NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.203
CP(IB)/19(MP)2023

Order under Section 9 IBC

IN THE MATTER OF:

Chandra Nirman Pvt Ltd ....**Applicant**
V/s
Madhya Pradesh Urban Development Co. Ltd ....**Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 05/08/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/- Sd/-

MAN MOHAN GUPTA **BRAJENDRA MANI TRIPATHI**
MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

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IN THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT INDORE

CP(IB) No. 19 of 2023

[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]

CHANDRA NIRMAN PRIVATE LIMITED

Through Director- Mr. Sameer Agrawal

2A, Ganesh Chandra Avenue, 7th Floor,

Room No.7 Kolkata-700013 **...... Creditor/Applicant**

VERSUS

Madhya Pradesh Urban Development Co Limited

Through its Engineer-In-Chief

Regd. office at Amarkantak Bhawan,

Press Complex, Zone- I, M.P.

Nagar, Bhopal-462011 **...... Respondent**

C O R A M:

Hon'ble Shri Brajendra Mani Tripathi, Member (Judicial)

Hon'ble Shri Man Mohan Gupta, Member (Technical)

Order Pronounced on 05.08.2026

Appearance:

For the Applicant: Mr. Sanyam Jain, Adv.

For the Respondent: Mr. Shantnu Chourasia Adv.

JUDGEMENT

1. This Company Petition has been filed by **Chandra Nirman Private Limited (**"Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Madhya Pradesh Urban Development Co Limited** ("Corporate Debtor") under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for having committed a default in payment of its outstanding debts amounting **Rs. 9,80,81,826/-** The date of default is stated to be **03.03.2022.**

2. On perusal of Part-I of the Form-5 reveals that Operational Creditor is one Chandra Nirman Private Limited. The Corporate

Identification Number of the Operational Creditor is U45202WB2005PTC105647 having its address at 2A, Ganesh Chandra Avenue, 7th Floor, Room No.7. Kolkata-700013.

3. On perusal of Part-II of the Form-5 reveals that the Corporate Debtor is one, Madhya Pradesh Urban Development Co Limited having CIN as U75110MP2015SGC034139. The registered address of the Corporate Debtor is Amarkantak Bhawan, Press Complex, Zone-I, M.P. Nagar, Bhopal 462011.

4. On perusal of Part-III of the Form-5 reveals that the Operational Creditor has not proposed the name of any Interim Resolution Professional.

5. On perusal of Part-IV of the Form-5 reveals that total operational debt as claimed by the Operational Creditor is Rs. Rs.9,80,81,826/- The date of default is stated to be 03.03.2022.

Case of the Operational Creditor/Applicant:

6. It is stated that the Operational Creditor is engaged in the business of acquire, exchange, hire, construct, develop, promote or otherwise deal in lands, landscape, buildings, real estate, roads, dams, canals, flyovers, shops, apartments, flats

and immovable property and to construct, execute, undertake, maintain, erect, fabricate, repair, alter or do any work relating to buildings, roads, bridges, dams, canals and other structures and to carry on business as marketing agent, commission agent, real estate agent and also act as civil engineer, architectural designing and construction, interior designer or decoration.

7. It is stated that the Corporate Debtor is engaged in providing technological support and financial assistance for different projects in the urban sector, raising funds from Government of Madhya Pradesh, Government of India and other financial institutions and co-operating and collaborating with national and international agencies to implement Urban Development Projects on behalf of ULBs and functions as a State Level Nodal Agency for urban development.

8. It is stated that during the year 2017-2018, the Operational Creditor bid for MPUDCL Tender No. 46, Tender No. 54 and Tender No. 55 for Sewerage Project of **Chitrakoot in Satna District, Amarkantak in Anuppur District** and Dindori in Dindori District of Madhya Pradesh. The Corporate Debtor accepted the bids on dated **29.09.2017, 27.12.2017** and

30.12.2017 respectively. Copies of Bid Acceptance Letters are annexed as **Annexure-I/C**.

9. It is stated that subsequent to negotiations and meetings, the Corporate Debtor and Operational Creditor entered into Contract Agreements for the sites Chitrakoot, Amarkantak and Dindori on dated **03.10.2017**, **09.01.2018** and **09.01.2018** respectively. Copies of the Contract Agreements are annexed as **Annexure-I/D**.

10. It is stated that after execution of the Contract Agreements, the Operational Creditor shared various designs with the Corporate Debtor for approval. It is further stated that the sites were not handed over in time and necessary statutory clearances were not provided by the Corporate Debtor.

11. In respect of Amarkantak Project, it is stated that there was delay in providing hindrance-free site and permission from statutory authorities such as Pollution Control Board. It is further stated that the site was changed and the same was intimated to the Operational Creditor on 01.11.2019, i.e., two months prior to expiry of stipulated time, with hindrance of LT line due to which work could not be started. It is stated that

the hindrance of LT line was cleared on 28.12.2021 after a 725-days delay beyond the actual completion period as per agreement. It is further stated that Puratatva Vibhag raised objection regarding construction of STP and stopped the work on 07.06.2020 and the Corporate Debtor requested them on 06.03.2021. It is further stated that permission from Road Crossing Department is still awaited and forest clearance permission from the Forest Department was delayed around five years. It is further stated that there was abnormal delay in clearing monthly RA Bills and unnecessary delay by the Corporate Debtor in approving drawings.

12. In respect of Dindori Project, it is stated that there was delay in providing hindrance-free site and permission of Local Bodies, Revenue Department and Pollution Control Board. It is stated that though it was mentioned in the tender that land was available, the same land was made available for initiation of work on 05.10.2019 when permission for STP work was granted by the Pollution Control Board, which is nearly 21 months after issuance of work order. It is further stated that the location of MPS was shifted to STP area in January 2021, resulting in delay of almost three years. It is stated that there

was insufficient storage area of material at STP site and obstruction by private land owner in movement of vehicles and transportation of material. It is further stated that there was abnormal delay in clearing monthly RA Bills, unnecessary stoppage of work and unnecessary delay in approving drawings.

13. In respect of Chitrakoot Project, it is stated that there was delay in providing hindrance-free site due to protests from local residents and the Corporate Debtor was aware of the same. It is further stated that the matter was reported to higher authorities and there was delay in providing substantial work for approximately three years. It is stated that due to departmental issues the STP HT line is not cleared till date and permission from Pollution Control Department is delayed around five years. It is further stated that approach for IPS is not cleared due to which work cannot be started and there was unreasonable delay in clearing the bills.

14. It is stated that due to the Covid-19 pandemic, the work was affected; however, the Operational Creditor did not abandon the work and executed the same when the situation improved. It is stated that despite completion of work, the Corporate

Debtor terminated the contract agreement for Dindori on **19.01.2022,** Amarkantak on **29.04.2022** and Chitrakoot on **29.04.2022** and denied payment of balance amount.

15. It is stated that the Operational Creditor issued total 36 RA Bills for all the three sites. Copies of Bid Acceptance Letters dated **29.09.2017, 27.12.2017 and 30.12.2017, Contract Agreements dated 03.10.2017, 09.01.2018 and 09.01.2018,** RA Bills and Sanctioned Bills are annexed as **Annexure-C**, **Annexure-D**, **Annexure-E** and **Annexure-F** respectively.

16. It is stated that pendency of the amount is reflected in the statement of books of account maintained by the Operational Creditor for the year 2018–2022. Copy of statement of books/ledger of Operational Creditor and interest calculation sheet are annexed as **Annexure-G** and **Annexure-H** respectively. Copy of GSTR-1 for the relevant period is annexed as Annexure-I/R and copy of Form 26AS reflecting deduction of tax at source is annexed as **Annexure-I/S.**

17. It is stated that Performance Security was furnished in terms of the agreements. Copies of Performance Security dated

03.10.2017 (Chitrakoot), 06.01.2018 (Amarkantak) and 06.01.2018 & 01.02.2018 (Dindori) are annexed as **Annexure-I/J.**

18. It is stated that despite execution of work, the Corporate Debtor terminated the Contract Agreements vide letters dated 19.01.2022 (Dindori) and 29.04.2022 (Amarkantak and Chitrakoot). Copies of Termination Letters are annexed as **Annexure-I/K.**

19. The total amount claimed to be in default is **Rs. 9,80,81,826/-** comprising principal amount of Rs. 1,64,53,357/-, security deposit of Rs. 57,20,773/-, withheld amount of Rs. 82,95,721/-, cost of material lying at site of **Rs. 2,54,59,178/-,** performance security deposit of **Rs. 3,60,16,000/-** and interest of Rs. 61,36,797/-.

20. It is stated that the Operational Creditor issued Demand Notice dated **21.11.2022** under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of Rs. 9,80,81,826/- within 10 days from receipt of notice. Copy of Demand Notice along with postal receipt and postal tracking report is annexed as **Annexure-I/W**.

21.The Operational Creditor has annexed record of default in Form-C as **Annexure-I/U.** It is further stated that the Operational Creditor requested its banker, Union Bank of India, Samta Colony, Raipur Branch, to issue certificate under Section 9(3)(c) of the Code; however, the bank refused to provide such certificate. Copies of bank statements are annexed as **Annexure-I/V.**

22.The Operational Creditor has relied upon the following documents: -

i. Copy of Bid Acceptance Letters dated 29.09.2017, 27.12.2017 and 30.12.2017 at **Annexure-I/C.**

ii. Copies of Contract Agreements dated 03.10.2017 (Chitrakoot), 09.01.2018 (Amarkantak) and 09.01.2018 (Dindori) at **Annexure-I/D**.

iii. Copies of RA Bills issued for all three projects at **Annexure-I/E**.

iv. Copies of Sanctioned Bills at **Annexure-I/F**.

v. Copies of Final Bills in respect of Dindori, Chitrakoot and Amarkantak projects at **Annexure-I/I**.

vi. Copies of Performance Security dated 03.10.2017 (Chitrakoot), 06.01.2018 (Amarkantak) and 06.01.2018 & 01.02.2018 (Dindori) at **Annexure-I/J.**

vii. Copies of Termination Letters dated 19.01.2022 and 29.04.2022 at **Annexure-I/K.**

viii. Details of delay in handling over the hindrance free site **Annexure-I/T.**

ix. Copy of Ledger/Statement of Accounts maintained by the Operational Creditor at Annexure-G.

x. Copy of Bank Statement reflecting last payment dated 03.03.2022 at **Annexure-I/V.**

xi. Record of Default in Form-C at **Annexure-I/U.**

xii. Copy of Demand Notice dated 21.11.2022 along with postal receipt and tracking report at **Annexure-I/W.**

23.**Reply Submitted by Respondent/ Corporate Debtor:**

i. The Corporate Debtor has filed its Objections-cum-Reply and has denied the averments made in the Petition. It is submitted that the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 is not maintainable in law or on facts.

ii. It is submitted that Madhya Pradesh Urban Development Company Limited (MPUDCL) is a Government of Madhya Pradesh undertaking incorporated on 27.04.2015 and is functioning as a State Level Nodal Agency for urban infrastructure development projects.

iii. The Corporate Debtor/Respondent submits that there exist pre-existing disputes between the parties in respect of Tender No. 46 (Chitrakoot), Tender No. 54 (Amarkantak) and Tender No. 55 (Dindori), which were terminated vide letters dated 29.04.2022 (Chitrakoot and Amarkantak) and 19.01.2022 (Dindori).

iv. It is submitted that prior to termination, several letters were issued pointing out slow and unsatisfactory progress of work. The Corporate Debtor has referred to letter dated 20.05.2021 bearing No. PMU/VN/2021/4310 (**Annexure-N** of main petition), raising substantial issues regarding progress of work done by the Applicant, which ultimately led to termination of contracts (**Annexure-K** of main petition).

v. It is further submitted that the Project Manager vide letter dated 28.04.2022 informed MPUDCL that there was no construction activity and deployment of labour and machinery at the site during the preceding 14 days. Reference is also made to various communications forming part of **Annexure-K.**

vi. It is submitted that despite granting last opportunity of 14 days under Clause 27.3 of the Contract, the Applicant failed to provide satisfactory progress or response, resulting in termination.

vii. The Corporate Debtor submits that disputes were referred to Deputy Project Director (Technical), MPUDCL and order dated 27.07.2022 was passed (**Annexure-1** of Reply). Being aggrieved, appeal dated 22.08.2022 was preferred before Engineer-in-Chief (**Annexure-2**).

viii. It is further submitted that Reference Case Nos. 12/2024 (Chitrakoot), 13/2024 (Amarkantak) and 14/2024 (Dindori) have been filed before Hon'ble Madhya Pradesh Arbitration Tribunal at Bhopal (Annexure-3, 4 and 5 respectively). Order sheets dated 12.03.2024 and

09.07.2024 are placed on record as **Annexure-6 to Annexure-11.**

ix. The Corporate Debtor submits that the statutory demand notice under Section 8 was issued during pendency of arbitration proceedings and therefore the alleged debt is already subject matter of adjudication before the Arbitration Tribunal.

x. Reliance is placed upon Section 5(6) of the Code defining "dispute" and the judgment of Hon'ble Supreme Court in **Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353,** *wherein it was inter alia held that so long as a dispute truly exists in fact and not spurious, hypothetical or illusory, the adjudicating authority has to reject the application. Conspicuously, in the present facts it is evident that the alleged debt claimed by the CNPL is pending adjudication in Arbitration, and therefore, such alleged debt cannot be deemed as an unequivocal or admitted liability of MPUDCL by any stretch of imagination. Also, IBC proceedings cannot be used as debt recovery mechanism.* That reliance is also placed upon **K. Kishan v. Vijay Nirman Company**

Private Limited *where it was held that the existence of the dispute and/or 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 maybe.*

xi. The Corporate Debtor submits that the alleged debt was never admitted or acknowledged by it, either expressly or impliedly. It is contended that admitted debt is sine-qua-non for initiation of CIRP and in the present case no such acknowledgment exists.

xii. It is further submitted that the Corporate Debtor has consistently disputed the validity, quantum and existence of the alleged debt through various correspondences.

xiii. It is submitted that as per NeSL certificate, the alleged debt is reflected as Rs.98,08,000/-, whereas the present Application claims Rs.9,80,81,829/- for three sites. It is contended that the Applicant has not demonstrated the basis of such computation.

xiv. The Corporate Debtor has further submitted that before the Arbitration Tribunal, for identical contracts, the Applicant has claimed amounts totalling Rs.26,97,59,000/- (Rs.11,89,00,000/- in Reference Case

12/2024; Rs.5,11,85,000/- in Reference Case 13/2024; and Rs.9,96,74,000/- in Reference Case 14/2024), which differs from the present claim. It is submitted that the date of default has been arbitrarily determined without legal basis.

xv. It is contended that the statutory demand notice is inadmissible for want of proper authorization, as no board resolution or power of attorney was executed on the date of issuance.

xvi. It is further submitted that the Application is defective as affidavits are dated 05.01.2023 whereas documents are notarized on 31.12.2022, and certain sanction letters annexed do not bear seal or endorsement of true copy.

xvii. The Corporate Debtor submits that the debt claimed does not fall within the definition of "operational debt" under Section 5(21) of the Code and that necessary deductions have been made upon termination of contracts.

xviii. It is submitted that the issues involved pertain to substantial delays, extension of timelines, quality of work, and alleged financial liabilities, which are presently under adjudication before the Arbitration Tribunal and involve detailed examination of facts and evidence.

24.**<u>Rejoinder Submitted by Applicant/ Financial Creditor:</u>**

i. It is submitted that there are no pre-existing disputes between the parties because in reality there is no dispute as per definition of IBC exists between Operational Creditor and Corporate Debtor. That all the contents of the answering para are totally false and baseless, hence denied.

ii. It is submitted that the 3 agreements of 3 different sites were executed on 29.09.2017, 27.12.2017 and 30.12.2017, following which the OC diligently commenced site mobilization with great enthusiasm. However, the CD had failed to provide a clean site for the STP (Sewer Treatment Plant), IPS (Intermediate Pumping Station), 4 nos Septicemia Tank and pipeline works, as is evident from the correspondence referenced in various annexed as **Annexure I/O** to **Annexure I/Q** of the main petition.

iii. It is specifically submitted that the delay in mobilization and commencement of construction works held due to delay in handing over the site and that CD is trying to misguide the Hon’ble Tribunal by concealing some important facts of the case and alleged delay stated by the CD is not genuine dispute in eyes of law.

iv. It is submitted that the CD never raised any dispute against the OC even the last payment received by OC on 03.03.2022 from CD and that OC filed present NCLT case on 12.01.2023 and before filing the NCLT case, CD never filed any case of breach of contract and suit for recovery for his return of his money upon the OC. Hence no question arises regarding the termination of contract and pre-existing disputes.

v. It is submitted that CD again misguide the Hon'ble Tribunal by twisting the word "ARBITRATION", which shows that CD having lack of knowledge regarding the arbitration proceedings.

vi. It is submitted that there are no Arbitration proceedings before 16.10.2023, the date which is beyond the filing of NCLT proceedings filed by the OC against CD i.e. 12.01.2023 much prior to arbitration proceedings filed by CD.

vii. It is submitted that the proceedings before the competent authority i.e. Deputy Project Director, MPUDCL dated 10.06.2022; Engineer-in-Chief, MPUDCL dated 22.08.2022 are solely merely a grievance redressal mechanism from CD and which is mentioned in the contract clause 12 of the Section-3 Conditions of the Contract, Part-1 General Conditions of Contract (GCC) and such remedies available to the OC and CD.

viii. It is submitted that since the grievance redressal mechanism authority of CD unable to resolve the petty issues of the OC, the OC choose the NCLT proceedings to initiate the CIRP of CD and filed the case on 12.01.2023 and that the arbitration proceedings were initiated after 8-9 months of NCLT proceedings i.e. 16.10.2023.

ix. It is submitted that the CD is trying to confused and misguide the Hon'ble Tribunal by giving the colour to grievance redressal mechanism to "ARBITRATION PROCEEDINGS". It is submitted that CD never disputes the invoices and documents filed by OC in the main petition and even CD never filed the reply of section 8 notice of IBC sent by OC.

x. It is submitted that CD raised his disputes only after initiation of NCLT proceedings. Hence no question arises of genuine dispute. It is further submitted that CD is not willing to pay the hard-earned money of the OC and trying to give colour of dispute as there is termination of contract between the parties but termination is on account of OC not CD, OC is trying to recover his hard-earned money from the CD and that's why OC availed all the legal remedies availed to him.

xi. It is submitted that there is no reply or dispute raised by the CD in form of reply of section 8 demand notice under IBC sent by OC.

xii. It is submitted that it was fundamental obligation of the department or CD under the agreement that hindrance free Site with all necessary permissions of Local Bodies Revenue dept., Pollution Control Board, PWD Forest dept. etc. were obtained and given to the contractor/OC for smooth execution.

xiii. It is submitted that Pollution Control Board granted permission STP (Sewer Treatment Plant) on 05.10.2019 which was nearly 21 months after issuance of WO and that since Sewer Project totally made of basis of gravitational force, all the sewer comes through pipes from IPS (Intermediate Pumping Station) and collected at Sewer Treatment Plants.

xiv. It is submitted that OC was very much aware that absence of Non-Availability of STP (Sewer Treatment Plant) land laying of the pipeline work could be charged due to uncertain of STP land that was the main reason of delay in slow progress that there was insufficient area for storage of material at STP site.

xv. It is submitted that further approach to it was passing through private land and land owner daily used to obstruct movement of vehicles and transportation of material. That OC had reported this matter regularly and sought a joining land of RTO on temporary basis, but no action was taken on request at CD's end.

xvi. It is submitted that there was delay in verification and payment of work done in running bill and the OC had submitted **10th R/A bill of Rs 71.82 lakhs on 12.10.2021 but CD made payment of Rs 55.79 lakhs only on 01.12.2021**.

xvii. It is further submitted that earlier also there used to be delay in payments which is self-evident from records of the work.

xviii. It is submitted that Pandemic "Covid 19" hit the world in December 2019 and OC have worked under very difficult conditions since March 2020 i.e., under the corona pandemic and staff and labourers had left for their native places but resumed after some period and did commendably well in very difficult conditions.

xix. It is submitted that there was third wave of corona from third week of December 2021 despite the fact, OC made all attempts to continue with the work. It is further submitted that skilled manpower was not locally easily available so the situation was very serious during Covid period and there were frequent mobilization and demobilization.

xx. It is submitted that since reasons for extension of time were not attributable to OC but either attributable to CD or force majeure, extension was granted by CD from time to time up to 31.12.2021 without imposing any liquidated damages and that OC had applied for extension of time up to 31.12.2022 but it was not decided when contract was terminated. Copies of the various letters and replies are annexed with the main petition as Annexure L to Annexure Q.

xxi. It is specifically submitted that vide letter dated 23/12/2021, annexed on Page No. 292 of the main petition as Annexure O, the CD had already admitted that "90% of civil work of STP (Sewer Treatment Plant) and IPS (Intermediate Pumping

Station) are completed, similarly 65% of development of network is completed and for electrical and mechanical work contractor ordered almost.”

It is submitted that CD is trying to misguide the Hon’ble tribunal by concealing a very important point i.e. “availability of clean site and that CD did not hand over the clean site to the OC due to which the delay has happened.

xxii. It is submitted that while filing the form, the amount should be mentioned with two decimal places, that the reason OC stated the amount as 98.08. It is further stated that there was no mentioning of Rs 98,08,000/- anywhere in the NeSL certificate and that the amount referred by the CD counsel in their reply is incorrect as it states Rs 9,80,81,829/- whereas the correct amount is Rs 9,80,81,826/- likely due to clerical error.

xxiii. It is stated that the present case is well in limitation as last payment received within 3 years of the filing date of present case.

25.**Additional reply to the Rejoinder**:

i. The Corporate Debtor has filed an Additional Reply to the Rejoinder. The submissions made therein are recorded as under:

ii. It is submitted that the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 is not maintainable in law or on facts in view of pre-existing disputes between the parties.

iii. It is submitted that the term "dispute" is defined under Section 5(6) of the Code. It is further submitted that the meaning of the term "dispute" may also be understood from Black's Law Dictionary, which defines dispute as:

"A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other."

iv. It is stated that existence of dispute must not be a patently feeble legal argument or an assertion of fact unsupported by evidence. It is submitted that the Hon'ble Adjudicating Authority, exercising summary jurisdiction under IBC, cannot adjudicate detailed disputed questions of fact.

v. Reliance is placed on **M/s S.S. Engineers & Ors. v. Hindustan Petroleum Corporation Ltd., Civil Appeal No.**

4583 of 2022 wherein it has been held: *Existence of a Dispute' between the parties prior to issuance of the Demand Notice. It has been time and again held that 'it is enough that a 'dispute exists' between the parties. The communication between the parties as noted in para 10 read together with the Arbitration invoked by the 'Operational Creditor', we are of the considered view that there is an 'Existence of a Dispute' between the parties which is a genuine dispute and not a spurious, patently feeble legal argument or an assertion offact unsupported by evidence.*

It has further been observed: *"The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor."*

vi. It is submitted that an Operational Creditor can trigger CIRP only when there is an undisputed debt and default. If the debt is disputed, the application must be dismissed.

vii. Further Reliance is placed on **Greymatter Entertainment (P) Ltd. v. Pro Sportify (P) Ltd., (2024) 249 Comp Cas 771: 2023 SCC OnLine NCLAT 82,** *wherein it has been held:*

"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 is 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".

viii. It is submitted that disputes between the parties arose out of execution of the works contract and performance obligations thereunder and the Applicant has invoked proceedings before the Madhya Pradesh Arbitral Tribunal, Bhopal, Madhya Pradesh, seeking recovery of alleged dues.

ix. It is stated that the Applicant commenced work after lapse of 3 months from the date of works contract and that there was delay of 713 days in completion of the project.

x. It is submitted that multiple notices and communications were issued and proceedings were initiated for blacklisting after giving opportunity of hearing. The major delays caused in completion of works contract are attributable to Applicant and the same is evident from bare perusal of:

Scope of Work – Sub-Section 1 & (ii) of Section 2 – Instructions to Bidder (ITB) – A. General;

- Sub clause 1.1 of Section 3 Part – II Special Conditions of Contract (SCC);
- Sub-Section 14.2 of Section 3 Part – II SCC;
- Sub-Section 14.2 of Section 3 Part – I General Conditions of Contract (GCC);
- Note 3 to 6 of Section 4;
- Sub clause 1.4 of Chapter 2 to **Annexure – E**.

xi. It is submitted that from bare perusal of these mandatory provisions and clauses of mutually agreed and registered works contract, it is categorically clear that Applicant is shifting responsibility of works on MPUDCL and alleging delays, even though the same ought to have been performed by Applicant Company in stipulated timelines. Therefore, the Application is liable to be dismissed.

xii. It is submitted that under the contractual framework, responsibility to obtain permissions and statutory compliances rested with the contractor and that the

Operational Creditor raised the 10th Running Account (R/A) Bill for Rs. 71.82 lakhs on 12th October 2021.

xiii. It is submitted that the Respondent made partial payment of **Rs. 55.79 lakhs** on 1st December 2021 it is further stated that the discrepancy in payment demonstrates existence of dispute between the parties and that Clause 12 of the contract provides a structured and formal Dispute Resolution Mechanism (DRM).

xiv. The respondent company has placed on record True copy of relevant excerpts from voluminous Contracts **(page no. 21 to 32)** annexed as **Annexure-12** and True copy of all communication showing pre-existing disputes **(page no. 33 to 137)** annexed **as Annexure-13.**

xv. It is stated that the Applicant has attempted to characterize the same merely as a grievance redressal mechanism and that records show that letter of termination was issued by the Respondent.

xvi. It is submitted that contradictory statements have been made by the Applicant in respect of termination and that breach of contract was committed by the Applicant and termination was carried out by the Corporate Debtor and that the prima facie reading of the NeSL certificate shows discrepancies.

26.**<u>Case Laws Relied Upon by the Parties:</u>**

i. In support of its case that no genuine pre-existing dispute exists, the Operational Creditor has placed reliance upon *Ahluwalia Contracts (India) Ltd. v. Raheja Developers Ltd.*, [2019] ibclaw.in 10 NCLAT; *Pedersen Consultants India Pvt. Ltd. v. Nitesh Estates Ltd.*, [2019] ibclaw.in 09 NCLAT; and *M/s Sahaj Bharti Travels v. M/s HCL Technologies Ltd.*, NCLT, New Delhi.

ii. In support of its case that a genuine pre-existing dispute bars admission and that the Code is not a substitute for the recovery of a disputed debt, the Corporate Debtor has placed reliance upon *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353; *K. Kishan v. Vijay Nirman Company Pvt. Ltd.*, (2018) 17 SCC 662; *M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd.*, 2022 SCC OnLine SC 1385; *Brand Realty Services Ltd. v. Sir John Bakeries India P. Ltd.*, 2022 SCC OnLine NCLAT 290; and *Greymatter Entertainment (P) Ltd. v. Pro Sportify (P) Ltd.*, (2024) 249 Comp Cas 771.

27.**Analysis and observation**:

i. We have heard the learned counsel for the parties and perused the pleadings, documents placed on record, the Company Petition in Form-5, the Reply, Rejoinder and Additional Reply along with annexures.

ii. The authorities relied upon by both the parties are, in the main, founded upon the principle of a pre-existing dispute; we are in respectful agreement with the law so laid down, and the question that falls for our determination is the application of that law to the facts of the present case.

iii. In an application under Section 9 of the Code, this Adjudicating Authority is required to examine whether there is an operational debt due and payable, whether a default has occurred, and whether there exists a pre-existing dispute. As settled by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited,*** **(2018)** 1 SCC 353, the application must be rejected if the Authority finds that a dispute truly exists in fact and is not spurious, hypothetical or illusory. The enquiry is confined to seeing whether the corporate debtor has raised a plausible contention requiring further investigation, and not one that is a patently feeble legal argument or an assertion of fact unsupported by evidence. It is equally settled that the Adjudicating Authority, in its summary jurisdiction, is not a forum for the recovery of disputed dues.

iv. The demand notice under Section 8 was issued on 10.11.2022 and served upon the Corporate Debtor on 25.11.2022. The question that arises for consideration is, therefore, whether a dispute existed between the parties prior to that date.

v. The record establishes that it did. The three contracts were terminated by the Corporate Debtor on 19.01.2022 (Dindori) and on 29.04.2022 (Amarkantak and Chitrakoot), the terminations having been preceded by a series of notices as to slow progress and unsatisfactory performance and by an order dated 01.04.2022 blacklisting the Operational Creditor for a period of three years. More significantly, the Operational Creditor itself invoked the dispute-resolution mechanism under Clause 12 of the General Conditions of Contract by filing a reference before the Deputy Project Director (Technical) on 10.06.2022, which came to be dismissed by order dated 27.07.2022, and thereafter preferred an appeal before the Engineer-in-Chief on 22.08.2022. Each of these events preceded the demand notice.

vi. The contention of the Operational Creditor that these proceedings were a mere grievance-redressal mechanism and not "arbitration," and that the dispute arose only upon the filing of the reference before the Madhya Pradesh Arbitration Tribunal on 16.10.2023, cannot be accepted. Under Section 5(6) of the Code, and on the test laid down in *Mobilox* (supra), a pre-existing dispute is not confined to a pending suit or a formal arbitration; it is sufficient that a real and substantial dispute is shown to have existed before the receipt of the demand notice. In the present case, the Operational Creditor itself set the contractual dispute-resolution machinery in motion, raising, in its own words, the "full description and grounds of dispute," and its claim was considered and rejected on 27.07.2022. Having itself raised the dispute, the Operational Creditor cannot be heard to contend that no dispute existed. The subsequent institution of arbitration in 2023-2024 only confirms that the dispute is real and continuing.

vii. The disputes so raised are neither spurious nor feeble. They concern the responsibility for the delays in execution, the validity of the terminations, the quality of the work, the entitlement to and quantification of the several heads of claim, and the deductions made upon termination. These are matters that require the leading of evidence and a detailed examination of the contractual terms, and they fall outside the summary jurisdiction of this Tribunal. That the debt is itself disputed and unascertained is further evident from the variance between the amount reflected in the Form-C, the amount claimed in the present petition, and the substantially larger sum claimed by the Operational Creditor before the Arbitration Tribunal in respect of the very same contracts.

viii. The circumstance that the Corporate Debtor did not reply to the demand notice under Section 8 does not alter this conclusion, for it is well settled that a failure to reply does not preclude a corporate debtor from demonstrating, on the material on record, the existence of a dispute pre-dating the notice.

ix. In view of the foregoing, we are satisfied that a pre-existing dispute, real and substantial, existed between the parties prior to the issuance of the demand notice under Section 8 of the Code. The application is, accordingly, liable to be rejected in terms of Section 9(5)(ii)(d) of the Code.

ORDER

28.The Application bearing **CP(IB) No. 19/of /2023** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed & disposed of.**

29.The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

Sd/-	Sd/-
MAN MOHAN GUPTA	**BRAJENDRA MANI TRIPATHI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Deepti-LRA