

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.412/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:

RDC Concrete (India)Private Limited

[CIN: U74999MH1993PTC172842]

DIL Complex, 701, 7th floor, Thane one,
Ghodbunder Road, Majiwade, Thane,
Maharashtra, India, 400610.

...Operational Creditor/Applicant

V/s

Gannon Dunkerley And Company Limited

[CIN: U51109MH1924PLC001107]

Registered Office New Excelsior Building,
3rd Floor, A.K. Nayak Marg, Fort, Mumbai,
Maharashtra, India, 400001.

...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. Ms. Revathi Mannivannan & Adv. Mr. Ravi a/w
Adv. Ms. Shilpa Khatu.

Corporate Debtor: Adv. Mr. Sumesh Dhawan a/w Adv. Ms. Vatsala Kale,
Adv. Mr. Amir Arsiwala & Adv. Mr. Rahul Gupta.

ORDER

[PER: BENCH]

1. BACKGROUND

- 1.1 This is an Application bearing C.P.(IB) No.412/MB/2025 filed on 20.12.2024 by **RDC Concrete (India)Private Limited**, 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”) through Mr. Dharmendra kumar Jaiswal vide Authorisation Letter dated 28.11.2024, the Applicant, seeking for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of **Gannon Dunkerley And Company Limited**, the Corporate Debtor (CD).
- 1.2 The Corporate Debtor is Gannon Dunkerley And Company Limited (CIN: U51109MH1924PLC001107) having its Registered Office at New Excelsior Building, 3rd Floor, A.K. Nayak Marg, Fort, Mumbai, Maharashtra, India, 400001.
- 1.3 The Applicant has not proposed the name of an IRP and has requested the Tribunal to appoint an IRP.

2. AVERMENTS OF THE APPLICANT

- 2.1 As per Part-IV of the Application the total amount claimed to be in default by the Applicant is Rs. 11,04,40,991.43/- (Rupees Eleven Crores Four Lakhs Forty Thousand Nine Hundred Ninety-One Forty-Three Paise Only) including interest at 18% p.a. calculated upto 30.06.2024, along with interest till the date the payment in full is received by the Operational Creditor.

2.2 The Operational Creditor (RDC Concrete (India) Private Limited) is a company incorporated under the Companies Act, 1956, and validly existing under the Companies Act, 2013 in India. The Operational Creditor was incorporated to carry on the business of manufacture and supply of Ready-Mix Concrete (RMC)/Site Mix Concrete (SMC).

2.3 It is submitted that during the course of business, the Corporate Debtor had approached the Operational Creditor for supplying, mixing, and transporting of Ready-Mix Concrete (RMC) for the following projects undertaken by the Corporate Debtor at various sites,

S.No	PARTICULARS	TOTAL RMC QUANTITY	TOTAL COST in Rs.
1.	Purchase order dated 06.06.2019 along with amended purchase order dated 05.09.2020 issued for TATA steel Kalinganagar Project Jaipur Odisha (Phase II) (Jajpur Site)	1,02,871 Cum	Rs.24,82,28,392/-
2.	Purchase order dated 15.02.2020 along with amended purchase order dated 03.03.2022 issued for UltraTech of 2 MTPA cement grinding unit Project Macchapur Village, Cuttack District, Odisha (Cuttack site)	55975 Cum	Rs.14,92,75,972/-
3.	Purchase order dated 25.01.2021 issued for Jindal stainless limited, Kalinganagar Jaipur (Jindal site)	1,09,682 Cum	Rs.26,60,79,320/-
4.	Purchase order dated 03.04.2023 issued for Flue Gas desulphurization plant, Mitsubishi Power India Private Limited, Ntpc, Farakka, West Bengal (Farakka site)	61857 Cum	Rs.27,12,60,406/-

2.4 The Operational Creditor had supplied the ordered quantity and raised invoices for the same, the Corporate Debtor had also acknowledged the invoice upon the receipt of

RMC. The Operational Creditor had also filed GSTR1 and GSTR 3B and Goods and Services Tax with the Tax department as and when the invoices were raised. In fact, the Corporate Debtor had availed the Input Tax Credit by filing GSTR 2A and had availed Input Tax Credit.

- 2.5 It is submitted that inspite of the receipt of the 'RMC', and inspite of availing the Input Tax Credit, the Corporate Debtor was not making the payment in terms of the Purchase Order. There were huge outstanding dues on account of default committed by the Corporate Debtor. Therefore, the officials of Operational Creditor had sought for the payment from the Corporate Debtor. However, it has not elicited any response. In such circumstances, the Operational Creditor had clearly informed the Corporate Debtor that, they will not supply further if the outstanding payments were not cleared. However, the Corporate Debtor was taking time for making payment on one pretext or another. While things stood thus, the official of TATA steel have approached the Operational Creditor in respect of the first referred project and stated that the Corporate Debtor was delaying the construction and so they have issued Purchase orders dated 05.05.2023 and 16.07.2024 directly to the Operational Creditor.
- 2.6 It is submitted that, the said arrangement was within the knowledge of the Corporate Debtor. In spite of the same, they requested Operational Creditor to supply for other projects in terms of the Purchase Orders. Due to the long-standing relationship and also due to the fact that the Operational Creditor had incurred huge expenses in setting up the batching plant, the Operational Creditor had continued to supply 'RMC' to the Corporate Debtor inspite of delay in making the payment by Corporate Debtor.
- 2.7 The Operational Creditor submitted that the Corporate Debtor instead of making payments on the basis of the terms agreed between the Operational Creditor, had made partial payments on running account basis for each site. It is submitted that, the

said payments made by the Corporate Debtor, through running account basis, were accepted by the Operational Creditor in good faith and to maintain good business relations. The Operational Creditor also submitted that, on-account payments made by the Corporate Debtor were being adjusted by the Operational Creditor against the invoices pending as on that date to continue supply of goods.

2.8 It is submitted that, as on 30.07.2024, the Corporate Debtor was liable to pay the following sums to the Operational Creditor.

S.No	PARTICULARS	TOTAL SUPPLIED VALUE IN Rs.	AMOUNT PAID BY CORPORATE DEBTOR IN Rs.	OUTSTANDING AMOUNT TO BE PAYABLE BY CORPORATE DEBTOR IN Rs.
1.	TATA steel Kalinganagar Project Jaipur Odisha (Phase II) (Jaipur Site) (recent amended PO as dated 05.09.2020)	36,71,74,257.76	30,67,83,041.00	6,03,91,216.76
2.	civil work of 2 MTPA cement grinding unit near Macchapur Village, Cuttack District, Odisha (Cuttack site)	18,64,29,507.10	17,66,56,967.31	97,72,539.79
3.	Jindal stainless limited, Kalinganagar Jaipur	8,13,19,868.90	7,00,44,272.16	1,12,75,596.74
4.	Flue Gas desulphurization plant, Mitsubishi Power India Private Limited, Ntpc, Farakka, West Bengal	3,85,54,751.87	1,73,28,295.88	2,12,26,455.99
			GRAND TOTAL	10,26,65,809.28

2.9 It is submitted that aggrieved by the abovementioned acts and the failure and deliberate neglect on the part of the Corporate Debtor in making requisite payments against the invoices raised, the Operational Creditor had made numerous requests

and apprised the Corporate Debtor of the amounts due and payable to the Operational Creditor and requesting for payments.

2.10 It is further stated that no dispute has been raised by the Corporate Debtor with respect to the quality and/or quantity of the goods supplied by the Operational Creditor till date, and that the supplies made were strictly in accordance with the contractual specifications agreed between the parties.

2.11 It is submitted that, accordingly a demand notice dated 30.07.2024 was served on the Corporate Debtor by the Operational Creditor, requesting for payments of the amounts due towards supply of RMC made by the Operational Creditor.

2.12 It is further stated that the Corporate Debtor replied to the said Demand Notice vide reply dated 08.08.2024. However, the said reply does not disclose any genuine or bona fide dispute with regard to the amounts claimed by the Operational Creditor, nor does it enclose any supporting documents or material to substantiate any contention raised therein.

2.13 It is submitted that the Corporate Debtor is justly and truly indebted to the Operational Creditor in a sum of RS. 10,26,65,809.28/- towards principal outstanding, along with RS.77,75,182.15/- towards interest, aggregating to a total amount of RS. 11,04,40,991.43/-, which remains due and payable.

2.14 It is further stated that the aforesaid liability was never disputed by the Corporate Debtor prior to the issuance of the Demand Notice. No notice of dispute was ever raised, nor were any concerns regarding quality, quantity, or non-supply of goods communicated at any point prior to the Demand Notice.

2.15 It is submitted that, in light of the aforementioned facts and circumstances, the Operational Creditor has sought to initiate Corporate Insolvency Resolution process under Section 9 of the Code against the Corporate Debtor.

- 2.16 The Operational Creditor submitted that no suit, arbitration proceedings or any other proceedings are pending before any judicial forum or authority relating to the unpaid Operational Debt. That the Corporate Debtor has not raised any valid disputes against its liability to pay the outstanding amounts to the Operational Creditor. Thus, the Corporate Debtor has not shown or established the "existence of any dispute, if any in terms of sub-section (2) of Section 8 of the Code.
- 2.17 It is submitted that it is amply clear that the Corporate Debtor has committed a "default" in payment of the unpaid operational debt within the meaning of Section 3 (12) of the Code. A copy of the Bank Statement showing there is no payment of the unpaid operational debt by the Corporate Debtor is enclosed with the Application.
- 2.18 The Operational Creditor has not proposed name of an interim Resolution Professional, who may be appointed in accordance with Section 16 (3) (a) of the Code.
- 2.19 The Applicant has relied on the following documents:
- i. Copy of the Demand Notice in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 served on the Corporate Debtor along with proof of service.
 - ii. Copy of Letter of authorization on 28.11.2024.
 - iii. Copy of Reply to the demand notice.
 - iv. Copy of master data of the Corporate Debtor.
 - v. Copy of purchase orders for all sites.
 - vi. Copy of Outstanding Invoices issued by the Operational Creditor to Corporate Debtor.
 - vii. Copy of the Ledger accounts of the Corporate Debtor maintained by the Operational Creditor.
 - viii. Copy of Bank statement.

- ix. Copy of E-mails exchanged between the Operational Debtor and Corporate Debtor.
- x. Copy of Form 1A (IAAA).

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 The CD filed Affidavit-in-Reply dated 03.05.2025 affirmed by Mr. Anilkumar Pandey, authorised representative of the Corporate Debtor *vide* Board Resolution.

3.2 It is stated that the Corporate Debtor is a reputed infrastructure and construction company that engaged the service of the Operational Creditor for the supply of Ready-Mix concrete for its various project sites. The Operation Creditor and Corporate Debtor entered into multiple contracts by way of individual purchase orders pertaining to separate projects as evident from the table below:

Sr. No.	Material Purchase Order details	Project
a.	CE:SE:2533 dated 15.02.2020 APO-1/493 dated 10.08.2020	UTCL – Ultratech, Cuttack, Odisha
b.	MO/0223 dated 01.04.2021 UTCL-Rev– 1 dated 03.03.2022	
c.	CE:SE:2669 dated 11.03.2020	
d.	CE:SE:1878 dated 25.01.2021	JSL – Jindal Steel, Angul, Odisha
e.	CE:SC:420 dated 06.06.2019	TSK – TATA Steel, Kalinganagar, Odisha
f.	CE:SC:420/2345 dated 06.06.2019 AMD-03	
g.	MO/0002 dated 03.04.2023 MPWI Rev-0 dated 03.04.2023	MPWI – Farkka, WB

3.3 It is further submitted that the performance of the Operational Creditor under the above-mentioned purchase order was deficient, irregular and in breach of contractual obligations. It is contended that several issues arose including unilateral stoppage of supply, inferior quality of RMC, cement wastage, financial loss due to site idling and

rejection of concrete due to cube failures. It is stated that these deficiencies resulted in losses aggregating to Rs. 10,15,96,002/- and were communicated to the Operational Creditor vide letters dated 18.06.2024, 19.06.2024 and 08.07.2024.

- 3.4 It is submitted that the letter dated 18.06.2024 pertaining to the TSK Project detailed losses suffered by the Corporate Debtor due to alleged failure of the Operational Creditor to adhere to contractual obligations, including excess payments, material costs, additional expenses due to stoppage of supply, poor quality of concrete and cement wastage. The total loss claimed under the said letter is stated to be Rs. 4,84,80,045/-, including further unqualified losses due to project delay. A copy of letter dated 18.06.2024 as annexed at **Annexure 1**.
- 3.5 It is further submitted that the letter dated 19.06.2024 relating to the JSL Project records losses suffered due to alleged repeated breaches, including stoppage of RMC supply, failure to procure materials and consequent idling of labour at site. The total loss claimed therein is stated to be Rs. 5,08,93,492/-. A copy of letter dated 19.06.2024 as annexed at **Annexure 2**.
- 3.6 It is also submitted that the letter dated 08.07.2024 relating to the UTCL Project records a claim of Rs. 22,22,465/- towards excess payments allegedly made by the Corporate Debtor, along with non-return of cement and empty bags. A copy of letter dated 08.07.2024 as annexed at **Annexure 3**.
- 3.7 It is contended that the aforesaid issues, as raised in the above correspondence, remain unresolved and demonstrate the existence of a pre-existing dispute between the parties.
- 3.8 It is also submitted by the Corporate Debtor that the contents of the Petition are denied, and a para-wise reply to the affidavit in support is provided.

- 3.9 With respect to Paragraphs 1 to 3, it is submitted that the Corporate Debtor denies the correctness of the statements made therein. It is contended that the amount claimed is disputed and misleading. It is further submitted that the claim of Rs. 11,04,40,991.43/- and interest @18% per annum is unsubstantiated and unsupported by contract and no such interest was agreed upon between the parties. It is reiterated that pre-existing disputes were raised vide letters dated 18.06.2024, 19.06.2024 and 08.07.2024 and no amount is payable. The Corporate Debtor further submitted that the present petition is not maintainable in view of a pre-existing dispute, which had been raised prior to the issuance of the demand notice by the Operational Creditor.
- 3.10 It is also submitted that the Corporate Debtor do not deny the engagement of the Operational Creditor for the supply of the RMC for specific site project at various sites, but the Corporate debtor strongly disputes the implications that such engagement was without any deficiencies. The Corporate Debtor submitted that the Operational Creditor failed to supply superior quality of concrete, faced rejection due to cube test failures, undergone unilateral stoppage of supply and consequent financial losses, which remained unresolved. The Corporate Debtor also denied para 5.3 of the petition regards the filling of GSTR-1, GSTR-3 and deposit of GST is not determinative of the validity or enforceability of the underlying invoices and also denied the mere the reflection of Input Tax Credit in GSTR-2A does not imply acknowledgment of debt or waiver the rights of the Corporate Debtor to dispute the quality and delivery of the goods, availing Input Tax Credit is a statutory mechanism under Goods and Sales Tax and does not override contractual defaults or preclude claims for damages.
- 3.11 The Corporate Debtor categorically denies the allegation that payments were withheld without justification. It is submitted that such withholding arose due to serious contractual breaches by the Operational Creditor, including supply interruptions,

quality deficiencies, and resultant project delays. These issues were formally documented through communications dated 18.06.2024, 19.06.2024 and 08.07.2024, establishing the existence of prior dispute. The reference to Tata Steel placing independent purchase orders on the Operational Creditor is stated to be beyond the knowledge of the Corporate Debtor and irrelevant to proceedings under Section 9 of the Insolvency and Bankruptcy Code. On the contrary, such conduct indicates disruption in the original contractual arrangement and supports the existence of ongoing commercial disputes.

3.12 With respect to Paragraph 5.5, it is observed that the Corporate Debtor has categorically denied having consented to any arrangement between Tata Steel and the Operational Creditor. The Corporate Debtor has further submitted that any continuation of supplies by the Operational Creditor to Tata Steel was undertaken at its own discretion. It is the case of the Corporate Debtor that the continued supply of Ready-Mix Concrete (RMC) by the Operational Creditor was not merely out of goodwill, but pursuant to specific contractual obligations governing the parties. The Corporate Debtor has also contended that the Operational Creditor was fully aware of pre-existing issues, including quality defects and supply disruptions, which had been repeatedly brought to its notice. According to the Corporate Debtor, these issues ultimately resulted in the withholding of payments against the invoices. Further, the Corporate Debtor has denied the allegation regarding the expenses incurred for setting up a batching plant and has called upon the Operational Creditor to strictly prove the same with cogent evidence. In view of the above, the Corporate Debtor maintains that the procurement of RMC from the Operational Creditor was carried out strictly in accordance with the terms and conditions of the contract executed between the parties.

3.13 It is the case of the Corporate Debtor that these communications clearly establish the existence of a pre-existing dispute between the parties prior to issuance of the demand notice. Further, it is submitted that:

- i. The demand notice dated 30.07.2024 was duly replied on 08.08.2024 reiterating the disputes.
- ii. The amount claimed by the Operational Creditor is wholly disputed.
- iii. The claim of interest @ 18% per annum is not supported by any contractual agreement.
- iv. The Corporate Debtor is not in default; rather, it has counterclaims against the Operational Creditor.

3.14 The Corporate Debtor has also raised objections regarding maintainability of the Petition on the following grounds:

- i. Existence of pre-existing dispute.
- ii. Absence of certificate from Information Utility
- iii. Lack of proper computation of default and interest

3.15 It is further contended that the Petition is a misuse of the provisions of the Insolvency and Bankruptcy Code, 2016 and has been filed as a recovery mechanism, which is impermissible in law.

3.16 The Corporate Debtor has specifically denied that any amount is due and payable and has asserted that the Operational Creditor is, in fact, liable to compensate the Corporate Debtor for losses suffered due to contractual breaches.

3.17 In view of the above, the Corporate Debtor has prayed that the present Petition be dismissed *in limine* with costs.

4. REJOINDER

- 4.1 The Rejoinder was filed by the Applicant on 13.06.2025.
- 4.2 The Operational Creditor has filed a Rejoinder denying the contents of the Reply filed by the Corporate Debtor and reiterating the averments made in the Company Petition.
- 4.3 It is submitted that the Reply filed by the Corporate Debtor is an attempt to evade its legitimate payment obligations by raising false and manufactured disputes, which were never raised during the subsistence of the business relationship between the parties.
- 4.4 The Operational Creditor has contended that it had supplied Ready-Mix Concrete (RMC) to the Corporate Debtor for multiple projects over a period of 4–5 years and that the Corporate Debtor had accepted such supplies without any objection. It is further submitted that the Corporate Debtor had duly accounted for these transactions in its books and had also availed Input Tax Credit (ITC) under GST for the supplies received.
- 4.5 The Operational Creditor submits that once the Corporate Debtor has accepted the goods and availed Input Tax Credit, it is estopped from alleging deficiency in quality or performance at a belated stage, and such allegations are afterthoughts raised only to avoid payment.
- 4.6 It is further contended that the alleged disputes raised by the Corporate Debtor through letters dated 18.06.2024, 19.06.2024, and 08.07.2024 were issued immediately prior to the demand notice dated 30.07.2024, which clearly demonstrates that the disputes are not genuine but are created to defeat the claim of the Operational Creditor.
- 4.7 The Operational Creditor has emphasized that throughout the long-standing commercial relationship:
- i. The Corporate Debtor continued to place purchase orders.
 - ii. Supplies were regularly accepted and utilized.

- iii. Substantial payments were made from time to time.
- iv. No contemporaneous dispute regarding quality or quantity was ever raised.

Such conduct, according to the Operational Creditor, clearly establishes that there was no pre-existing dispute between the parties.

- 4.8 The Operational Creditor has further submitted that the reply dated 08.08.2024 to the demand notice is vague and unsupported by any documentary evidence such as test reports, rejection records, or contemporaneous correspondence.
- 4.9 It is the case of the Operational Creditor that the Corporate Debtor has admitted making partial payments amounting to approximately Rs. 57,08,12,576.35/-, and the outstanding operational debt of Rs. 10,26,65,809.28/- (excluding interest) remains due and payable. The correctness of invoices and computation of dues has not been specifically disputed.
- 4.10 The Operational Creditor has also contended that the counterclaims raised by the Corporate Debtor are unsubstantiated, inflated, and created only to set-off the legitimate dues, and such claims cannot be a ground to defeat initiation of CIRP under Section 9 of the Code.
- 4.11 It is further submitted that the existence of cross-claims or counterclaims does not amount to a “pre-existing dispute” within the meaning of Section 8 of the Code, particularly when such claims are not supported by contemporaneous evidence.
- 4.12 The Operational Creditor has asserted that all requirements under Section 9 of the Insolvency and Bankruptcy Code, 2016 have been duly complied with, including issuance of demand notice, waiting period, and filing of necessary documents. In view of the above, the Operational Creditor has prayed that the Reply filed by the Corporate Debtor be rejected, the present Petition be admitted, CIRP be initiated, and

appropriate orders including declaration of moratorium and appointment of Interim Resolution Professional be passed.

5. IA(I.B.C.)/3245/2025 FILED BY CORPORATE DEBTOR

- 5.1 I.A. (I.B.C.) No. 3245/2025, E-filed on 17.07.2025, filed by the Corporate Debtor seeking to take additional documents on record.
- 5.2 Vide order dated 04.08.2025, this Bench rejected the application filed by the Corporate Debtor. Thereafter, the Applicant (Corporate Debtor) filed an appeal, being Company Appeal (AT)/(Ins)/ NO. 1222/2025, before the Hon'ble NCLAT against the order passed by this Tribunal.
- 5.3 Vide order dated 22.08.2025, the Hon'ble NCLAT passed an order in favour of the Corporate Debtor (hereinafter referred to as the 'Applicant') and set aside the order dated 04.08.2025 passed by this Tribunal.
- 5.4 The relevant extract of the order dated 22.08.2025 passed by the Hon'ble NCLAT is produced hereinbelow for ready refence:

“16. The present is not a case where application filed by the Corporate Debtor was held not maintainable nor any such finding has been entered by the Adjudicating Authority in the impugned order. Adjudicating Authority although have not held that application is not maintainable but rejected the application on merits where order was reserved for issuance of notice and maintainability.

17. After having heard counsel for the parties, we are of the view that present was a case where sufficient cause has been made out by the Corporate Debtor in IA No.3245 of 2025 to take additional documents on record. In result, we set aside the order dated

04.08.2025, allow the prayers made in IA No.3245 of 2025 and take additional documents on record. Respondent i.e. Operational Creditor is also allowed three weeks' time to file reply to the additional documents. Both the parties may request the Adjudicating Authority to fix the date after three weeks to hear Section 9 application in accordance with law. We make it clear that we have not expressed any opinion on the merits of the additional documents brought on the record by IA No.3245 of 2025.

18. Appeal is disposed of."

6. ADD. DOCUMENT FILED BY THE CORPORATE DEBTOR

- 6.1 It is stated that the present affidavit has been filed with the purpose of placing on record certain additional documents which are essential for the fair, proper, and complete adjudication of the captioned proceedings. These documents clearly substantiate the existence of pre-existing and bona fide disputes between the parties, which arose prior to the issuance of the Demand Notice dated 30.07.2024.
- 6.2 It is submitted that the said affidavit has been filed to bring on record contemporaneous documents arising out of the operational relationship between the parties in respect of multiple infrastructure projects sites and regional offices. These documents pertain to the long-standing operational relationship between the Corporate Debtor and the Operational Creditor in respect of four major infrastructure projects-namely, the TSK Project (Tata Steel Kalinganagar), the JSL Project (Jindal Stainless Limited), the UTCL Project (Ultratech Cement, Cuttack), and the MPWI Project (Mitsubishi Power Works India, Farakka). In each of these projects, the Operational Creditor was engaged to supply Ready-Mix Concrete (RMC) under specific and independently issued Purchase

Orders. The documents now being produced comprehensively capture the timeline of transactions, operational challenges, deficiencies in supply, and the consequential disputes that arose during the execution of the said projects. These records, therefore, are essential to demonstrate the existence of genuine, pre-existing disputes that go to the root of the present proceedings and directly rebut the Operational Creditor claim of a clear and undisputed operational debt.

6.3 The Corporate Debtor has stated that the Operational Creditor failed to provide the requisite materials, i.e., Ready-Mix Concrete (RMC), in a timely, adequate, and consistent manner across multiple critical project sites, the Corporate Debtor was compelled, under pressing circumstances, to make alternate arrangements to sustain progress of ongoing works. The short supply, poor scheduling, and at times complete stoppage of concrete delivery by the Operational Creditor resulted in serious on-site disruptions and delays, threatening not only the Corporate Debtor ability to meet its construction timelines but also exposing it to the risk of penalties, blacklisting, and even termination by its esteemed clients such as Tata Steel, Jindal Stainless, Ultratech Cement, and Mitsubishi Power. The Operational Creditor failure to perform its contractual obligations left the Corporate Debtor with no option but to urgently mobilize alternate third-party vendors to supply RMC, often at significantly higher rates, and under constrained lead times. It is further state that the additional cost incurred by the Corporate Debtor towards these alternate supplies forms a substantial component of its counterclaims against the Operational Creditor. A copy of the complete set of third-party purchase invoices as annexed at **Annexure -A(Colly)**.

6.4 It is submitted that the Corporate Debtor had commenced procuring materials from third-party vendors, it continued its business relationship with the Operational Creditor and regularly followed up with it for the supply of pending materials in terms of the

respective Purchase Orders executed between the parties. It is further stated that the Corporate Debtor had, on multiple occasions, raised concerns and complaints regarding the poor quality of Ready-Mix Concrete (RMC), short and delayed supplies, abrupt interruptions in batching plant operations, and the resulting disruption at project sites. These issues were consistently communicated to the Operational Creditor through email correspondences, letters, and site-level communications. Specifically, various email correspondences were exchanged between the Corporate Debtor and the Operational Creditor concerning: (i) the TSK Project (Tata Steel, Kalinganagar), (ii) the JSL Project (Jindal Stainless, Jajpur), (iii) the UTCL Project (Ultratech Cement, Cuttack), and (iv) the MPWI Project (Mitsubishi Power Works, Farakka). Across all the aforesaid projects, the Corporate Debtor persistently raised issues concerning delayed and short supply, inadequate deployment of resources, shutdowns of batching plants, and deficiencies in the quality of RMC supplied.

A copies of the correspondences exchanged between the Corporate Debtor and the Operational Creditor in respect of the aforesaid projects as annexed as **Annexure-B(Colly), Annexure-C(Colly), Annexure-D(Colly), and Annexure-E (Colly)**.

6.5 It is submitted that the consequence of the financial losses suffered by the Corporate Debtor due to Operational Creditor failure to supply Ready-Mix Concrete (RMC) in accordance with the contractual schedule and specifications, the Corporate Debtor was constrained to procure materials from third-party vendors at significantly higher rates to ensure timely progress of its ongoing project work. In light of these losses, the Corporate Debtor, after conducting a detailed internal reconciliation, formally intimated the Operational Creditor about the quantification of such losses by way of an email dated 3rd June 2024. In the said communication, the Corporate Debtor categorically referred to the Operational Creditor inadequate performance, including shortage of

raw materials, erratic supply, poor quality, excess cement wastage, and instances where the Corporate Debtor had to source concrete from external agencies due to non-supply by the Operational Creditor. A copy of the email dated 03.06.2024 as annexed at **Annexure-F**.

6.6 It is further stated that the Operational Creditor, vide its email dated 20th June 2024, responded to the Corporate Debtor claims by categorically denying any liability and attempted to dispute the validity of the commercial recoveries raised. In the said email, the Operational Creditor alleged that the debit notes and claims issued by GDCL were "invalid" and purportedly "resolved" during a prior meeting held on 03.06.2024, an assertion which the Corporate Debtor unequivocally denies. The Operational Creditor further contended that its performance was not deficient and instead blamed the Corporate Debtor for failure to issue fresh Purchase Orders and make timely payments, while also threatening to raise commercial claims in the future, despite having never raised any such claims earlier. The tone and content of this email are demonstrative of a clear dispute between the parties that had crystallised well before the issuance of the statutory demand notice. A copy of the email dated 20.06.2024 as annexed at **Annexure- G**. In view of these false assertions, the Corporate Debtor issued a detailed reply vide its letter dated 05.07.2024, wherein it categorically refuted the Operational Creditor claims and reiterated the factual and financial basis of the recoverable amount of Rs. 4,84,80,045/-. The letter provided a detailed breakdown of each head of recovery and reaffirmed the Corporate Debtor position that the Operational Creditor alone was responsible for the commercial losses suffered across the project sites. It is further stated that when these two documents are read together, they clearly demonstrate that there existed substantial, ongoing, and bona fide

disputes between the parties prior to the issuance of the section 8 demand notice. A copy of letter dated 05.07.2024 is annexed and marked as **Annexure – H**.

7. AFFIDAVIT-IN-REPLY FILED ON BEHALF OF THE OPERATIONAL CREDITOR

- 7.1 The Operational Creditor has filed an Affidavit-in-Reply pursuant to the order dated 22.08.2025 passed by the Hon'ble NCLAT in Company Appeal No. 1222 of 2025, in response to the Additional Affidavit filed by the Corporate Debtor under Rule 55 of the NCLT Rules, 2016. It is submitted that the contents of the Company Petition and the Rejoinder already filed may be read as part and parcel of the present Affidavit-in-Reply. It is also stated that the present additional affidavit is alear attempt to delay the proceedings and frustrate the legitimate claim of the Operational Creditor. The Corporate Debtor is trying to introduce a voluminous set of documents (spanning over 240 pages as per their own index) to unnecessarily complicate and prolong the proceedings.
- 7.2 It is submitted that the Corporate Debtor claims regarding "quality deficiencies," "supply interruptions," and financial losses" are fabricated and have been raised for the first time only to defeat the legitimate claim of the Operational Creditor. It is also stated that the Corporate Debtor has clearly admitted the supply of goods and services by the Operational Creditor. The only dispute, if any, is regarding the quantum of payment, which does not constitute a "dispute" within the meaning of Section 9 of the Insolvency and Bankruptcy Code, 2016.
- 7.3 The Operational Creditor stated that the averments contained in the para 2 to 4 are specifically denied as false and misleading. It is specifically denied that. the additional documents filed by the Corporate Debtor substantiate the existence of pre-existing and genuine disputes between the parties prior to the issuance of the Demand Notice

dated 30.07.2024. It is specifically denied that, the Corpo Debtor was compelled under pressing circumstances to make alternate arrangements to sustain the progress of ongoing sites. It is further denied that, the short supply, poor scheduling, and at times complete stoppage of concrete delivery by the Operational Creditor resulted in serious on-site disruptions and delays, threatening not only the Corporate Debtor ability to meet its construction timelines but also exposing it to the risk of penalties, blacklisting, and even termination by its esteemed clients such as Tata Steel, Jindal Stainless, Ultratech Cement, and Mitsubishi Power.

7.4 It is submitted that, the following reply in relation to **ANNEXURE-A** filed by the Corporate Debtor would substantiate that there was no pre-existing dispute between the parties prior to the issuance of the Demand Notice dated 30.07.2024. With regard to Annexure A (third-party invoices), it is submitted as follows:

- i. All tax invoices alleged to have been issued by Kamaleswar Enterprise in respect of Jindal Stainless Steel (Pg. No. 29 to 82) show that the Operational Creditor was not a party to such invoices and was never put on notice regarding alleged third-party procurement. In this context, it is relevant to note that, the Operational Creditor had supplied RMC even during the period of alleged third-party purchase and payments were made to the Operational by the Corporate Debtor during the alleged third-party purchase and last such payment of Rs. 15 Lakhs was made to the Applicant on 28.08.2023. Further, the invoices dated 22/08/2024, 22/08/2024, 17/09/2024, 09/10/2024. 09/10/2024 were not issued prior to the issuance of the Demand Notice dated 30.07.2024 and therefore those correspondences cannot be brought within the ambit of pre-existing dispute.

- ii. Similarly, in respect of invoice pertaining to Farakka Site found at (Pg. No. 83 & 84) of the typed set filed by the Corporate Debtor along with the additional affidavit were not issued prior to the issuance of the Demand Notice 30.07.2024 and therefore cannot be brought within the ambit of pre-existing dispute. In respect to Farakka site, the Corporate Debtor issued a mail dated 30.04.2024 wherein they have confirmed the total outstanding of Rs. 1,31,30,000/- as on 31.03.2024. In the mail dated 30.04.2024, which is filed at Pg. No. 237 along with the Additional Affidavit, the Corporate Debtor had undertaken to pay Rs. 62.83 Lakhs by 10.05.2024 from Farakka Account in relation to total outstanding sum of Rs. 143 Lakhs. Further in the mail dated 28.03.2024 which is filed at Pg. No. 241 along with the Additional Affidavit, the Corporate Debtor had undertaken to pay Rs. 44 Lakhs by 31.03.2024 and another sum of Rs. 38 Lakhs by 15.04.2024.
- iii. Further the alleged two invoices were dated 20.09.2024 and 11.08.2024 which were issued after the last date of supply made by the Operational Creditor which was on 30.06.2024 and after last payment of Rs. 4.7 Lakhs made by the Corporate Debtor on 05.06.2024.
- iv. Similarly, Tax invoices alleged to have been issued by M.S. Enterprise (pg no. 85 to 99) in respect to Farakka site shows that the Operational Creditor was not a party to the said invoices and the Operational Creditor was not put on notice regarding the alleged third-party procurement. Further, the invoices dated 19.08.2024, 19.08.2024, 19.08.2024, 27.09.2024, 27.09.2024 were not issued prior to the issuance of the Demand Notice dated 30.07.2024 and therefore those correspondences cannot be brought within the ambit of pre-existing dispute.

- v. It is submitted that the tax invoices (Pg. No. 100 to 106) purportedly issued by M/s. Alekha Enterprises in relation to the TATA site do not reflect the Operational Creditor as a party to such transactions. The Operational Creditor was neither informed nor put on notice regarding any alleged third-party procurement. It is noted that the Operational Creditor had supplied RMC even during the period of alleged third-party purchase and payments were made to the Operational Creditor by the Corporate Debtor during the alleged third-party purchase and payments were made to the Operational Creditor by the Corporate Debtor during the alleged third-party purchase and last such payment of Rs. 40 Lakhs was made to the the Operational Creditor on 03.04.2024.
- vi. The Operational Creditor also submitted that the all invoices dated 30.11.2024, 31.12.2024, 31.01.2025, and 28.02.2025 allegedly issued by OMM Satyanarayan Traders and Constructions Pvt. Ltd. (Pg. Nos. 107–110) were all generated subsequent to the issuance of the Demand Notice dated 30.07.2024. As such, these documents cannot be relied upon to establish the existence of a pre-existing dispute, as they were not in existence at the relevant time prior to the Demand Notice.

7.5 It is stated that the averment contained in the para 5-9 of the Additional Affidavit are specifically denied as false and misleading. It is also submitted that, the Operational Creditor neither received any formal rejection nor quality notice from the Corporate Debtor or from any of the officials in respect of all 4 sites, despite which continued supply of RMC and raised invoices on recurring basis.

7.6 The Operational Creditor has denied that the Corporate Debtor consistently raised concerns over delayed or short supply, inadequate deployment of resources, batching

plant shutdowns and quality issues in the Ready-Mix concrete supplied. It is submitted that the Corporate Debtor. Corporate Debtor has filed E-mail correspondences in respect of all 4 sites as Annexure B, C, D and E. However, the same cannot be looked into for following reasons:

- a. The certificate under section 63(4) (C) OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023 has not been filed by the Corporate Debtor for the E-mail correspondences filed by the Corporate Debtor. Therefore, the E-mail Correspondences referred all the annexures ought to be rejected.
- b. Without prejudice, so far as all E-mail correspondences filed in Annexure B and C is concerned, it is mainly in relation to the payment outstanding to the Operational Creditor.
- c. In so far as the letters dated 18.06.2024, 19.06.2024 and 08.07.2024 alleged to have been issued by the Corporate Debtor to Operational Creditor is concerned, the same have not been received by the Operational Creditor.
- d. The Corporate Debtor had placed reliance on the letter correspondences annexed in their affidavit dated 18.06.2024, 19.06.2024, 05.07.2024, 08.07.2024, 08.08.2024 issued by the Corporate Debtor alleging disputes raised through such letters exposes their manufactured nature and the same has been rebutted in their reply, wherein show casing the same by placing repeated materials on record is clearly evident that it's an afterthought to protract the proceedings as there stands no genuine pre-existing dispute. However, these letters were issued within a span of merely 20 days, conveniently just before the statutory demand notice dated 30.07.2024. If genuine quality issues existed over the 4 5-year period of continuous supply spanning multiple projects, it defies all commercial logic and normal business

practice that no contemporaneous complaints were raised during the actual performance of the contracts.

- e. In so far mail dated 20.06.2024 sent by the Operational Creditor to the Corporate Debtor (page no. 141) which has been filed by the Operational Creditor as well, wherein it has been stated that, the Corporate Debtor admitted during meeting held on 03.06.2024 that their commercial claims were invalid and sent in error and further sought for payment of outstanding dues.
- f. In so far as mail dated 31.05.2024 (Page No.151) and 03.06.2024 (Page No.157) alleged to have been issued by Corporate Debtor is concerned, the same seems to have been issued after very long time of stoppage of supplies on 30.11.2022 for the Jindal project and even thereafter the payment of Rs.15 lakhs were made on 28.08.2023 to the Operational Creditor and no complaint was received during the supply or immediately thereafter. Therefore, it is clear that, the said mails are false and fabricated claim only to defeat the ultimate claim of the Operational Creditor.
- g. In so far as documents filed as Annexure-E in relation to Ultra Tech Cement Limited project is concerned, the letter dated 08.08.2024 alleged to have been issued by the Corporate Debtor subsequent to the Demand Notice dated 30.07.2024 and therefore the same cannot be brought within the ambit of pre-existing dispute. Further, in so far as other E-mails are concerned, the same has not been received by the Operational Creditor.

7.7 It is further submitted that the mail dated 04.06.2024 issued by the Operational Creditor to the Corporate Debtor filed at Annexure-G (Page No.269) wherein it has been stated that the meeting was held on 03.06.2024 at the office of the Corporate Debtor wherein the Corporate Debtor has committed to release a sum of Rs.71 lakhs

by 10.06.2024 against the supplies for the month of February and March 2024. Further, the Corporate Debtor requested the Operational Creditor to start supplies at Farakka site immediately which was agreed to by the Operational Creditor subject to the payment commitment. Further, the Corporate Debtor acknowledged that two commercial claims sent by them on 31.05.2024 and 03.06.2024 were invalid and were sent in error. Pursuant thereto, on 05.06.2024, the Corporate Debtor had paid a sum of Rs. 4,77,463/- to the Operational Creditor. Thereafter, until 30.06.2024, the Operational Creditor had supplied RMC to the Corporate Debtor. In the light of the above discussion and latest payment of Rs.4,77,463/- on 05.06.2024, all the alleged E-mail correspondences lack merits.

7.8 It is submitted that, as per the contention of the Corporate Debtor stating in para 7 of the affidavit that tone and content of the email dated 20.06.2024 by Operational Creditor are demonstrative of a clear dispute is totally misconceived and contrary to the record. The Operational Creditor places reliance on the reply mail dated 20.06.2024 show casing the communication where the Operational Creditor had clearly contented that (page no. 266 and 267)

- a. the commercial claims raised by GDCL site personnel on 03.06.2024 were invalid and sent in error.
- b. that the purchase order had expired and no new orders were issued post March 2024, and
- c. that all supplies made by the Applicant were duly acknowledged without any rejection or adverse comment on quality.
- d. The Operational Creditor have received commendations from GDCL and TSL officials for the delivery performance in various critical projects.

e. The Corporate Debtor attempt to camouflage the admitted liability of INR 6.05 crores under the garb of alleged counter-claims is wholly malafide.

Such contingent and uncrystallised claims do not constitute a "pre-existing dispute" within the meaning of Section 9 of the Insolvency and Bankruptcy Code, 2016.

7.9 It is submitted that the Corporate Debtor letter dated 05.07.2024 reiterating alleged losses of Rs. 4.84 crores debitabile by the Operational Creditor in para 8 of the affidavit is wholly misconceived. It is submitted that, the Letter dated 05.07.2024 is a unilateral communication, which has not been received by the Operational Creditor. Further the said alleged letter claimed to have been issued in respect to the mail communication dated 20.06.2024 by the Operational Creditor only to create a façade of "dispute," cannot diminish the clear liability acknowledged by the Corporate Debtor on multiple prior occasions. It is pertinent to note that from the mail communication dated 20.06.2024, that no new purchase orders had been placed by the Corporate Debtor , despite which the Operational Creditor issued supply of RMC to the Corporate Debtor which is clearly evident from the material placed on record by the Operational Creditor in its Application (**Page No. 39 of Volume 1/Exhibit 2 of the Application**) and eventually invoices were raised and the same had been acknowledged by the Corporate Debtor in its mail dated 30.04.2024 confirming the outstanding amount as payable by the Corporate Debtor (**page no. 920 of Volume 6lexhibit 17of the Application**).

7.10 It is stated that, significantly the Corporate Debtor continued to avail supplies and services from the Applicant till 30.06.2024 in respect of the Farakka site even after the alleged losses, without raising contemporaneous objections, termination, or any claims before an appropriate forum.

- 7.11 It is also that the Operational Creditor has already placed before the Hon'ble Tribunal comprehensive documents evidencing the Operational Debt through our original petition dated 26.05.2025. Subsequently, when the Corporate Debtor filed their reply, the Operational Creditor filed a detailed Rejoinder dated 26.05.2025 specifically addressing and countering each of the Corporate Debtor contentions. In the said Rejoinder, the Operational Creditor has extensively referred to and relied upon various documents and correspondences that were already part of the record to demonstrate that the Corporate Debtor claims of pre-existing disputes are manufactured and afterthought. Infact the same email correspondences have been filed yet again by way of additional documents which ought not to be entertained.
- 7.12 The Operational Creditor stated that the Corporate Debtor supporting correspondences as stated in the additional affidavit under Rule 55 of NCLT rules failed to establish any genuine dispute as required under Section 8(2)(a) of the Code. The alleged disputes are vague, unsubstantiated, and lack any contemporary documentation. These alleged issues were never raised during the performance of the contracts when they could have been addressed, demonstrating their afterthought nature designed solely to frustrate legitimate payment claims.
- 7.13 It is also submit that, the present additional affidavit filed by the Corporate Debtor failed to establish that the legitimate claim of the Operational Creditor as sought in the Application under section 9 of the IBC, 2016 is in pre-existing dispute and thus, it is amply clear that the Corporate Debtor had committed default in paying the unpaid Operational Debt and is liable to pay the outstanding Operational Debt of INR 11,04.40,991.43/- inclusive of interest at 18% per annum.

8. COUNTER AFFIDAVIT TO THE AFFIDAVIT IN REPLY

- 8.1 The Corporate Debtor stated that this Counter Affidavit to the Affidavit in Reply dated 11.09.2025 is being filed pursuant to the liberty granted by this Hon'ble Tribunal vide its order dated 17.09.2025. A copy of the order dated 17.09.2025 as annexed at **Annexure - A.**
- 8.2 The Corporate Debtor denies and disputed all allegations, submissions and averments contained in the Affidavit-in-Reply dated 11.09.2025 except those expressly admitted herein. It is stated that the reply is misconceived, misleading, and a deliberate attempt to divert attention from contemporaneous records now validly taken on record by this Tribunal pursuant to the judgment of the Hon'ble NCLAT dated 22.08.2025.
- 8.3 With respect to paragraph 5 of the Affidavit-in-Reply, it is submitted that the allegation that all the documents annexed to the Additional Affidavit were in the possession and knowledge of the Corporate Debtor from the inception of the dispute and were deliberately withheld is wholly denied. The Corporate Debtor has already explained in Interlocutory Application No. 3245 of 2025 that these records were spread across multiple project offices and regional sites, and their retrieval, verification, and collation required time and effort. The filing of the Additional Affidavit was, therefore, neither delayed deliberately nor lacking in bona fides. On the contrary, the Corporate Debtor promptly placed the documents on record once the exercise of collation was completed, and without seeking any adjournment or attempting to stall the proceedings. The Hon'ble NCLAT, after considering this very explanation, has accepted the position of the Corporate Debtor and directed that the Additional Affidavit be taken on record. In view of this categorical finding, the Operational Creditor cannot be permitted to reagitiate the issue or cast aspersions on the conduct of the Corporate

Debtor. It is further submitted that the Operational Creditor own assertion that these documents existed from the inception reinforces the case of the Corporate Debtor that they are contemporaneous records of the transactions and disputes, and their relevance cannot be denied. The attempt to portray them as an afterthought is misconceived, contrary to record, and deserves outright rejection.

8.4 It is submitted that the allegations contained in Paragraph 9 and sub-paragraph 9(A) of the Affidavit-in-Reply are misconceived, untenable, and hence denied. The contention that the Operational Creditor was not a party to the third-party invoices is irrelevant, since the core issue is that the Corporate Debtor was compelled to source RMC from vendors such as Kamaleswar Enterprise at higher costs owing to the repeated lapses, erratic supply, and plant shutdowns of the Operational Creditor. It is further submitted that such third-party procurements commenced as early as 2022 and continued throughout the contractual period precisely because the Operational Creditor failed to meet its supply commitments. The mere fact that the Corporate Debtor continued to make certain payments to the Operational Creditor during overlapping periods does not dilute the disputes or constitute an admission of liability, as those payments were made under compulsion to sustain site progress. Further, the Operational Creditor reliance on the date of certain invoices issued after 30.07.2024 is wholly misplaced as the disputes had already crystallised well before the demand notice, as reflected in contemporaneous emails, letters, and debit notes, and the later invoices only represent the continuing consequences of earlier defaults.

8.5 It is submitted that the allegations contained in Paragraph 9 (B) of the Affidavit-in-Reply the contentions raised therein are incorrect and denied. The fact that certain third-party invoices from Aneja Constructions (India) Ltd. at the Farakka site are dated after 30.07.2024 does not negate the existence of pre-existing disputes. The third-

party procurement at Farakka was not an isolated incident beginning after the demand notice but was a continuing course of action compelled by the Operational Creditor repeated defaults and irregularities, which had already been raised and recorded in contemporaneous communications prior to July 2024. The subsequent invoices merely capture the ongoing financial impact of such defaults. The reliance on the alleged acknowledgment emails dated 28.03.2024 and 30.04.2024 is misplaced and misleading. These communications were part of commercial reconciliations carried out under protest and subject to adjustment of debit claims and damages; they cannot be construed as an unequivocal admission of liability. In fact, the very same period saw multiple complaints from the Corporate Debtor herein regarding stoppages and short supply at Farakka, which are on record. Therefore, the attempt to portray the invoices as post-notice and the emails as acknowledgment of debt is contrary to the factual matrix, and paragraph 9(B) is denied in its entirety.

- 8.6 It is also submitted that the allegations contained in Paragraph 9 (C) of the Affidavit-in-Reply the allegations made therein are denied as baseless and misleading. The contention that the Operational Creditor was not a party to the invoices issued by M.S. Enterprise is irrelevant, since the necessity of engaging third-party vendors at the last moment for procurement of RMC by the Corporate Debtor arose solely due to the repeated lapses and erratic supply by the Operational Creditor at the Farakka site. The fact that the Corporate Debtor continued to make certain payments to the Operational Creditor during overlapping periods does not dilute the existence of disputes, as those payments were made under commercial compulsion to prevent a total stoppage of work and cannot be construed as acknowledgment of liability. Further, the Operational Creditor attempt to discredit the invoices on the ground that some of them are dated after the demand notice is misconceived. The third-party

procurement had already commenced prior to the demand notice, and contemporaneous emails and letters placed on record establish that disputes regarding short supply and stoppages were raised well before 30.07.2024. The subsequent invoices only reflect the continuing financial consequences of earlier defaults and do not absolve the Operational Creditor of its contractual breaches.

8.7 The Corporate Debtor stated that the allegations contained in Paragraph 9 (D) of the Affidavit-in-Reply the invoices of M/s. Alekha Enterprises at the Tata site, the contentions of the Operational Creditor are denied in toto. The relevance of these invoices does not lie in whether the Operational Creditor was a party to them or was formally notified, but in the fact that the Corporate Debtor was compelled to procure RMC from alternate sources owing to repeated lapses and unreliable supply by the Operational Creditor. The Corporate Debtor had no incentive to bear higher costs by engaging third-party suppliers unless driven by pressing necessity created by the Operational Creditor defaults. The fact that some payments were made to the Operational Creditor during the same period, including the payment of Rs. 40 lakhs on 03.04.2024, does not detract from the existence of disputes, as such payments were made to keep operations afloat and cannot be treated as admission of liability. The contemporaneous correspondence on record demonstrates that both third-party procurement and continuing disputes coexisted, and hence the denial of pre-existing disputes in this regard is misconceived and contrary to fact.

8.8 It is submitted that the allegations contained in Paragraph 9 (E) of the Affidavit-in-Reply the allegations are emphatically denied. The objection that the Operational Creditor was not a party to the invoices of M/s. Alekha Enterprises is irrelevant, since those procurements were necessitated solely by the Operational Creditor repeated defaults and erratic supply at the Tata site. No contractor would voluntarily incur

additional costs by engaging third parties unless compelled by the Operational Creditor failure to perform. Likewise, the reference to payments, including Rs. 40 lakhs on 03.04.2024, does not wipe out the disputes, as such payments were made under duress to prevent a complete standstill of work and cannot be twisted into an admission of liability. As regards the invoices of OMM Satyanarayan Traders raised after 30.07.2024, the attempt to dismiss them outright is misleading, since the disputes at the Tata site had already arisen well before the demand notice and the subsequent invoices merely reflect the continuing consequences of the Operational Creditor lapses.

8.9 With respect to paragraph 10 of the Affidavit-in-Reply, the averments are denied as false and misleading. It is incorrect to suggest that no formal rejection or quality notices were ever raised by the Corporate Debtor. On the contrary, contemporaneous emails, letters, and debit claims placed on record clearly document repeated complaints of poor quality, erratic supply, batching plant shutdowns, and consequent financial losses across all four project sites well before the demand notice dated 30.07.2024. The mere fact that the Operational Creditor continued to supply material and raise invoices despite ongoing disputes cannot erase or dilute those disputes, nor can it be construed as waiver or acceptance by the Corporate Debtor. The denial of these documented grievances is therefore untenable and contrary to the contemporaneous record.

8.10 With respect to paragraphs 11 (c) and 11 (d) of the Affidavit-in-Reply, the allegations made therein are false, misleading, and an afterthought. It is emphatically denied that the Corporate Debtor letters dated 18.06.2024, 19.06.2024, and 08.07.2024 were never received by the Applicant. These letters were duly sent by email contemporaneously, well before the statutory demand notice dated 30.07.2024, and form part of the record. At no point contemporaneously did the Operational Creditor

dispute their authenticity or receipt. On the contrary, in the Rejoinder earlier filed by the Operational Creditor to the Affidavit-in-Reply of the Corporate Debtor, these very letters were specifically dealt with on merits, without raising any objection as to non-receipt. The belated plea now sought to be raised in paragraph 11 (c) is therefore nothing but an afterthought, invented only to discredit authentic contemporaneous evidence which directly establishes the existence of disputes. A copy of the emails dated 18.06.2024, 19.06.2024 and 08.07.2024 evidencing that the respective letters were duly sent to the Operational Creditor as annexed at Annexure - E (Colly).

8.11 It is stated that the allegation in paragraph 11 (d) that these letters were "manufactured" or conveniently issued within 20 days prior to the demand notice, the same is misconceived and contrary to fact. The letters were written in the ordinary course of business in continuation of repeated complaints and exchanges between the parties across project sites and were further relied upon in the Reply filed by the Corporate Debtor to the demand notice as well as in the reply to the company petition. The fact that the Corporate Debtor raised these disputes formally in June and July 2024 only underscores that the issues had escalated to such an extent that they required to be documented and quantified in writing. To contend that genuine disputes cannot arise unless every single deficiency is recorded contemporaneously over a 4 to 5-year period defies commercial reality and ignores the fact that the projects were ongoing, with multiple communications, reconciliations, and site-level interventions. The attempt of the Operational Creditor to now brush aside these letters as manufactured is wholly untenable and deserves to be rejected outright.

8.12 It is contended that the allegation in paragraph 11 (e) of the Affidavit-in-Reply, the allegation that the Corporate Debtor admitted in the meeting of 03.06.2024 that its commercial claims were invalid and raised in error is false, misleading, and contrary

to the record. At no point did the Corporate Debtor concede that its claims lacked merit. On the contrary, immediately after the said meeting, the Corporate Debtor issued a detailed letter dated 05.07.2024, categorically denying the suggestion that any admission had been made and reiterating its claims for damages and set-offs against the Operational Creditor. The said letter, already placed on record, itself belies the contention now raised by the Operational Creditor. It is evident that the Operational Creditor is selectively misrepresenting the 20.06.2024 email, while deliberately suppressing the Corporate Debtor contemporaneous rebuttal dated 05.07.2024. The attempt to twist the events of 03.06.2024 into an alleged admission is wholly misconceived and stands contradicted by documentary evidence, and is therefore denied in toto. A copy of the email dated 05.07.2024 evidencing delivery of the notice dated 05.07.2024 upon the Operational Creditor by the Corporate Debtor as annexed at Annexure – F.

8.13 The Corporate Debtor stated that, with reference to paragraph 11(f) of the Affidavit-in-Reply, the allegations contained therein are wholly denied. The emails dated 31.05.2024 and 03.06.2024 are false or fabricated merely because they were issued after stoppage of supply in November 2022 is untenable. The disputes at the Jindal project were neither isolated nor dormant, but continued to arise as reconciliations were carried out and losses were quantified, which is why the Corporate Debtor repeatedly raised them in 2024. The fact that a payment of Rs. 15 Lakhs was made in August 2023 does not erase or condone the Operational Creditor defaults as such payments were made under compulsion to keep other aspects of work moving and cannot be construed as a waiver of claims. More importantly, the Operational Creditor allegation that these claims are fabricated stands conclusively contradicted by the Corporate Debtor detailed letter dated 05.07.2024 wherein the claims of financial loss

and recoveries were reiterated with quantification and supported by specific heads of breach. This contemporaneous letter, issued immediately after the alleged "fabricated" emails, establishes beyond doubt that the claims were genuine, consistently pressed, and part of a continuing course of disputes.

8.14 It is stated that the allegation in paragraph 11 (d) of the Affidavit-in-Reply, the contentions raised are denied. The Corporate Debtor has placed on record a series of contemporaneous emails exchanged with the Operational Creditor regarding the Ultratech Cement limited project, many of which pre-date the statutory demand notice dated 30.07.2024 and clearly evidence disputes relating to quality, supply interruptions, and delays. The bare assertion that these emails were "not received" is untenable, particularly since the Operational Creditor has never contemporaneously disputed their authenticity or receipt and has chosen to raise this objection belatedly, only after the Hon'ble NCLAT directed that the documents be taken on record. As regards the letter dated 08.08.2024, it is correct that it post-dates the demand notice; however, that letter merely reiterates and builds upon the very disputes already raised prior to 30.07.2024, and cannot be dismissed as irrelevant. It forms part of the continuing chain of correspondence which shows that disputes were genuine, alive, and unresolved both before and after the issuance of the demand notice.

8.15 It is stated that, with respect to paragraph 12 of the Affidavit-in-Reply, the allegations are denied as false and misleading. The emails dated 31.05.2024 and 03.06.2024 were genuine contemporaneous communications raising quantified claims and cannot be dismissed as fabricated merely because the Jindal project supplies had stopped earlier, since disputes and reconciliations continued thereafter; likewise, the letter dated 08.08.2024 concerning the Ultratech project only reiterated pre-existing disputes and forms part of the ongoing chain of correspondence, while the bald denial

of other emails as "not received" is a belated afterthought never raised contemporaneously. The reliance on the Corporate Debtor email dated 04.06.2024 is selective and distorted, as it is categorically denied that the Corporate Debtor admitted its claims were invalid; on the contrary, by its detailed letter dated 05.07.2024 the Corporate Debtor reaffirmed its claims as genuine and quantified recoveries against the Operational Creditor. The mere payment of Rs.4,77,463/- on 05.06.2024 cannot by any stretch negate or extinguish the substantial disputes repeatedly raised, and the attempt to portray such disputes as fabricated or waived is wholly untenable and contrary to record.

8.16 The Corporate Debtor stated that in respect of the paragraph 13 of the Affidavit-in-Reply the allegations are emphatically denied as misleading and contrary to the contemporaneous record. The Operational Creditor reliance on its own reply mail of 20.06.2024 to claim that the Corporate Debtor admitted its commercial claims were invalid is a selective and distorted reading, which stands conclusively rebutted by the Corporate Debtor detailed letter dated 05.07.2024 wherein it expressly denied making any such admission and reaffirmed its quantified recoveries and claims. The contention that the purchase orders expired in March 2024 is equally untenable, since supply obligations and disputes were already alive and being addressed before that date, as evidenced by repeated emails and letters complaining of poor quality, plant shutdowns, and supply interruptions. The attempt to rely on alleged commendations from GDCL or TSL officials is nothing but a diversion, as isolated acknowledgments of timely deliveries on certain occasions do not wipe out the long trail of documented disputes and defaults.

9. WRITTEN-SUBMISSIONS OF THE OPERATIONAL CREDITOR

- 9.1 The written submission was filed by the Operational Creditor on 21.04.2026.
- 9.2 The Operational creditor stated that, on 07.04.2025, when the Company Petition was listed for hearing, a question was posed regarding non-filing of NeSL Record of Default for which on behalf of the Applicant, it has been stated that, they were in the process of registering the default with the NeSL. Pursuant thereto, this Hon'ble Tribunal had directed the Applicant/Operational Creditor to file an Additional Affidavit to bring on record the NeSL Record of Default and granted three weeks' time for the same. It is also submitted that, on 05.05.2025, when the Company Petition was listed for hearing, on behalf of the Operational Creditor, it was represented that, the Operational Creditor could not submit the relevant details with the Information Utility within the given time due to technical difficulties and, therefore, additional three weeks' time had been sought and the Hon'ble Tribunal had granted three weeks' time to file the same.
- 9.3 It is submitted that the Operational Creditor submitted relevant details as mandated under Regulation 20 of IBBI (Information Utilities) Regulations, 2017 and generated the Record of Financial Information in Form C on 28.05.2025 through the Information Utility (NeSL). On 02.06.2025, the Additional Affidavit along with Form C was duly filed before this Tribunal after serving the same on the Corporate Debtor. On 09.06.2025, it was represented on behalf of Operational Creditor that, an additional affidavit has been e-filed on 02.06.2025 to bring on record the Form-C and the same had been lying in defects. Recording the same, this Hon'ble Tribunal had directed the Applicant to remove the said defects at the earliest and granted time to file brief synopsis and posted the case for arguments on 27.06.2025. It is also stated that the matter was listed on 08.04.2026, during the course of arguments by the Operational Creditor, the Corporate Debtor produced an email dated 26.06.2025 claiming that, the intimation of

default had been raised by the Corporate Debtor before NeSL and the same had not been submitted by the Operational Creditor, and sought for dismissal of the Company Petition. Upon hearing the said objection, this Tribunal had directed the Applicant to file Written Submissions in relation to non-submission of Form D NeSL Record of Default.

9.4 The applicant has relied on the following judgement:

- i. Vijay Kumar Singhania v. Bank of Baroda [CA (AT) (Insolvency) No. 1058 of 2023] judgment of the Hon'ble NCLAT, Principal Bench, New Delhi.
- ii. Vinodkumar Nihalchand Parmar v. Mr. Anuj Bajpai (IRP of Dee Plone Polyester Pvt. Ltd.) and anr.
- iii. C.P. (IB) No. 58/KB/2025 (UCO Bank v. Haridra Vintrade Private Limited) Kolkata Bench.

9.5 The Operational Creditor submitted that, the judgment of the Hon'ble NCLAT, Principal Bench, New Delhi in Company Appeal (AT) (Insolvency) No. 1373 of 2025 titled Accurate Transheat Pvt. Ltd. v. Sufi International Pvt. Ltd. (10.12.2025), relied upon by the Respondent, is factually and legally distinguishable from the present case and is not applicable to the facts herein, on the following grounds:

- a. In Accurate Transheat, NeSL certificate has been generated and brought on record. In the present case, the Applicant took every step required, registered with NeSL, filed Form C on 28.05.2025, filed an Additional Affidavit, and served the Respondent. The non-issuance of Form D is not due to any failure, inaction or noncompliance on the part of the Applicant. The Applicant fully discharged its obligation under Regulation 20 of the IBBI (Information Utility) Regulations

and the non-issuance / non-generation of Form D is beyond the control of the Applicant.

- b. The Two-member Bench of Hon'ble NCLAT in Accurate Transheat vs Sufi International Private Ltd., has not considered the judgment of the Hon'ble NCLAT in the case of Vijay Kumar Singhania v. Bank of Baroda [CA (AT) (Insolvency) No. 1058 of 2023].
- c. In the judgment of the Three Member Bench of the Hon'ble NCLAT, Principal Bench, New Delhi in Vinodkumar Nihalchand Parmar v. Mr. Anuj Bajpai (IRP of Dee Plone Polyester Pvt. Ltd.) and anr., it has been held that, Information Utility filing is directory not mandatory.

9.6 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.

10. WRITTEN-SUBMISSIONS OF THE CD

10.1 The written submissions were filed by the Corporate Debtor on 17.04.2026.

10.2 The Corporate Debtor has relied on the following judgment:

- i. Bhuvan Kumar Gupta v. Maverick Developers and Colonisers Pvt. Ltd. (Company Appeal (AT) (Ins.) No. 1145 of 2025)
- ii. Accurate Transheat Pvt. Ltd. v. Sufi International Pvt. Ltd. (Company Appeal (AT) (Insolvency) No. 1373 of 2025)
- iii. Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd. [(2021) 10 Supreme Court Cases 483]
- iv. Mobilox Innovations v. Kirusa Software (2018) 1 SCC 353.

10.3 The Corporate Debtor has placed reliance on the judgement of Hon'ble NCLAT in Accurate Transheat Pvt. Ltd. v. Sufi International Pvt. Ltd. [Company Appeal (AT)

(Insolvency) No. 1373 of 2025], wherein the Hon'ble NCLAT has reiterated that when the NeSL record reflects the status of the debt as "DISPUTED", the same squarely attracts Section 9(5)(ii)(d) of the Code. The Hon'ble Tribunal held that the existence of such a record demonstrates that the Corporate Debtor has already disputed the claim prior to or during the process, and therefore, the insolvency mechanism cannot be invoked as a substitute for adjudication of such disputes. It was further observed that the presence of a dispute in the Information Utility record reinforces the requirement that the Adjudicating Authority must reject the petition at the threshold stage.

10.4 The Corporate Debtor has stated that the present Written Submissions are confined to a short but decisive issue, namely, that when the alleged debt stands recorded as "DISPUTED" in Form-D issued by the Information Utility i.e. NeSL, the said stand by itself is sufficient to outrightly dismiss and reject the Petition under Section 9(5)(ii)(d) of the Code.

11. ANALYSIS AND FINDINGS

11.1 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: -

11.2 The Operational Creditor supplied Ready-Mix Concrete to the Corporate Debtor across Multiple project sites pursuant to purchase orders issued from time to time.

11.3 The Corporate Debtor has admittedly received the supplies and has made part payment against the invoices raised by the Operational Creditor.

11.4 The Corporate Debtor, in its email communications dated 28.03.2024 and 30.04.2024, has acknowledged the outstanding liability, while proposing timelines for payment.

- 11.5 Even after the alleged disputes, the Corporate Debtor has continued to avail supplies till 30.06.2024 and made part payments on 05.06.2024.
- 11.6 The Operational Creditor issued a Demand Notice dated 30.07.2024 under Section 8 of the Code, which was duly served upon the Corporate Debtor. The Corporate Debtor replied to the said notice on 08.08.2024.
- 11.7 The Operational Creditor has placed on record copies of invoices, ledger accounts, bank statements and statutory filings under the Goods and Services Tax regime, in support of its claim. The material on record prima facie establishes that supplies were made and invoices were raised in respect thereof. It is also noted that the Corporate Debtor had availed Input Tax Credit (ITC) against such invoices.
- 11.8 The Corporate Debtor's defence is primarily predicated on the existence of a pre-existing dispute. It is contended that the Operational Creditor had failed to supply materials in a timely and consistent manner, that there were instances of short supply, batching plant shutdowns, and deficiencies in the quality of RMC supplied, which resulted in disruption of project timelines and financial losses. The Corporate Debtor asserts that it was compelled to procure RMC from third-party vendors at higher rates and has raised counterclaims on this account. In support of these contentions, reliance has been placed upon certain email correspondences (Annexures B to E), letters dated 18.06.2024, 19.06.2024, 05.07.2024 and 08.07.2024, as well as third-party invoices. It is the case of the Corporate Debtor that these documents demonstrate the existence of genuine disputes prior to the issuance of the Demand Notice dated 30.07.2024. However, the applicant states that the above referred letters have been claimed to be issued just prior to the date of issuance of Demand Notice by the Applicant on 30.07.2024 (and some of them have never been served upon the applicant), when the Applicant was following up with the Corporate Debtor for payment

and that the intention behind issuance of the said letters was to create a façade of dispute to avoid making payment of the legitimate admitted dues of the Applicant by the Corporate Debtor.

11.9 The Operational Creditor has argued that the Corporate Debtor continued to accept supplies, made partial payments and availed Input Tax Credit under GST, thereby acknowledging its liability.

11.10 In regard to the email correspondence placed on record, the Applicant states that a substantial portion thereof pertains to routine commercial communications relating to reconciliation of accounts and payment follow-ups. There is no consistent or cogent material demonstrating that the Corporate Debtor had, during the subsistence of the contractual relationship, raised persistent and contemporaneous objections regarding quality, short supply or breach of contractual obligations. Several of the communications are disputed as to their receipt, and no independent material has been placed on record to establish their authenticity or effect.

11.11 This bench observed that the letters dated 18.06.2024, 19.06.2024, 05.07.2024 and 08.07.2024, relied upon by the Corporate Debtor, have been issued within a narrow time frame immediately preceding the demand notice dated 30.07.2024. There is an absence of similar complaints or correspondence during the earlier period of business dealings between the parties, which admittedly spanned a considerable duration. The timing and clustering of these communications raise doubts as to their spontaneity and lend credence to the contention that they were generated as a defensive measure in anticipation of insolvency proceedings.

11.12 The conduct of the Corporate Debtor is also of considerable significance. Despite the alleged deficiencies, the Corporate Debtor continued to accept supplies and made payments even during the period when disputes are claimed to have arisen. The

acknowledgment of outstanding dues in earlier communications further militates against the existence of a bona fide dispute.

11.13 As regards the reliance placed on third-party invoices and counterclaims, this Bench finds that many of these documents are either subsequent to the demand notice or are not supported by contemporaneous evidence of rejection of goods, quantification of damages, or invocation of contractual remedies.

11.14 This Bench also takes note of the fact that the Corporate Debtor, in its written submissions, has sought to rely upon the alleged “dispute” reflected in the record of default with the information utility. The relevant portion of the NeSL ROD (in form D) is reproduced below:



**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 RDC CONCRETE INDIA PVT. LTD. in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s RDC CONCRETE INDIA PVT. LTD.
(b) Schedule-2 Bank (Y/N):	N
(c) Name of Corporate Debtor:	M/s GANNON DUNKERLEY AND COLTD
(d) Unique Debt Identifier Number:	AAACU0108Q_283482
(e) Registered Address:	701, Thane One Corporate IT Park, Ghodbunder Road, Kapurbawdi, Thane (West)
(f) Total Outstanding Amount:	INR 110440991.43
(g) Default Amount:	INR 110440991.43
(h) Dispute Remarks*:	• No such debt existed. • Pre-existing Dispute. Remarks - There are no debt. Also there are pre existing disputes.
(i) Submission ID:	1
(j) Date of Default:	30-07-2024
(k) Status of Authentication of Default:	DISPUTED
(l) Authentication Completed on:	26-06-2025 18:57:25
(m) Date of Last Acknowledgement of Debt (AoD):	30-04-2024

** 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, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

11.15 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. Section 9(5)(ii)(d) of IBC, 2016 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

.....”

11.16 In support of the contention as made by the Corporate Debtor referred to in para 11.15 above, the Corporate Debtor is relying 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)

11.17 This tribunal also relies 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:"

11.18 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.

11.19 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.

11.20 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)

11.21 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)

11.22 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.

11.23 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.

11.24 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.”

11.25 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.

11.26 The judgment of Hon’ble NCLAT in the matter of Vijay Kumar Singhania vs. Bank of Baroda in C.A. (AT) (insolvency) No. 1058 of 2023, vide order dated 13.08.2023, as relied upon by the applicant, does not support its case as in the said judgment Hon’ble NCLAT has held that record of default recorded with the information utility is not the

only document which has to be furnished by the Financial Creditor and the Financial Creditor is at liberty to submit such other record of default as may be specified. The said judgment does not applied to the facts of the present matter as this application is filed under Section 9 and not under Section 7 of IBC, 2016. In the other judgment of Hon'ble NCLAT relied upon by the applicant i.e. the judgment in the matter of Vinodkumar Nehalchand Parmar vs. Anuj Bajpai, it was held that information utility filing is directory and not mandatory and the absence thereof cannot defeat the section 7 application when default is otherwise proved. The said judgment also was in the context of section 7 of the IBC and was not in relation to a section 9 application and therefore the same does not apply to the facts of this matter under consideration. Similarly, NCLT, Kolkata Bench order in CP No. 58/2025 was also in relation to a section 7 petition and not in relation to section 9 petition and therefore the same does not apply. In any case, now the NeSL record of default is available with respect to transactions between the parties, the issue as to whether filing of NeSL record of default is mandatory or not, loses its significance.

11.27 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.

11.28 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**.

11.29 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)**