IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH (COURT NO.-II)

KOLKATA

C.P (IB) No. 266/KB/2022

An Application 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:

ATINDRA CONSTRUCTION FINANCE LIMITED

……Operational Creditor / Applicant

VERSUS

WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED

……Corporate Debtor / Respondent

Coram:

Shri. Labh Singh, Member (Judicial)

Ms. Rekha Kantilal Shah, Member (Technical)

Appearances: (via Hybrid Mode):

For the Operational Creditor:

Mr. Ishaan Saha, Adv.

Mr. Ram Maroo, Adv.

For the Corporate Debtor:

Ms. Puspal Chakraborty, Adv.

Ms. Amrita Panja Moulick, Adv.

Ms. Prisanka Ganguly, Adv.

Date of Pronouncement: 10.08.2026

O R D E R

Per: Rekha Kantilal Shah, Member (Technical)

1. The Court convened through physical mode.
2. This Company Petition is filed by **M/s Atindra Construction Limited** ("Operational Creditor") under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process ("CIRP") against **West Bengal State Electricity Distribution Corporation Limited** ("Corporate Debtor") on account of non-payment of an operational debt amounting to Rs. **1,46,10,536/-** (Rupees One Crore Forty Six Lakhs Ten Thousand Five Hundred and Thirty Six Only) including interest of Rs. 23,35,144/- (Rupees Twenty Three Lakh Thiry Five Thousand One Hundred Forty Four Only). The date of default is **22.06.2021** according to Part- IV of the petition.
3. **BRIEF FACTS OF THE CASE**

3.1 The Operational Creditor is a company incorporated under the provisions of the Companies Act, 2013 and is, inter alia, engaged in the business of construction and laying of High-Density Polyethylene Pipes ("HDPE Pipes"). The Operational Creditor has its registered office at 147A, Dakshinee Housing Society, EM Bypass, Near Dhapa Crossing, Kolkata – 700105, West Bengal.

3.2 The Corporate Debtor is a Government Company within the meaning of Section 2(45) of the Companies Act, 2013, having its registered office at Vidyut Bhawan, 2nd Floor, Block-B, Salt Lake City, Kolkata – 700091, West Bengal. The Corporate Debtor is stated to be owned, managed and controlled by the State of West Bengal.

3.3 It is stated that sometime in January 2019, the Corporate Debtor floated a tender in relation to the laying of HDPE Pipes for 33 KV, 3 Core, 400 sq. mm. XLPE Underground Cable by micro-tunnelling method along the Kalyani Expressway. Pursuant thereto, the Operational Creditor was awarded the works under three Letters of Allotment ("LOAs"), the particulars whereof are as follows:

a. LOA dated 26.09.2019[1] for laying of 33 KV Grade 400 sq. mm. XLPE Underground Cable from Mohispota to Jafferpur under the North 24 Parganas Region, Integrated Power Development Scheme ("IPDS");

[1] Annexure- C (Page No: 35-49)

b. LOA dated 27.08.2019[2] for laying of 33 KV Grade 400 sq. mm. XLPE Underground Cable from Mohispota to KMDA under Barrackpore Division, North 24 Parganas Region, IPDS; and

c. Revised LOA dated 03.06.2020[3] for laying of 3 Core 33 KV Grade 400 sq. mm. XLPE Underground Cable from Mohispota 132/33 KV Sub-station through Bisherpara (Bankra) More to Ganganagar and Abdalpur 33/11 KV Sub-stations under the North 24 Parganas Region, IPDS.

3.4 Pursuant to the aforesaid LOAs, the Operational Creditor commenced execution of the works relating to laying of HDPE Pipes for 33 KV, 3 Core, 400 sq. mm. XLPE Underground Cable by micro-tunnelling method along the Kalyani Expressway. The Corporate Debtor also issued Purchase Orders in favour of the Operational Creditor in respect of the works allotted under the IPDS Scheme pertaining to the Barrackpore and Barasat Divisions.

3.5 As per the terms of the LOAs, the materials required for execution of the works were to be supplied by the Corporate Debtor, whereas the equipment, tools and other implements necessary for laying the HDPE Pipes were to be arranged and provided by the Operational Creditor.

[2] Annexure- C (Page No: 50-58)
[3] Annexure- C (Page No: 59-77)

3.6 It is further stated that the Corporate Debtor, by letters dated 02.08.2019[4], 07.08.2019[5] and 31.08.2019[6], issued erection orders to the Operational Creditor for execution of the aforesaid works. According to the Operational Creditor, the works were represented to be urgent in nature and the Corporate Debtor had undertaken to make available the requisite materials for their execution.

3.7 Acting pursuant to the aforesaid allotments and erection orders, the Operational Creditor commenced the work of laying HDPE Pipes.

4. **SUBMISSION BY THE OPERATIONAL CREDITOR**

4.1 The Operational Creditor submits that it duly executed the works entrusted to it under the three Letters of Allotment ("LOAs") and that the completion of the works was acknowledged by the Corporate Debtor through written communications dated 13.04.2021[7] and 02.06.2021[8]. The Operational Creditor has also placed reliance upon the Guidelines for Payment of Charges dated 16.07.2021[9].

4.2 It is submitted that pursuant to the Go-Ahead Letter issued by the Corporate Debtor, the Operational Creditor

[4] Page No: 79
[5] Page No: 80
[6] Page No: 78
[7] Page No: 93-95
[8] Page No: 106-109
[9] Annexure- F

commenced the works and, upon completion thereof, duly intimated the Corporate Debtor. The works were thereafter inspected by the Engineer-in-Charge ("EIC") of the Corporate Debtor and Joint Measurement Sheets ("JMS") were stated to have been signed on 02.02.2021, 19.02.2021[10] and 25.02.2021.

4.3 The Operational Creditor further submits that invoices[11] were raised from time to time in respect of the works executed under the IPDS Scheme and the same were duly received by the Corporate Debtor. Upon completion of the entire scope of work, the Operational Creditor raised three final bills corresponding to the three LOAs, particulars whereof are set out below:

LOA date	Final bill Number	Amount claimed
03.06.2020	10A/WB/2 /2021-22	36,21,420
27.08.2019	12A/WB/3 /2021-22	12,53,160
26.09.2019	15A/WB/4 /2021-22	74,00,813

4.4 It is contended that a sum of ₹1,46,10,536/- (Rupees One Crore Forty-Six Lakh Ten Thousand Five Hundred and Thirty-Six only) became due and payable to the Operational Creditor in respect of the works executed under the contracts. According to the Operational Creditor, the final bills dated 17.04.2021[12], 12.05.2021[13] and

[10] Page No: 114
[11] Annexure- H
[12] Page No: 129

23.05.2021[14] were received and accepted by the Corporate Debtor without any objection, demur or protest.

4.5 The Operational Creditor submits that under the payment terms contained in the respective LOAs, the Corporate Debtor was required to discharge the final bills within a period of 30 days from the date of their submission. It is contended that although the works were awarded under three separate LOAs, all the works emanated from a common tender. Accordingly, the Operational Creditor has reckoned 22.06.2021 as the date of default, being the date by which, according to it, payment against the last final bill dated 23.05.2021 ought to have been made.

4.6 It is further submitted that against the aggregate amount of ₹2,91,33,244.13 claimed by the Operational Creditor in relation to the aforesaid works/final bills, the Corporate Debtor made payments aggregating to ₹1,68,57,851.41/- on various occasions. The Operational Creditor contends that such part-payments constitute an acknowledgment of the liability of the Corporate Debtor towards the amounts claimed. In support thereof, reliance has been placed upon the bank statements[15] evidencing receipt of the aforesaid payments.

[13] Page No: 130
[14] Page No: 131
[15] Annexure- I

4.7 After giving adjustment to the payments received, the Operational Creditor claims that a principal amount of ₹1,22,75,393/- remains outstanding and payable by the Corporate Debtor. It is further contended that, in terms of the agreement between the parties, delayed payment attracts penal interest at the rate of 18% per annum. Accordingly, the Operational Creditor claims an amount of ₹23,35,144/- towards interest, calculated at the rate of 18% per annum from the respective dates on which the final bills dated 17.04.2021, 12.05.2021 and 23.05.2021 allegedly became due and payable, up to 15.05.2022.

4.8 The Operational Creditor further submits that the principal outstanding amount of ₹1,22,75,393/-, inclusive of applicable GST charges, continues to remain due and payable. A summary statement[16] setting out the amounts claimed, interest thereon and adjustments towards the part-payments received from the Corporate Debtor has also been placed on record.

4.9 It is the case of the Operational Creditor that it duly and successfully completed the entire scope of work contemplated under the three LOAs to the satisfaction of the Corporate Debtor. According to the Operational Creditor, satisfactory completion of the works was acknowledged by the Corporate Debtor without any

[16] Annexure- J

objection, reservation, protest or demur. Notwithstanding the same, the Corporate Debtor failed to discharge the balance amount claimed under the final bills.

4.10 The Operational Creditor contends that despite repeated assurances and acknowledgment of its liability, the Corporate Debtor failed and neglected to clear the outstanding dues. It is further submitted that the delay in release of the payments caused financial prejudice to the Operational Creditor, as it was required to bear interest at the rate of 18% per annum on the borrowings availed by it.

4.11 In view of the alleged continuing default, the Operational Creditor issued a statutory Demand Notice dated 18.06.2022[17] in Form 3 under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("Code"), demanding payment of the outstanding operational debt. The said Demand Notice is stated to have been received by the Corporate Debtor on 21.06.2022.

4.12 The Operational Creditor submits that the Corporate Debtor responded to the aforesaid Demand Notice by its letter dated 27.07.2022[18]. According to the Operational Creditor, the said response was issued beyond the prescribed period and the grounds taken therein for denying the claim are false, frivolous and untenable. The

[17] Annexure- K
[18] Annexure- L

Operational Creditor has, accordingly, denied the contentions raised by the Corporate Debtor in the said communication.

4.13 The Operational Creditor reiterates that an amount of ₹1,46,10,536/- was due and owing in respect of the successful execution of the contract works and that, despite acceptance of the works and making part-payments from time to time, the Corporate Debtor failed to discharge the balance amount claimed. It is contended that the aforesaid part-payments further demonstrate acknowledgment of the amounts due and payable to the Operational Creditor.

4.14 In the aforesaid circumstances, the Operational Creditor submits that there exists an operational debt and default within the meaning of the Code and, accordingly, prays that the present application be admitted and the Corporate Insolvency Resolution Process ("CIRP") be initiated against the Corporate Debtor.

5. **<u>SUBMISSION OF THE CORPORATE DEBTOR</u>**

5.1 Per contra, the Corporate Debtor opposes the present application as being misconceived and not maintainable. It is submitted that no operational debt is due and payable to the Operational Creditor and that the claim raised by the Operational Creditor was disputed by the Corporate Debtor in its reply dated 27.07.2022 to the Demand Notice dated 18.06.2022.

5.2 The Corporate Debtor submits that, in its reply dated 27.07.2022, it had specifically disputed the claim of the Operational Creditor, inter alia, on the grounds that: (i) no amount was payable against Purchase Order Nos. 5300300258 and 5300339444; (ii) the claim pertaining to Purchase Order No. 5300306576 was unjustified on account of alleged non-fulfilment of the mandatory contractual requirements; and (iii) the photocopies of the three GST invoices submitted by the Operational Creditor were, upon verification from the official GST records, allegedly found to be non-existent on the respective dates mentioned therein. According to the Corporate Debtor, the Operational Creditor did not rebut the contents of the aforesaid reply prior to institution of the present proceedings.

5.3 It is accordingly contended that there existed a dispute in relation to the alleged operational debt prior to filing of the present application. Placing reliance upon Sections 3(11), 3(12), 8 and 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”), the Corporate Debtor submits that the provisions of the Code cannot be invoked where the debt itself is disputed. It further relies upon Section 9(5)(ii)(d) of the Code to contend that the present application is liable to be rejected in view of the notice of dispute communicated to the Operational Creditor.

5.4 Ld. Counsel denied that the Corporate Debtor is not an instrument of the State and is not established under any statute. In this regard, it is stated that the respondent is a Statutory body and other authorities, falling within the meaning of 'State' as defined in Article 12 of the Constitution of India. The respondent is one of the successors of West Bengal State Electricity Board ('WBSEB) along with West Bengal State Electricity Transmission Company Limited ('WBSETCL'). The respondent performs public functions and is the only electricity provider in the major parts of the State of West Bengal other than CESC. The respondent is involved in the activities of distribution of electricity. The respondent satisfies the definition of 'Distribution Licensee' and 'Government Company' as defined under section 2(17) and section 2(31) of the Electricity Act, 2003 and section 2(45) of the Companies Act, 2013, respectively.

5.5 The Corporate Debtor further submits that the Code is not intended to operate as a substitute for a debt recovery mechanism and that the insolvency process cannot be invoked in the presence of a genuine dispute between the parties. In support of the aforesaid contention, reliance has been placed upon the decisions of the Hon'ble Supreme Court in

Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353 and ***Sabarmati Gas Limited v. Shah Alloys Limited***, 2023 SCC OnLine SC 7.

5.6 Coming to the underlying transactions, the Corporate Debtor submits that three Purchase Orders bearing Nos. 5300300258, 5300339444 and 5300306576 were issued to the Operational Creditor for laying of 33 KV underground cables under the Barrackpore, Barasat and Naihati Divisions.

5.7 In respect of Purchase Order No. 5300300258, the Corporate Debtor submits that the same was issued for laying two numbers of 33 KV Grade 3 × 400 sq. mm. XLPE cables through micro-tunnelling from Mohispota to KMDA under the Barrackpore Division, North 24 Parganas, under the IPDS, with an initial estimated value of ₹56,27,864/- excluding GST. According to the Corporate Debtor, a final amendment order dated 19.03.2021 was thereafter issued, whereby the final executed value of the completed work was determined at ₹44,00,669.53/- excluding GST.

5.8 The Corporate Debtor states that against the aforesaid Purchase Order, payments of ₹28,22,050/- and ₹15,78,619.50/-, excluding GST, were made to the Operational Creditor against the first RA Bill and the second and final RA Bill respectively. It is contended that the Operational Creditor accepted the aforesaid payments without raising any objection.

5.9 In respect of Purchase Order No. 5300339444, the Corporate Debtor submits that the same was issued for laying two numbers of 3 Core 400 sq. mm. XLPE 33 KV underground cables over a route length of 6.670 kilometres from Mohispota 132/33 KV Sub-station to Bisherpara (Bakra) More for Ganganagar and Abdalpur 33/11 KV Sub-stations under the North 24 Parganas Region under the IPDS, with an initial estimated value of ₹1,59,21,851/- excluding GST.

5.10 According to the Corporate Debtor, a final amendment order dated 07.04.2021 was issued in respect of the aforesaid Purchase Order, whereby the final executed value of the completed work was determined at ₹98,89,645.13/- excluding GST. It is stated that payments of ₹80,53,740/- and ₹18,31,905.03/-, excluding GST, were thereafter made to the Operational Creditor against the first RA Bill and the second and final RA Bill respectively. The Corporate Debtor contends that these payments were also accepted by the Operational Creditor without objection.

5.11 In respect of Purchase Order No. 5300306576, the Corporate Debtor submits that the same was issued for laying one new 33 KV underground cable feeder having a proposed route length of 11.120 kilometres for the proposed Basudebpur Sub-station from Mohispota 132/33 KV Sub-station to Jafferpur under the Naihati Division under the IPDS, with an initial estimated value of ₹1,37,54,224/- excluding GST.

5.12 The Corporate Debtor contends that, owing to Right of Way ("ROW") issues encountered along the Kalyani-Barrackpore Expressway during execution of the works covered under the other Purchase Orders, Clause 50.0 was incorporated in Purchase Order No. 5300306576. It is stated that the District Magistrate, Naihati Division, by a letter dated 25.10.2019, sought permission from the West Bengal Highway Development Corporation Limited ("WBHDCL") for laying cables along the Kalyani-Barrackpore Expressway. However, according to the Corporate Debtor, there is no record available with it demonstrating that the requisite permission was ultimately granted by WBHDCL.

5.13 The Corporate Debtor further contends that the work undertaken by the Operational Creditor under Purchase Order No. 5300306576 comprised only part micro-tunnelling work with laying of HDPE pipe for a route length of 5,575 metres and that the work remained unfinished.

5.14 It is further submitted that Clause 40.0 of the said Purchase Order prescribed the procedure governing the terms of payment. According to the Corporate Debtor, payment could be processed only upon submission of the Measurement Book, store transaction papers and other relevant records duly certified by the concerned Site Engineer and

Supervising Officer. The Corporate Debtor alleges that the Operational Creditor failed to submit the aforesaid requisite documents and, therefore, the claim raised in relation to Purchase Order No. 5300306576 is disputed and is stated to be unjustified.

5.15 The Corporate Debtor has also disputed the claim towards GST in respect of the three Purchase Orders. It is submitted that, according to its records, the original GST invoices bearing Nos. 10A/WB/2/2122 dated 16.04.2021, 12A/WB/2/2122 dated 11.05.2021 and 15A/WB/4/2122 dated 22.05.2021 were never submitted by the Operational Creditor.

5.16 According to the Corporate Debtor, only photocopies of the aforesaid invoices were submitted at its Divisional Office sometime in June 2022, without supporting documents such as the Joint Measurement Certificate, Material Consumption Certificate and as-built drawings. It is further alleged that upon verification from the official GST records, the aforesaid GST invoices were found to be non-existent on the respective dates mentioned therein. On this basis, the Corporate Debtor disputes the authenticity of the GST invoices relied upon by the Operational Creditor. It further submits that this issue had already been communicated to the Operational Creditor in its reply dated 27.07.2022.

5.17 The Corporate Debtor specifically denies the Operational Creditor's contention that the communications dated 13.04.2021 and 02.06.2021 constitute acknowledgment of completion of the entire works. According to the Corporate Debtor, the said communications, upon a plain reading, cannot be construed as acknowledgment of satisfactory completion of the works or admission of liability towards the amounts claimed.

5.18 The Corporate Debtor also disputes the Operational Creditor's assertion regarding the three final bills stated to have been raised in April and May 2021 and disputes the amounts claimed thereunder. Consequently, it denies that a sum of ₹1,46,10,536/- or any other amount claimed by the Operational Creditor remains due and payable against the said works.

5.19 The Corporate Debtor further denies that the payments made by it to the Operational Creditor constituted part-payments towards or acknowledgment of an alleged liability of ₹2,91,33,244.13/-. According to the Corporate Debtor, the payments made under Purchase Order Nos. 5300300258 and 5300339444 were towards the amounts payable under the respective RA Bills/final executed values and cannot be construed as acknowledgment of the further amounts claimed by the Operational Creditor.

5.20 The Corporate Debtor consequently disputes the alleged outstanding principal amount of ₹1,22,75,393/- as well as the claim of ₹23,35,144/- towards interest calculated at the rate of 18% per annum. It denies that there has been any default in payment of an operational debt so as to attract either the principal amount or penal interest claimed by the Operational Creditor.

5.21 The Corporate Debtor also disputes the assertion that the Operational Creditor had duly and successfully executed the entire works contemplated under all three LOAs to its complete satisfaction. It further denies that the Joint Measurement Sheets relied upon by the Operational Creditor establish completion and acceptance of the entire contractual works or acknowledgment of the amounts claimed.

5.22 The Corporate Debtor reiterates that the claim of the Operational Creditor had been disputed through its communication dated 27.07.2022 and contends that the grounds raised therein were not rebutted by the Operational Creditor before filing the present application. Therefore, according to the Corporate Debtor, a dispute concerning the alleged debt existed prior to initiation of the present proceedings.

5.23 In view of the aforesaid, the Corporate Debtor submits that no operational debt or default, as alleged by the Operational Creditor, has been established and that the claim is subject to a pre-existing dispute. It accordingly prays that the application seeking initiation of CIRP under Section 9 of the Code be rejected.

6. **REJOINDER OF THE OPERATIONAL CREDITOR**

6.1 In rejoinder, the Operational Creditor has reiterated the averments made in the application and denied the contentions raised by the Corporate Debtor in its reply affidavit. At the outset, the Operational Creditor has questioned the authority and competence of the deponent of the reply affidavit, namely, Mr. Subhendu Bhar, contending that no valid Board Resolution authorising him to affirm and file the reply has been disclosed.

6.2 On merits, the Operational Creditor denies that the present application is not maintainable or that there exists any genuine pre-existing dispute in relation to the operational debt claimed by it. It is contended that the claim falls within the ambit of Section 9 of the Code and that the Corporate Debtor has, on several occasions, acknowledged its liability as well as the subsisting debtor-creditor relationship between the parties.

6.3 The Operational Creditor reiterates that pursuant to the Go-Ahead Letters dated 02.08.2019, 07.08.2019 and 31.08.2019, it was instructed to commence the works immediately while maintaining the prescribed safety precautions and measures. According to the Operational Creditor, these communications demonstrate that the works were commenced pursuant to express instructions issued by the officials of the Corporate Debtor.

6.4 It is further submitted that under the terms of the LOAs, the Corporate Debtor was responsible for providing the requisite Right of Way ("ROW") at the sites where the contractual works were to be executed as well as the free-issue materials required for execution thereof. According to the Operational Creditor, its principal obligation was to undertake laying of HDPE Pipes, whereas the Corporate Debtor was required to provide the cables and other requisite materials for completion of the works.

6.5 The Operational Creditor submits that a portion of the contractual works could not be carried out on account of the Corporate Debtor's failure to provide the requisite ROW and free-issue materials. In this regard, reliance has also been placed upon the communication dated 21.11.2019 whereby, according to the Operational Creditor, issuance of cable drums and jointing kits against Purchase Order No. 5300306576 was requested from the Corporate Debtor.

6.6 In response to the contention of the Corporate Debtor concerning Purchase Order No. 5300306576 and the alleged absence of ROW permission, the Operational Creditor contends that the said defence itself demonstrates that ROW was not made available by the Corporate Debtor. According to the Operational Creditor, any portion of the work which remained unexecuted was attributable to the failure of the Corporate Debtor to fulfil its reciprocal obligation of providing unobstructed ROW and requisite free-issue materials. It denies having failed to execute any portion of the work for which ROW was actually made available.

6.7 The Operational Creditor also disputes the Corporate Debtor’s contention that the final executed value under Purchase Order No. 5300300258 stood restricted to ₹44,00,669.53/- or that such amount was accepted by it in full and final satisfaction of its claim. Likewise, it disputes that ₹98,89,645.13/- represented the final executed value under Purchase Order No. 5300339444 or that the payments made thereunder were accepted in full and final settlement of its claims.

6.8 The Operational Creditor further denies that it failed to furnish the requisite documents for receiving payment under Purchase Order No. 5300306576. It disputes the contention that its claim under the said Purchase Order was unjustified or that the same had been contemporaneously disputed by the Corporate Debtor.

6.9 In relation to completion of the works, the Operational Creditor reiterates its reliance upon the communications dated 13.04.2021 and 02.06.2021. It contends that the said communications acknowledge due and satisfactory execution of the contractual works. According to the Operational Creditor, the documents bear the signatures of the concerned officials, including the Assistant Engineer of the Barrackpore Division, as well as the stamp and seal of the Corporate Debtor, which are relied upon to demonstrate acknowledgment of the works executed.

6.10 The Operational Creditor further relies upon the site measurement records prepared by the Corporate Debtor, which, according to it, record the quantity of HDPE Pipes laid along the Kalyani Expressway. It is contended that these records demonstrate that the works were executed in accordance with the specifications stipulated under the respective LOAs.

6.11 As regards the GST invoices, the Operational Creditor specifically denies the contention that the original invoices were not submitted or that the GST invoices dated 16.04.2021, 11.05.2021 and 22.05.2021 were non-existent. The Operational Creditor has called upon the Corporate Debtor to inspect the original GST invoices together with the supporting documents and contends that no dispute concerning the said invoices had been raised prior thereto.

6.12 The Operational Creditor also disputes the contention that the three final bills dated 17.04.2021, 12.05.2021 and

23.05.2021 were neither received nor traceable in the records of the Corporate Debtor. It reiterates that the invoices/final bills were raised pursuant to execution of the works and had not been contemporaneously disputed by the Corporate Debtor.

6.13 With regard to the quantum of the claim, the Operational Creditor reiterates that its claim under the Section 9 application is ₹1,46,10,536/-, stated to be inclusive of interest calculated at the rate of 18% per annum, with the date of default being reckoned as 22.06.2021. According to the Operational Creditor, the said date has been calculated upon expiry of 30 days from the date of the last invoice/final bill.

6.14 The Operational Creditor further disputes the contention that the Corporate Debtor is outside the ambit of proceedings under the Code on account of its status as an instrumentality of the State or on account of the public functions performed by it. It is contended that the Corporate Debtor falls within the meaning of a "corporate debtor" under the Code and that the present application is maintainable against it.

6.15 Insofar as the alleged pre-existing dispute is concerned, the Operational Creditor submits that the Corporate Debtor principally relies upon its reply dated 27.07.2022 to the statutory Demand Notice. It is contended that the Demand Notice in Form 3 under Section 8 of the Code was issued on 18.06.2022 and was received by the Corporate Debtor on 21.06.2022. According to the Operational Creditor, the period of ten days prescribed under Section 8(2) expired on 01.07.2022, whereas the Corporate Debtor responded only on 27.07.2022.

6.16 On this basis, the Operational Creditor contends that the reply dated 27.07.2022 was issued beyond the statutory period prescribed under Section 8(2) of the Code and cannot be relied upon to establish the existence of a pre-existing dispute. It is further contended that the disputes sought to be raised therein were an afterthought intended to oppose the insolvency proceedings.

6.17 The Operational Creditor further submits that it was under no obligation to respond to the Corporate Debtor's communication dated 27.07.2022, the same having been issued beyond the period prescribed under Section 8(2) of the Code. It nevertheless disputes the Corporate Debtor's assertion that the contents of the said communication stood accepted merely because no response thereto was issued prior to filing the present application.

6.18 In support of its contention regarding the requirement of a pre-existing dispute, the Operational Creditor has placed reliance upon the decision of the Hon'ble Supreme Court in ***Mobilox Innovations Private***

Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353, to contend that the dispute relied upon by a Corporate Debtor must be pre-existing, i.e., it must exist prior to receipt of the demand notice under Section 8 of the Code.

6.19 The Operational Creditor accordingly maintains that no genuine pre-existing dispute existed between the parties prior to issuance of the Demand Notice and that, despite service thereof, the Corporate Debtor neither discharged the unpaid operational debt nor raised any dispute within the period prescribed under Section 8(2) of the Code.

6.20 The Operational Creditor therefore reiterates that an operational debt remains due and payable by the Corporate Debtor and that default has occurred in payment thereof. It accordingly maintains its prayer for admission of the application and initiation of CIRP against the Corporate Debtor under Section 9 of the Code.

7. SUPPLEMENTARY AFFIDAVIT DATED 04.04.2024 ON BEHALF OF THE CORPORATE DEBTOR

7.1 The Corporate Debtor has also filed a Supplementary Affidavit pursuant to the liberty granted by this Adjudicating Authority to bring certain additional documents on record. By way of the said affidavit, the Corporate Debtor has sought to supplement the contentions raised in its reply affidavit and to place further documents pertaining to the correspondence exchanged between the parties, the GST invoices and the payments stated to have been made to the Operational Creditor.

7.2 The Corporate Debtor submits that subsequent to issuance of the Demand Notice dated 18.06.2022 and its reply thereto dated 27.07.2022, the Operational Creditor addressed a communication dated 11.08.2022[19] in response to the said reply, which was received by the Corporate Debtor on 12.08.2022.

7.3 It is contended that the aforesaid communication dated 11.08.2022 was already in existence when the present application was filed on 23.08.2022. According to the Corporate Debtor, the Operational Creditor did not disclose or annex the said communication to the Section 9 application despite having issued the same prior to institution of the proceedings. The Corporate Debtor characterises such non-disclosure as suppression of a material document and contends that the application is liable to be dismissed on this ground.

7.4 The Corporate Debtor further reiterates its dispute concerning the Operational Creditor’s claim towards Goods and Services Tax (“GST”). It submits that the issue relating to unpaid GST had specifically been raised in its reply dated 27.07.2022 and contends that the Operational

[19] Annexure- A

Creditor, even in its subsequent communication dated 11.08.2022, did not deny the objection raised in this regard.

7.5 In furtherance of its objection concerning the GST invoices, the Corporate Debtor submits that a photocopy of Invoice No. 12A/WB/3/2122 dated 11.05.2021, which had been forwarded by the Operational Creditor, was returned to it by the Corporate Debtor under cover of a letter dated 16.06.2022. In support thereof, the Corporate Debtor has placed on record the communication of the Operational Creditor along with the photocopy of the invoice, the envelope and the Corporate Debtor's communication dated 16.06.2022[20].

7.6 The Corporate Debtor further contends that the original GST invoices bearing Nos. 10A/WB/2/2122 dated 16.04.2021, 12A/WB/3/2122 dated 11.05.2021 and 15A/WB/4/2122 dated 22.05.2021 have not been submitted to it. It is also contended that proof reflecting payment/reporting of GST corresponding to the aforesaid invoices in Table 4A of Form GSTR-1 has not been furnished by the Operational Creditor.

7.7 The Corporate Debtor reiterates its earlier contention that, upon verification from the official GST records, no record of the aforesaid invoices was found. On

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[20] Annexure- B

this basis, it continues to dispute the GST component of the claim as well as the authenticity/existence of the invoices relied upon by the Operational Creditor.

7.8 The Corporate Debtor further submits that all amounts to which the Operational Creditor was entitled under the applicable Purchase Orders have already been paid on different dates and that such payments were accepted by the Operational Creditor without protest or dispute. In support of this contention, the Corporate Debtor has placed additional documents relating to the payments[21] on record along with the Supplementary Affidavit.

7.9 On the strength of the aforesaid documents, the Corporate Debtor reiterates its contention that no operational debt remains due and payable to the Operational Creditor. It further maintains that the claim raised by the Operational Creditor had been disputed and that the documents placed on record demonstrate the existence of such dispute.

7.10 The Corporate Debtor also reiterates its allegation that material documents, particularly the Operational Creditor’s communication dated 11.08.2022, were withheld while filing the present application. According to the Corporate Debtor, the non-disclosure of the said correspondence assumes significance since it relates

[21] Annexure- C

directly to the dispute raised in response to the statutory Demand Notice.

7.11 In view of the aforesaid, the Corporate Debtor reiterates that the alleged operational debt is disputed and contends that the requirements for initiation of CIRP under Sections 8 and 9 of the Code are not satisfied. It accordingly maintains that no case has been made out for admission of the present application and prays that the application under Section 9 of the Code be rejected.

8. **REPLY OF THE OPERATIONAL CREDITOR DATED 17.05.2024 TO THE SUPPLEMENTARY AFFIDAVIT DATED 04.04.2024 OF THE CORPORATE DEBTOR**

8.1 In response to the Supplementary Affidavit filed by the Corporate Debtor, the Operational Creditor has raised a preliminary objection as to its maintainability. It is submitted that pursuant to the order dated 22.01.2024, as subsequently corrected/extended by orders of this Adjudicating Authority, the Corporate Debtor was required to file its Supplementary Affidavit within the time stipulated therein. According to the Operational Creditor, the Corporate Debtor failed to do so within the prescribed period and, consequently, its right to file the same stood forfeited.

8.2 The Operational Creditor submits that on 22.03.2024, it was served with an un-affirmed advance copy of a Supplementary Affidavit proposed to be affirmed by one Ms. Ranita Biswas on behalf of the Corporate Debtor. It is pointed out that while the original reply affidavit filed on behalf of the Corporate Debtor had been affirmed by Mr. Subhendu Dhar, Divisional Engineer (Electrical), the Supplementary Affidavit was sought to be affirmed by Ms. Ranita Biswas.

8.3 According to the Operational Creditor, the un-affirmed copy served on 22.03.2024 did not disclose any Board Resolution authorising Ms. Ranita Biswas to affirm or file the Supplementary Affidavit on behalf of the Corporate Debtor. It is further submitted that the subsequent Supplementary Affidavit affirmed on 04.04.2024 was accompanied by an affidavit of competency and a purported Letter of Authority dated 22.03.2024 issued by the Chairman and Managing Director of the Corporate Debtor. The Operational Creditor, however, contends that neither the affidavit of competency nor the Letter of Authority bears the stamp and seal of the Corporate Debtor. On this basis, it questions the authority of Ms. Ranita Biswas to affirm the Supplementary Affidavit and contends that the same ought not to be taken into consideration.

8.4 The Operational Creditor further contends that the scope of the liberty granted by this Adjudicating Authority by its order dated 22.01.2024, as corrected by the subsequent order, was to enable the Corporate Debtor to place on record the final amendments to the Purchase Orders dated 19.03.2021 and 07.04.2021. According to the Operational Creditor, the Corporate Debtor has not disclosed the said amendments through its Supplementary Affidavit and has instead sought to introduce other documents and contentions.

8.5 In particular, the Operational Creditor objects to the Corporate Debtor bringing on record, through the Supplementary Affidavit, the correspondence dated 11.08.2022. It is contended that the said document was already within the knowledge, possession and custody of the Corporate Debtor when its original reply affidavit was filed and that the liberty granted by this Adjudicating Authority cannot be utilised to introduce documents which could have been produced earlier. According to the Operational Creditor, the Corporate Debtor is thereby seeking to improve or supplement the case originally pleaded in its reply affidavit.

8.6 Without prejudice to the aforesaid preliminary objections, the Operational Creditor has also furnished particulars in compliance with the directions issued by this Adjudicating Authority. It reiterates that the total amount claimed in the Section 9 application is ₹1,46,10,536/-, comprising a principal sum of ₹1,22,75,393/- and interest of ₹23,35,144/-, calculated at the rate of 18% per annum with reference to the three final bills raised in April and May 2021.

8.7 The Operational Creditor reiterates that under the payment terms contained in the respective LOAs, the final bills were payable within 30 days of their being raised. On this basis, it has reckoned 22.06.2021 as the date of default, being the date on which, according to it, the last final bill became due and payable.

8.8 In relation to Section 10A of the Code, the Operational Creditor submits that the amounts claimed under the three final bills became due and payable after expiry of the period contemplated under Section 10A, which ended on 25.03.2021. In compliance with the directions of this Adjudicating Authority, the Operational Creditor has also placed on record a schedule setting out the payments received from the Corporate Debtor during the period from 25.03.2020 to 25.03.2021.

8.9 It is the case of the Operational Creditor that since the amounts under the final bills became payable only after expiry of the Section 10A period and the asserted date of default is 22.06.2021, no part of the operational debt forming the subject matter of the present application is barred by Section 10A of the Code.

8.10 The Operational Creditor further states that the principal amount allegedly due and payable by the Corporate Debtor, excluding GST, is ₹1,04,02,875.50/-. It relies upon the first and second RA Bills forming part of the record to contend that the bills raised by it had been accepted by the Corporate Debtor without reservation, protest or demur.

8.11 The Operational Creditor also relies upon the Measurement Book stated to have been signed by the Assistant Engineer of the Corporate Debtor. According to the Operational Creditor, the entries therein demonstrate that the contractual works had been executed and completed by it.

8.12 Coming to the Corporate Debtor's allegation of suppression of the communication dated 11.08.2022, the Operational Creditor denies that the said communication constitutes a material document whose non-disclosure renders the Section 9 application defective. It contends that Section 8 of the Code contemplates issuance of a demand notice by an Operational Creditor and communication of a dispute by the Corporate Debtor, whereas no statutory rejoinder to such reply is contemplated under the Code. On this basis, the Operational Creditor submits that its communication dated 11.08.2022 is not material to adjudication of the present application and denies having suppressed the same with an intention to mislead this Adjudicating Authority.

8.13 The Operational Creditor also disputes the Corporate Debtor's contention concerning the GST component of the claim. It denies that the Corporate Debtor had validly disputed the GST claim or that Invoice No. 12A/WB/3/2122 was returned to it. In particular, it denies receipt of the communication dated 16.06.2022 relied upon by the Corporate Debtor.

8.14 In relation to the GST liability, the Operational Creditor contends that since payment against the invoices raised by it has not been made by the Corporate Debtor, the Operational Creditor has not yet become liable to make payment of GST on such bills. It consequently disputes the Corporate Debtor's reliance upon the alleged absence of the corresponding invoices/entries in the GST records as a ground to deny the operational debt.

8.15 The Operational Creditor further denies the contention of the Corporate Debtor that all amounts payable under the three Purchase Orders/final bills have already been discharged. It disputes that the documents annexed to the Supplementary Affidavit establish full payment of its contractual entitlement and reiterates that the balance amount claimed in the Section 9 application continues to remain outstanding.

8.16 The Operational Creditor also denies the allegation that it has suppressed any material document or fact from this Adjudicating Authority. It maintains that the application contains the documents and particulars necessary for adjudication of the operational debt claimed by it and disputes the Corporate Debtor's contention that the application is liable to be dismissed on the ground of suppression.

8.17 The Operational Creditor reiterates that there was no genuine pre-existing dispute in relation to its claim. According to it, the disputes sought to be raised by the Corporate Debtor are subsequent and in the nature of an afterthought and do not constitute a credible pre-existing dispute warranting rejection of the application under Section 9 of the Code.

8.18 In view of the aforesaid, the Operational Creditor maintains that the principal operational debt, together with the interest claimed thereon, remains due and payable by the Corporate Debtor. It accordingly disputes the contentions raised in the Supplementary Affidavit and reiterates its prayer for admission of the application under Section 9 of the Code.

9. **ANALYSIS AND FINDINGS**

9.1 We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

9.2 Upon consideration of the rival contentions, the following issues arise for our consideration:

I. *Whether the status of the Corporate Debtor as a Government undertaking Company has any bearing upon the maintainability of the Present Proceedings?*

II. *Whether compliance with the timeline stipulated under Section 8 of the Code for notifying a pre-existing dispute is mandatory in nature?*

III. *Whether the entire amount claimed by the Operational Creditor constitutes a crystallised and undisputed operational debt due and payable by the Corporate Debtor?*

IV. *Whether there existed a genuine pre-existing dispute between the parties in relation to the claim of the Operational Creditor?*

V. *Whether the objections concerning the GST invoices are relevant for determining the existence of a pre-existing dispute?*

ISSUE NO. 1

9.3 The Corporate Debtor has resisted the maintainability of the petition on the ground that it is a Government Company and an instrumentality of the State performing public functions in the field of distribution of electricity.

9.4 The Tribunal notes that the Master Data of the Corporate Debtor on the MCA portal explicitly records the subcategory of the Corporate Debtor is registered as "State Government Company" under the Companies Act. Section 2(20) of the Companies Act defines company as *"a company incorporated under this Act or under any previous company law."* While Section 2(45) of the Companies Act, 2013 defines Government company as *"any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company"*.

9.5 A conjoint reading makes it clear that a Government Company is, first and foremost, a company incorporated under the Companies Act, and its status as a "Government Company" is merely a sub-category based on ownership of shareholding. Its juristic character remains that of a company under law.

9.6 Section 3(7) of the Code defines "corporate person" to include *"a company as defined in Section 2(20) of the Companies Act, 2013…"*. Thus, Government Companies are not excluded from the purview of the Code. On the contrary, they are expressly included as "corporate persons." The legislative scheme of the Code is of universal application to all companies incorporated under the Companies Act, unless specifically exempted. No such exemption exists for Government Companies.

9.7 The Hon'ble Supreme Court in ***Hindustan Construction Company Limited v. Union of India*** **WP (Civil) No. 1074 of 2019** drew a clear distinction between statutory government bodies such as the National Highways Authority of India (NHAI), created by statute to perform sovereign functions, and government companies incorporated under the Companies Act. While the former, being statutory authorities, are immune from insolvency proceedings, the latter, though government-owned, remain amenable to the Code. The Court held as follows:

"63. From a conspectus of the above provisions, what is clear is that NHAI is a statutory body which functions as an extended limb of the Central Government, and performs governmental functions which obviously cannot be taken over by a resolution professional under the Insolvency Code, or by any other corporate body. Nor can such Authority ultimately be wound- up under the Insolvency Code. For all these reasons, it is not possible to accede to Dr. Singhvi's argument to either read in, or read down, the definition of 'corporate person' in Section 3(7) of the Insolvency Code."

9.8 The Hon'ble Supreme Court, thus, held that a CIRP can be initiated against a government company by virtue of it being covered under the first part of 'corporate person' as provided in section 3(7) of the Code. The Court cleared that NHPC, NTPC and IRCON, being Public Sector Undertakings are government companies incorporated under the Companies Act, and they would be covered within the section 3(7) of the Code. However, the Supreme Court also laid down that so far as the NHAI is concerned, referred to the Statement of Objects and Reasons of the National Highways Authority of India Act, 1988 and some sections of the said Act to show that NHAI is a statutory body which functions as an extended limb of the Central Government, and carries out the sovereign function of laying down national highways. The Code cannot be used against such a statutory body, because no resolution professional or private individual can take over the management of such body, as it performs sovereign functions, nor can such body be driven to insolvency under the Code.

9.9 In the present case, the Corporate Debtor is not a statutory authority constituted under an enactment to perform sovereign functions, but a Public Limited Company incorporated under the Companies Act, 2013.

9.10 In view of the above discussion, the Corporate Debtor, being a State Government Company incorporated under the Companies Act, 2013, squarely falls within the definition of "corporate person" under Section 3(7) of the Code. The petition is, therefore, maintainable. Hence, this issue is decided in favour of the Petitioner.

ISSUE NO. 2

9.11 The Operational Creditor has contended that the reply to the demand notice under Section 8 of the Code was furnished by the Corporate Debtor beyond the statutory period of ten days prescribed under Section 8(2) of the Code. It has, therefore, been argued that the Corporate Debtor is precluded from raising any plea regarding the existence of a pre-existing dispute at the stage of adjudication of the present petition.

9.12 The aforesaid contention cannot be accepted in the manner canvassed by the Operational Creditor. Section 8(2)(a) of the Code obliges the Corporate Debtor, within ten days of receipt of the demand notice, to bring to the notice of the Operational Creditor the existence of a dispute, if any, or the pendency of a suit or arbitration proceedings filed before the receipt of such notice. The object of the provision is to afford the Operational Creditor an opportunity to ascertain whether the debt sought to be enforced is disputed before initiating proceedings under Section 9 of the Code.

9.13 However, neither Section 8 nor Section 9 of the Code provides that failure to issue a reply within the prescribed period would automatically foreclose the Corporate Debtor from demonstrating before the Adjudicating Authority that a genuine dispute had, in fact, existed prior to the issuance of the demand notice.

9.14 In ***Brandy Realty Services Limited v. Sir John Bakeries India Private Limited***, reported at **(2022) ibclaw.in 245 NCLAT**, the Hon'ble National Company Law Appellate Tribunal held that the mere fact that no reply to the demand notice was issued within the period stipulated under Section 8(2), or that the reply was delayed, would not by itself preclude the Corporate Debtor from producing relevant material before the Adjudicating Authority to establish the existence of a pre-existing dispute. The Appellate Tribunal observed that the Adjudicating Authority is duty-bound to examine the entire material placed on record for determining whether such dispute existed prior to the issuance of the demand notice. Relevant para of the order is extracted below:

> *"13. *********** ***We thus are of the considered opinion that mere fact that Reply to notice under Section 8 (1) having not been given within 10 days or no reply to demand notice having been filed by the Corporate Debtor does not preclude the Corporate Debtor to bring relevant materials before the Adjudicating Authority to establish that there are pre-existing dispute which may lead to the rejection of Section 9 application****. In the above context, we may refer to Judgement of this Tribunal in "Neeraj Jain Vs. Cloudwalker Streaming Technologies Private Limited" (Company Appeal (AT) Ins. No. 1354 of 2019) decided on 24th February, 2020 in paragraph 50 following observations have been made by this Tribunal:*
>
> *"… Even otherwise, mere failure to reply to the demand notice does not extinguish the rights of the Operational Creditor to show the existence of a pre-existing dispute…"*

(Emphasis Added)

9.15 The aforesaid principle was reiterated by the Hon'ble National Company Law Appellate Tribunal in ***Greymatter Entertainment Private Limited v. Pro Sportify Private***

Limited, reported at **(2023) ibclaw.in 122 NCLAT**, wherein it was held that neither Section 8 nor Section 9 of the Code bars the Corporate Debtor from raising the plea of a pre-existing dispute merely because a reply to the demand notice was not furnished within ten days. What is material is not the timing of the reply, but whether the dispute sought to be relied upon genuinely existed prior to the issuance of the demand notice and is supported by credible material. Relevant para of the order is extracted below:

*"13. It is observed from the aforenoted Sections that neither Section 8 nor Section 9 of the Code indicate that in event Reply to Notice was not filed within 10 days, the 'Corporate Debtor' is precluded from raising the question of dispute or pleading that there or no amount 'due and payable', the 'Corporate Debtor' is not prevented from establishing by way of a Reply and relevant documents, any 'Pre-Existing Dispute' or paid 'Operational Debt'. We place reliance of the Judgement of this Tribunal in '**M/s. Brandy Realty Services Ltd.' Vs. 'M/s. Sir John Bakeries India Pvt. Ltd.**"*

9.16 The legal position emerging from the aforesaid decisions is that the timeline prescribed under Section 8(2) is intended to facilitate the insolvency process; however, it does not curtail the jurisdiction of the Adjudicating Authority to independently examine whether a bona fide dispute existed before the demand notice was issued.

9.17 Accordingly, we hold that the delay in furnishing the reply under Section 8(2) of the Code is not, by itself, fatal to the defence of the Corporate Debtor. This issue is answered accordingly.

ISSUE NO. 3, 4 and 5

9.18 Since the aforesaid issues are intrinsically interconnected, they are taken up together for consideration.

9.19 It is now well settled that the jurisdiction exercised by the Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 is summary in nature. While considering an application under Section 9, the Adjudicating Authority is neither expected to adjudicate complicated questions of fact nor determine the respective contractual rights and liabilities of the parties. The scope of enquiry is confined to examining whether there exists an operational debt which has become due and payable, whether default has occurred, and whether the debt is free from any genuine pre-existing dispute.

9.20 The legal position in this regard has been authoritatively settled by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*** reported at **(2018) 1 SCC 353**, wherein it was held that the Adjudicating Authority is only required to examine whether there exists a plausible contention requiring further investigation and whether the defence raised is not a patently feeble legal argument or an assertion unsupported by evidence. The Hon'ble Supreme Court further clarified that the Adjudicating Authority is not required to examine the merits of the dispute or determine whether the defence is likely to succeed. If the dispute is real and bona fide and not illusory or a mere moonshine, the application under Section 9 is liable to be rejected.

9.21 Similar principles have been reiterated by the Hon'ble Supreme Court in ***Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited*** and ***Kay Bouvet Engineering Limited v. Overseas Infrastructure Alliance (India) Private Limited***, wherein it has consistently been held that the Insolvency and Bankruptcy Code is not intended to substitute conventional adjudicatory mechanisms for resolution of contractual disputes or recovery of disputed dues.

9.22 Bearing the aforesaid principles in mind, we proceed to examine the material placed before us.

9.23 The Operational Creditor has claimed an operational debt of Rs. 1,46,10,536/- in Part IV of the present application. Subsequently, pursuant to the directions issued by this Adjudicating Authority, the Operational

Creditor in his affidavit dated 20.05.2024 stated that a principal amount of Rs. 1,04,02,875/- remained outstanding as on 16.07.2021 and attached a chart comprising of the outstanding dues at pages 12 of the said affidavit.

9.24 Thus, the Tribunal notices that the Operational Creditor itself has projected different figures of the alleged outstanding liability at different stages of the proceedings. Though the Operational Creditor has attempted to explain the variation by distinguishing the principal amount from interest, the fact remains that the exact amount allegedly due and payable has itself become the subject matter of dispute between the parties.

9.25 The Corporate Debtor has, throughout the proceedings, specifically disputed the Operational Creditor's computation of the alleged outstanding amount. It has categorically asserted that the dues under Purchase Order Nos. 5300300258 and 5300339444 stand discharged after issuance of the respective final amendment orders dated 19.03.2021 and 07.04.2021, whereby the executed value of the works was revised and payments corresponding to the first and final RA Bills were released. The Operational Creditor disputes the correctness of the said contention and maintains that substantial amounts continue to remain unpaid.

9.26 Likewise, in respect of Purchase Order No. 5300306576, the parties have taken diametrically opposite stands. According to the Operational Creditor, the remaining work could not be executed because the Corporate Debtor failed to provide the Right of Way and free issue materials which, under the contractual arrangement, were required to be supplied by it. Conversely, the Corporate Debtor contends that the Operational Creditor failed to complete the contractual work and did not submit the Measurement Book, store transaction papers and other documents prescribed under Clause 40.0 of the Purchase Order, thereby disentitling itself from claiming further payment.

9.27 The Corporate Debtor has also questioned the authenticity and admissibility of the GST invoices relied upon by the Operational Creditor. It has specifically pleaded that the original invoices were not submitted, that the invoices were not reflected in the GST records and has relied upon its communication dated 16.06.2022 whereby one of the invoices was allegedly returned to the Operational Creditor. The Operational Creditor has denied the said allegations and disputes both the contents and service of the aforesaid communication.

9.28 The Tribunal is of the considered opinion that the GST controversy cannot be viewed in isolation. The objections relating to the GST invoices form only one component of the larger contractual dispute between the parties concerning execution of work, final measurement, revised contract value, contractual compliances and quantification of the alleged outstanding amount.

9.29 Therefore, the dispute between the parties is not confined merely to the correctness of one invoice or one payment. Rather, it extends to the very foundation of the claim, namely, the extent of work executed, the revised contractual value, reciprocal contractual obligations, compliance with the contractual conditions governing release of payment, and ultimately the amount, if any, legally recoverable by the Operational Creditor.

9.30 Resolution of the aforesaid disputes would necessarily require detailed examination of the contractual documents, amendment orders, correspondence exchanged between the parties, measurement records, certification of work, oral and documentary evidence and reconciliation of accounts. Such an exercise is clearly beyond the limited summary jurisdiction conferred upon this Adjudicating Authority under Section 9 of the Code.

9.31 This Tribunal cannot, while exercising jurisdiction under Section 9, undertake an enquiry into the correctness of rival contractual claims or determine which party is responsible for the alleged non-performance of reciprocal obligations. Nor can this Tribunal adjudicate whether the revised contract value asserted by the Corporate Debtor or the computation advanced by the Operational Creditor correctly represents the amount legally recoverable.

9.32 The Tribunal further notices that the defence raised by the Corporate Debtor is supported by specific contractual documents, amendment orders, payment particulars and contemporaneous correspondence. It is not a case where the Corporate Debtor has merely taken a bald plea that nothing is payable. The defence raised cannot, therefore, be characterised as illusory, hypothetical or a mere moonshine intended solely to evade insolvency proceedings.

9.33 Equally, this Tribunal refrains from expressing any final opinion on the correctness of the rival contractual claims. The observations recorded herein are confined only to determining whether the dispute raised satisfies the threshold contemplated under Sections 8 and 9 of the Code.

9.34 Having considered the pleadings and material placed on record, we are satisfied that the disputes raised by the Corporate Debtor are substantial, bona fide and supported by contemporaneous material requiring detailed adjudication. The issues raised are neither sham nor spurious, but constitute plausible disputes which cannot be conclusively determined within the summary jurisdiction exercised under Section 9 of the Code.

9.35 Consequently, this Tribunal is unable to hold that the Operational Creditor has established an operational debt which is due and payable, free from any bona fide dispute, so as to justify initiation of the Corporate Insolvency Resolution Process.

9.36 The objections concerning the GST invoices, though not independently decisive, reinforce the existence of the larger contractual dispute between the parties and lend further support to the conclusion that the claim of the Operational Creditor is not free from bona fide controversy.

9.37 Accordingly, applying the test laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*** and the subsequent decisions governing Section 9 proceedings, we hold that the Corporate Debtor has successfully demonstrated the existence of a genuine pre-existing dispute within the meaning of Sections 5(6), 8 and 9 of the Insolvency and Bankruptcy Code, 2016.

9.38 In view of the foregoing discussion, the Operational Creditor has failed to establish that the debt sought to be enforced under the present application is an undisputed operational debt warranting invocation of the insolvency jurisdiction of this Adjudicating Authority. The appropriate remedy for adjudication of the rival contractual claims lies before the competent forum in accordance with law and not through the mechanism of the Insolvency and Bankruptcy Code.

10. **CONCLUSION**

In view of the foregoing discussion and our findings on the issues framed hereinabove, the conclusions of this Adjudicating Authority may be summarised as follows:

I. The Corporate Debtor, being a State Government Company incorporated under the Companies Act, 2013, falls within the definition of a "corporate person" under Section 3(7) of the Insolvency and Bankruptcy Code, 2016. Accordingly, the present Company Petition is maintainable under the provisions of the Code.

II. The material placed on record, however, discloses substantial disputes concerning the quantification of the alleged outstanding dues, the effect of the final amendment orders, execution and completion of the contractual work, reciprocal contractual obligations, submission of contractual documents, release of payments and the GST invoices forming part of the claim.

III. Applying the test laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, this Adjudicating Authority is satisfied that the Corporate Debtor has successfully demonstrated the existence of a genuine pre-existing dispute within the meaning of Sections 5(6), 8 and 9 of the Insolvency and Bankruptcy Code, 2016.

IV. The determination of the actual amount, if any, payable by either party would necessarily require a detailed examination of contractual documents, amendment orders, measurement records, reconciliation of accounts and appreciation of evidence. Such an exercise falls beyond the limited summary jurisdiction vested in this Adjudicating Authority while considering an application under Section 9 of the Code.

11. The Insolvency and Bankruptcy Code, 2016 is a legislation intended for resolution of insolvency and not for adjudication of disputed contractual claims or recovery of disputed amounts. Once the Corporate Debtor succeeds in demonstrating the existence of a genuine dispute which is neither spurious nor illusory, the jurisdictional requirement for admission of an application under Section 9 ceases to exist. The insolvency process cannot be permitted

to assume the character of a substitute for civil proceedings or arbitration for determination of disputed contractual liabilities.

12. It is clarified that dismissal of the present petition shall not be construed as an adjudication upon the merits of the contractual disputes between the parties or as a declaration that no amount is payable by one party to the other. The parties shall be at liberty to pursue such remedies as may be available to them before the appropriate judicial, arbitral or other competent forum in accordance with law.

13. Consequently, the present Company Petition being no. 266/KB/2022 is **dismissed** and **disposed of**.

14. The Registry is directed to communicate a copy of this Order to the parties and their learned counsel forthwith by mail.

15. A certified copy of this Order be issued, if applied for, upon compliance with all requisite formalities.

(Rekha Kantilal Shah)
Member (Technical)

(Labh Singh)
Member (Judicial)

Order signed on the 10th day of August, 2026

S.T. (LRA)