and therefore does not fall within the definition of "operational debt" under Section 5(21) of the Code. It is submitted that unpaid instalments arising from a settlement agreement cannot be treated as operational debt and consequently CIRP cannot be invoked for enforcement of such settlement terms.

7.2. In support of the aforesaid contention, reliance has been placed upon the decisions rendered in *Delhi Control Devices Pvt. Ltd. v. Fedders Electric and Engineering Ltd.*; *Nitin Gupta v. International Land Developers Pvt. Ltd.*; *Ahluwalia Contracts (India) Pvt. Ltd. v. Logix Infratech Pvt. Ltd.*; *Trafigura India Private Limited v. TDT Copper Ltd.*; and *Permali Wallace Pvt. Ltd. v. Narbada Forest Industries Pvt. Ltd.*, wherein it has been held that amounts arising out of settlement agreements cannot be treated as operational debt for the purpose of initiation of CIRP. It is further submitted that the judgment in *Permali Wallace Pvt. Ltd.* has been upheld by the Hon'ble NCLAT vide order dated 17.01.2023 passed in Company Appeal (AT)(Ins.) No. 36 of 2023.

7.3. It is further submitted that once the parties entered into settlement agreement dated 08.07.2020, the original operational transactions lost their substratum

and what survived thereafter was merely a claim arising from settlement terms. According to the Corporate Debtor, the alleged dues at best constitute a "debt" under Section 3(11) of the Code and cannot be treated as "operational debt" under Section 5(21) of the Code.

7.4. The Corporate Debtor has further relied upon the judgment of the Hon'ble NCLAT in *Amrit Kumar Aggarwal v. Tembo Appliances Pvt. Ltd.* to contend that mere breach of obligations under a settlement agreement would not amount to financial debt or operational debt and that CIRP cannot be invoked for recovery of amounts arising from such settlement arrangements.

7.5. It is further contended that the Insolvency and Bankruptcy Code is not intended to be used as a recovery mechanism. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Invent Asset Securitisation and Reconstruction Pvt. Ltd. v. Gimar Fibres Ltd.* as well as *Swiss Ribbons Pvt. Ltd. v. Union of India* to submit that insolvency proceedings cannot be invoked merely for recovery of money and that the object of the Code is resolution of insolvency of the corporate debtor. According to the Corporate Debtor, the present petition has been filed solely for recovery of alleged dues and therefore deserves to be dismissed.

7.6. Without prejudice to the aforesaid contentions, it is further submitted that the claim towards interest is also not maintainable under Section 9 of the Code. It is contended that the Operational Creditor is seeking recovery of interest arising out of the settlement agreement and such claim cannot form the basis of initiation of CIRP. Reliance has again been placed upon *Permali Wallace Pvt. Ltd. v. Narbada Forest Industries Pvt. Ltd.* and the affirming judgment of the Hon'ble NCLAT dated 17.01.2023.

7.7. The Corporate Debtor has further contended that the present petition is barred by Section 10A of the Code. It is submitted that as per the demand notice as well as Form 5, the date of default has been mentioned as 08.08.2020, which falls within the period protected under Section 10A, namely from 25.03.2020 to 24.03.2021, during which initiation of CIRP stood suspended. It is therefore submitted that no insolvency proceedings can be initiated in respect of defaults occurring during the said period.

7.8. In support of the aforesaid contention, reliance has been placed upon the judgments rendered in *Kinetic Engineering Solution Limited v. Walchandnagar Industries Limited* and *Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd.*, wherein it has been held that applications under Sections 7, 9 and 10 of the Code are barred in respect of defaults occurring

during the Section 10A period. It is further submitted that the judgment in Ramesh Kymal has been affirmed by the Hon'ble Supreme Court vide order dated 09.02.2021 passed in Civil Appeal No. 4050 of 2020.

7.9. The Corporate Debtor has also raised the plea of pre-existing disputes. It is submitted that prior to issuance of demand notice dated 27.12.2022, several proceedings had already been initiated between the parties.

7.10. According to the Corporate Debtor, the Operational Creditor had instituted Commercial Suit Nos. 52, 53 and 54 of 2021 before the Commercial Court at Pune in relation to the settlement agreement. It is further submitted that the Operational Creditor had also lodged police complaints dated 07.12.2021, 07.02.2022 and 19.02.2022 against officers of the Corporate Debtor, to which replies were submitted by the Corporate Debtor.

7.11. It is contended that since the aforesaid proceedings and disputes were already in existence prior to issuance of demand notice, the present petition under Section 9 is not maintainable. Reliance has been placed upon the judgment of the Hon'ble NCLAT in *Landmark Realty v. Siroya Developers Pvt. Ltd.*, wherein it was held that when civil proceedings for recovery had already been instituted prior to issuance

of demand notice, initiation of CIRP would not be maintainable.

7.12. The Corporate Debtor has further submitted that the Operational Creditor is attempting to resolve disputes raised in police complaints and other proceedings through the mechanism of the IBC. Reliance has been placed upon the decision of the Hon'ble NCLAT in *Anil J. Nemaavarkar v. Kumar Builders Mumbai Realty Pvt. Ltd.* to contend that the IBC is not intended for adjudication of such disputes and that existence of prior complaints and disputes disentitles an operational creditor from invoking Section 9 of the Code.

7.13. It is further submitted that where genuine disputes exist between the parties and require adjudication, an application under Section 9 of the Code is liable to be rejected. Reliance has been placed upon the judgments of the Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*; *Wind Water System v. Narendra Emporis Ltd.*; and *Trafigura Pte. Ltd. v. SLR Metaliks Ltd.* to contend that once a plausible dispute is shown to exist prior to issuance of demand notice, CIRP cannot be initiated.

7.14. It is further submitted that even after filing of the present petition, the Operational Creditor has continued to initiate multiple proceedings against the

Corporate Debtor, including Commercial Suit Nos. 1, 2 and 3 of 2023 before the Commercial Court at Pune, Regular Civil Suit No. 76 of 2023 before the Civil Judge at Kagal, arbitration proceedings bearing File Nos. A.P/001/28042023 and A.P/002/28042023, and Original Suit No. 226 of 2023 before the Civil Judge at Mandya, Karnataka. According to the Corporate Debtor, the said facts demonstrate that the disputes between the parties are pending adjudication before various fora and the present petition has been filed only to pressurize the Corporate Debtor.

7.15. On the aforesaid grounds, the Corporate Debtor has prayed for dismissal of the present petition with exemplary costs.

8. The Operational Creditor filed a rejoinder on 13.10.2023 through e-mode, denying most contentions raised by the Corporate Debtor in its reply. The contents of the Rejoinder are reproduced as follows: -

8.1. It is submitted that the present petition does not pertain to the Samruddhi Project but pertains specifically to the Chitradurga Branch Canal Project. The Operational Creditor has denied the contention of the Corporate Debtor that the entire claim is founded solely upon agreement dated 08.07.2020. It is submitted that even assuming the agreement dated

08.07.2020 is considered, the claim would nevertheless fall within the ambit of "Operational Debt" under Section 5(21) of the Code as the said agreement merely acknowledges liability arising from execution of works and provision of services rendered by the Operational Creditor.

8.2. It is submitted that the Corporate Debtor intentionally misled the Tribunal by contending that the petition was based upon default under a settlement agreement. According to the Operational Creditor, Running Account Bills were raised by it in relation to excavation, embankment, canal lining, cross drainage works, road bridges and cart track crossing works executed pursuant to work order dated 18.02.2019. It is further submitted that vide letter dated 27.01.2020, the Corporate Debtor expressly acknowledged and admitted liability of Rs. 22,90,19,773/- and confirmed that the Running Account Bills had been duly verified, audited and approved and that there existed no dispute regarding quantities, measurements, rates or payable amounts.

8.3. It is further submitted that despite acknowledgment of liability vide letter dated 27.01.2020, the Corporate Debtor failed to release payment. Thereafter, agreement dated 08.07.2020 came to be executed between the parties only for the purpose of recording and reaffirming payment obligations already arising

from the operational works carried out by the Operational Creditor. According to the Operational Creditor, Clause 2.2 of the agreement specifically records that payment was towards the work already completed by the Operational Creditor in relation to the Chitradurga Branch Canal Project and therefore the agreement merely acknowledged pre-existing operational liability.

8.4. It is submitted that agreement dated 08.07.2020 is not a settlement agreement in the strict sense and that the petition is not founded upon breach of instalments under any settlement agreement. According to the Operational Creditor, the claim pertains to unpaid Running Account Bills raised from time to time for execution of works and provision of services and therefore squarely falls within the definition of "Operational Debt" under Section 5(21) of the Code.

8.5. The Operational Creditor has further sought to distinguish the judgments relied upon by the Corporate Debtor. It is submitted that in *Delhi Control Devices Pvt. Ltd. v. Fedders Electric and Engineering Ltd.*, the petition had been filed solely on the basis of default of instalments under a settlement agreement dated 25.05.2018 and therefore the said judgment is distinguishable on facts. Similarly, it is submitted that in *Nitin Gupta v. International Land Developers Pvt. Ltd.*, the petition was filed solely on the basis of default

under settlement agreement dated 27.12.2019, whereas in the present case the liability arises from operational works already executed by the Operational Creditor.

8.6. It is further submitted that the judgment in *Ahluwali Contracts (India) Ltd. v. Logix Infratech Pvt. Ltd.* is also distinguishable since the petition therein was based entirely upon a claim arising from a default under settlement agreement dated 30.09.2019. Likewise, in *Trafigura India Pvt. Ltd. v. TDT Copper Ltd.*, the petition was filed solely on account of default committed under settlement agreement dated 20.11.2018 and the Hon'ble NCLAT had therefore held that such default would not constitute operational debt.

8.7. The Operational Creditor has further submitted that reliance upon Permali Wallace Pvt. Ltd. v. Narbada Forest Industries Pvt. Ltd. is misconceived since in that matter the Section 9 petition had been filed only for recovery of interest arising under settlement agreement dated 07.11.2017 after principal operational debt had already been paid. According to the Operational Creditor, the present petition is not filed solely for recovery of interest but for unpaid operational dues arising from execution of works.

8.8. It is further submitted that reliance placed upon *Amrit Kumar Aggarwal v. Tembo Appliances Pvt. Ltd.* is also

misplaced. According to the Operational Creditor, the said judgment pertained to a petition under Section 7 of the Code arising solely from breach of a settlement agreement where the principal borrower was not even a party to the proceedings. Reliance has further been placed upon the judgment of the Hon'ble NCLAT in *Piyal Kantilal Patel v. IREP Credit Capital Pvt. Ltd.*, wherein it was held that where a petition is not founded solely on breach of settlement terms but arises from the original debt itself, the nature and character of debt would not change merely because settlement terms had subsequently been entered into.

8.9. It is further submitted that the Corporate Debtor has dishonestly failed to release admitted payments despite acknowledging liability under letter dated 27.01.2020 and agreement dated 08.07.2020. According to the Operational Creditor, the Corporate Debtor is attempting to raise technical defences only to avoid admitted liabilities arising from operational works already completed by the Operational Creditor.

8.10. The Operational Creditor has further distinguished the judgments in *Invent Asset Securitisation and Reconstruction Pvt. Ltd. v. Gimar Fibres Ltd.* and *Swiss Ribbons Pvt. Ltd. v. Union of India* by contending that the present petition has not been filed for recovery of stale claims but pertains to admitted and acknowledged operational dues. Reliance has further

been placed upon the judgment of the Hon'ble Supreme Court in S.S. Engineers v. Hindustan Petroleum Corporation Ltd., wherein it has been observed that where an undisputed operational debt remains unpaid due to deliberate failure of the corporate debtor to pay, initiation of CIRP cannot be denied.

8.11. It is further submitted that the claim towards interest is also maintainable. According to the Operational Creditor, interest at the rate of 12% per annum had been expressly agreed between the parties and therefore the same forms part of "debt" within the meaning of Sections 3(6) and 3(11) of the Code. Reliance has been placed upon the judgment in *Prashant Agarwal v. Vikas Parasrampuria, Sole Proprietor of Chiranjilal Yarns Trading*, wherein it has been held that where interest on delayed payment is contractually stipulated, the same would form part of debt under the Code.

8.12. With respect to Section 10A, the Operational Creditor has submitted that the present case is not barred under the said provision since the default had commenced prior to the Covid period and continued thereafter. According to the Operational Creditor, the Corporate Debtor defaulted in payment of Running Account Bills from August 2019 onwards and such continuing default merely extended into the Section

10A period. In support thereof, the Operational Creditor has produced the following chronology:

Date	Particulars	Reference
18.02.2019	Respondent sub-contracted Chitradurga Branch Canal earthwork including excavation in soil, excavation in soft rock, excavation in hard rock, embankment and CNS layer work as per drawing within Km. 2.600 to Km. 7.000 and Km. 13.000 to Km. 14.500 along with structure work between 0.000 to Km. 7.000 to the Petitioner.	Page No. 45 of Petition
April 2019 to August 2019	Operational Creditor carried out subcontracted work. The Corporate Debtor neither raised dispute nor demur regarding the work executed. Running Account Bills were duly verified, approved and accounted for by the Corporate Debtor. As per agreed terms, the approved and accepted Running Account Bills were required to be paid forthwith. However, the Corporate Debtor failed to release payment and default commenced from August 2019.	—
27.01.2020	Operational Creditor submitted Running Account Bills worth Rs. 22,90,19,773/-, which were verified, audited and approved and no dispute regarding quantities, measurements, rates and payable amounts was raised.	Page No. 50 of Petition
08.07.2020	Even after acknowledgment of liability commencing from August 2019, the Corporate Debtor failed	Page No. 96 of

	to release payment. Thereafter, agreement dated 08.07.2020 came to be executed wherein the Corporate Debtor once again acknowledged liability and agreed to pay interest at the rate of 12% per annum.	Agreement
18.05.2021, 27.05.2021, 05.06.2021, 10.06.2021 and 15.07.2021	Despite repeated reminders, the Corporate Debtor failed to release admitted payments.	Pages 113 to 116 of Petition

8.13. It is submitted that since the original default had commenced from August 2019 and merely continued during the Covid period, the present petition would not be hit by Section 10A of the Code. Reliance has been placed upon the judgment of the Hon'ble NCLAT in *Narayan Mangal v. Vatsalaya Builders and Developers Pvt. Ltd.*, wherein it has been held that Section 10A bars initiation of CIRP only in respect of defaults which first occurred during the protected period and would not apply where default had arisen prior thereto and merely continued during the Section 10A period.

8.14. With respect to the plea of pre-existing dispute, the Operational Creditor has denied existence of any dispute concerning the claim forming the subject matter of the present petition. It is submitted that the Corporate Debtor never raised any dispute regarding the operational works executed in relation to the

Chitradurga Branch Canal Project and in fact expressly admitted liability under letter dated 27.01.2020 and agreement dated 08.07.2020. According to the Operational Creditor, the civil suits and police complaints relied upon by the Corporate Debtor pertain to entirely different projects and transactions and therefore cannot constitute pre-existing disputes in relation to the present claim.

8.15. In this regard, the Operational Creditor has produced the following details of suits relied upon by the Corporate Debtor:

Civil Suit	**Particulars**
Civil Suit No. 52 of 2021 before Commercial Court, Pune	Filed in relation to Hoskote Creek Project. Respondent therein admitted liability of Rs. 53,54,00,000/- with interest.
Commercial Suit No. 53 of 2021 before Commercial Court, Pune	Filed for recovery of amount outstanding in relation to Mysore Belari Project.
Commercial Suit No. 54 of 2021 before Commercial Court, Pune	Filed for recovery of amount outstanding and other reliefs relating to Gadak Honali Project.

8.16. It is further submitted that the police complaints relied upon by the Corporate Debtor also pertain to other projects and not to the Chitradurga Branch Canal Project forming the subject matter of the present

petition. According to the Operational Creditor, the Corporate Debtor has deliberately suppressed the fact that Commercial Suit No. 52 of 2021 itself contains acknowledgment of liability by the Corporate Debtor.

8.17. The Operational Creditor has further submitted that the judgments in *Landmark Realty v. Siroya Developers Pvt. Ltd.* and *Anil J. Nemaavarkar v. Kumar Builders Mumbai Realty Pvt. Ltd.* are distinguishable since in those cases the prior suits and complaints related to the very same subject matter forming basis of insolvency proceedings, whereas in the present case the proceedings relied upon by the Corporate Debtor pertain to different projects and contracts altogether.

8.18. It is further submitted that the subsequent proceedings initiated by the Operational Creditor after filing of the present petition also pertain to distinct projects and separate causes of action. In this regard, the Operational Creditor has produced the following details:

Proceeding	**Subject Matter**
Commercial Suit No. 1 of 2023	Recovery of payments towards various incidental and occasional expenses and additional work at Hoskote Creek Project.
Commercial Suit No. 2 of 2023	Recovery of amounts due against investment and transferred amounts for purchase of material at Gumma India Ltd.

Commercial Suit No. 3 of 2023	Declaration and permanent injunction concerning Power of Attorney dated 10.09.2018 and agreement dated 03.04.2022.
Regular Civil Suit No. 76 of 2023	Permanent injunction regarding implementation of terms of agreement dated 03.04.2022 and consent decree.
Arbitration Proceedings	Proceedings initiated under contract of guarantee dated 16.03.2020 for recovery arising from guarantee obligations and other projects.
Original Suit No. 226 of 2023	Suit seeking permanent injunction against possession proceedings.

8.19. According to the Operational Creditor, none of the aforesaid proceedings pertain to the operational debt forming the subject matter of the present petition and therefore cannot be treated as pre-existing disputes under Section 8 and Section 9 of the Code. On the aforesaid grounds, the Operational Creditor has prayed that the present petition be allowed.

9. During the pendency of the present Company Petition, the Operational Creditor filed **IA No. 500 of 2026** on 30.03.2026 through e-mode, seeking amendment of the pleadings in the main Company Petition, more particularly seeking substitution/correction of the date of default from 08.08.2020 to 27.01.2020. It is the case of the Operational

Creditor in the said application that the date of default originally mentioned in the demand notice and Company Petition was an inadvertent typographical/clerical error and that the actual default had arisen much prior thereto upon issuance of Payment Certificates for the months of April, June, July and August 2019 and acknowledgment of liability vide letter dated 27.01.2020.

10. Thereafter, Written Submissions came to be filed on behalf of the Applicant on 08.04.2026 and 16.04.2026 through e-mode as well as on behalf of the Respondent on 14.05.2024 and 10.04.2026 through e-mode: -

10.1. It is further submitted by the Operational Creditor in its written submissions that the Payment Certificates issued by the Corporate Debtor in respect of the works executed for the months of April, June, July and August 2019 constituted crystallisation of the operational debt and quantified the payable amount aggregating to Rs. 22,90,19,773/-. According to the Operational Creditor, the corresponding ledger statements maintained by the Corporate Debtor corroborate the amounts reflected in the Payment Certificates and establish subsistence of outstanding liability.

10.2. It is further submitted that the Corporate Debtor had specifically recorded in its own documents that the Running Account Bills had been "verified as per records, audited, accepted and approved" and that there existed no dispute regarding quantities, measurements, rates or payable amounts. According to the Operational Creditor, the use of the expression "payable" in the acknowledgment dated 27.01.2020 demonstrates that the liability had crystallised and become immediately enforceable.

10.3. The Operational Creditor has further relied upon Clause 3.3 of the agreement dated 08.07.2020 to contend that the parties had specifically agreed that all invoices, documents and communications exchanged between them pertained to works duly executed by the Operational Creditor and that neither party would thereafter dispute or disown the same. It is submitted that the said clause itself establishes absence of any dispute regarding execution or quality of work.

10.4. It is further submitted that Recital "B", Clause 2.2 and Schedule "B" of the agreement dated 08.07.2020 clearly demonstrate that the agreement merely structured payment of already completed and accepted operational works and did not create any fresh liability independent of the original operational transactions.

10.5. With respect to the amendment application, it is submitted by the Operational Creditor that the date of default mentioned as 08.08.2020 in the demand notice and petition was merely an inadvertent clerical error and that the actual default had arisen much prior thereto upon non-payment of certified Running Account Bills and acknowledgment dated 27.01.2020. In support thereof, reliance has been placed upon *Raj Television Network Ltd. v. Thaicom Public Company Ltd.*; *Dena Bank v. C. Shivakumar Reddy*; *Yatra Online Ltd. v. Ezeego One Travel and Tours Ltd.*; and *Credible Engineering Construction Projects Ltd. v. Patel Engineering Ltd.* to contend that bona fide amendments necessary for proper adjudication ought to be permitted.

10.6. Per contra, it is further submitted by the Corporate Debtor in its updated written submissions that the Operational Creditor has not annexed even a single Running Account Bill along with the petition and therefore the present proceedings are founded entirely upon the agreement dated 08.07.2020. It is contended that Clause 2.8 of the said agreement specifically demonstrates that payment obligations thereunder were dependent upon satisfactory completion of future works contemplated under the agreement and admittedly no such work was completed thereafter.

10.7. It is further submitted by the Corporate Debtor that the Operational Creditor had consistently pleaded the date of default as 08.08.2020 not only in the demand notice and petition but also in the rejoinder and therefore the same cannot now be characterized as a typographical or clerical error. According to the Corporate Debtor, substitution of the date of default at the stage of final arguments would amount to setting up an entirely new and inconsistent case only to overcome the statutory embargo under Section 10A of the Code.

10.8. In support of the aforesaid contentions, the Corporate Debtor has additionally relied upon *Maulik Kirtibhai Shah v. United Telecoms Ltd.*; *East India Udyog Ltd. v. SPML Infra Ltd.*; *Sabarmati Gas Ltd. v. Shah Alloys Ltd.*; *STR Holding Inc. v. Lucent Cleanergy Pvt. Ltd.*; *Narayan Organics Pvt. Ltd. v. Prayag Polytech Pvt. Ltd.*; and *Gimatex Industries Pvt. Ltd. v. Mafatlal Industries Ltd.*

11. We have heard the arguments of Ld. Counsel for the Applicant/Operational Creditor as well as Ld. Counsel for the Respondent/Corporate Debtor, considered their oral submissions, written submissions, Judgments/Citations relied upon in their favour, and perused all the documents which were produced on record.

12. Observation and Findings of this Tribunal:

12.1. The present Company Petition has been filed by the Operational Creditor under Section 9 of the Code seeking initiation of CIRP against the Corporate Debtor in relation to alleged operational dues arising out of execution of subcontract works pertaining to the Chitradurga Branch Canal Project. The Operational Creditor has claimed an amount of Rs. 30,12,10,696/- including interest at the rate of 12% per annum.

12.2. It is observed from the record that pursuant to work order dated 18.02.2019, the Corporate Debtor sub-contracted canal earthwork, excavation, embankment, CNS layer work and structure work in relation to the Chitradurga Branch Canal Project in favour of the Operational Creditor. It is the case of the Operational Creditor that the subcontracted works were duly executed and Running Account Bills were raised from time to time, which were verified, audited and approved by the Corporate Debtor without any dispute regarding quantities, measurements, rates or payable amounts.

12.3. It is further observed that the Operational Creditor has heavily relied upon letter dated 27.01.2020 whereby the Corporate Debtor allegedly acknowledged and confirmed outstanding liability to the extent of Rs. 22,90,19,773/- and recorded that the bills had been

"verified, audited, accepted and approved". The Operational Creditor has also relied upon Payment Certificates, ledger statements and agreement dated 08.07.2020 to contend that the operational debt stood duly crystallised and admitted by the Corporate Debtor.

12.4. Per contra, the Corporate Debtor has opposed the maintainability of the petition principally on the grounds that the present claim is founded upon agreement dated 08.07.2020 and therefore does not retain the character of "Operational Debt" under Section 5(21) of the Code. It is contended that the said agreement constituted a fresh and comprehensive settlement arrangement governing the liabilities and obligations of the parties and that any alleged default thereafter arose only under the said agreement.

12.5. It is further the case of the Corporate Debtor that the present petition is barred under Section 10A of the Code inasmuch as the date of default has consistently been pleaded by the Operational Creditor as 08.08.2020 in the demand notice under Section 8, the Company Petition as well as subsequent pleadings. According to the Corporate Debtor, the amendment application seeking substitution of the date of default to 27.01.2020 has been filed only at the final stage with a view to overcome the statutory embargo under Section 10A.

12.6. It is also contended by the Corporate Debtor that agreement dated 08.07.2020 expressly superseded prior arrangements and introduced fresh schedules, obligations and conditional payment mechanisms. Reliance has been placed upon Clauses 2.8 and 6.2 of the said agreement to contend that the rights and obligations of the parties thereafter stood governed exclusively by the said agreement.

12.7. It is further observed that the parties have relied upon various judgments in support of their rival contentions concerning the nature of operational debt, effect of settlement agreements, applicability of Section 10A and permissibility of amendment of pleadings under the Code. While the Operational Creditor has contended that the agreement dated 08.07.2020 merely structured payment of admitted operational dues arising from execution of works, the Corporate Debtor has argued that the said agreement constituted a substituted arrangement and that the operative default falls squarely within the period protected under Section 10A of the Code.

12.8. It is also observed that during pendency of the present petition, the Operational Creditor preferred IA No. 500 of 2026 seeking amendment of the pleadings in the Company Petition and substitution of the date of default from 08.08.2020 to 27.01.2020 on the ground that the earlier date was inadvertently mentioned due

to clerical error. The said application has been opposed by the Corporate Debtor contending that the proposed amendment seeks to fundamentally alter the basis of the petition and maintainability thereof.

12.9. In light of the rival submissions and material available on record, the following issues arise for consideration:

i. **Issue No. (i)** Whether the claim of the Operational Creditor constitutes an "Operational Debt" within the meaning of Section 5(21) of the Insolvency and Bankruptcy Code, 2016;

ii. **Issue No. (ii)** Whether the letter dated 27.01.2020 and 08.07.2020 merely acknowledge/restructure pre-existing operational liability or novate/extinguish the original operational debt and create a fresh settlement claim?

iii. **Issue No. (iii)** Whether the present petition is barred under Section 10A of the Insolvency and Bankruptcy Code, 2016;

iv. **Issue No. (iv)** Whether IA No. 500 of 2026 seeking amendment of the date of default deserves to be allowed; and

v. **Issue No. (v)** Whether there existed pre-existing disputes between the parties prior to issuance of demand notice under Section 8 of the Code.

vi. **Issue No. (vi)** Whether the present Petition is in the nature of a recovery proceeding and thus not maintainable under Section 9 of the Code?

13. **Findings on Issue No. (i) & (ii):** Whether the claim of the Operational Creditor constitutes an "Operational Debt" within the meaning of Section 5(21) of the Insolvency and Bankruptcy Code, 2016? **and** Whether the letter dated 27.01.2020 and 08.07.2020 merely acknowledge/restructure pre-existing operational liability or novate/extinguish the original operational debt and create a fresh settlement claim?

13.1. Before moving onto the adjudication of this issue, it is apposite to reproduce the statutory definition of "operational debt" as contained in Section 5(21) of the Code, which reads as under:

> "(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

A plain reading of the aforesaid provision makes it evident that for a claim to qualify as "operational debt", it must arise from the provision of goods or services, and there must exist a nexus between the debt claimed and the operational activities undertaken by the creditor.

13.2. In the present case, it is not in dispute that the initial relationship between the parties arose from work order dated 18.02.2019 issued by the Corporate Debtor in favour of the Operational Creditor in relation to execution of canal excavation, embankment, CNS layer work and allied structure works pertaining to the Chitradurga Branch Canal Project. It is further not disputed that the Operational Creditor executed substantial portions of the subcontracted works pursuant thereto.

13.3. The Operational Creditor has heavily relied upon letter dated 27.01.2020, Payment Certificates and ledger statements to contend that the work executed by it had been duly verified, audited, accepted and approved by the Corporate Debtor and that the outstanding amount of Rs. 22,90,19,773/- stood crystallised and admitted. It is further contended that agreement dated 08.07.2020 merely structured payment of already admitted operational dues and therefore the original nature of the debt continued to subsist.

13.4. This Adjudicating Authority has carefully considered the aforesaid contention. The material placed on record does indicate that the underlying transactions between the parties originated from execution of operational works and provision of services by the Operational Creditor. The letter dated 27.01.2020 also prima facie

reflects acknowledgment of outstanding amounts payable in respect of such executed works.

13.5. However, the controversy in the present matter does not merely pertain to the original nature of the transaction but rather to the effect and legal consequence of the subsequent agreement dated 08.07.2020 executed between the parties.

13.6. At this stage, it would also be apposite to refer to **Section 62 of the Indian Contract Act, 1872**, which reads as under:

> "**62. Effect of novation, rescission, and alteration of contract.** If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed."

13.7. In this regard, Hon'ble Supreme Court in ***Lata Construction & Ors. v. Dr. Maheshchandra Ramniklal Shah & Anr.*, (2000) 1 SCC 586** has also held that novation under Section 62 takes place when parties substitute a new agreement in place of the earlier arrangement and the rights and liabilities thereafter stand governed by the substituted contract.

> *"9. We may, at this stage, refer to the provisions of Section 62 of the Indian Contract Act which provides as under:*
>
> > *"62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."*

This provision contains the principle of "novation" of contract.

10. One of the essential requirements of "novation", as contemplated by Section 62, is that there should be complete substitution of a new contract in place of the old. It is in that situation that the original contract need not be performed. Substitution of a new contract in place of the old contract which would have the effect of rescinding or completely altering the terms of the original contract, has to be by agreement between the parties. A substituted contract should rescind or alter or extinguish the previous contract. But if the terms of the two contracts are inconsistent and they cannot stand together, the subsequent contract cannot be said to be in substitution of the earlier contract."

(Emphasis Supplied)

13.8. In the present case, a careful examination of agreement dated 08.07.2020 reveals that the said agreement was not confined merely to acknowledgment of past dues. The agreement introduced structured payment schedules, reciprocal obligations and fresh contractual conditions governing the inter se rights and liabilities of the parties. Clause 2.8 of the agreement specifically contemplated linkage of payments with satisfactory completion of obligations thereunder. Further, Clause 6.2 expressly stipulated that the agreement superseded prior discussions and arrangements between the parties. The relevant portion of Clause 6.2 reads as under:

"This Agreement supersedes all discussions and agreements whether oral or written made prior to the execution of this Agreement."

13.9. The language employed in the aforesaid clause assumes considerable significance. The parties consciously agreed that the agreement dated 08.07.2020 would govern their rights and obligations in supersession of prior arrangements. The agreement also introduced fresh schedules regarding payment obligations and regulated the broader commercial relationship between the parties.

13.10. This Adjudicating Authority is unable to accept the contention of the Operational Creditor that the agreement dated 08.07.2020 merely constituted a mode of payment simpliciter. Mere acknowledgment or restructuring of debt ordinarily does not extinguish the underlying operational liability. However, where parties consciously introduce fresh obligations, structured schedules, supersession clauses and substituted contractual terms, the arrangement travels beyond a mere acknowledgment and assumes the character of a substituted arrangement within the meaning of Section 62 of the Indian Contract Act, 1872.

13.11. It is clarified that every acknowledgment, restructuring or settlement arrangement would not ipso facto extinguish the character of operational debt. The determination would necessarily depend upon the nature of the subsequent agreement, intention of parties, extent of substituted obligations and surrounding contractual framework

13.12. The Hon'ble NCLAT in ***Trafigura India Private Limited v. TDT Copper Ltd.*, (2022) ibclaw.in 714 NCLAT**, observed that where parties enter into a settlement arrangement governing their liabilities inter se, the original operational claim may lose its independent character and what survives thereafter is the liability flowing from the settlement arrangement itself. The relevant portion of the judgement is reproduced hereinbelow: -

> *"**17**. After hearing the parties and having gone through the pleadings made on behalf of the parties, particularly the Settlement Agreement dated 20.11.2018 (Annexure A3 at page 99 to 108 of the Appeal) arrived between the parties in Clause 3 and 5 read as hereunder:*
>
> > *"3. As at August 2018, the Parties agree that the outstanding liabilities owed by TDT to Trafigura under the MSA is INR 63,81,63,368/- (the "Outstanding Principal"). The Outstanding Principal comprises of all sums owed and unpaid by TDT in respect of the Purchase Price only for purchases done under the MSA up to 28th February 2018 and does not include any contractual interest and/or MTM. In the event that it is confirmed that GST is to be levied on certain purchases of Material by TDT (as previously discussed between Parties), then the Outstanding Principal stands revised to INR 67,43,99,745/- as at 31 August 2018. It is further clarified that any purchases of material made by TDT after 28th February 2018 up until the date of this Settlement Agreement have been on a non-credit basis only.*
> >
> > *5. TDT shall make payment of the Outstanding Principal together with the*

interest (set out at Clause4 above) and/or MTM (together the "Outstanding Amount") to Trafigura into its designated bank account as follows:

a. TDT shall make any and all payments to Trafigura as necessary in order to reduce the Outstanding Amount to INR 52,50,00,000/- by 30 November, 2018 (the "First Instalment"); and

b. In the event that TDT fails to make the First Instalment within the timeframe set out above, the entire outstanding portion of the Outstanding Amount shall become immediately due ad owing, and Trafigura shall have the right to pursue TDT for that debt and Trafigura shall not be obliged to make any further supply of Material under the MSA; and

c. In the event that the Parties fail to conclude a further contract for the supply of material for 2019 by 21 December 2018, TDT shall make any and all payments to Trafigura as necessary in order to reduce the Outstanding amount to zero balance by 30 April 2019."

- *The Adjudicating Authority has considered the Settlement Agreement and rightly come to the conclusion that default of instalment of Settlement Agreement does not come within the definition of 'operational debt' as it does not fall within the definition of additional debt as per Section 5(21) of the IBC and further prayer made by the Corporate Debtor that the matter be referred to the Arbitration under Section 8 of the Arbitration and Conciliation Act, the Adjudicating Authority has also rightly held that the role of National Company Law Tribunal is very limited while exercising its power under Section 7, 9 and 10 of the IBC, 2016, it is beyond the scope of Section 9 of the IBC.*
- *The Adjudicating Authority has taken note of the submissions of Corporate Debtor that the Commercial Civil Suit No. 2/2020 is pending for consideration before*

the Court of competent jurisdiction and rightly rejected the claim of the Appellant.

- *With these reasons assigned by the Adjudicating Authority, we do not find any merit in the instant Appeal. The impugned order dated 15.07.2020 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench Court-V) in Company Petition (IB) No. 2817/ND/2019 is hereby affirmed. The Appeal is hereby dismissed."*

13.13. Similar view has been taken in ***Permali Wallace Pvt. Ltd. v. Narbada Forest Industries Pvt. Ltd.*, (2023) ibclaw.in 49 NCLAT.**

13.14. Accordingly, though the original relationship between the parties arose from execution of operational works and provision of services by the Operational Creditor, this Adjudicating Authority is of the considered opinion that after execution of the agreement dated 08.07.2020, the enforceable rights and liabilities of the parties came to be governed substantially by the substituted contractual arrangement embodied therein. In view of the fresh obligations, structured payment schedules, conditional payment mechanism and supersession clause contained in the said agreement, the present claim cannot be treated as a pure and independent "Operational Debt" simpliciter arising directly from provision of goods or services under Section 5(21) of the Code. Accordingly, the original cause of action arising from operational transactions does not survive independently and cannot be enforced dehors the substituted agreement.

13.15. Accordingly, Issue No. (i) & (ii) are answered against the Operational Creditor and in favour of the Corporate Debtor.

14. Findings on Issue No. (iii): Whether the present petition is barred under Section 10A of the Insolvency and Bankruptcy Code, 2016?

14.1. The present issue arises from the objection raised by the Corporate Debtor that the petition is barred by virtue of Section 10A of the Code, inasmuch as the alleged default, according to the Corporate Debtor, arose during the period protected under the said provision. The determination of this issue is closely intertwined with the effect and legal consequence of the agreement dated 08.07.2020 executed between the parties.

14.2. Before adverting to the factual matrix, it would be appropriate to notice the statutory framework. **Section 10A** of the Code reads as under: -

> "Notwithstanding anything contained in Sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:
>
> Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

> Explanation: For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

14.3. The legislative intent underlying Section 10A has been explained by the Hon'ble Supreme Court in ***Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd.*, (2021) 3 SCC 224**, wherein it has been held that the embargo created under Section 10A is absolute in nature and no application can ever be filed for defaults arising during the protected period. The relevant portion of the judgment has been reproduced hereinbelow: -

> *"16 Section 10A is prefaced with a non-obstante provision which has the effect of overriding Sections 7, 9 and 10. Section 10A provides that:*
> *(i) no application for the initiation of the CIRP by a corporate debtor shall be filed;*
> *(ii) for any default arising on or after 25 March 2020; and*
> *(iii) for a period of six months or such further period not exceeding one year from such date as may be notified in this behalf.*
> *The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP of a corporate debtor "for the said default occurring during the said period". The explanation which has been inserted for the removal of doubts clarifies that Section 10A shall not apply to any default which has been committed under Sections 7, 9 and 10 before 25 March 2020.*
>
> *17. Section 10A makes a reference to the initiation of the CIRP. Clauses (11) and (12) of Section 5 of the IBC define two distinct concepts, namely:*
> *(i) the initiation date; and*

(ii) the insolvency commencement date.

18. The "initiation date" is defined in Section 5(11) in the following terms:
"5(11) "initiation date" means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process;"
The expression "insolvency commencement date" is defined in Section 5(12) in the following terms:
"5(12) "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be:"

19. Section 5(11) stipulates that the date on which a financial creditor, corporate applicant or operational creditor makes an application to the adjudicating authority for initiating the CIRP is the "initiation date". Distinguished from this is the "insolvency commencement date", which is the date on which the application for initiating the CIRP under Sections 7, 9 or 10, as the case may be, is admitted by the Adjudicating Authority.

20. The substantive part of Section 10A adverts to an application for the initiation of the CIRP. It stipulates that for any default arising on or after 25 March 2020, no application for initiating the CIRP of a corporate debtor shall be filed for a period of six months or such further period not exceeding one year "from such date" as may be notified in this behalf. The expression "from such date" is evidently intended to refer to 25 March 2020 so that for a period of six months (extendable to one year by notification) no application for the initiation of the CIRP can be filed. The submission of the appellant is that the expression "shall be filed" is indicative of a legislative intent to make the provision prospective so as to apply only to those applications which were filed after 5 June 2020 when the provision was inserted. Such a construction cannot be accepted."

14.4. In the present case, it is an undisputed position that the Operational Creditor in its demand notice issued under Section 8 of the Code, in Part IV of Form 5 accompanying the present petition and in the pleadings originally filed before this Adjudicating Authority, consistently mentioned the date of default as 08.08.2020. The said date admittedly falls within the period protected under Section 10A of the Code.

14.5. This Adjudicating Authority has carefully examined the contention of the Operational Creditor that the said date was mentioned due to inadvertent clerical or typographical error and that the actual default had arisen much earlier upon non-payment of certified Running Account Bills and acknowledgment of liability vide letter dated 27.01.2020.

14.6. However, the material placed on record indicates that the date 08.08.2020 was not mentioned only once or casually in a singular document. On the contrary, the said date has consistently appeared in:

(i) the demand notice issued under Section 8 of the Code;
(ii) the Company Petition filed under Section 9;
(iii) Form 5 accompanying the petition; and
(iv) subsequent pleadings filed by the Operational Creditor.

14.7. The repeated and conscious pleading of the said date across multiple proceedings and documents materially weakens the contention that the same was a mere typographical or clerical error.

14.8. Further, this Adjudicating Authority cannot lose sight of the fact that the amendment application seeking substitution of the date of default from 08.08.2020 to 27.01.2020 came to be filed only after the maintainability objection under Section 10A had been specifically raised by the Corporate Debtor. The proposed amendment therefore directly impacts the maintainability of the petition itself.

14.9. It is also significant that the present claim substantially proceeds on the basis of agreement dated 08.07.2020. As already discussed while adjudicating Issue No. (i), the said agreement introduced fresh schedules, obligations and substituted contractual terms governing the rights and liabilities of the parties. Clause 6.2 of the agreement expressly stipulated that the agreement superseded prior discussions and arrangements between the parties.

14.10. Thus, even independently viewed, the operative framework governing the enforceable obligations between the parties stood regulated by the agreement dated 08.07.2020, which itself falls within the period contemplated under Section 10A.

14.11. The contention of the Operational Creditor regarding "continuing default" also does not merit acceptance in the peculiar facts of the present case. The contention regarding continuing default also cannot be accepted in the peculiar facts of the present case. Even assuming earlier dues existed, the Operational Creditor itself consciously pleaded the operative date of default as 08.08.2020 in the statutory demand notice and Section 9 petition. Further, after execution of the agreement dated 08.07.2020, the enforceable obligations between the parties stood governed by the substituted contractual framework. Therefore, the default sought to be enforced in the present proceedings squarely falls within the protected period contemplated under Section 10A of the Code.

14.12. In view of the aforesaid circumstances, this Adjudicating Authority is of the considered opinion that the operative default pleaded and sought to be enforced in the present proceedings falls within the period protected under Section 10A of the Code. Consequently, the present petition is barred by Section 10A and is not maintainable.

14.13. Accordingly, Issue No. (iii) is answered in favour of the Corporate Debtor and against the Operational Creditor.

15. Findings on Issue No. (iv): Whether IA No. 500 of 2026 seeking amendment of the date of default deserves to be allowed?

15.1. The Operational Creditor has preferred IA No. 500 of 2026 seeking amendment of the pleadings in the present Company Petition and substitution of the date of default from 08.08.2020 to 27.01.2020. According to the Operational Creditor, the date originally mentioned in the demand notice and petition was inadvertently stated due to clerical or typographical error and that the actual default had arisen much prior thereto upon non-payment of certified Running Account Bills and acknowledgment of liability vide letter dated 27.01.2020.

15.2. The said application has been vehemently opposed by the Corporate Debtor contending that the proposed amendment does not merely seek correction of an accidental or clerical error but seeks to fundamentally alter the basis and maintainability of the present petition. It is submitted that the Operational Creditor had consciously and repeatedly pleaded the date of default as 08.08.2020 not only in the demand notice issued under Section 8 of the Code but also in Form 5, the Company Petition and subsequent pleadings filed before this Adjudicating Authority.

15.3. There can be no quarrel with the settled proposition that procedural rules should ordinarily be construed liberally and bona fide amendments necessary for proper adjudication ought to be permitted. However, such liberal approach cannot be extended in a manner that permits a party to fundamentally alter the basis of maintainability of proceedings after consciously proceeding on a particular factual foundation throughout the litigation.

15.4. In the present case, the Company Petition came to be instituted in the year 2023 and the Operational Creditor continued to prosecute the matter for nearly three years on the basis that the date of default was 08.08.2020. During the said period, no steps whatsoever were taken by the Operational Creditor seeking correction or amendment of the alleged erroneous date of default. It is only after the Corporate Debtor specifically raised objection regarding applicability of Section 10A of the Code and the matter reached the stage of final adjudication that the present amendment application came to be preferred.

15.5. It is further observed that the proposed amendment does not merely seek correction of typographical particulars or elaboration of existing pleadings. The amendment directly seeks substitution of the date of default from 08.08.2020, which admittedly falls within the protected period under Section 10A of the Code, to

27.01.2020, which would have the effect of materially altering the maintainability of the present petition itself.

15.6. It is also significant that the date of default as 08.08.2020 was not casually or inadvertently mentioned in a singular document. The said date consistently appears in:

(i) the demand notice issued under Section 8 of the Code;
(ii) Part IV of Form 5;
(iii) the Company Petition; and
(iv) subsequent pleadings filed by the Operational Creditor.

The repeated assertion of the said date across multiple pleadings and proceedings over a prolonged period does not prima facie support the contention that the same was a mere clerical or typographical error.

15.7. The Hon'ble NCLAT in ***Yatra Online Ltd. v. Ezeego One Travel and Tours Ltd.*, (2023) ibclaw.in 679 NCLAT,** has observed that though amendments may ordinarily be permitted to advance the cause of justice, such amendments cannot be allowed where they fundamentally alter the factual foundation of the proceedings and directly impact maintainability under the Code. The Hon'ble NCLAT further recognised that where the date of default itself forms the basis of

maintainability, substitution of such date at a belated stage cannot be treated as a mere clerical correction simpliciter. The Relevant Portion of the judgment is mentioned hereinbelow: -

> *"**15.** Admittedly, the application under Section 9 has to be filed after a notice under Section 8 of the Code is delivered. Meaning thereby notice under Section 8 of the Code is a* sine qua non *to maintain an application under Section 9 of the Code. Section 8 of the Code provides that the Operational Creditor shall deliver a demand notice upon the Corporate Debtor who may within a period of 10 days of the receipt of the demand notice either raise the issue of an existing dispute or bring to notice of the Operational Creditor that the payments have been made / paid of operational debt and an application under Section 9 of the Code could be filed only after the expiry of period of 10 days from the date of delivery of notice. The Resolution Professional who was appointed on 09.03.2021 and is familiar with the provisions of the Code mentioned the date of default as 30.10.2020 in the notice and after the notice, the application under Section 9 of the Code too contained the date of default as 30.10.2020. Thus, the positive case before the Adjudicating Authority, at the instance of the Resolution Professional, was that the date of default is 30.10.2020 and not July 2019 but while contesting the application filed under Section 10A the RP conveniently changed the date of default from 30.10.2020 to July, 2019 in order to wriggle out of the rigorus of Section 10A of the Code.*
>
> ***16.** In the background of the aforesaid facts and circumstances of the case, the question thus would arise as to whether the date of default, mentioned in the demand notice as well as in the application filed under Section 9 of the Code, which has not been amended even if it was allegedly wrongly mentioned, can be changed in the litigation which arises from a miscellaneous application?*

> ***17.*** *In this regard, this case is squarely covered by the decision of the Hon'ble Supreme Court rendered in the case of Ramesh Kymal (supra) in which it has been held that the date of default cannot be changed. But in the case of Dena Bank (Supra) the Hon'ble Supreme court has found that there are situation when either the Operational Creditors or the Corporate Debtor may commit a mistake in the pleadings, therefore, it provided a window to the parties for amendment of their pleadings. The said window was also available to the present Respondent if the date of default has been inadvertently mentioned as 30.10.2020 in the demand notice as well as in the application filed on Form-4 but the Respondent did not seek the amendment of the said date and has rather brought out a new date while contesting the miscellaneous application filed under Section 10A of the Code. It is also worthwhile to mention that the judgment which has been relied upon by the Respondent are on the application filed under Section 7 of the Code whereas the judgment in the case of Ramesh Kymal (Supra) is in regard to the application filed under Section 9 of the Code.*
>
> ***18.*** *In view of the aforesaid discussions, we are totally satisfied that there is an error in the approach of the Adjudicating Authority in allowing the Respondent to bring a new date of default dehors the fact that another date of default is still existing in the pleadings which were filed at the inception of the litigation and has not yet been amended. Thus, the present appeal has been found meritorious and the same is hereby allowed, the impugned order is set aside and as a result thereof, the application filed under Section 9 of the Code is also dismissed. No costs."*
>
> (Emphasis Supplied)

15.8. The judgments relied upon by the Operational Creditor including ***Dena Bank v. C. Shivakumar Reddy*** were rendered in materially different factual contexts where amendment was sought either at an earlier stage or

where the foundational factual matrix itself was not being substituted so as to overcome a statutory bar affecting maintainability.

15.9. This Adjudicating Authority is therefore of the considered opinion that the proposed amendment is not merely clarificatory in nature but seeks to set up a materially different factual foundation with respect to occurrence of default and maintainability under the Code after continuation of proceedings for nearly three years on the basis of the originally pleaded default date.

15.10. Accordingly, IA No. 500 of 2026 deserves to be rejected and is hereby dismissed.

15.11. Accordingly, Issue No. (iv) is answered in favour of the Corporate Debtor and against the Operational Creditor.

16. Findings on Issue No. (v): Whether there existed pre-existing disputes between the parties prior to issuance of demand notice under Section 8 of the Code?

16.1. The Corporate Debtor has further contended that the present petition is liable to be rejected on account of existence of disputes between the parties prior to issuance of the demand notice under Section 8 of the Code. In support of the said contention, reliance has been placed upon various civil suits, police complaints

and arbitration proceedings initiated between the parties.

16.2. At this juncture, it would be appropriate to advert to the settled legal position governing "existence of dispute" under Sections 8 and 9 of the Code. The Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353**, has held that while examining a petition under Section 9, the Adjudicating Authority is required to ascertain whether there exists a real dispute which is not spurious, hypothetical or illusory, and such dispute must exist prior to issuance of the demand notice. The Hon'ble Supreme Court has further clarified that the Adjudicating Authority is not expected to enter into an adjudicatory exercise on merits but only to determine whether there exists a plausible contention requiring further investigation.

16.3. In the present case, it is observed from the material placed on record that the Corporate Debtor has relied upon Commercial Suit Nos. 23, 52, 53 and 54 of 2021 before the Commercial Court at Pune, police complaints dated 07.12.2021, 07.02.2022 and 19.02.2022, as well as certain arbitration proceedings, to contend that disputes existed between the parties prior to issuance of the demand notice dated 27.12.2022.

16.4. This Adjudicating Authority has carefully examined the material placed on record. It is observed that the disputes and proceedings relied upon by the Corporate Debtor largely pertain to broader commercial dealings and multiple projects between the parties. The Operational Creditor has specifically contended that the said proceedings pertain to Hoskote Creek Project, Mysore Bellary Project, Gadak Honali Project and other independent transactions and not specifically to the Chitradurga Branch Canal Project forming the subject matter of the present petition.

16.5. At the same time, it is also observed that the relationship between the parties was not confined to a singular isolated transaction and extensive litigations and disputes admittedly existed between them even prior to issuance of the demand notice. The agreement dated 08.07.2020 itself reflects the existence of broader disputes and attempts to regulate and structure inter se obligations between the parties under a fresh contractual framework.

16.6. However, insofar as the operational works pertaining specifically to the Chitradurga Branch Canal Project are concerned, the material placed on record indicates that the Corporate Debtor had issued acknowledgments, Payment Certificates and ledger confirmations reflecting quantified amounts payable in respect of the works executed by the Operational

Creditor. Prima facie, no contemporaneous material has been placed on record demonstrating disputes specifically regarding quality of work, measurements, rates or execution of the Chitradurga works prior to issuance of the demand notice.

16.7. Nevertheless, in view of the findings already returned under Issue Nos. (i), (ii) and (iii), particularly the findings that the operative rights and obligations between the parties stood substantially governed by the agreement dated 08.07.2020 and that the present petition is barred under Section 10A of the Code, adjudication of the present issue does not independently alter the final outcome of the petition.

16.8. Be that as it may, this Adjudicating Authority is of the considered view that while broader commercial disputes and litigations admittedly existed between the parties prior to issuance of the demand notice, the same do not appear to directly pertain to the execution or quantification of the operational works forming the subject matter of the present petition.

16.9. Accordingly, though this Adjudicating Authority is not inclined to reject the petition solely on the independent ground of pre-existing dispute qua the Chitradurga Branch Canal Project, the petition nevertheless remains non-maintainable for the reasons already recorded under Issue Nos. (i) to (iv).

16.10. Accordingly, Issue No. (v) is answered in the aforesaid terms.

17. Findings on Issue No. (vi): Whether the present Petition is in the nature of a recovery proceeding and thus not maintainable under Section 9 of the Code?

17.1. The Corporate Debtor has contended that the present petition has been filed with the sole intent of recovery of money and not for resolution of insolvency, and therefore the same is not maintainable under Section 9 of the Code.

17.2. At the outset, it is well settled that the Insolvency and Bankruptcy Code, 2016 is not a substitute for a recovery mechanism. The Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. v. Union of India*** has categorically held that the Code is a beneficial legislation intended for resolution of insolvency and not for recovery of dues. Similarly, in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.***, it has been held that Section 9 proceedings cannot be invoked in a manner so as to pressurize the Corporate Debtor for recovery of disputed claims.

17.3. In the present case, it is observed that the claim of the Operational Creditor arises from agreement dated 08.07.2020, which this Adjudicating Authority has already held to constitute a substituted contractual framework governing the rights and obligations of the

parties. The enforcement of such contractual payment obligations, particularly where disputes exist and civil proceedings have been initiated, falls within the domain of appropriate civil or arbitral remedies.

17.4. It is further observed that the Operational Creditor has simultaneously pursued multiple remedies including civil suits and arbitration proceedings against the Corporate Debtor. The initiation of the present proceedings under Section 9, in the backdrop of such parallel proceedings and in view of the nature of the claim arising out of a substituted agreement, indicates that the petition is primarily intended for recovery of alleged dues rather than for resolution of insolvency.

17.5. This Adjudicating Authority is therefore of the considered view that the present petition is in substance a recovery proceeding, which is impermissible under the scheme of the Code. The Operational Creditor cannot invoke the provisions of the Code as a coercive mechanism to enforce contractual claims arising out of settlement arrangements.

17.6. Accordingly, Issue No. (vi) is answered in favour of the Corporate Debtor and against the Operational Creditor.

18. In view of the findings returned on Issue Nos. (i) to (vi), this Adjudicating Authority is of the considered opinion that though the original transactions between the parties arose

from execution of operational works by the Operational Creditor, the subsequent agreement dated 08.07.2020 materially altered and governed the enforceable rights and liabilities of the parties under a substituted contractual framework containing fresh schedules, obligations and supersession clauses.

19. This Adjudicating Authority has further held that the date of default consistently pleaded by the Operational Creditor in the demand notice issued under Section 8 of the Code, Form 5, Company Petition and subsequent pleadings was 08.08.2020, which admittedly falls within the period protected under Section 10A of the Code. The amendment application seeking substitution of the said date at the stage of final adjudication, after continuation of proceedings for nearly three years on the basis of the originally pleaded date of default, cannot be treated as a mere clerical correction and therefore does not deserve acceptance.

20. Consequently, this Adjudicating Authority is of the considered opinion that the operative default sought to be enforced in the present proceedings falls within the

statutory embargo contemplated under Section 10A of the Insolvency and Bankruptcy Code, 2016 and the present petition is therefore not maintainable.

21. It is however clarified that dismissal of the present petition shall not preclude the parties from pursuing such other remedies as may be available in law. No order as to costs

22. Accordingly, CP (IB) No. 52/9/NCLT/AHM/2023 and IA No. 500 of 2026 stand disposed of in the above terms as not maintainable. No order as to costs

23. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

—SD—

SANJEEV SHARMA
MEMBER (TECHNICAL)

—SD—

SHAMMI KHAN
MEMBER (JUDICIAL)

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