

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P2.

C.P. (IB)/728(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **24.06.2026**

NAME OF THE PARTIES: **Balaji Trading Corporation**
Vs
B S Ispat Limited

Under Section 9 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//S.DUBEY//

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.728/MB/2025

[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:

Balaji Trading Corporation Through
its proprietor Brijesh H. Agarwal HUF,
through its Karta Mr. Brijesh Himmatlal Agarwal,
Shop No. 3, Khasara No. 238,
NH 69, Saoner Road, Village: Manegaon,
Tah. Saoner, District: Nagpur- 441 107
Maharashtra, India.

...Operational Creditor/Applicant

V/s

B S Ispat Limited
[CIN: U27100MH1999PLC122856]
Registered Office: Khasara No. 97,
101,190, Village Salori Yensa
Post Chinora, Tah. Warora,
Chandrapur, Chandrapur, Maharashtra,
India, 442914.

...Corporate Debtor

Pronounced: 24.06.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Mr. Rohit Gupta a/w Adv. Ms. Khushi Bagaria
i/b Adv. Ms. Darshana Naval.

Corporate Debtor : Adv. Mr. Amir Arsiwala, Adv. Ms. Megha Talwar,
Adv. Ms. Princi Jaiswal, Adv. Ms. Saumya Goyal i/b
Adv. Ms. Meghna Talwar.

ORDER

[PER: BENCH]

1. BACKGROUND

- 1.1 This is an Application bearing C.P.(IB) No.728/MB/2025 filed on 23.07.2025 by **Balaji Trading Corporation Through its Proprietor Brijesh Himmatlal Agarwal HUF(through its Karta) Mr. Brijesh Agarwal**, the Applicant (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “the AAA Rules”), authorised representative *vide* authority letter dated 28.04.2025 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of B S Ispat Limited, the Corporate Debtor.
- 1.2 The Corporate Debtor **B S Ispat Limited** (CIN: U27100MH1999PLC122856) was incorporated in 1999 and is engaged in the business of Coal Mining, Generation of Power and Steel Manufacturing its Registered Office at Khasara No. 97,101,190, Village Salori Yensa Post Chinora, Tah. Warora, Chandrapur, Maharashtra, India, 442914.
- 1.3 Perusal of Part III reveals that the Applicant has named Ms. Megha Agrawal, Email ID: ***ip.meghaagrawal@gmail.com*** having ***IP Registration No. IBI/IPA-001/IP-P-01456/2018-2019/12272*** as IRP. The proposed IRP has given her consent in Form No. 2, which is annexed as **Annexure- XV**.

2. AVERMENTS OF THE APPLICANT

- 2.1 The Operational Creditor is a proprietorship firm primarily engaged in the business of transportation and logistics.
- 2.2 The Operational Creditor was approached by the Corporate Debtor for availing its services for transportation of coal from the mine to the hired washeries and back to the plant of the Corporate Debtor situated at Salori Yensa, Warora, Chandrapur.
- 2.3 It is submitted that the Operational Creditor has transported coal from its mines to the washeries & then to their Plant in accordance with the instructions provided by the Corporate Debtor.
- 2.4 It is submitted that the invoices for the transportation services were raised by the Operational Creditor which were duly acknowledged by the Corporate Debtor. Along with the respective invoices, the Operational Creditor also submitted the Statement for Bill for Coal Transportation with the details of the truck number and such other relevant information. All the invoices as raised by the Operational Creditor upon the Corporate Debtor totalled to the tune of Rs. 4,95,20,648.15/- and after deducting the receipt of monies in tranches to the tune of Rs. 2,91,00,000/- till date and TDS receivable of Rs. 9,14,553/- the outstanding amount which remains due and payable by the Corporate Debtor is 2,90,97,707.15/- (Rupees Two Crores Ninety Lakh Ninety-Seven Thousand Seven Hundred Seven and Fifteen Paise only) which is bifurcated into Principal Amount of Rs. 1,95,06,095.15/- along with interest amount Rs. 95,91,612/- (as per the respective invoices, which stipulate an imposition of 18% interest). Copies of unpaid invoices reflecting that the transportation services worth Rs. 1,95,06,095.15/- from 10.05.2022 through 05.04.2023 have been provided to the Corporate Debtor are annexed as Annexure II.

- 2.5 As per Part-IV of the Application the total amount claimed to be in default by the Applicant is Rs. 2,90,97,707.15 /- (Rupees Two Crores Ninety Lakhs Ninety-Seven Thousand Seven Hundred Seven and Fifteen Paisa Only) and the date of default is mentioned as 12.05.2023.
- 2.6 It is submitted that the Corporate Debtor had cleared the dues for some invoices after duly consuming services, and at no point in time had communicated/ raised any objection/ protest/ demur regarding the services of the Operational Creditor, which clearly implies that there was no deficiency in services rendered by the Operational Creditor. However, despite the huge outstanding amount, the Corporate Debtor failed to clear the dues. It came to light that First Information Report came to be filed against the Corporate Debtor by associate venture in January 2024, wherein, the Corporate Debtor's personnel assured that the dues of the Operational Creditor will also be cleared.
- 2.7 The Operational Creditor stated that multiple requests were made for the clearance of the dues, however of no avail. Upon persistent requests and expressing financial incapacity, the Managing Director of the Corporate Debtor assured that the outstanding dues will be cleared through coal supply. Accordingly, the Operational Creditor on 25.04.2024 addressed an email to the Corporate Debtor requesting for clearance of dues by way of supply of coal. A copy of ledger maintained by the OC for its business transactions with the CD and copy of the Email dated 25.04.2024 are annexed as Annexure III and Annexure IV respectively.
- 2.8 However, despite assurances that the coal would be supplied against the outstanding dues, the Corporate Debtor failed to comply with its obligations. The Corporate Debtor neither supplied coal nor remitted dues to the Operational Creditor. It was communicated by the Corporate Debtor's Vice President Mr. Sagar Kasangottuwar

that integrated ILMS registration of the Corporate Debtor is suspended by the statutory authority due to non-payment of royalty dues. A copy of the letter dated 01.07.2024 (Annexure V) addressed by the Corporate Debtor to the Directorate General of Geology & Mining was also shared to the Operational Creditor's representative on WhatsApp to further substantiate his claims. The said letter was issued by the Corporate Debtor seeking resumption of ILMS & dispatch of coal from Marki Mangli III mine of the Corporate Debtor. The ILMS registration of the Corporate Debtor has been suspended by the statutory authorities since 01.06.2024 which is a pre-requisite for dispatch of coal from mines. Crucially, without a valid ILMS registration, the Corporate Debtor was incapacitated from supplying coal.

- 2.9 It is stated that, on 12.09.2024, the Corporate Debtor raised a debit note via email bearing Debit Note no. DN/SEP/2 against rate difference in coal transportation for FY 21-22 and FY 22-23. The issuance of the Debit Note by the Corporate Debtor was wholly unilateral, arbitrary, and devoid of merit, particularly in light of the fact that the invoices raised by the Operational Creditor towards transportation of coal were duly acknowledged and accepted by the Corporate Debtor without any demur or objection. The issuance of the purported debit note by the Corporate Debtor was ex-facie malafide and had been engineered with the sole intent to reduce the acknowledged operational debt to an amount below the statutory threshold of Rs. 1 Crore, as prescribed under the Code. Accordingly, the Operational Creditor issued a reply immediately demanding withdrawal of the debit note vide Email and Letter dated 14.09.2024 and also demanded release of the outstanding payment of Rs. 1,95,06,095/- along with accrued interest. Copy of the Email dated 12.09.2024 by the Corporate Debtor issuing a Debit Note to the Operational Creditor is annexed as Annexure VI and Copy of the Email dated 14.09.2024 by the Operational Creditor

demanding withdrawal of the Debit Note issued to the Operational Creditor is annexed as Annexure VII.

- 2.10 It is submitted that thereafter, the Corporate Debtor immediately withdrew the Debit Note vide email dated 14.09.2024 recording "the Debit Note of Rs. 1,12,57,011/- was sent to you inadvertently due to some oversight of books of accounts." Copy of the Email dated 14.09.2024 by the Corporate Debtor confirming the debt amount and withdrawing the Debit Note is annexed as Annexure VIII.
- 2.11 It is further stated that the Corporate Debtor kept assuring of complying with their end of the bargain to supply coal in lieu of the amount outstanding but till date there has been no supply or payment received by the Operational Creditor. It is submitted that the Operational Creditor has diligently performed its part of the covenants and invariably continued to provide its services. However, the Corporate Debtor failed to remit the outstanding dues of the Corporate Debtor to the tune of Rs. 2,90,97,707,15/- (including interest) and has not cleared the aforementioned invoices, inspite of duly acknowledging the same.
- 2.12 The Operational Creditor has duly discharged its statutory obligations under the applicable GST laws by filing its periodical GST returns, wherein the invoices raised for the transportation of coal being the subject matter of the present claim have been duly reflected and accounted for. It has also been affirmed by the Corporate Debtor in its email Communication dated 14.09.2024 that the outstanding payment shall be cleared through supply of coal but since it still remains unpaid. It is submitted that the Operational Creditor's debt cannot be withheld without any explanation and recourse. The amount outstanding remains due and payable by the Corporate Debtor along with interest. Copy of GST return is annexed as Annexure IX and 26AS certificate as annexed at Annexure X.

- 2.13 It is submitted that upon failure of the Corporate Debtor to clear the outstanding amount payable, the Operational Creditor was constrained to issue a Form 3 Demand Notice dated 15.05.2025 as contemplated under the Code. A copy of demand notice as annexed at Annexure XI.
- 2.14 In response to the Form 3 Demand Notice as addressed by the Operational Creditor, the Corporate Debtor vide its email dated 25.05.2025, responded to the notice in a mechanical and a generic manner, without addressing the core issues. The Corporate Debtor has failed to make any payment with respect to the pending invoices and has also failed to establish existence of any pre-existing dispute with respect to the amount claimed by the Operational Creditor, which pre-dated the issuance of the Demand Notice. It has become the modus operandi of the Corporate Debtor to fabricate documents and engineer defences tailored to suit its convenience, with the sole intent of evading legitimate dues. The services forming the subject matter of the present claim were duly rendered and consumed by the Corporate Debtor as far back as in 2022, followed by ad-hoc part-payments made without protest. However, in 2024, nearly two years after the completion of services, the Corporate Debtor arbitrarily issued a debit note for Rs. 1.12 Crores, which was subsequently withdrawn, allegedly due to an "oversight." The very act of withdrawal unequivocally affirms that the debit note was baseless and confirms the admitted liability. Now, almost three years later from the date of services, the Corporate Debtor is seeking to introduce a new line of defence by alleging non-coordination with its purported representatives for checks and certifications, an allegation that is entirely unsubstantiated and never raised contemporaneously.
- 2.15 The Corporate Debtor has malafidely stated in the reply that the transport services provided by the Operational Creditor were defective and that the Corporate Debtor

had to obtain checks and certifications in respect of the transported coal, however, these claims are not substantiated by any piece of evidence to show the terms agreed upon between parties. It appears that the Corporate Debtor had created a back-dated documents / certification to create a manufactured defense which was never communicated / informed to the Operational Creditor prior to issuance of the Demand Notice. Thus, the operational debt of the Operational Creditor exists without any demur and is due and payable by the Corporate Debtor. A copy of the reply dated 25.05.2025 as received from the Corporate Debtor in response to the Operational Creditor's Form 3 Demand Notice is hereto annexed as Annexure XII.

2.16 The Corporate Debtor has adopted a fraudulent and calculated modus operandi of issuing baseless Debit Notes immediately upon receipt of a Demand Notice, particularly when the debt amount crosses the statutory threshold of INR 1 Crore under Section 4 of the Insolvency and Bankruptcy Code, 2016. This practice is not isolated but part of a consistent pattern employed by the Corporate Debtor against multiple creditors. For instance, upon receipt of a demand from another Operational Creditor (M/s Armaco Infralinks Private Limited), the Corporate Debtor manufactured a Debit Note of approximately Rs. 16 Crores after receipt of the Demand Notice (Form 3). Similarly, against one of the associate concerns of the present Operational Creditor, namely Vinayak Trading Corporation, a Debit Note of Rs. 3 Crores (approx.) was issued without justification, and infact in a Company Petition No. 872 of 2023 filed against the Corporate Debtor, the CFO had sworn on oath- that the coal worth Rs. 1 Crores (approx.) shall be supplied before 14.09.2024, which has not been done so far. In yet another instance, another Operational Creditor who had provided transportation services to the Corporate Debtor in the year 2023, had filed the Company Petition No. 719 of 2024. In the said proceedings, the present Corporate Debtor had raised the

same ground of alleged internal checks and certifications, even though the debt amount was admitted and accounts were reconciled by the parties. This repeated pattern of conduct reveals a deliberate and mala fide attempt to evade genuine liabilities by creating fictitious debit entries to suppress and dilute otherwise undisputed operational debts. The Petitioner craves leave to rely upon such documents as and when necessitated by this Hon'ble Tribunal and / or at the time of hearing.

2.17 It is stated that in the present case, the services forming the subject matter of the operational debt were duly rendered and consumed by the Corporate Debtor as far back as in the year 2022 (only 2 invoices were raised in 2023). The invoices were raised during FY 2022-2023 and FY 2023-2024, duly acknowledged without demur, and were reflected in statutory records, including Form 26AS, GST returns, and other accounting documents of the Corporate Debtor. At no point during or after the provision of services was any deficiency, defect, or shortcoming communicated to the Operational Creditor. For nearly two years, the Corporate Debtor remained completely silent and never raised any dispute or dissatisfaction, written or oral. The alleged 'internal check' or 'certification' now sought to be relied upon is nothing but a sham, manufactured conveniently after the issuance of the statutory Demand Notice under Section 8 of the Code. Such post-facto creation of documents is clearly an afterthought and is devoid of any evidentiary value. Accordingly, there exists no genuine or pre-existing dispute.

2.18 It is further submitted that the Corporate Debtor was earlier admitted into Corporate Insolvency Resolution Process (CIRP) pursuant to the Order dated 26.03.2025 passed by this Hon'ble Tribunal in CP/891/2024. Though the said admission was subsequently overturned by the Hon'ble National Company Law Appellate Tribunal (NCLAT) vide Judgment dated 25.04.2025, the Operational Creditor, along with other similarly

situated creditors both financial and operational have preferred appeals and intervened in the proceedings now pending before the Hon'ble Supreme Court. Notice has already been issued to the Corporate Debtor, and the matter is listed for final hearing on 18.07.2025. Significantly, during the CIRP, the Interim Resolution Professional submitted a report before the Hon'ble NCLAT confirming that claims aggregating to more than Rs. 180 Crores were received from creditors, thereby demonstrating that the Corporate Debtor is commercially insolvent and has irretrievably lost its substratum. The mounting liabilities and its repeated failure to honour undisputed debts reflect a dire state of financial health and reinforce the necessity of initiating CIRP against the Corporate Debtor. A Copy of the Written Submissions filed by the Interim Resolution Professional evidencing the claims of above Rs. 180 Crores received for the Corporate Debtor is annexed at Annexure XIII.

- 2.19 The Operational Creditor submitted that the cumulative conduct and material placed on record unequivocally demonstrates that the Corporate Debtor is commercially insolvent and entirely incapable of satisfying its outstanding debt obligations. It is further stated that the Corporate Debtor has failed to remit the monies to the Operational Creditor and thus, the instant petition u/s 9 of the Code is being filed. Thus, due to the failure of the Corporate Debtor to comply with its obligations, and under the aforementioned circumstances, it is a fit case to proceed with the Corporate Insolvency Resolution Process against the Corporate Debtor, as it has lost its substratum.
- 2.20 It is stated that the present petition is filed within the time limit as prescribed under the Limitation Act, 1963.
- 2.21 The Applicant has relied on the following documents:
- i. Copy of the Demand Notice dated 15.05.2025
 - ii. Copies of emails.

- iii. Copy of the NeSL Report in Form C.
- iv. Copy of Master Data of the Corporate Debtor.
- v. Copy of the tracking report, postal receipts.
- vi. Affidavit in compliance of Section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016.
- vii. Copy of the 26AS certificate and GST returns.
- viii. Copy of the letter dated 01.07.2024 addressed by the Corporate Debtor to the Directorate General of Geology & Mining which was shared by the Corporate Debtor's CFO with the Operational Creditor's representative.
- ix. Copy of the Ledger maintained by the Operational Creditor for its business transactions with the Corporate Debtor.
- x. Copies of unpaid Invoices.
- xi. Copy of the written communication by proposed Interim Resolution Professional under Form 2.
- xii. Copy of the authority letter.

3. CONTENTIONS OF CORPORATE DEBTOR

- 3.1 The Corporate Debtor filed Counter Affidavit affirmed by Mr. Rajesh Jambhulkar, authorised representative of the CD *vide* board resolution dated 26.02.2024 authorising him to file Counter Affidavit.
- 3.2 The Corporate Debtor has denied the alleged default and has contended that the Operational Creditor is attempting to misuse the provision of the IBC in order to arm twist the Corporate Debtor into acceding to unlawful and disputed claims.
- 3.3 Further the Corporate Debtor has primarily raised an objection with regard to limitation and has contended that the Petition is barred under the Limitation act, 1963. According

to the Corporate Debtor, the invoices relied upon by the Operational Creditor pertain to the dates 10.05.2022, 10.06.2022, 16.07.2022 and 05.04.2023, whereas the present Petition came to be filed on 23.07.2025. It is therefore contended that all invoices barred by limitation, having been filed beyond the prescribed period of three years. as the present Petition has been filed beyond the period of 3 years as provided under the statute. It is further stated that the Operational Creditor in its petition has also claimed that the date of the invoice is the date of default, therefore, there is no occasion to extend the limitation period for filing the petition under reply beyond three years from the date of alleged invoices of the Petitioner. Therefore, the Petition under reply ought to be dismissed on this ground alone. Copy of the case status of the instant matter as reflecting on the portal of this Tribunal, is annexed as annexure A-2.

- 3.4 The Corporate Debtor in respect of the above submission is relying upon the judgment of Hon'ble Supreme Court in B.K. Educational Services Pvt. Ltd. v. Parag Gupta cited as (2019) 11 SCC 633 (para 42) and Next Education India Pvt. Ltd. Vs. M/s. K12 Techno Services Pvt. Ltd (Civil Appeal No. 1775 of 2021), dated 27.03.2023.
- 3.5 It is further submitted that the Operational Creditor has also claimed alleged interest to the tune of Rs.95,91,612/- as a part of the debt and default amount as mentioned in Part IV of the (@pg.16, para 5 of the Petition). It is submitted that the interest as claimed by the Operational Creditor was never agreed between the parties. Nothing has been produced on record by the Operational Creditor to show that interest was agreed by the Corporate Debtor Company as claimed. The Operational Creditor for claiming the interest is relying upon the unilateral stipulation mentioned by the Operational Creditor over its own invoice, upon which no consent was provided by the Corporate Debtor company ever.

- 3.6 It is further submitted that even the Operational Creditor is also aware that interest was never agreed between the parties and only for the said reason, interest was never demanded by the Operational Creditor in its email, dated 25.04.2024 (@pg.109-111, Vol-I of Petition), wherein in the attached ledger, it clearly appears that no interest has been demanded by the Operational Creditor despite passage of almost 2 years of alleged non-payment of its alleged outstanding debt. Even in the email of the Petitioner, dated 14.09.2024 (@pg.130, Vol-I of Petition), the Operational Creditor has not only substantiated that pre-existing disputes exist between the parties, but has also substantiated that no interest was agreed between the parties as the Operational Creditor has only demanded the alleged principal amount of Rs.1,95,06,095/-. In both the above emails, the Operational Creditor has nowhere mentioned that the interest stipulation, unilaterally inserted by the Operational Creditor over its invoices, was ever agreed between the parties. There is no whisper by the Operational Creditor about the said stipulation in its earlier illegal demand also. Thus, even the acts of the Operational Creditor also clearly demonstrates that there was agreement between the parties for payment of interest.
- 3.7 Further, the definition of 'financial debt' provided under Section 5(8) of Code, expressly includes the term 'interest to be a part of the debt, however, in the definition of 'operational debt' under Section 5(21), the term 'interest has not been specifically mentioned as a part of the debt, unlike in the definition of 'financial debt'. This deliberate difference in the language by the legislation, clearly provides that interest could not have been accepted as a part of the debt for triggering CIRP under Section 9 of the IBC.
- 3.8 It is submitted that there is no agreement between the parties for levy of any interest on any payment. The Petitioner has failed to provide any agreement, wherein the

Respondent company has agreed to levy of interest in case there is delay in payment. Thus, this clearly demonstrates that Corporate Debtor never agreed for payment of any interest, therefore, the same cannot be made part of the alleged debt under Section 9 of the Code. The Respondent herein places reliance on the judgments of the Hon'ble Appellate Tribunal being Mr. Maulik Kiritbhai Shah Vs. United Telecoms Ltd. (Company Appeal (AT) (CH) (Ins) No. 268/2023), decided on 15.09.2023, Rohit Motawat v. Madhu Sharma, Proprietor Hind Chem Corporation & Anr. (Comp. App. (AT) (Ins) No. 1152 of 2022), decided on 03.02.2023, Swastik Enterprises v. Gammon India Limited (Company Appeal (AT) (Insolvency) No. 144, 145, 146, 147 & 148 of 2018), SS Polymers v. Kanodia Technoplast Limited (Company Appeal (AT) (Insolvency) No. 1227 of 2019), Company Appeal(AT) (Insolvency) No. 1881 of 2024 & Rishabh Infra Through Hari Mohan Gupta Vs Sadbhav Engineering Ltd. (para 9), Shitanshu Bipin Vora, Suspended Director of Exclusive Linen Fabrics Pvt Ltd Vs. Shree Hari Yarns Pvt. Ltd. and Anr., being Company Appeal (AT)(Ins) No.2204 of 2024, (2025) ibclaw.in 35 NCLAT Comet Performance Chemicals Pvt. Ltd. Vs Aarvee Deninis and Exports Ltd. (para 18). The Hon'ble National Company Law Appellate Tribunal in the aforementioned judgments have not considered the interest component as part of debt under Section 9 of the IBC, therefore, it is prayed that the submission of the Petitioner that interest was agreed between the parties and therefore, the same forms part of the debt, is clearly in the teeth of the law as it prevails today.

- 3.9 It is further submitted that in terms of the judgment of Hon'ble Supreme Court in Next Education India (supra) and various judgments of Hon'ble Appellate Tribunal as mentioned in para 12 above, the remaining two alleged invoices of the Petitioner, dated 05.04.2023, do not meet the threshold of Rs.1 crore as required under Section 4 of IBC, as the total of both the said alleged invoices sums up to Rs.37,93,056/-, and

hence, the same do not meets the requirement under section 4 of IBC. Therefore, the petition under reply ought to be dismissed being in contravention of Section 4 of IBC. The Corporate Debtor herein is placing reliance on the judgment of Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 1067 of 2022 NCLAT M/s. Netfinity Solutions V/s M/s Karvy DigiKonnnect Limited (para 20-26).

- 3.10 It is submitted that in terms of Section 8(2)(a) of IBC, there already exists a pre-existing dispute between Operational Creditor and Corporate Debtor, which is evident from the email, dated 14.09.2024, of the Corporate Debtor. In the said email, Corporate Debtor has specifically denied and disputed Operational Creditor demand of the alleged outstanding payment of Rs. 1,95,06,095/-.
- 3.11 The Corporate Debtor vide email dated 14.09.2024 has called upon Operational Creditor to make itself available for reconciliation meeting along with books of accounts to undertake the exercise of reconciliation of accounts at the earliest. It was stated by Corporate Debtor in the said email that the outstanding payments due to Operational Creditor can be made only after reconciliation of accounts and any liability, if any would be settled through supply of coal and not by payment of money. The said fact also gets crystalized from the email dated 25.04.2024 (Annexure IV @Pg 109) wherein the Operational Creditor had itself requested to clear the amount by supplying of coal at an agreed price between the parties. However, instead of coming forward to reconcile the accounts, the Operational Creditor has abruptly served Corporate Debtor with the Demand Notice solely with an intent to abuse the process of law.
- 3.12 The Demand Notice dated 15.05.2025 has been served abruptly upon the Corporate Debtor after a span of 8 months since the last email dated 14.09.2024 was sent by Corporate Debtor to Operational Creditor denying and disputing its liability to pay the alleged outstanding payment of Rs. 1,95,06,095/-.

- 3.13 It is submitted that at no point of time prior to serving of the Demand Notice, Operational Creditor has contradicted or refuted the said email of the Corporate Debtor dated 14.09.2024 nor made any attempts to communicate with Corporate Debtor in respect of reconciliation of accounts. The inaction on part of Operational Creditor to resolve the pre-existing disputes between the parties by reconciliation of the books of accounts and on the other hand wrongfully resorting to the remedy available to bona fide Operational Creditor under section 8 or 9 of IBC, clearly shows that the Operational Creditor wants to enrich itself by arm-twisting the Corporate Debtor with the threat of insolvency proceedings.
- 3.14 It is further submitted that so far as Petitioner's assertion that it has "transported coal from its mines to the washeries & then to their Plant in accordance with the instructions provided by the Corporate Debtor" is concerned, it is submitted that the same is false. As per the agreed terms between Respondent Company and Petitioner, Petitioner's invoices have always been subject to internal checking and certification by Respondent Company's authorized representative after the invoices are raised. The Respondent Company has found numerous defects in Petitioner's transportation services which were communicated to the authorized representative of Petitioner from time to time. Furthermore, the Petitioner has neither contacted any authorized representative of the Respondent Company to obtain the checks and certifications in respect of the defective services rendered by Petitioner nor has the Petitioner taken any corrective measures to cure the defective services rendered by Petitioner.
- 3.15 It is further an admitted position of fact that a payment of Rs.2,91,00,000/- was made by the Respondent Company to Petitioner on an ad-hoc basis as the invoices of the Petitioner were to undergo internal checks and certifications by the Respondent Company's authorized representative. The Petitioner at para 16 of its Petition

(@pg.23, Vol-I of Petition), has clearly admitted that the payment of Rs.2.91 crores was made by the Respondent on ad hoc basis. This admitted ad hoc payment was made as it was agreed between the parties that final and total amount payable to the Petitioner would be determined only after all the invoices submitted by the Petitioner undergoes check and certification by the authorized representative of the Respondent Company and the said ad hoc payment would be adjusted towards the certified amount arrived. However, the Petitioner neither sought for check and certification of its invoices nor did the Petitioner agree to the reconciliation of books of accounts as requested by the Respondent.

- 3.16 It is submitted that there have been numerous defects in the services of the Petitioner. The details of the checks and certifications for FY 2021-22 till FY 2022-23 conducted by Respondent Company's authorized representatives reveal numerous defects in transportation services of the Respondent. Copies of certification and checks have been provided to the respondent, annexed by the Petitioner alongwith the reply of the dated 25.05.2025, to Demand Notice (@Pg.185, Vol-II onwards).
- 3.17 The corporate Debtor stated that from the submissions made above, it is clear that pre-existing disputes exists between the parties and the Respondent had disputed the alleged demand of Rs.1,95,06,095/- vide its email dated 14.09.2024 on the basis of its internal checks & certification which has revealed numerous deficiencies in Petitioner's services and consequently reconciliation of books of accounts was demanded by the Respondent Company 8 months prior to the date on which the Demand Notice was issued by the Petitioner under section 8 of IBC. The Respondent has further duly replied to the Demand Notice of the Petitioner within the time period as directed under Section 8 of IBC and has also enclosed elaborate evidences showing the disputes and deficiency of services. However, the Petitioner has very

clearly concealed the above pre-existing dispute and filed the Petition under reply, thereby, abusing the provisions of IBC.

- 3.18 It is further submitted that in terms of Section 9(3) (d) of IBC, the Petition ought to be accompanied with the record of default with the information utility. However, the Petitioner has misled this Hon'ble Tribunal into believing that the Information Utility records the default of the Respondent in its report as annexed alongwith Petition (@pg.791 Vol-V of Petition). However, the Petitioner has deliberately concealed from this Hon'ble Tribunal the entire report of Information Utility, which clearly records that the Respondent has disputed the debt of the Petitioner with reasoning. Copy of the report and email of the Information Utility is being annexed herewith as annexure A-3 (Colly). Therefore, the petition under reply ought to be dismissed not only for concealment and misleading this Tribunal, but also for the fact that pre-existing dispute exists between the parties, hence, the petition under section 9 of IBC is not maintainable. The Respondent in this respect places its reliance upon the celebrated judgment of Hon'ble Supreme Court in Rajratan Babulal Agarwal v. Solartex India (P) Ltd., cited as (2023) 1 SCC 115, wherein it has been held that if a pre-existing dispute is established before issuance of notice under S. 8 IBC or before the Ld. Adjudicating Authority then the Ld. Adjudicating Authority ought to reject Section 9 application filed by the Operational Creditor.
- 3.19 It is further submitted that the Operational Creditor in its Application has made submission that the Respondent has acknowledged / admitted the debt, however, no evidence has been brought on record showing admission of debt as claimed by the Operational Creditor. The Petitioner is misinterpreting the email of the Respondent company, dated 14.09.2024, into believing that the same is admission of liability, whereas on the other hand a clear reading of email, dated 14.09.2024, shows that the

same raises a dispute in respect of the amount claimed by the Operational Creditor. Thus, there is no acknowledgment of debt by the Respondent Company as claimed by the Operational Creditor.

- 3.20 It is further submitted that this is a very peculiar case where admittedly, the Petitioner's claim against the Respondent has been for supply of coal and not for payment of money. Therefore, in the absence of any right of payment accruing in favor of Petitioner (as required under Section 3 (6), (11), (12) and Section 5 (21) of IBC) no claim / debt or default has taken place in the instant case as required under the 'provisions of IBC', therefore, the Petitioner could not have filed the petitioner under reply.
- 3.21 The Corporate Debtor further submitted that the Petitioner itself in its first demand email, dated 25.04.2024, has demanded coal in exchange of the services provided by it. Thus, it is clear that in the case in hand, the agreement between the parties was novated on the request of the petitioner, where no money was to be paid but goods were to be supplied, hence, in the absence of any right of the Petitioner to demand money after novation of agreement between the parties, no application under section 8 or Section 9 of IBC could have been filed claiming default of debt of more than Rs.1 crore as no money was due to the Petitioner. Further, a reading of email of Petitioner, dated 25.04.2024, would also show that quantity or price of coal was also to be decided between the parties, which remained nonquantified as the Petitioner failed to reconcile the books of accounts with the Respondent and cure its defective services. Thus, even the above email of the Petitioner also goes on to show that the transaction between the parties, even for supply of coal, clearly lacked consensus i.e. disputes already existed, hence, petition under reply ought to be dismissed.

3.22 It is further submitted that the Petitioner before this Hon'ble Tribunal has committed perjury by filing affidavit under Section 9(3) (B) and (C) (@pg 795 of Vol-V of Petition), wherein the Petitioner has concealed that notice of dispute has been received by the Petitioner being Respondent's reply, dated 25.05.2025 and earlier communications of Respondent. Therefore, it is prayed that the petition under reply be dismissed on the above ground of misrepresentation and concealment as well. It is further submitted that the Petitioner is a solvent company as the Respondent Company has been engaged in the business of coal mining and power generation since the last two-and-a-half-decades (25 years) and has a paid-up share capital of Rs. 182 crores. The Respondent Company is a robust, active and compliant going concern and it employs more than 250 people directly, and several other workmen indirectly. Thus, the Respondent company provides livelihood to hundreds of employees, workmen and their families. The Respondent company pays several crores in taxes and other government dues to the exchequer.

3.23 It is stated that the petition under reply has been filed against the Respondent company only for the sole purpose of recovery and the same has also been admitted by the petitioner in its email, 14.09.2024 (@pg.130 of Vol-I of Petition), wherein the Petitioner has also threatened to approach this Hon'ble Tribunal in case the Petitioner's alleged outstanding is not paid. Thus, there is enough material on record demonstrating that the Petitioner has approached this Hon'ble Tribunal for the sole purpose of recovery of its unlawful demand. Thus, this Hon'ble Tribunal ought to dismiss the petition under reply. The Respondent places its reliance on the trite law laid down by the Hon'ble Supreme Court in Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd cited as 2018 (1) SCC 353, S. S. Engineers v Hindustan Petroleum Corporation Ltd. & Ors., Civil Appeal No. 4583 of 2022 and Tottempudi

Salalith vs State Bank of India & Ors. Civil Appeal No.2348 of 2021, wherein it has been held that IBC is not debt recovery mechanism.

3.24 The Corporate Debtor further contended that the contention raised by the Petitioner at para 9 of Part IV (@pg.18 of the Petition) in regard to the ILMS registration is entirely wrong and misconstrued. It is submitted that the contention of the Petitioner is wholly misconceived as the same has nothing to do with the alleged liability as being claimed by the Petitioner. However, it is submitted that the ILMS portal is used only for submission of returns to the Government, a matter strictly between the Government and the lessee and does not affect the Respondent's ability to supply coal once the buyer intimates its intention to lift the same. Further, the Respondent has been in constant business of supply of coal without any interruption, which also clearly shows that the contention raised by the Petitioner is totally false and irrelevant to the present matter.

4. REJOINDER

4.1 The Rejoinder was filed by the Operational Creditor on 06.01.2026.

4.2 It is submitted by the Operational Creditor for a dispute to be considered as "pre-existing", it should have existed prior to the receipt of the demand notice under Section 8 (1) of the Code. The Hon'ble Supreme Court in Mobilox Innovalions Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353, has held that in order to reject an application under Section 9 of the Code, the existence of the dispute and/or suit or arbitration proceedings must be pre-existing, meaning it must have existed before the receipt of the demand notice or invoice.

4.3 The Operational Creditor is relying on the judgment of the Hon'ble Supreme Court in the Mobilox case, and in the case of Raghuvir Buildcon Private Limited Vs. Ketan Construction Limited [CP (IB) No. 57/9/NCLT/AHM/2019] the Tribunal has clearly laid

down that not every difference/disagreement can be held to constitute a dispute and that normally commercial/legal differences per se are not dispute unless such differences are ascertained into a claim on which both the parties have opposite/different views and want to settle the same through some legal process or otherwise. Not every routine correspondence in commercial relationship can automatically or necessarily be considered and admitted as dispute unless certain stage is reached.

- 4.4 The Operational Creditor submitted that the defence of the Corporate Debtor is nothing but an afterthought, concocted solely to evade its admitted liability. The Corporate Debtor has admittedly availed, consumed, and enjoyed the services rendered by the Operational Creditor without raising even a whisper of complaint, protest, or objection at any point of time. Not a single contemporaneous email, communication, or record has been produced to demonstrate that the services were in any manner unsatisfactory. On the contrary, when payment was demanded, the Corporate Debtor failed to clear its dues and, in a clear attempt to obfuscate its liability, unilaterally raised a debit note only to subsequently withdraw the same citing it as an "oversight." Thereafter, in September 2024, the Corporate Debtor expressly acknowledged and accepted its liability, assuring the Operational Creditor that the dues would be cleared. Having failed to honor even this categorical assurance, the Corporate Debtor is now belatedly seeking refuge under a false plea of "unsatisfactory services" and "pre-existing dispute," which, ex facie, did not exist at any time prior to the issuance of the demand notice. Such manufactured defences, raised only after default, deserve to be outrightly rejected as mala fide and illusory.
- 4.5 The Operational Creditor further submitted that the Corporate Debtor has deliberately misread and misinterpreted the email dated 14.09.2024. The communication in

unequivocal terms records that "*we do intend to settle the outstanding payment due to Balaji Corporation through supply of coal as promised to you, subject to reconciliation of account.*" Firstly, the intent to settle the outstanding dues is a clear acknowledgment of liability, which by itself defeats the plea of limitation sought to be raised by the Corporate Debtor. The expression "subject to reconciliation" is at best a procedural rider and does not dilute or negate the unequivocal acknowledgment of debt. Secondly, such acknowledgment cannot be construed as a "pre-existing dispute." At no point during the entire tenure of services rendered did the Corporate Debtor raise any objection, demur, or complaint with respect to the rates, quality, or performance of services. It is only after default and after issuance of the demand notice that a false and mala fide plea of "unsatisfactory services" and "pre-existing dispute" has been manufactured. This belated defence, contrary to the contemporaneous record, is illusory and deserves to be rejected outright. Furthermore, in said email, the Corporate Debtor has not raised any objections regarding the alleged deficiency in services or the alleged internal checks and certifications.

4.6 It is submitted that the purported "dispute" now sought to be raised by the Corporate Debtor is a sham, illusory and bereft of any basis or substantiation. Such alleged disputes, raised only after the issuance of the demand notice, can have no bearing in law. The Hon'ble NCLAT in *Mitcon Consultancy & Engineering Services Ltd. v. Vitthal Corporation. Ltd.* [2018 SCC Online NCLA T 928] categorically held that a defence set up for the first time in the reply to a Section 8 demand notice cannot qualify as a "pre-existing dispute" under the Code. In that matter, though the respondent claimed to have disputed the consultancy services, when the Hon'ble Appellate Tribunal specifically asked whether any contemporaneous record existed evidencing such dispute prior to the demand notice, the respondent's counsel candidly admitted that

no such record existed. The Tribunal, therefore, rightly rejected the submission that oral conferences or telephonic disagreements could amount to proof of pre-existing dispute, in the absence of any documentary substantiation. It is further stated that the applying the same ratio here, the Corporate Debtor has utterly failed to produce a single contemporaneous email, letter, or communication raising any objection as to the quality, rates, or performance of services at the time they were being rendered. On the contrary, the record shows that the services were fully availed and enjoyed, debit notes were raised and subsequently withdrawn citing oversight, and even an acknowledgment of liability was made in September 2024. Having failed to honour its admitted obligations, the Corporate Debtor cannot now manufacture a non-existent dispute post facto to defeat the legitimate claim of the Operational Creditor. Such belated, mala fide defences fall squarely within the category of "spurious, hypothetical and illusory disputes" decried by the Hon'ble Supreme Court in Mobilox Innovations v. Kirusa Software (supra) and deserve to be outrightly disregarded.

4.7 The Operational Creditor submitted that the purported dispute with regard to deficiency in services has been wholly concocted after the issuance of the said Demand Notice. This is further evident from the fact that:

- i. All 24 invoices have been duly acknowledged and accepted by the Corporate Debtor without any demur [Ann. II (Vol. I), Pg. 38-103 to the Petition];
- ii. The services provided by the Operational Creditor have been consumed/enjoyed by the Corporate Debtor;
- iii. No objections have been raised by the Corporate Debtor with respect to the quality, quantity, rate of the services provided by the Operational Creditor at any time before the issuance of the Demand Notice;

- iv. The Corporate Debtor has made part payment to the tune of Rs. 26,34,536.35/- against the services provided by the Operational Creditor [Ann. III (Vol. I), Pg. 104-108 of the Petition]
- v. Debit Note dated 12.09.2024 [Ann. VI (Vol. I), Pg. 128-129 to the Petition] was immediately withdrawn by the Corporate Debtor vide email dated 14.09.2024.
- vi. The Corporate Debtor has wholly acknowledged its liability towards payment of the operational debt in said letter dated 14.09.2024.

4.8 It is further submitted that the alleged dispute regarding deficiency of service as raised for the first time in said Reply to Demand Notice is . wholly based on back dated! manufactured documents. It is submitted that the purported existence of such documents was never brought to the knowledge of the Operational Creditor before receipt of said Reply to Demand Notice. This is further evinced by the fact that the Corporate Debtor has failed to show any acknowledgement of receipt of such documents on behalf of the Operational Creditor. In such circumstances, it is submitted that such fabricated documents highlighting purported defects in the services provided by the Operational Creditor are nothing but an attempt to manufacture a spurious narrative of pre-existing disputes after receipt of said Demand Notice. Furthermore, in the alleged Reconciliation Report [Ann. XII (Vol. II), Pg. 187 to the Petition], the Corporate Debtor has referenced a Work Order which was never issued to the Operational Creditor. Said Work Order was issued against services rendered by another entity to the Corporate Debtor. Such conduct of the Corporate Debtor further speaks to the manner in which said documents have been maleficently manufactured after the receipt of Demand Notice by the Corporate Debtor to fabricate a spurious pre-existing dispute. It is a well settled position of law that a pre-existing dispute must be in existence before the receipt of demand notice for the same to nullify

an application under Section 9 of the Code. Pursuant to the above, it is respectfully submitted that, in the present case, no pre-existing disputes exists prior to the receipt of the Demand Notice. Consequently, the defense undertaken by the Corporate Debtor in its Reply is wholly vexatious hypothetical, illusory, spurious and liable to be dismissed.

4.9 It is also submitted that the purported dispute with regard to reconciliation of accounts raised by the Corporate Debtor is wholly untenable and false. Firstly, it is reiterated that supply of coal as against outstanding dues was accepted by the Operational Creditor upon persistent requests of the Corporate Debtor as a result of its financial incapacity. Accordingly, vide email dated 25.04.2024 [Ann. IV (Vol. 1), Pg. 109-111 to the Petition], the Operational Creditor requested clearance of dues by supply of coal at an agreed upon price. Secondly, it is submitted that the alleged pre-existing dispute regarding lack of consensus about reconciliation of accounts is absolutely spurious. This is because in the absence of any objections raised with respect to service provided by the Operational Creditor, no question of reconciliation of accounts arises.

4.10 It is submitted that non-reconciliation of accounts does not necessarily prosper into a "pre-existing dispute". This stand was propounded by the Hon'ble NCLAT in the matter of Mr. Narayan Singh Pathania Vs. Valuelabs LLP & Others. In CA(AT)(INS.) No. 1415 of 2019. Relevant lines are as follow:

"27 There is a bald and bare denial of any amounts due and payable only on tire ground of pending reconciliation. It is pertinent to note that there is no whisper of any dispute regarding 'rate.'" It is pertinent to note that in all their replies, tire Appellant herein only mentioned non-reconciliation of accounts as the reason but is silent with respect to any other issue regarding payment or amounts and therefore this Tribunal holds that the Appellant has railed the test or proving any pre-existing dispute."

...Merely contending that the accounts were not reconciled for almost a year, in our considered opinion. can be considered as a 'feeble and spurious' argument. "

(emphasis supplied)

- 4.11 It is settled position of law that merely contending that accounts were not reconciled when dispute regarding services provided was never raised is a spurious argument and fails the test of pre-existing dispute. Accordingly, it is respectfully submitted that there is no pre-existing dispute with respect to reconciliation of accounts.
- 4.12 Thirdly, it is submitted that the Corporate Debtor has defaulted on its promise to supply coal in consideration for the operational debt which was agreed upon by the Operational Creditor only after much insistence on behalf of the Corporate Debtor. Pursuant to the same, it is submitted that such agreement does not in any way diminish the liability of the Corporate Debtor. Accordingly, the contention of the Corporate Debtor that the agreement between the parties stood novated and no money was to be paid to the Operational Creditor is wholly unfounded and ludicrous.
- 4.13 It is contended that the Corporate Debtor does not hold water in view of the fact that the ILMS Registration of the Corporate Debtor has been suspended by statutory authorities since 01.06.2024. It is reiterated that without a valid ILMS Registration the Corporate Debtor is disabled from dispatching coal from its mines. This is evident from the letter dated 1st July 2024 from the Corporate Debtor addressed to the Director General of Directorate of Geology and Mine wherein the Corporate Debtor has prayed for instructions for resumption of ILMS operations for dispatching from the mine. [Ann. V (Vol I), Pg. 112-127 to the Petition]. The relevant portion of said letter is reproduced below for the reference of this Hon'ble Tribunal:

"Considering the above crucial local situation and our Financial crunch, your good-self is requested to intervene in the matter, and suitable instructions may please be

given to concern for resuming ILMS operations and Royalty updating on time to time for dispatch from mine in that we can able to generate the revenues and clear the out standings at an early date as per our commitment" (Emphasis Supplied)

It is submitted that the contention of the Corporate Debtor that the suspension of the ILMS Registration does not affect its ability to supply coal is wholly dishonest and devoid of merit. In furtherance of the same, it is submitted that an Operational Creditor cannot wait for an indefinite period for clearance of its dues that have been defaulted upon. Therefore, in light of the inability of the Corporate Debtor to supply coal against outstanding operational debt, the Operational Creditor demanded clearance of the operational debt which the Corporate Debtor failed to comply with. Accordingly, it is humbly submitted that the present Petition has been preferred against a valid and subsisting operational debt defaulted upon by the Corporate Debtor and is liable to be admitted.

- 4.14 It is submitted that the contention raised by the Corporate Debtor that the record of default with the Information Utility reflects that the debt has been disputed it wholly baseless and irrelevant. It is respectfully submitted that the Information Utility is not an adjudicating body and as such the debt being recorded as disputed before the Information Utility does not ipso facto mean that a pre-existing dispute persists with respect to the operational debt. Without prejudice to the same, it is further submitted that since that filing of record of default with the Information Utility u/s 9(3)(d) of the Code is directory in nature, the same cannot be solely relied upon to reject an application filed by the Operational Creditor.
- 4.15 It is submitted that the Corporate Debtor contention that interest was not agreed upon by the parties is wholly false, immaterial and devoid of merit. It is reiterated that all 24 invoices which specifically provide for imposition of interest on delayed payment have

been duly acknowledged by the Corporate Debtor without any objection. More importantly, in the email dated 14.09.2024, the Operational Creditor has specifically demanded payment of outstanding dues along with the accrued interest which has been wholly acknowledged by the Corporate Debtor in its reply to said email. Without prejudice to the above, even if it is assumed for the sake of argument that interest was not agreed upon, it is submitted that the application of interest on delayed payment is wholly immaterial as the principal amount in itself meets the threshold amount prescribed under the Code. It is submitted that the principal amount of the outstanding operational debt is Rs. 1,95,06,095.15/- and, consequently, the present Petition is not liable to be dismissed on the ground of inapplicability of interest on delay in payment.

5. WRITTEN-SUBMISSIONS OF THE APPLICANT

5.1 The written submission were filed by the Applicant on 16.02.2026.

5.2 The applicant has relied on the following judgement:

- I. Mitcoin Consultancy & Engineering Services Ltd. V Vitthal Corp. Ltd., 2018 SCC OnLine NCLAT 928
- II. Sharad Chandra Goel v. Tarannom Shargh International Transporation Cp. & Another (2023 SCC OnLine NCLAT 232)
- III. Saraswati wire and cable industries v. Mohammad Moinuddin Khan (2025 SCC OnLine SC 2756)

5.3 The written submissions filed by the applicant are in conformity with the pleadings already on record. Hence, the same are not restated herein to avoid duplication.

6. WRITTEN-SUBMISSIONS OF THE CD

6.1 The written submissions were filed by the Corporate Debtor on 25.02.2026.

6.2 The Corporate Debtor has relied on the following judgement:

- I. Hon'ble Supreme Court in B.K. Educational Services Pvt. Ltd. v. Parag Gupta.
- II. Next Education India Pvt. Ltd. Vs. M/s. K12 Techno Services Pvt. Ltd (Civil Appeal No. 1775 of 2021).
- III. Hon'ble NCLAT in Mr. Maulik Kiritbhai Shah Vs. United Telecoms Ltd. (Company Appeal (AT) (CH) (Ins) No. 268/2023)
- IV. Rohit Motawat v. Madhu Sharma, Propreitor Hind Chem Corporation & Anr. [Comp. App. (AT) (Ins) No. 1152 of 2022].
- V. Swastik Enterprises v. Gammon India Limited [Company Appeal (AT) (Insolvency) No. 144, 145, 146, 147 & 148 of 2018].
- VI. Hon'ble NCLAT in Bhawani Prasad Mishra v. Armaco Infralinks Pvt. Ltd. being Co. App. (AT) (Ins) No. 557 of 2025.

6.3 The written submissions filed by the Corporate Debtor are in conformity with pleadings already on record. Hence, the same are not restated herein to avoid duplication.

7. ANALYSIS AND FINDINGS

- 7.1 We have heard the Ld. Counsels for the Operational Creditor and the Corporate Debtor and have perused the records as placed before us. Our findings in the matter are as under: -
- 7.2 The present Company Petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by the Operational Creditor seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on account of alleged default in payment of operational dues arising from transportation services rendered by the Operational Creditor to the Corporate Debtor.
- 7.3 As per the material placed on record, invoices aggregating to Rs.4,95,20,648.15/- were raised by the Operational Creditor. Against the said invoices, payments

aggregating to approximately Rs.2.91 Crores were admittedly made by the Corporate Debtor. After adjustment of payments received and TDS deductions, the Operational Creditor claims that a principal amount of Rs.1,95,06,095.15/- remained outstanding and payable. Interest on delayed payments has also been claimed in terms of the invoices, taking the total claim amount to Rs.2,90,97,707.15/-. The fact that transportation services were rendered by the Operational Creditor and that substantial payments were released by the Corporate Debtor is not disputed. The business relationship between the parties and the rendering of services therefore stand admitted.

- 7.4 The Operational Creditor has contended that despite repeated requests and communications demanding payment of outstanding dues, the Corporate Debtor failed to clear the admitted liability and instead attempted to evade payment by issuing a unilateral Debit Note dated 12.09.2024 alleging discrepancies in transportation charges. According to the Operational Creditor, the said Debit Note was subsequently withdrawn by the Corporate Debtor itself on 14.09.2024 citing “oversight”, thereby acknowledging the subsisting liability.
- 7.5 Per contra, the Corporate Debtor has opposed the Petition primarily on the grounds that: (i) the Petition is barred by limitation; (ii) the operational debt has been artificially inflated by inclusion of unilateral interest; (iii) the present proceedings constitute misuse of the insolvency mechanism for recovery of disputed dues and (iv) serious pre-existing disputes existed between the parties prior to issuance of Demand Notice and dispute had already been recorded with the Information Utility.
- 7.6 The Operational Creditor has contended that the last invoice dated 05.04.2023 was acknowledged on 12.05.2023 and therefore limitation commenced from the said date. It has additionally been contended that the account between the parties constituted a

running account and that limitation stood extended by acknowledgment dated 14.09.2024.

7.7 This Tribunal finds merit in the contention of the Operational Creditor that the transactions between the parties reflected characteristics of a running and continuous account. The invoices, part-payments and continuing negotiations between the parties indicate a subsisting commercial relationship rather than isolated and disconnected transactions. Furthermore, the email dated 14.09.2024, wherein the Corporate Debtor withdrew the Debit Note and expressed intention to settle outstanding dues, prima facie constitutes acknowledgment of liability within the meaning of Section 18 of the Limitation Act, 1963. Consequently, the plea of limitation raised by the Corporate Debtor does not merit acceptance at this stage.

7.8 Section 18(1) of the Limitation Act 1963, is reproduced herein below:

“18. Effect of acknowledgment in writing. — (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.”

7.9 In the present case, the email dated 14.09.2024 unmistakably recognizes the existence of outstanding dues payable to the Operational Creditor. Consequently, the period of limitation stood extended and the present Petition cannot be said to be barred by limitation. Therefore, we reject the objection raised by the Corporate Debtor on the issue of limitation.

- 7.10 The Corporate Debtor has next contended that interest amounting to Rs.95,91,612/- has been wrongfully included as part of operational debt despite absence of any contractual agreement between the parties regarding payment of interest.
- 7.11 We find that the applicant has not produced any agreement, purchase order or correspondence evidencing mutual consent in regard to payment of interest in case of delay in making payment of invoices by the Corporate Debtor. The only basis for the applicant to claim interest in the Application is unilateral stipulation printed on the invoices raised by the applicant. The Applicant has failed to produce any document based on which it can claim that the corporate debtor has consented for payment of interest on delayed payment. Nor the applicant has based on the conduct of the corporate debtor established that there was an understanding between the parties as to payment of interest. It is also observed that the applicant has not accounted for the interest being claimed by it from the corporate debtor in its books of account except that in the ledger account of the corporate debtor in the books of the applicant, as attached on page No. 108 of the Application, on 05.05.2025, an entry in respect of interest receivable amounting to Rs. 95.91 lakh for the entire period of delay has been made. It is well settled now that an applicant cannot claim interest in a section 9 Application only on the basis of a unilateral stipulation printed on the invoices raised by it, without there being any express or implied understanding as to payment of interest between the applicant and the corporate debtor. In our view therefore, the claim of interest as made by the applicant and disputed by the Corporate Debtor is not justified.
- 7.12 The Corporate Debtor has further contended that the present proceedings have been initiated solely as a coercive recovery mechanism and that the Corporate Debtor is a solvent company engaged in coal mining and power generation for more than twenty-

five years. It is settled law that the Insolvency and Bankruptcy Code is not intended to substitute recovery proceedings. However, where operational debt and default are established and the defence raised is found to be moonshine or unsupported by credible evidence, admission of Petition cannot be refused merely because the Corporate Debtor asserts commercial solvency. In view of the same, the contention of the corporate debtor that the present proceeding constitute misuse of the insolvency mechanism for recovery of disputed dues is not accepted.

7.13 The next and more substantial issue is whether a genuine pre-existing dispute existed prior to issuance of the Demand Notice and that there is a dispute recorded with the information utility and in view of the same the application is required to be rejected. The Corporate Debtor has contended that the transportation services rendered by the Operational Creditor suffered from deficiencies and that reconciliation of accounts was pending. It has also been argued that payments were released only on ad-hoc basis and subject to certification and verification.

7.14 The Operational Creditor, however, has contended that no contemporaneous objection was ever raised regarding quality of services, transportation charges or invoice amounts during the subsistence of the business relationship.

7.15 The record further reveals that the alleged disputes regarding deficiencies and reconciliation surfaced only after issuance of the Demand Notice.

7.16 In order to establish pre-existing dispute, the Corporate Debtor has heavily relied upon the phrase "subject to reconciliation" contained in its email dated 14.09.2024. However, we note that the same communication also records the Corporate Debtor's intention to settle the outstanding dues payable to the Operational Creditor.

7.17 This Bench also takes note of the fact that the Corporate Debtor, in its written submissions, has sought to rely upon the "dispute" reflected in the record of default

with the information utility. The relevant portion of the NeSL ROD (in form D) is reproduced below:

ANNEXURE A 3 COLLY

019

NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED
India's First Information Utility

FORM D
RECORD OF DEFAULT(RoD)

(Issued By information utility under sub- regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Operational Creditor M/s BRIJESH HIMMATLAL AGRAWAL HUF in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s BRIJESH HIMMATLAL AGRAWAL HUF
(b) Schedule-2 Bank (Y/N):	N
(c) Name of Corporate Debtor:	M/s B. S. ISPAT LTD.
(d) Unique Debt Identifier Number:	AAGHB5691A_AACCB2665H
(e) Registered Address:	SHOP NO. 3, KH. No. 238, NH 69, SAONER ROAD, VIL. - MANEGAON, TAH. SAONER, DIST. NAGPUR
(f) Total Outstanding Amount:	INR 29097707.15
(g) Default Amount:	INR 29097707.15
(h) Dispute Remarks*:	<ul style="list-style-type: none"> - Pre-existing Dispute. Remarks - Pre existing disputes exist between BTC and BSIL as is evident from the email dtd 14.09.2024 at 19.33 sent by BSIL to BTC (1st Doc) wherein BSIL has denied and disputed BTCs unlawful demand of Rs. 19506095 (2nd Doc). Also - BTCs invoices are subject to internal checking and certification by BSILs authorized representative. BSIL has found numerous defects in BTCs transportation services which were communicated to BTC from time to time. The details of the defective transportation services of BTC can be accessed from the google drive link (gdrive link) from the BSILs email dtd May 25 2025 at 10.15 PM (3rd Doc). Till date BTC has not taken any corrective measures to cure the said defective services. In view of the above. - there is no default on part of B S Ispat Limited and there clearly exist preexisting disputes between B S Ispat Limited and Balaji Trading Corporation. All the allegations levelled by BTC are once again denied in toto..
(i) Submission ID:	1
(j) Date of Default:	12-05-2023
(k) Status of Authentication of Default:	DISPUTED
(l) Authentication Completed on:	11-07-2025 20:56:50
(m) Date of Last Acknowledgement of Debt (AoD):	12-05-2023



** where dispute is pertaining to non-financial information and financial creditor is schedule II bank, the status of authentication will be recorded as Authenticated*

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017,

Registered Office : Gresham Assurance House, 4th Floor, Sir P.M. Road, Fort, Mumbai-400001.

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7.18 As such, the record of default with the information utility as reproduced above records that status of authentication of default as “disputed” and it also list the pre-existing disputes.

7.19 The Corporate Debtor has pleaded that the status of default, which has been reflected as “disputed” in the NeSL record of default, requires this Adjudicating Authority to reject the Application as per the provisions of Section 9 (5)(ii)(d) of IBC, 2016. The said section is reproduced hereunder:-

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order-

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

.....

(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 4[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

.....”

7.20 In regard to the contention as made by the Corporate Debtor referred to in para 7.20 above, this Tribunal relies upon the judgment of Hon’ble NCLAT dated 10.12.2025 in

the matter of *Accurate Transheat Pvt. Ltd. v. Sufi International Pvt. Ltd.* [Company Appeal (AT) (Insolvency No. 1373 of 2025)]. Relevant portion of the said judgment is reproduced hereunder:-

*“16. In the facts of the present case, in the record of information utility, the Corporate Debtor has disputed the debt which is recorded in the information utility. The proceeding under Section 9 is a proceeding which clearly contemplates that in event, when the notice of dispute has been received by the operational creditor and there is a record of dispute in the information utility, application is to be rejected. Section 9 proceeding is not a proceeding for deciding various contractual dispute between the parties and insolvency proceeding against the Corporate Debtor can proceed only in accordance with the statutory scheme under **Section 9 and the statutory scheme under Section 9 itself contemplate that when there is a record of dispute in the information utility, the Adjudicating Authority had to reject the application.***

17. In the facts of the present case, we are of the view that the Adjudicating Authority did not commit any error in rejecting Section 9 application filed by the Appellant. The Appeal is dismissed. We, however, make it clear that dismissal of Section 9 application shall not preclude the Appellant to take such remedy in law as permissible.”

(emphasis supplied)

7.21 The corporate debtor has in support of its contention in regard to rejection of the application in view of provisions of section 9(5)(ii)(d) relied upon the judgement of Hon'ble NCLAT in Company Appeal (AT) (INS) No. 557 of 2025 in the matter of

Bhawani Prasad Mishra v/s Armaco Infralinks Pvt. Ltd. & Anr., wherein it was held that: -

*“28. When we look into Section 9(5)(ii)(d) there are two circumstances under which Section 9 application deserves to be rejected i.e. (i) notice of dispute has been received by operational creditor or (ii) there is record of dispute in the Information Utility. In the present case, both the above clauses are fully met since notice of dispute has been received by operational creditor and there is record of dispute in the Information Utility. The record of dispute in the Information Utility as extracted above was information which was submitted by ‘Armaco Infralinks Pvt. Ltd.’ for authentication and authentication made on the same day by the corporate debtor disputing the information which is captured in the Information Utility information. **The statutory condition as contained in Section 9(5)(ii)(d) was fully in existence, hence, Adjudicating Authority had to reject the application.** Adjudicating Authority although in paragraph 31 has noticed the record of default in the Information Utility which paragraph 31 is as follows:-*

“31. Further, upon perusal of record of default in the information utility namely National E-Governance Services Ltd. (‘NeSL’) produced by the Respondent vide its reply dated 18.01.2025, we notice the existence of prior dispute between the parties. The relevant screenshot is reproduced hereunder:”

7.22 As such, in the above judgment, Hon’ble NCLAT has held that in case the statutory condition as contained in Section 9(5)(ii)(d) is in existence, i.e., if either notice of

dispute is received or there is a record of dispute in the information utility, Adjudicating Authority has to reject the Application.

7.23 Hon'ble Supreme Court in **K. Kishan v. Vijay Nirman Company Pvt. Ltd.**, (2018) 17 SCC 662, cautioned against permitting insolvency proceedings to become a substitute for ordinary debt enforcement mechanisms. Likewise, in **Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Ltd.**, (2019) 12 SCC 697, the Hon'ble Supreme Court reiterated that where a pre-existing dispute exists, the insolvency process cannot be invoked as a means of exerting pressure for recovery of contested claims. The rationale underlying these decisions is that insolvency proceedings are intended to address genuine insolvency and not to resolve complex contractual disputes.

7.24 The aforesaid conclusion also finds support from the recent judgment of the Hon'ble NCLAT, New Delhi, in **Salil Musale Vs. Lintec India Pvt. Ltd. & Ors.** (Company Appeal (AT) (Insolvency) No.870 of 2026) dated 25.05.2026, where in while setting aside the admission order in CP (IB) No. 669 (MB) of 2025, which was admitted by this Bench of NCLT, the Hon'ble Appellate Tribunal has held as below:

*“11. Section 9(5)(d)(ii) provides that the Adjudicating Authority shall reject the application when notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility. Present is a case where notice of dispute was issued by the corporate debtor within 10 days from receipt of the demand notice and there was also record of dispute in NeSL record where status was mentioned as disputed. We may refer to the judgment of this Tribunal in Company Appeal (AT) (Insolvency) No. 557 of 2025- **Bhawani Prasad Mishra V/s Armaco Infralinks Pvt.***

Ltd. & Anr.” decided on 25.04.2025 where this Tribunal has held that when the status of NeSL record mentions the dispute, Adjudicating Authority cannot proceed to admit Section 9 application. Relevant paragraphs of the judgment are as follows:-

*“28. When we look into Section 9(5)(ii)(d) there are two circumstances under which Section 9 application deserves to be rejected i.e. (i) notice of dispute has been received by operational creditor or (ii) there is record of dispute in the Information Utility. In the present case, both the above clauses are fully met since notice of dispute has been received by operational creditor and there is record of dispute in the Information Utility. The record of dispute in the Information Utility as extracted above was information which was submitted by 'Armaco Infralinks Pvt. Ltd.' for authentication and authentication made on the same day by the corporate debtor disputing the information which is captured in the Information Utility information. **The statutory condition as contained in Section 9(5)(ii)(d) was fully in existence, hence, Adjudicating Authority had to reject the application.** Adjudicating Authority although in paragraph 31 has noticed the record of default in the Information Utility which paragraph 31 is as follows:-*

"31. Further, upon perusal of record of default in the information utility namely National EGovernance Services Ltd. ('NeSL') produced by the Respondent vide

its reply dated 18.01.2025, we notice the existence of prior dispute between the parties. The relevant screenshot is reproduced hereunder:"

.....

31. Section 8(2)(a) is a provision which provides that the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute. Section 8(2)(a) does not in any manner dilute the requirement of Section 9(5)(ii)(d) **The initiation of insolvency against the Corporate Debtor has a serious consequence and when there are sufficient material to indicate that condition as mentioned in Section 9(5)(ii)(d) are in existence, Adjudicating Authority cannot proceed to ignore the same.....**

13. Adjudicating Authority has ignored the notice of dispute issued which was given by the corporate debtor as well as the authenticated default in NeSL record by observing that the contention of pre-existing dispute raised by the corporate debtor is spurious, moonshine and mere bluster. The notice of dispute in

detail has given the facts which cannot be said to be unsupported by any evidence.”

12. It is relevant to notice that the Adjudicating Authority has also noted the fact that NeSL record claim is disputed. In paragraph 7.21 and 7.22, Adjudicating Authority noticed following:-

“7.21 The Applicant has placed on record the NeSL record of default in Form D. which reflects the Status of Authentication of default as 'Disputed with remarks that there exists a pre-existing dispute. The Applicant has relied on the judgment of Hon'ble NCLAT, in *Rakesh Bhailalbai Patel v. Vasundhara Seamless Stainless 4 Tubes (P) Ltd.*, 2025 SCC OnLine NCLAT 1669, vide Order dated 17.10.2025, has clarified the legal position regarding marking of dispute on NeSL portal. The relevant portion of the judgment is reproduced as under:

"79. The contention regarding the NeSL portal is also not convincing. The Code does not treat the NeSL information as determinative of the existence of a dispute. The mere marking of a debt as "disputed" on the portal, without supporting evidence, cannot override the underlying contractual documents and financial records".

7.22 The CD with regard to above, relied upon the judgment of Hon'ble NCLAT in *Bhawani Prasad Mishra v. Aramco Infralinks Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 557 of 2025 (Order dated 25.04.2025), **wherein it was held that Section 9(5)(ii) (d) of the IBC is**

mandatory and that the application must be rejected if either notice of dispute is received or there is a record of dispute in the Information Utility. However, the said order has already been challenged before the Hon'ble Supreme Court in Civil Appeal Diary No. 26723 of 2025. In any event, in the present case, the Applicant has substantiated its claim through invoices, e-way bills and GSTR-1 filings, thereby establishing the operational debt and default.”

13. Adjudicating Authority has ignored the notice of dispute issued which was given by the corporate debtor as well as the authenticated default in NeSL record by observing that the contention of pre-existing dispute raised by the corporate debtor is spurious, moonshine and mere bluster. The notice of dispute in detail has given the facts which cannot be said to be unsupported by any evidence.

.....

14. In view of the foregoing discussions, we are of the view that there being pre-existing dispute, the Adjudicating Authority committed error in admitting Section 9 application. Order admitting Section 9 application cannot be sustained.

15. In result, the Appeal is allowed. Impugned order passed by the Adjudicating Authority dated 06.05.2026 is set aside. Section 9 application CP (IB) No.669 (MB) of 2025 is rejected. Parties shall bear their own costs.”

(emphasis supplied)

7.25 It is important to note that in CP(IB) No. 669 of 2025 (in the matter of Lintec India Private Limited vs. Naxnova Technologies Private Limited), this Bench while admitting the company petition for initiation of CIRP in respect of the said CD, vide order dated

06.05.2026, had recorded the finding that the disputes raised by the CD therein were spurious, moonshine and mere bluster. The relevant portion of the said order is reproduced hereunder:-

*“7.26 In light of the aforesaid settled position of law and the facts in the present case, **we are of the view that the contention of pre-existing dispute raised by the CD is spurious, moonshine and mere bluster.** Stoppage of supply by the Applicant due to not genuine and bona fide and merely a feeble and illusory defence. Therefore, the question posed above in the analysis is answered accordingly. Stoppage of supply by the Operational Creditor due to non-payment of due invoices for past supplies, that too in terms of the purchase orders issued by the CD, in order to safeguard its financial interests, can never be termed as dispute.*

.....

*7.28 In view of the above findings, it is clear that the Applicant has placed on record the necessary evidences and materials to demonstrate the existence of the operational debt exceeding the minimum threshold of Rs. 1 Crore prescribed under Section 4 of the Code due and payable by the CD as well as the default in payment thereof by the CD. The Applicant has served the Demand Notice upon the CD, and that the **CD has failed to establish the existence of any pre-existing dispute.** The Application is*

*complete as all the relevant documents have been attached
by the Applicant along with the Application.”*

(emphasis supplied)

7.26 However, in appeal against the above referred order of this Adjudicating Authority, Hon'ble NCLAT in *Salil Musale smatter (supra)* has, in the light of provisions of Section 9(5)(ii)(d) of IBC, 2016, held that if the NeSL record of default is reflecting the “disputed status”, the AA is mandated to reject the Application.

7.27 To summarize, the Hon'ble NCLAT in *Salil Musale v. Lintec India Pvt. Ltd. & Ors. (supra)*, reiterated that Section 9(5)(ii)(d) of the IBC mandates rejection of a Section 9 application where either

- i. a notice of dispute has been received by the Operational Creditor, or
- ii. there exists a record of dispute in the Information Utility.

7.28 The Operational Creditor has placed reliance upon the judgment of Hon'ble Supreme Court in Civil Appeal No. 12261 of 2024 being *Saraswati Wire and Cable Industries Vs. Mohammad Moinuddin Khan and Ors.* The relevant portion of the said judgment is reproduced hereunder: -

“19. Applying this legal standard to the case on hand we have no hesitation in holding that the defence of pre-existing disputes sought to be put forth by the CD was mere moonshine and had no credible basis or foundation. There was no dispute worth the name existing as on the date of issuance of the demand notice by the firm warranting the withholding of the operational debt due and payable by the CD. The attempt to project such pre-existing disputes was mere bluster and did not have the effect of non-suiting the firm.

20. The NCLAT, however, lost sight of these critical facts while dislodging the order of admission passed by the NCLT on the application filed by the firm

under Section 9 of the IBC. The NCLAT, not being informed of the full facts, attributed delay to the firm and failed to attach value and consequence to the CD's own ledger account which clearly 14 negated the claim of pre-existing disputes, as the minor issues raised by the CD obviously did not have the effect of either stopping further supplies by the firm or further payments to the firm by the CD. The NCLAT also failed to attach requisite importance to the email dated 04.08.2021 sent by the CD along with the said ledger account, that clearly evidenced that more than the threshold amount was due and payable to the firm even after adjustment of the amounts mentioned in the debit notes and voucher.”

21. The judgment dated 13.03.2024 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, is accordingly set aside and the order of admission dated 06.12.2023 passed by the National Company Law Tribunal, Mumbai Bench-IV, in C.P.(IB)No. 398/NCLT/MB/C-IV/2023, is restored. Further proceedings in the said company petition shall be initiated in accordance with law and due procedure from the date of communication of this judgment.

The appeal is allowed in the aforesaid terms.

Parties shall bear their respective costs.”

7.29 It is, however, important that in the Saraswati Wire matter (Supra), the facts were different as the order of Hon'ble Supreme Court does not state that the status of authentication of default as per NeSL record of default is "disputed". However, in this matter the issue is as to whether in a matter where the NeSL record of default reflects a "disputed" status of the debt, the application has to be rejected in view of provisions

of Section 9(5)(ii)(d) or the adjudicating authority has to go into further details regarding the genuineness or otherwise of the disputes raised.

7.30 The applicant has also the relied upon the judgment of Hon'ble NCLAT in the matter of Mitcon Consultancy and Engineering Services Ltd. vs. Vitthal Corp. Ltd. 2018 SCC online NCLAT 928 wherein Hon'ble NCLAT has held that though the respondent has disputed the claim but such submission cannot be accepted in absence of any record relating to existence of dispute. Further reliance has been placed by the applicant in the matter of Sharad Chandra Goel vs. Tarannom Shargh International Transportation Cp and another (2023 SCC online NCLAT 232, wherein Hon'ble NCLAT has held that "we are inclined to agree that no serious lacunae have been pointed out by the Corporate Debtor prior to demand notice with regard to quality of services..... Moreover, no evidence of outright denial of the liability to pay has been placed on record by the Corporate Debtor". The Applicant has further relied upon the judgment of Hon'ble NCLAT in the matter of Dheeraj Wadhawan vs. Yes Bank and others (Comp. App (AT) (Ins.) No. 953 of 2021) wherein Hon'ble NCLAT has held that information utility is not an Adjudicatory Body and as such debt being recorded as disputed with NeSL is not conclusive proof of pre-existing dispute. In the matter of Vijay Kumar Singhania vs. Bank of Baroda in Company Appeal (AT) (Ins) 1058 of 2023 it was held that since the with information utility under Section 9(3)(d) is directory nature, it cannot be solely relied upon to reject an Application. However, the said judgements in the matters of Dheeraj Wadhawan and Vijay Kumar Singhania were in the context of Section 7 of IBC and therefore the same do not apply to the facts of this matter, which is an application under Section 9 of the IBC. Further, we are of the view that in the above cited judgements, the issue before Hon'ble NCLAT was not as to whether in case record of default with information utility reflects "disputed" status

of the dues, in view of provisions of Section 9 (5)(ii)(d) of IBC, 2016, the Adjudicating Authority is required to reject the Application. The judgements referred to in earlier part of this order clearly establish the legal position that in a such situation, Adjudicating Authority is obligated to reject the application. In view of the same, we hold that the reliance placed by the applicant on the above judgments is misplaced and is of no consequence in regard to the fate of this Application.

7.31 Having considered the totality of the material placed on record, we are of the view that considering the provisions of section 9(5)(ii)(d) of IBC, 2016, this adjudicating authority is bound to reject an application in case the record of default as issued by the information utility reflects the status of authentication of default as “disputed”. The recent judgments of Hon’ble NCLAT as referred to above including the judgments in the matter of Bhawani Prasad Mishra and in the matter of Salil Musale have clearly confirmed the above view and, therefore, this Adjudicating Authority is left with no alternative but to reject the Application.

7.32 In these circumstances, we are satisfied that the CD has successfully demonstrated that there exists a record of dispute with the information utility and therefore, the present Petition CP(IB)/412/MB/2025 is **rejected** under Section 9(5)(ii)(d) of the IBC as **non-maintainable**.

7.33 Needless to mention here that rejection of the present CP does not preclude the Applicant to recover its dues, if any, through methods as known to law.

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

//S.D.//

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)