NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 27.07.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

CORAM : SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER	**: --**
PETITION NUMBER	**: CP(IB)/44(CHE)2022**
NAME OF THE PETITIONER	**: DEE Development Engineers Ltd**
NAME OF THE RESPONDENT(S)	**: BGR Boilers Pvt Ltd**
UNDER SECTION	**: Sec 9 Rule 6 of IBC, 2016**

ORDER

Present: Ld. Counsel Mr. P.J. Sri Ganesh for the Respondent.

Vide separate order pronounced in open court, **C.P. (IB)/44(CHE)2022** is Dismissed.

Sd/-	**Sd/-**
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
Member (Technical)	**Member (Judicial)**

jp

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI
CP(IBC)/44(CHE)/2022

(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, R/w, Rule 4 of the Insolvency and Bankruptcy Rules, 2016)

In the matter of ***BGR Boilers Private Limited***

DEE DEVELOPMENT ENGINEERS LIMITED,
Having Office at: 1255, Sector-14,
Faridabad, Haryana.

… Petitioner/ Operational Creditor

V/s

BGR BOILERS PRIVATE LIMITED,
(formerly Gamesa Renewable Private Limited)
Having Office at: Plot No. 443, Anna Salai Teynampet,
Chennai, Tamilnadu – 600 018.

… Respondent/ Corporate Debtor

Order pronounced on 27th July 2026

CORAM:

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:
For Applicant: *Rakesh Kumar, Advocate*
For Respondent: *P.J.Sri Ganesh, Advocate*

O R D E R

(Heard through Hybrid Mode)

Under consideration is a petition under Section 9 of IBC filed by **DEE Development Engineers Limited**, represented by its Authorized Representative Mr. Krishna Lalit Bansal, Petitioner/ Operational Creditor herein, against **BGR Boilers Private Limited** (formerly Gamesa

Renewable Private Limited), Respondent/ Corporate Debtor herein for initiating Corporate Insolvency Process (CIRP) against the Corporate Debtor.

2. SUBMISSIONS OF THE APPLICANT

2.1. Part I of the Application contains the particulars of the Applicant DEE Development Engineers Limited. Part II of the Application sets out the details of the Corporate Debtor. It was incorporated on 23.01.2009 with its authorized share capital of Rs. 5,00,00,00,000/- and paid up share capital of Rs. 1,35,58,40,000/- and address at Plot No: 443, Anna Salai Teynampet, Chennai, Tamil Nadu – 600 018, within the jurisdiction of this Tribunal. In Part III of the application, the Operational Creditor has not proposed anyone as the IRP. Part IV of the application sets out the details of the debt being Rs.8,88,06,192/- (Rupees Eight Crores Eighty Eight Lakhs Six Thousand One Hundred and Ninety Two only) along with the Interest amount Of Rs. 2,31,23,672/- (Rupees Two Lakhs Twenty Hundred and charged at @ Crores Thirty One Three Thousand Six Seventy Two only) 18% per annum till 15.08.2021 along with interest, as on 05.03.2020. This application has been filed on 08.02.2022.

2.2. The Applicant, DEE Development Engineers Limited, is a public limited company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and supplying engineering products including pipes, fittings and allied equipment for thermal power projects. The Respondent, BGR Boilers Private Limited, is the Corporate Debtor as defined under Section 5(8) of the Code and had, from time to time, placed various purchase orders upon the Applicant for supply of such materials, which were duly accepted and executed by the Applicant.

2.3. It is submitted that pursuant to the purchase orders issued by the Corporate Debtor, the Applicant supplied materials from February, 2015 till February, 2020 aggregating to a value of Rs.1,10,38,51,209/-. The supplies were made to the complete satisfaction of the Corporate Debtor and were accompanied by all requisite documents including invoices, IBR data and other supporting records. The Applicant contends that the materials supplied were accepted without any protest or objection and that the Corporate Debtor had also issued completion certificates acknowledging satisfactory execution of the supplies.

2.4. It is further submitted that invoices were raised for each supply in accordance with the contractual terms. However, the Corporate Debtor allegedly started making irregular payments. In this regard, a meeting was held on 25.04.2018 between the representatives of the Corporate Debtor, its holding company, M/s. BGR Energy Systems Limited, and the Applicant, wherein assurances were given that the outstanding dues would be cleared by September, 2018. The Applicant submits that relying upon such assurances and appreciating the requests made by the Corporate Debtor, it continued to supply materials for the Solapur and Meja projects.

2.5. It is submitted that despite the assurances extended by the Corporate Debtor, defaults in payment continued. The Applicant states that against the total value of supplies amounting to Rs.1,10,38,51,209/-, the Corporate Debtor made only part payments aggregating to Rs.1,01,50,45,018/-, leaving an outstanding principal sum of Rs.8,88,06,192/-. The Applicant submits that it has maintained a running ledger account reflecting the transactions between the parties and evidencing the outstanding operational debt.

2.6. It is also submitted that despite repeated requests and personal follow-ups for payment of the outstanding dues, the Corporate Debtor failed to liquidate the liability. Consequently, the Applicant issued joint notices dated 19.06.2020 and 26.10.2020 to the Corporate Debtor and its holding company calling upon them to clear the outstanding operational dues. In response, the Corporate Debtor sent a reply dated 09.12.2020, wherein, according to the Applicant, it acknowledged the debt but, for the first time, raised untenable and false disputes with an intention to evade its contractual liability. The Applicant thereafter issued a rejoinder dated 16.02.2021 refuting the allegations raised in the reply.

2.8. It is further submitted that as the Corporate Debtor failed to honour its commitments despite the earlier correspondence, the Applicant issued a demand notice dated 18.06.2021 under Section 8 of the Insolvency and Bankruptcy Code, 2016 in Form-3, demanding payment of Rs.10,99,15,302/-, comprising the principal outstanding of Rs.8,88,06,192/- together with interest of Rs.2,11,09,110/- calculated at 18% per annum. The Corporate Debtor, by reply dated 05.07.2021, allegedly raised false and frivolous disputes and failed to discharge the operational debt.

2.9. It is submitted that the last invoice was raised on 19.02.2020 and became due for payment on 05.03.2020, which is stated to be the date of default. It is contended that as on the date of filing of the present application, the total amount in default stood at Rs.11,19,29,864/-, comprising the principal amount of Rs.8,88,06,192/- and interest of Rs.2,31,23,672/- calculated at the contractual rate of 18% per annum. The Applicant has placed on record the working computation of the outstanding dues and asserts that no payment has been received towards the unpaid operational debt.

2.10. It is further submitted that an operational debt is due and payable by the Corporate Debtor, that the Corporate Debtor has committed default in payment thereof within the meaning of Section 3(12) of the Code, and that the requirements under Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016 stand duly complied with. There is no pre-existing dispute in respect of the operational debt claimed.

3. SUBMISSIONS OF THE RESPONDENT

3.1. The Respondent submits that the present petition is not maintainable either in law or on facts, and denies all allegations made by the Petitioner except those expressly admitted.

3.2. It is contended that the amount claimed does not constitute an operational debt within the meaning of the Insolvency and Bankruptcy Code, 2016 and that the claim is barred by limitation.

3.3. It is further stated that the alleged debt had been disputed much prior to the issuance of the demand notice under Section 8 of the Code and, therefore, the present proceedings under Section 9 are not maintainable.

3.4. It is also stated that the Operational Creditor had initially issued a legal notice dated 26.10.2020 claiming a sum of Rs.18.47 Crores from both the Respondent and its parent company, M/s. BGR Energy Systems Limited. The Respondent issued a detailed reply dated 09.12.2020 disputing the entire claim and explaining the reasons why the amounts demanded were not payable. Thereafter, the Operational Creditor issued the statutory demand notice dated 18.06.2021 under the Code, which was duly replied to by the Respondent on 05.07.2021 within the prescribed period, reiterating the existence of disputes and denying the liability. It is specifically denied that there was any acknowledgment of debt in the earlier correspondence.

3.5. It is stated that it had awarded several independent purchase orders to the Operational Creditor for supply of Integral Piping, Soot Blower Piping and Utility Piping for the Solapur Super Thermal Power Project and Meja Thermal Power Project. Each purchase order constituted an independent contract governed by its own terms and conditions relating to scope of work, payment schedule, supply obligations, submission of IBR documentation, Contract Performance Bank Guarantee (CPBG) and price reduction for delayed performance. The Operational Creditor's claim pertains to five purchase orders, while one purchase order relating to Utility Piping for the Solapur Project had already been fully paid and no amount remains due thereunder.

3.6. It is stated that the Operational Creditor failed to perform its contractual obligations by not completing the agreed scope of work. Under all the purchase orders, the Operational Creditor was required to furnish Indian Boiler Regulations (IBR) Data Folders together with QA documentation within the stipulated time, which formed an essential part of the contractual obligations. However, despite repeated requests, meetings and reminders, the Operational Creditor failed to furnish complete IBR documents and drawings and submitted only partial documents after considerable delay, thereby preventing completion of the contracts and affecting acceptance of supplies by NTPC. According to the Respondent, substantial quantities of IBR drawings and forms are still pending.

3.7. It is further stated that the Operational Creditor committed substantial delays in execution of supplies under the various purchase orders. In terms of the contractual clauses relating to price reduction/liquidated damages, the Operational Creditor became liable for deductions on account of delayed deliveries. The Respondent has furnished details comparing the contractual delivery schedules with the actual dates of completion, contending that delays ranging from several months to over one thousand days occurred in respect of certain purchase orders, thereby entitling the Respondent to levy contractual liquidated damages.

3.8. It is stated that the payments made under each purchase order have been correctly accounted for and the balance amounts claimed by the Operational Creditor have been validly withheld or adjusted towards contractual deductions. According to the Respondent, deductions have been effected on account of liquidated damages arising from delayed supplies, non-submission of complete IBR documentation, failure to complete contractual obligations, withholding permissible under the payment clauses, and adjustment of amounts towards Contract Performance Bank Guarantee obligations. Statements of account relating to each purchase order have been produced in support of the said contention.

3.9. It is further stated that under two of the purchase orders, the Operational Creditor was contractually obliged to furnish and maintain valid Contract Performance Bank Guarantees equivalent to 10% of the contract value throughout the warranty period. However, despite extension of the warranty period necessitated by the Operational Creditor's own delays, the requisite bank guarantees were not extended beyond 30.06.2019. Consequently, the Respondent contends that it was justified in retaining amounts equivalent to the value of such guarantees until completion of the warranty period.

3.10. It is further stated that the Operational Creditor procured certain raw materials from vendors not approved by NTPC, contrary to the contractual requirements. Though the materials were ultimately accepted by NTPC with cautionary observations, the Respondent submits that such deviations adversely affected inspection and material clearance, caused loss of credibility with the end customer and resulted in withholding of payments by NTPC. The Respondent also alleges that the Operational Creditor's delayed, non-sequential and short supplies caused disruption of construction activities, idling of manpower and machinery, additional financial liabilities, claims from erection agencies and consequential losses running into several crores. The Respondent reserves its right to claim such consequential damages separately upon final determination of the losses suffered.

3.11. It is asserted that correspondence exchanged between the parties from 2016 onwards, including emails, Minutes of Meeting dated 15.07.2017, repeated reminders regarding pending IBR documentation and communications concerning vendor approvals and extension of CPBG, clearly establish that disputes regarding the Operational Creditor's contractual defaults had arisen long before issuance of the demand notice under Section 8 of the Code. It is therefore contended that the existence of a genuine and bona fide pre-existing dispute is evident from the contemporaneous records themselves.

3.12. The Respondent also disputes the claim for interest, contending that none of the purchase orders provides for payment of interest on delayed payments and, therefore, the interest claimed by the Operational Creditor cannot constitute an operational debt under the Code. It is submitted that, in the absence of any contractual stipulation or legally enforceable agreement for payment of interest, the said claim is unsustainable.

3.13. It is further stated that the amounts claimed by the Operational Creditor are seriously disputed, arise out of alleged contractual breaches and claims for damages, and are therefore outside the scope of proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016. It is contended that the Code is not intended to serve as a recovery mechanism for disputed claims and that the Operational Creditor ought to pursue its remedies before the appropriate contractual forum.

4. SUBMISSIONS OF THE RESPONDENT IN ADDITIONAL COUNTER

4.1. It is stated that the detailed reply dated 09.12.2020, issued nearly six months prior to the demand notice dated 18.06.2021, specifically raised disputes relating to delayed supplies, non-submission of IBR Forms and QA documentation, discrepancies in IBR data, damages suffered by the Respondent and consequential financial losses.

4.2. It is further stated that more than one hundred contemporaneous email communications exchanged between April 2016 and March 2020 also evidence the existence of such disputes.

4.3. It is submitted that under all the purchase orders, submission of complete IBR Data Folders together with QA documentation within the stipulated period constituted an essential contractual obligation directly linked to release of payments. According to the Respondent, the Applicant itself has produced documents in the rejoinder showing that IBR data relating to several consignments remained pending.

4.4. It is submitted that under all the purchase orders, submission of complete IBR Data Folders together with QA documentation within the stipulated period constituted an essential contractual obligation directly linked to release of payments. According to the Respondent, the Applicant itself has produced documents in the rejoinder showing that IBR data relating to several consignments remained pending.

4.5. It is further stated that the plea advanced by the Applicant that issuance of Final Offering Before Dispatch (FOBD) dispensed with the requirement of furnishing IBR documentation is misconceived. According to the Respondent, FOBD and IBR certification operate in different fields and the issue as to whether complete IBR certification was contractually mandatory requires appreciation of evidence, rendering the dispute unsuitable for adjudication under Section 9 of the Code.

4.6. It is also contended that substantial quantities of IBR drawings pertaining to Integral Piping and Soot Blower Piping projects continue to remain pending.

4.7. It further contends that the Applicant's failure to furnish complete IBR documentation also constitutes non-compliance with the provisions of the Boilers Act, 1923 governing manufacture and certification of boiler components.

4.9. It is stated that approval of designs, inspection and certification under the said enactment are statutory requirements and any deficiency exposes the Respondent to possible penal consequences and that the alleged defaults are not merely contractual but also involve compliance with statutory obligations.

5. SUBMISSIONS OF THE APPLICANT IN REJOINDER

5.1. The Applicant/ Operational Creditor submits that the additional counter statement has been filed only to protract the proceedings and contains no new or substantial defence, but merely reiterates the earlier pleadings.

5.2. It is contended that the Corporate Debtor has sought to introduce several new defences which were never raised in the earlier correspondence exchanged between the parties. According to the Applicant, the operational debt is an admitted liability and there exists no genuine pre-existing dispute warranting dismissal of the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016.

5.3. The Applicant also questions the validity of the counter pleadings on the ground that different signatories have signed the counter statement and the additional counter statement without any Board Resolution authorising them to represent the Corporate Debtor.

5.4. It is submitted that the alleged disputes projected by the Corporate Debtor are false, frivolous and unsupported by contemporaneous records, and have been raised only after issuance of the demand notice with a view to evade payment of the admitted operational debt. It is reiterated that no dispute regarding quality of goods, completion of work or contractual performance had been raised during the execution of the contracts and, therefore, the plea of pre-existing dispute is an afterthought.

5.5. With regard to the objections relating to electronic records and the certificate under Section 65B of the Indian Evidence Act, the Applicant submits that the certificate has been duly filed in accordance with law and is sufficient to prove the email communications relied upon. The Applicant contends that the Corporate Debtor's objections in this regard are legally untenable and liable to be rejected.

5.6. The Applicant denies the allegations regarding defective supplies or failure to comply with contractual specifications. It is submitted that all materials supplied were of the required quality and conformed to the contractual specifications.

5.7. It is contended that the revisions in engineering drawings occurred due to changes and modifications at the project site and not on account of any deficiency attributable to the Applicant.

5.8. It is asserted that the Corporate Debtor, under the terms of the purchase orders, was itself responsible for providing the detailed engineering and isometric drawings required for execution of the work.

5.9. The Applicant disputes the Corporate Debtor's allegations regarding the quantum of claim and submits that there is no material discrepancy in the outstanding amount claimed. It is explained that the difference referred to by the Corporate Debtor arises only because one invoice amounting to Rs.3,30,51,329/- had already been fully realised and was therefore excluded from the computation. According to the Applicant, the difference between the receivable amount and the amount payable is only Rs.75,697/-, which is insignificant and does not affect the admitted liability. A detailed reconciliation statement has been produced in support of the claim.

5.10. It is specifically denied that it failed to complete the contractual scope of work or that the IBR documents were not furnished. It is submitted that the Corporate Debtor has misconstrued the contractual procedure relating to submission of IBR documentation. According to the Applicant, after inspection by the IBR Authorities, the Final Offering Before Dispatch (FOBD) is issued, followed by inspection by the Corporate Debtor and NTPC, upon which the Material Dispatch Clearance Certificate (MDCC) is granted. The complete IBR folder is required to be handed over upon completion of the entire contract and the same was duly delivered to the Corporate Debtor. Copies acknowledging receipt of the IBR folders have been annexed in support of the said contention.

5.11. It is further submitted that the allegations relating to delayed submission of drawings and IBR documentation are factually incorrect and contends that the Operational Creditor responded to the modifications sought by the Corporate Debtor and carried out necessary revisions on account of site-specific changes.

5.12. It is also submitted that the very fact that both the Solapur and Meja Thermal Power Projects have since commenced commercial operations establishes that the materials together with the requisite IBR and FOBD documentation had been duly supplied and accepted. The Applicant has relied upon documents evidencing commercial operation of both projects in support of the said contention.

5.13. It is also disputed the Corporate Debtor's contentions regarding withholding of payments on account of Contract Performance Bank Guarantee (CPBG).

5.14. It is submitted that Clause 11 of the purchase orders clearly stipulated the validity period of the CPBG and the Applicant had furnished the guarantees strictly in accordance with the contractual terms. The Corporate Debtor had duly discharged the bank guarantees upon expiry and never sought any extension thereof during the subsistence of the contractual period. Consequently, the subsequent plea of withholding payments on account of non-extension of CPBG is stated to be contrary to the terms of the contract and devoid of merit.

5.15. It is finally reiterated that the defences raised by the Corporate Debtor are afterthoughts unsupported by contemporaneous records, whereas the liability towards the outstanding invoices stands admitted.

6. WRITTEN SUBMISSIONS OF THE APPLICANT

6.1. It is submitted that the Corporate Debtor has deliberately delayed adjudication by repeatedly seeking adjournments since April 2023 under the pretext of settlement. Pursuant to a consensus recorded in the order dated 01.08.2024 for a total sum of Rs. 8.80 Crores, the Corporate Debtor made a part-payment of Rs. 2 Crores, but subsequently resiled from the settlement on 12.06.2025. Such conduct amounts to a clear acknowledgment of liability and an abuse of judicial process.

6.2. It is also submitted that the plea regarding account reconciliation is untenable, given that in its reply to the statutory demand notice, it explicitly admitted an outstanding sum of Rs. 8,87,30,495/-. The minor difference between the admitted amount and the claimed amount is negligible and does not alter the admitted operational debt.

6.3. The Corporate Debtor's allegation regarding non-submission of IBR forms and QA documents is factually incorrect and contrary to the record. All required IBR folders, Material Dispatch Clearance Certificates (MDCC), and Final Offering Before Dispatch (FOBD) documents were duly provided, with no contemporaneous objections raised at the relevant time.

6.4. The Corporate Debtor itself issued Work Completion Certificates dated 06.12.2018 (Solapur Project) and 11.08.2020 (Meja Project) certifying that supplies were satisfactorily completed within schedule. These certificates completely negate the defense of incomplete performance or pending IBR documentation.

6.5. The Corporate Debtor categorically acknowledged its liability and assured payment in the Minutes of Meeting dated 25.04.2018 (describing the Applicant as a key supplier) and in email correspondence dated 30.11.2019, without raising any grievance regarding quality or documentation, thereby refuting the existence of any pre-existing dispute.

6.6. The issue regarding procurement through an unapproved vendor was fully resolved during execution vide document dated 22.11.2016. Raising this issue post-completion of projects is a stale defense aimed at withholding payment.

6.7. The defense regarding non-extension of Contract Performance Bank Guarantees (CPBG) is baseless, as the Corporate Debtor had already discharged the bank guarantees after issuing the work completion certificates.

6.8. The claim is strictly within limitation considering that invoices were raised between 15.06.2016 and 19.02.2020, part-payments were made, the COVID-19 period was excluded as per Supreme Court orders, written acknowledgment was given on 30.11.2019, and a part-payment of Rs. 2 Crores was made on 01.08.2024.

6.9. It is therefore submitted that the Corporate Debtor has repeatedly acknowledged its liability, both through contemporaneous correspondence and during the pendency of the proceedings, and that the alleged disputes are illusory, stale and raised only as an afterthought to avoid payment of the operational debt.

7. WRITTEN SUBMISSIONS OF THE RESPONDENT

7.1. The Respondent/ Corporate Debtor submits that the present application is non-maintainable as it impermissibly clubs claims arising out of five separate purchase orders, each constituting an independent contract with distinct obligations and dates of default. Relying on NCLAT's decision in ***International Road Dynamics South Asia v. Reliance Infrastructure Ltd.***, the Respondent submits that separate work orders give rise to independent causes of action and cannot be combined into a single Section 9 petition.

7.2. It is further submitted that the claim is barred by limitation. It is contended that computing limitation independently for each invoice, the last invoices under the first three purchase orders were raised between 2015 and 2018 (with corresponding payments completed in 2018), whereas the petition was filed only in 2022. Relying on ***Gaurav Hargovindbhai Dave and Sesh Nath Singh***, the Respondent submits that these claims are barred under Article 137 of the Limitation Act, 1963.

7.3. It is reiterated that a genuine pre-existing dispute existed much prior to issuance of the statutory demand notice concerning the Applicant's failure to furnish required IBR Data Folders, QA documentation, and drawings, an integral part of the contractual scope.

Relying on Minutes of Meeting dated 15.07.2017 and emails dated 17.03.2020, the Respondent contends that these pending obligations require full evidentiary trial outside the summary jurisdiction of Section 9.

7.4. It is further submitted that the Operational Creditor committed inordinate delays in effecting supplies attracting price reduction and liquidated damages clauses as stipulated under the purchase orders. In the absence of proof detailing actual dates of supply completion, the Respondent remains contractually entitled to withhold such sums.

7.5. It is also submitted that the Operational Creditor failed to keep the Contract-cum-Performance Bank Guarantees (CPBG) valid throughout the warranty period as required under the purchase orders. The Applicant thus breached contractual terms by failing to extend two Contract-cum-Performance Bank Guarantees (CPBG) beyond **30.06.2019** through the warranty period. Consequently, the Corporate Debtor was legally entitled to retain equivalent funds pending warranty expiration.

7.6. The Respondent disputes the Applicant's claim for interest is unsustainable as neither the purchase orders nor the underlying contracts contain any provision for interest on delayed payments.

Relying on NCLAT decisions in ***Prashant Agarwal, S.S. Polymers*, and *Steel India*,** it is submitted that unagreed interest cannot constitute an operational debt.

7.7. It is further submitted that there is no acknowledgment of liability as alleged by the Operational Creditor. It is contended that the reliance on the email dated 30.11.2019 as an acknowledgment of debt is misplaced. The email expressly conditionalized payment upon the fulfillment of remaining contractual obligations and cannot be construed as an unconditional admission of liability in the presence of prior contemporaneous disputes.

7.8. Relying on the Supreme Court's landmark ruling in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.***, the Respondent submits that the record establishes a bona fide, plausible, and non-spurious pre-existing dispute, which mandatorily requires the rejection of the Section 9 Application.

7.9. Regarding procedural objections, the Section 65B Evidence Act certificate for electronic records has been validly submitted along with the additional counter statement. Relying on ***Arjun Panditrao Khotkar***, the Respondent submits that such certification can be filed at a subsequent stage and that the NCLT Rules do not compel original documents at the initial pleading stage.

7.10. On the aforesaid grounds, the Respondent submits that the present petition seeks recovery of disputed contractual dues under the guise of insolvency proceedings and constitutes an abuse of the process contemplated under the Insolvency and Bankruptcy Code, 2016.

8. ADDITIONAL WRITTEN SUBMISSIONS OF THE RESPONDENT

8.1. The Respondent reiterates that the petition suffers from misjoinder of causes of action as it combines claims arising out of five separate purchase orders relating to different projects, each constituting an independent contract with distinct rights, obligations, invoices and dates of default. Reliance is again placed upon the decision of the Hon'ble NCLAT in ***International Road Dynamics South Asia Pvt. Ltd. v. Reliance Infrastructure Ltd***. to contend that separate contractual claims cannot be clubbed together in one application under Section 9 of the Code.

8.2. It is further submitted that the claims are barred by limitation since separate invoices were raised under each purchase order and limitation has to be computed independently for each contract. According to the

Respondent, the last invoices under several purchase orders were raised between 2015 and 2018 and the last payments were also made during 2018, whereas the petition was instituted only thereafter. Reliance is placed upon Article 137 of the Limitation Act and the decisions in ***Gaurav Hargovindbhai Dave and Sesh Nath Singh*** in support of the plea.

8.3. It is also reiterated that the Applicant committed substantial delay in execution of supplies, failed to extend the Contract-cum-Performance Bank Guarantees during the warranty period and consequently became liable for contractual price reduction and retention of amounts by the Respondent.

8.4. It is further submitted that the claim for interest is wholly untenable in the absence of any contractual stipulation and therefore cannot constitute an operational debt under the Code. Reliance is placed upon the decisions in ***Prashant Agarwal v. Vikash Parawampuria, S.S. Polymers v. Kanodia Technoplast Ltd. and Steel India v. Theme Developers Pvt. Ltd.***

8.5. It is finally submitted that the email dated 30.11.2019 relied upon by the Applicant cannot be construed as an acknowledgment of liability, as it merely required the Applicant to first comply with its contractual obligations before release of payment. According to the Respondent, the contemporaneous correspondence demonstrates that disputes existed well before the issuance of the statutory demand notice. Relying upon the decisions in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. and GLS Films Industries Pvt. Ltd. v. Chemical Suppliers India Pvt. Ltd.***, it is submitted that the disputes raised are bona fide and require detailed adjudication in appropriate civil proceedings, and that the Insolvency and Bankruptcy Code cannot be invoked as a recovery mechanism.

9. FINDINGS OF THE TRIBUNAL

9.1. We have heard the Learned Counsel appearing for the Applicant / Operational Creditor and the Learned Counsel appearing for the Respondent / Corporate Debtor, and perused the documents placed on record by both sides.

9.2. The present Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor on the allegation that a principal operational debt of Rs.8,88,06,192/-

remains unpaid in respect of materials supplied under various purchase orders relating to the Solapur and Meja Thermal Power Projects.

9.3. The Applicant contends that the supplies were completed to the satisfaction of the Respondent, invoices were duly raised and accepted, work completion certificates were issued by the Respondent and repeated acknowledgments of liability are reflected in the Minutes of Meeting dated 25.04.2018, subsequent correspondence and the payment of Rs.2 Crores made during the pendency of the proceedings pursuant to settlement discussions before this Tribunal. According to the Applicant, the disputes now projected by the Respondent are an afterthought and were raised only to evade payment of the admitted operational debt.

9.4. Per contra, the Respondent contends that there existed serious disputes regarding the Applicant's performance of the contracts long before issuance of the statutory demand notice. According to the Respondent, the Applicant had failed to furnish complete IBR Data Folders, QA documentation and other contractual documents, had delayed execution of supplies, thereby attracting contractual liquidated damages, had failed to maintain Contract-cum-Performance Bank Guarantees during the warranty period and consequently the amounts claimed were liable to be withheld or adjusted in terms of the contractual conditions. It is further contended that such disputes are evidenced by contemporaneous correspondence exchanged between the parties commencing from the year 2016 onwards, the Minutes of Meetings and the detailed reply dated 09.12.2020 issued prior to the statutory demand notice.

9.5. The principal question that arises for consideration is not whether the Applicant has ultimately established its monetary claim, but whether there existed a genuine pre-existing dispute between the parties prior to the issuance of the demand notice under Section 8 of the Code. It is well settled that while exercising jurisdiction under Section 9 of the Code, the Adjudicating Authority is not expected to adjudicate disputed questions of fact or determine the correctness of rival contractual claims. The scope of enquiry is confined to examining whether the dispute raised is real and plausible and not a mere patently feeble legal argument or unsupported assertion.

9.6. The records placed before this Tribunal disclose that much prior to issuance of the statutory demand notice dated 18.06.2021, the Respondent had issued a detailed reply dated 09.12.2020 disputing its liability and raising specific objections regarding delayed supplies, pending IBR documentation, contractual deductions, performance obligations and consequential damages. The said reply cannot be viewed as a vague denial or a bald assertion. On the contrary, it refers to specific contractual obligations and encloses supporting documents. The contemporaneous emails exchanged between the parties, Minutes of Meetings relied upon by the Respondent and repeated communications regarding submission of IBR documents also indicate that differences regarding contractual performance had arisen during execution of the contracts themselves.

9.7. Though the Applicant has relied upon Work Completion Certificates, Minutes of Meeting dated 25.04.2018, reconciliation statements and various email communications to contend that the Respondent had acknowledged its liability, the Respondent has furnished an explanation that the payments remained subject to completion of contractual obligations including furnishing of complete IBR documentation, extension of Contract-cum-Performance Bank Guarantees and adjustment of contractual liabilities. Whether such explanation is ultimately sustainable is a matter requiring detailed examination of the contractual terms, technical documents, correspondence and evidence, which cannot be undertaken in proceedings under Section 9 of the Code.

9.8. Equally, the rival contentions regarding completion of contractual obligations, the necessity and stage of submission of IBR Data Folders, the legal effect of Final Offering Before Dispatch (FOBD), levy of liquidated damages, retention of amounts towards Contract-cum-Performance Bank Guarantees and the alleged entitlement of the Respondent to adjust the claimed amounts involve disputed questions of fact arising out of contractual interpretation. Resolution of such issues would necessarily require appreciation of oral and documentary evidence, which falls outside the summary jurisdiction exercised by this Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.

9.9. Considerable emphasis was placed by the Applicant on the payment of Rs.2 Crores made by the Respondent pursuant to settlement discussions recorded before this Tribunal. However, merely because parties entered into settlement negotiations or certain payments were made during the pendency of the proceedings, it cannot automatically follow that all earlier disputes stood extinguished or that the Respondent unequivocally admitted the entire operational debt. Settlement negotiations are ordinarily undertaken without prejudice to the respective rights and contentions of the parties and cannot, in the facts of the present case, override the contemporaneous disputes raised much prior to issuance of the statutory demand notice.

9.10. The Respondent has also raised objections regarding limitation and maintainability of a composite petition founded upon multiple purchase orders. In view of our finding regarding the existence of a genuine pre-existing dispute, we do not consider it necessary to render any conclusive finding on the said objections and leave the same open

9.11. The Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*** has held that if there exists a pre-existing dispute prior to the issuance of the demand notice which is not spurious, hypothetical or illusory, the Adjudicating Authority must reject the application under Section 9. The relevant portion is reproduced hereunder:

> *"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational*

debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be…"

9.12. Thus, applying the ratio of the said judgment to the facts of the present case, it could be seen that this Tribunal need not be satisfied as to whether the defence raised by the Corporate Debtor is likely to succeed or not and also need not examine the merits of the dispute. The fact that dispute truly exists between the parties in fact is sufficient for this Tribunal to reject the Application.

9.13. It is also held that the Hon'ble Supreme Court has consistently reiterated that the Insolvency and Bankruptcy Code is not intended to substitute ordinary civil or contractual remedies nor can it be invoked as a mechanism for recovery of disputed contractual dues. The recent decision in ***GLS Films Industries Private Limited v. Chemical Suppliers India Private Limited*** has also reiterated the same principle.

9.14. Applying the aforesaid principles to the facts of the present case, this Tribunal is satisfied that the Respondent has succeeded in demonstrating the existence of bona fide disputes regarding performance of the contracts, submission of IBR documentation, contractual deductions, delayed supplies, extension of performance bank guarantees and consequential contractual liabilities. The disputes are supported by contemporaneous correspondence preceding the statutory demand notice and cannot be characterised as sham, illusory or moonshine defences.

9.15. In view of the foregoing discussion, we are of the considered opinion that the present proceedings arise out of seriously disputed contractual claims which require adjudication before the appropriate forum competent to appreciate evidence and determine the respective contractual rights of the parties. The jurisdiction under Section 9 of the Insolvency and Bankruptcy Code cannot be invoked for resolution of such disputes.

9.16. In this instance, the Company Petition fails to satisfy the requirements for admission under Section 9 of the Insolvency and Bankruptcy Code, 2016 and is liable to be dismissed. It is, however, made clear that dismissal of the present petition shall not preclude the Applicant from pursuing such other remedies as may be available to it in law for recovery of its alleged dues before the appropriate forum.

9.17. Accordingly, **CP(IBC)44/(CHE)2022** is **dismissed**.

-Sd-	-Sd-
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)