IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT-V

IA-3104/2026

IN

COMPANY PETITION NO. (IB)-62/(ND)/2026

IN THE MATTER OF:

M/S NAMAN INFRA ENGINEERING PRIVATE LIMITED
(Through its Authorized Representative, Sh. Rajat Rai)

... OPERATIONAL CREDITOR

VERSUS

M/S KRISHNA CONSTELLATION PRIVATE LIMITED

...CORPORATE DEBTOR

Order under Section 9 IBC, 2016

Order Delivered on: 21.08.2026

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

MS. REENA SINHA PURI,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Ms. Monica Goel, Mr. Pavan Saraswat, Advs
For the Respondent : Mr. Manish Gupta, Mr. Shubham Aggarwal, Mr. Ankit Gupta, Advs.

ORDER

1. The present Application has been preferred by the Corporate Debtor/Respondent, namely M/s Krishna Constellation Private Limited, under Rules 11 and 49 of the National Company Law Tribunal Rules, 2016, seeking recall/setting aside of the order dated 08.05.2026, to the limited extent whereby the Corporate Debtor was proceeded ex-parte and the matter was directed to be listed for arguments.

2. It is averred by the Applicant/Corporate Debtor that its non-appearance on 08.05.2026 was neither intentional nor deliberate. According to the Applicant, the Company Secretary, who was coordinating with the engaged counsel and was responsible for providing the necessary instructions, was on leave on account of severe illness. Consequently, proper instructions could not be transmitted to the counsel within time and the matter could not be effectively attended to.

3. It is further averred that the proceedings under Section 9 of the IBC[1] have been initiated by the Operational Creditor on the basis of alleged dues arising from work orders pertaining to five projects. The Applicant submits that the work in respect of four projects remains incomplete, whereas Work Order No. WO/KCPL/HO/2024/21 dated 08.10.2024 was cancelled by the Corporate Debtor.

4. The Applicant asserts that substantial and genuine disputes existed between the parties prior to the issuance of the alleged Demand Notice dated 26.12.2025. In particular, the Applicant relies upon the document dated 13.10.2025 bearing the signatures/acknowledgment of the Operational Creditor, together with photographs depicting deficiencies in the work executed by the Operational Creditor, in respect of which a claim of Rs.1,03,00,103/- has been raised. The Applicant accordingly contends that the dispute cannot be treated as a

[1] Insolvency and Bankruptcy Code, 2016

subsequent or sham dispute and that the Section 9 proceedings are therefore not maintainable.

5. The Applicant has further contended that the Operational Creditor is an MSME and that its claim substantially concerns interest under the MSMED Act, 2006, while the principal amount is stated to have been substantially paid. Reliance has been placed upon the decisions referred to in the Application to contend that, where interest is not contractually agreed, such disputed interest claim cannot form the basis of an operational debt for the purpose of Section 9 of the Code and that the appropriate forum for such a claim is the MSEFC.

6. It is also the case of the Applicant that material documents and correspondence were not fully disclosed by the Operational Creditor, and that the disputes were contemporaneous, supported by documents, and existed prior to issuance of the Demand Notice dated 26.12.2025

7. The Applicant has also relied upon judicial precedents concerning suppression of material facts, the requirement of approaching the Court with clean hands, and the principle that proceedings under the IBC cannot be used merely as a recovery mechanism for disputed dues. The Applicant has particularly relied upon the decision of the Hon'ble Supreme Court in *M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd. & Ors.*, wherein it has been observed that the NCLT, while exercising jurisdiction under Sections 7 and 9 of the IBC, is not a debt collection forum, and that where the debt is genuinely disputed, a Section 9 application cannot be maintained

8. The Applicant has also relied upon the judgment referred to as *M/s Anjani Technoplast Limited v. Shubh Gautam*, wherein, the Hon'ble Supreme Court has reiterated that the IBC is not a debt-recovery

legislation and that insolvency proceedings cannot be used as a substitute for ordinary recovery proceedings

9. The Applicant submits that the proceedings are still at a nascent stage and that, being a solvent company, it would suffer serious prejudice and irreparable injury if denied an opportunity to contest the Section 9 proceedings. It is accordingly urged that, in furtherance of the principles of *audi alteram partem*, the Corporate Debtor ought to be afforded an opportunity of being heard

10. The Applicant asserts that the present Application is bona fide and has been filed in the interest of justice. The Applicant has prayed for recall/setting aside of the order dated 08.05.2026 to the extent it was proceeded ex parte, along with such other orders as may be deemed fit.

ANALYSIS AND FINDINGS

12. We have considered the Application, the averments made therein and the material placed on record. The order dated 08.05.2026 shows that the matter was called before this Adjudicating Authority; the learned counsel for the Operational Creditor was present, whereas there was no representation on behalf of the Corporate Debtor. Consequently, the Corporate Debtor was proceeded ex parte and the matter was directed to be listed for arguments on 29.06.2026.

13. The principal question for consideration is whether, in the facts and circumstances, there is a case for recalling the order dated 08.05.2026 to the limited extent that the Corporate Debtor was proceeded ex parte

14. The explanation furnished by the Corporate Debtor is that its Company Secretary, who was coordinating with the counsel and was required to provide instructions, was on leave due to severe illness. It is specifically pleaded that, owing to this circumstance, instructions could not be transmitted to counsel in time. The explanation is specific and directly

relates to the circumstances resulting in non-appearance on the date fixed

15. Moreover, the Applicant has disclosed substantial issues going to the maintainability of the underlying Section 9 proceedings. The Applicant has relied upon contemporaneous documents, including the document dated 13.10.2025 bearing the acknowledgment/signatures of the Operational Creditor, photographs concerning alleged deficiencies in work, and correspondence dated 30.10.2025 and 31.10.2025 relating to the disputed Work Order. These materials, as pleaded, indicate that the dispute was asserted before the Demand Notice dated 26.12.2025.

16. At this stage, this Adjudicating Authority is not required to finally adjudicate upon the merits of the alleged disputes, the contractual liability, the quantum of the operational debt or the correctness of the rival claims. However, the existence of pleaded and document-backed issues is relevant for determining whether the Corporate Debtor should be shut out from participating in the proceedings.

17. The Applicant has also raised a specific contention that the claim substantially concerns disputed interest under the MSMED Act, 2006 and he has relied upon authorities in support of its submission that such a disputed interest claim cannot, in the circumstances pleaded, constitute a sufficient foundation for commencement of CIRP under Section 9 of the IBC. These are matters which require consideration after both sides are afforded an effective opportunity of hearing.

18. The principles of natural justice require that a party should ordinarily be afforded a reasonable opportunity to place its defence, particularly where proceedings under Section 9 of the IBC may have serious and far-reaching consequences. The Applicant has specifically pleaded that the proceedings are at a nascent stage and that denial of an opportunity to contest the proceedings would cause substantial prejudice. The

material placed on record demonstrates that the defence, proposed to be raised by the Corporate Debtor in Section 9 proceedings, is not merely a bald denial.

27. The relief sought in this IA is limited to recall of the ex parte direction so that the Corporate Debtor may participate in the proceedings and place its defence before the Adjudicating Authority. The relief sought, therefore, facilitates adjudication on merits rather than frustrating the proceedings.

28. At the same time, it cannot be overlooked that the non-appearance of the Corporate Debtor resulted in avoidable proceedings and consumption of judicial time. Therefore, while we are inclined to grant the limited relief sought in the interest of justice, the same deserves to be made subject to costs so as to balance the indulgence granted with the requirement of procedural discipline

29. Accordingly, **IA No. 3104/2026** filed by M/s Krishna Constellation Private Limited under Rules 11 and 49 of the National Company Law Tribunal Rules, 2016 is **allowed**, subject to payment of costs of Rs. 50,000 to be deposited with the Prime Minister's National Relief Fund.

30. The cost shall be paid within one week from the date of pronouncement of this order, and proof of payment shall be filed on record.

31. List the matter for compliance on 24.09.2026.

Sd/-

REENA SINHA PURI
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)