NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 07.08.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

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

APPLICATION NUMBER	**: --**
PETITION NUMBER	**: CP(IB)/256(CHE)2024**
NAME OF THE PETITIONER	**: Bava Erectors**
NAME OF THE RESPONDENT(S)	**: EDAC Engineering Ltd**
UNDER SECTION	**: Sec 9 Rule 6 of IBC, 2016**

ORDER

Present : Ld. Counsel Mr. Naveen Kumar Murthi for the Petitioner.

Vide separate order pronounced in open court, **CP/(IBC)/256/CHE/2024** is dismissed.

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

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IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

CP(IB)/256(CHE)/2024

(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

M/s. Bava Erectors,
Represented by Mr. S. Noushad,
D-20/D, Italian Avenue,
Block 27, Neyveli Town,
Cuddalore District – 607 803.

… Operational Creditor/Applicant

-Vs-

M/s. EDAC Engineering Limited,
U45201TN1987PLC014584,
Having its registered Office at
No.88, Mount Road,
Guindy, Chennai – 600 032.

…Corporate Debtor/Respondent

Order Pronounced on ***07th August 2026***

CORAM

SHRI JYOTI KUMAR TRIPATI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Petitioners **:** *Ld. Counsels Mr. Sidhartha Vishnu, G.V. Mohan Kumar, Ms. E. Ramya Shree, Mr. Naveen Kumar.*

For Respondent **:** *Ld. Counsels Mr. Shivakumar, Mr. Suresh, Mr. Dev Eshwar*

O R D E R

(Heard Through Hybrid Mode)

1. This Application has been filed 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 by **Bava Erectors,** (hereinafter referred to as '*Operational Creditor*' / '*Applicant*' / '*Petitioner*') seeking to initiate Corporate Insolvency Resolution Process against **M/s EDAC Engineering Limited** (hereinafter referred to as '*Corporate Debtor*' / 'EDAC' / 'Respondent').

2. Part-I of the Application sets out of the details of the Operational Creditor. It is averred that the Bava Erectors is engaged in the business of engineering, erection, maintenance services, which is represented by Mr. S. Noushad with its office situated at No. D-20/D, Italian Avenue, Block 27, Neyveli Town, Cuddalore District, Tamil Nadu- 607 803.

3. Part-II of the Application sets out the details of the Corporate Debtor, M/s EDAC Engineering Limited, formerly known as SPIC JEL Engineering Construction Limited with Identification No. U45201TN1987PLC014584, incorporated on 1987, having its registered office at the No. 88, Mount Road, Guindy, Chennai – 600 032.

4. In Part-III of the Application the Operational Creditor has proposed Mrs. V. Sathya, having Registration No. IBBI/IPA-001/IP-P-02609/2021-2022/14028 to act as a Resolution Professional and therefore, prayed the Tribunal for appointment as Interim Resolution professional.

5. Part-IV of the Application states that the total outstanding Debt is Rs.1,28,04,903/- (Rupees One Crore Twenty Eight Lakhs Four Thousand Nine

Hundred and Three Only). It is stated that the Date of Default is August 2021.

6. Part-V of the Application describes the Particulars of the Operational Debt, documents, records and evidence of the default as below:

i. A Copy of work order dated 12.10.2015 along with Sub-Contractor payment advice of Corporate Debtor, Bank Account Statement of the Operational Creditor, TDS of Operational Creditor, Tax invoice issued by the Operational Creditor to the Corporate Debtor, Tax receipt and account for Erection of steel structures at NNTPP/ NLCIL/ Neyveli of the Operational Creditor, are annexed as Annexure II.

7. <u>SUBMISSIONS OF THE OPERATIONAL CREDITOR:</u>

7.1 It is submitted that the Operational Creditor is a leading partnership firm was established on 1986 in the field of mechanical and electrical engineering. In addition, the Operational Creditor carries outs the erection & installation of electrical items, maintenance of electrical components and vulcanizing works.

7.2 It is submitted that the Corporate Debtor is engaged in the businesses of executing power projects on an EPC basis.

7.3 It is submitted that a Board resolution was passed at the Meeting held on 06.08.2024 appointing Mr. S. Noushad as the Authorised Signatory of the Operational Creditor. It is further submitted that the Corporate Debtor entered into work order contract with the Operational Creditor on 12.10.2015.

7.4 It is submitted that, pursuant to the work order, the Operational Creditor commenced the work and duly fulfilled all its contractual obligations. The Corporate Debtor accepted the services rendered by the Operational Creditor without any demur and also made part payments in acknowledgement of its liability.

7.5 It is submitted that the Corporate Debtor has failed to make payments due since August 2021, amounting to Rs.1,28,04,903/- exclusive of interest. The details of the outstanding debt arising from non-payment, as per invoices, are as follows:

Bill No	Invoice Date	Bill Value	TDS 2%	Retention 10%	Consumables & Bolt Tightening	Total Deductions
RA 01	31.03.2016	2,31,814	4,636	23,181	54,392	82,210
RA 02	30.04.2016	3,82,762	7,655	38,276	21,706	67,637
RA 03	31.05.2016	1,59,708	3,194	15,971	9,775	28,940
RA 04	30.06.2016	10,87,783	21,756	1,08,778	24,614	1,55,148
RA 05	31.07.2016	10,61,223	21,224	1,06,122	38,297	1,65,644
RA 06	31.08.2016	16,70,414	33,408	1,67,041	58,183 & 1,64,997	4,23,630
RA 07	30.09.2016	13,55,586	27,112	1,35,559	37,206	1,99,876

RA 08	31.10.2016	10,71,116	21,422	1,07,112	49,992	1,78,526
RA 09	30.11.2016	15,72,013	31,440	1,57,201	46,226	2,34,868
RA 10	31.12.2016	14,85,371	29,707	1,48,537	27,736	2,05,981
RA 11	31.01.2017	11,97,078	23,942	1,19,708	33,349	1,76,998
RA 12	28.02.2017	13,50,622	27,012	1,35,062	48,580	2,10,655
RA 13	31.03.2017	9,36,529	18,731	93,653	70,166 & 4,52,935	6,35,484
RA 14	30.04.2017	12,47,873	24,957	1,24,787	1,05,506 & 1,02,827	3,58,078
RA 15	31.05.2017	11,97,692	23,954	1,19,769	1,32,447 &1,44,863	4,21,033
RA 16	30.06.2017	12,28,927	24,579	1,22,893	3,07,776	4,55,247
RA 17	31.07.2017	14,22,303	28,446	1,42,230	-	1,70,676
RA 18	31.08.2017	13,15,136	26,303	1,31,514	-	1,57,816
RA 19	30.09.2017	13,82,273	27,645	1,38,227	5,36,640	7,02,513
RA 20	31.10.2017	13,40,128	26,803	1,34,013	-	1,60,815
RA 21	20.12.2017	16,42,540	32,851	1,64,254	2,04,625	4,01,730
RA 22	12.01.2018	16,14,704	32,294	1,61,470	7,21,257	9,15,021
RA 23	16.02.2018	16,54,490	33,090	1,65,449	1,60,143	3,58,682
RA 24	13.03.2018	17,67,662	35,353	1,76,766	-	2,12,119
RA 25	31.03.2018	19,34,568	38,691	1,93,457	-	2,32,148
RA 26	30.04.2018	17,78,542	35,571	1,77,854	8,24,194	10,37,619
RA 27	08.06.2018	15,25,625	30,513	1,52,563	1,40,912	3,23,987
RA 28	10.07.2018	15,14,450	30,289	1,51,445	-	1,81,734
RA 29	07.08.2018	15,42,520	30,850	1,54,252	-	1,85,102
RA 30	25.09.2018	13,92,679	27,854	1,39,268	2,37,876 & 12,267	4,17,264
RA 31	10.10.2018	14,69,928	29,399	1,46,993	1,94,527	3,70,918

RA 32	14.11.2018	9,80,086	19,602	98,009	9,81,308	10,98,918
RA 33	07.12.2018	7,00,000	14,000	-	1,72,072	1,86,072
RA 34	20.02.2019	9,02,861	18,057	90,286	82,876 & 43,711	2,34,930
RA 35	20.02.2019	8,09,781	16,196	80,978	3,25,923 & 3,919	4,27,016
RA 36	22.04.2019	5,82,803	11,656	58,280	-	69,936
RA 37	23.07.2019	6,80,974	13,619	68,097	2,54,100 & 1,610	3,37,427
RA 38	18.08.2020	25,56,130	38,342	2,55,613	-	2,93,955
RA 39	31.12.2020	3,67,018	5,505	36,702	-	42,207
RA 40	01.03.2021	14,80,255	22,204	1,48,026	1,77,000	3,47,229
RA 41	30.11.2021	39,52,444	79,049		-	79,049
Total		**5,35,46,411**	**10,48,911**	**48,89,397**	**70,06,533**	**1,29,44,841**

7.6 It is submitted that, as per Clause 9 of the work order, the Corporate Debtor has wilfully breached the said clause and has been delaying the payments due to the operational Creditor since August 2021. The relevant clause of the work order is extracted below:

> Subcontractor shall submit the progress Invoice before 5th of every calendar month at Site for certification process.
> EDAC shall release the monthly progress payment within 05 days after receipt the payment from the client.

7.7 It is submitted that the Operational Creditor issued a demand notice dated 01.07.2024 under Section 8 of the IBC read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the same was served on the Corporate Debtor on 02.07.2024.

8. <u>SUBMISSIONS OF THE RESPONDENT:</u>

8.1 It is submitted that the present application filed by the Operational Creditor is not maintainable under the provisions of the IBC. Further, the application is incomplete and has been filed without complying with Section 9(3)(b) of the IBC, which mandates that the operational creditor shall furnish an affidavit of no dispute along with the application. Accordingly, the Adjudicating Authority may admit the application only if it complies with the requirements stipulated under Section 9(5)(i)(a) of the IBC. Further, although the operational creditor has referred to the purchase orders and invoices, no such documents have been filed along with the application.

8.2 It is submitted that there are disputes with regard to the claims and the Operational Creditor has failed to comply with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Further, the applicant has not furnished the Bank Certificate of the Operational Creditor as required under Section 9(3)(c) of the IBC.

8.3 It is submitted that the IBC would not apply especially since it is a debt. The definition of "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

8.6 It is submitted that, as per Para 32 of Clause 1 of the work order, the scope of work was required to be completed within the time stipulated by EDAC, BHEL/ NLC. The relevant clause is extracted below:

DURATION:

32. All the scope of work shall be completed as per the schedule stipulated by EDAC / BHEL / NLC.

8.7 It is submitted that, as per Para 35 of Clause 1 of the work order, in the event that the work was expected to be delayed beyond the stipulated date of completion, EDAC (Corporate Debtor) was entitled to engage any other agencies without prior intimation. The relevant clause is extracted below:

35. In case the work is expected to be delayed from due date of completion, EDAC shall have all the right to engage any other agencies without prior intimation and get the work completed at the risk and cost of the Sub-Contractor.

8.8 It is submitted that, as per Clause 2 of the work order, the tentative contract value was fixed at Rs.4,19,65,715/-. It was specifically agreed, upon completion of the scope of work, and in the event of any increase or decrease, in the quantum of work, the final payment would be made only for the actual quantity erected and certified, at the agreed unit price. The relevant clause is extracted below:

II. BILL OF QUANTITY:

The approx. Weight schedule of the Main Boiler structure, Galleries & structures and interconnecting platforms works are as follows and the detailed PGMA wise quantity is attached.

Sl.No	Description	Unit	Scope	Unit Price (Rs.)	Total Price (Rs.)
1	Main Boiler structures (PG-35) Major	MT	5799.3	3,100	17,977,675
	Main Boiler structures (PG-35) - Auxiliary Structures	MT	2063.1	4,100	8,458,710
2	Galleries & Structures (PG-36)	MT	1294.9	8,600	11,136,140
3	Interconnecting platforms (PG-38)	MT	556.1	7,900	4,393,190
TOTAL		MT	9713.4		41,965,715

The Likely Contract Value Rs 4,19,65,715/- (Rupees Four Crores Nineteen Lakhs Sixty Five Thousand and Seven Hundred Fifteen Only)

- However after completion of the above total scope of work, if the quantum of work increases or decreases, the total final erected & certified quantity payment only will be made as per the agreed unit price.
- EDAC informed that the above agreed unit price shall be valid till the entire work completion.
- No Idle payment shall be made under any circumstances.

8.9 It is submitted that, as per Clause 4 of the work order, the Operational Creditor had agreed that all works would be carried out in accordance with the Quality Assurance plan approved by EDAC/BHEL/NLC.

8.10 It is submitted that, as per Clause 9 of the work order, the Operational Creditor agreed that the corporate debtor would release the monthly progress payments within 5 days from the date of receipt of payment from BHEL. It was also agreed that 5% would be paid to the Operational Creditor on a pro rata basis upon completion of the punch list points/pending points liquidation. However, the said conditions have not yet been fulfilled.

8.11 It is submitted that the Corporate Debtor supplied the machinery, tools & tackles required to the Operational Creditor on a returnable basis on various dates, in accordance with the work order. However, the Operational Creditor failed to return the same. Consequently, the Corporate Debtor sent emails dated 28.10.2021 and 26.11.2021, called upon the Applicant/Operational Creditor to return the same, failing which the cost of the tools and tackles would be back charged to the Applicant. Accordingly, the Applicant is liable to pay an amount of Rs.55,31,833/- to the corporate debtor.

8.12 It is submitted that the Applicant is responsible for the safe execution of the job as per Para 15 of the Clause 6 of the work order. The relevant clause is extracted below:

> 15. If any incident/accident occurs during the time of execution due to unsafe working procedure or violating the safety regulations EDAC shall not take any responsibility and all the consequences against the same shall be sub contractor's account.

8.13 It is submitted that Mr. Selvakumar, a 20-year-old worker engaged by the Applicant, fell from a height at work site and died on 25.11.2019. Consequently, the Corporate Debtor paid a sum of Rs.25 lakhs to the victim's family and is entitled to recover the said amount from the Applicant. It is further submitted that BHEL imposed an HSE penalty of Rs.2,00,000/- on the corporate debtor in connection with the fatal accident. Accordingly, the Applicant is liable to reimburse the said amount to the corporate debtor.

8.14 The Corporate Debtor issued various letters/emails calling upon the Applicant to complete the works, including the email dated 17.04.2023, wherein the Corporate Debtor pointed out the non-completion of pending works and punch points and invoices raised by the Applicant were not accepted by the Corporate Debtor and the same was disputed.

8.15 It is submitted that, despite having failed to complete the pending works, the Applicant issued a demand notice on 28.03.2024 and a letter dated 03.05.2024 claiming a sum of Rs.1,28,04,903/- as due and payable. In response, the corporate debtor, by its reply dated 18.05.2024, denied its liability for the said claim. It is submitted that the Corporate Debtor incurred an amount of Rs.44,12,492/- towards the completion of the pending works.

8.16 It is submitted that the corporate debtor requested the petitioner to reconcile the accounts and amicably resolve the disputes between the parties. Accordingly, by email dated 18.05.2024, the Corporate Debtor called upon the petitioner to attend a meeting on 27.05.2024. On 27.05.2024, the Applicant attended a meeting with the Corporate Debtor, however, no consensus could be reached between the parties.

8.17 It is submitted that, as per Clause 11 of the work order, any disputes arising between the parties are required to be resolved through arbitration proceedings. Accordingly, the corporate debtor invoked arbitration. In view of the irreconcilable disputes between the applicant and the Corporate Debtor, the Hon'ble Madras High Court, appointed Justice Mr. V. Parthiban, Retired High Court Judge, as the Arbitrator and the arbitration proceedings have commenced. The Operational Creditor has sought time to file its counter in the arbitration proceedings. Despite the existence of the arbitration clause, the Applicant has filed the Present Application under IBC. Therefore, the application is not maintainable and amounts to suppression of material facts. The relevant clause is extracted below:

<u>XI. SETTLEMENT OF DISPUTES AND ARBITRATION:</u>

1. Any disputes or differences arising out of or in connection with the present contract shall be to the extent possible settled amicably between the parties, failing which all disputes shall be settled by arbitration in the manner provided hereunder.
2. Any dispute or difference which cannot be settled amicably between the parties arising out of this contract shall be finally resolved by arbitration as per the Arbitration and Conciliation Act 1996. The proceeding shall be carried out in English language and the seat of arbitration shall be in Chennai only.

9. <u>REJOINDER FILED BY THE OPERATIONAL CREDITOR:</u>

9.1 It is submitted that the Operational Creditor had issued the demand notice as early as 28.03.2024 & 03.05.2024, much prior to the invocation of the arbitration clause and the issuance of the demand notice dated 01.07.2024. Subsequently, the corporate debtor filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court of Madras. Further, submitted that the arbitration proceedings cannot be construed as a "Pre-existing dispute" and therefore, the present application is maintainable under the IBC.

9.2 It is submitted that the Corporate Debtor has not disputed the fact that payments are due and payable to the Operational Creditor. Even in the Arbitration proceedings, the Operational Creditor brought to the notice of Hon'ble Madras High Court that proceedings under Section 9 of the IBC had already been initiated before this Hon'ble Tribunal. The relevant portion of the order passed by the Hon'ble Madras High Court order is extracted below:

"3. The application had been opposed by the learned counsel for the respondent by contending that the respondent had moved the NCLT on 12.08.2024 against the applicant herein for proceedings against the applicant under Section 9 of the Insolvency and Bankruptcy Code, 2016. However what has been produced before this Court is only a presentation of paper by the respondent against the applicant under Section 9 of the Insolvency and Bankruptcy Code, 2016. Therefore, there is no bar for this Court to appoint an Arbitrator."

9.3 It is submitted that the order of the High Court clearly shows that the appointment of arbitrator was opposed at the time of the hearing. Nevertheless, the Hon'ble High Court of Madras appointed the Sole Arbitrator, observing that there was no bar to entertaining the application under Section 11 of the Arbitration and Conciliation Act, 1996. Further, submitted that the application filed by the Operational Creditor under Section 16 of the Arbitration and Conciliation Act, 1996 challenging the claims made by the corporate debtor, is still pending. Furthermore, the Operational Creditor had not consented to the appointment of the Sole Arbitrator.

9.4 It is submitted that the statutory remedy available under Section 9 of the IBC supersedes the contractual remedy, and there is no bar to filing the present application. It is further submitted that, despite the invoices having been raised and not disputed by the corporate debtor, the payments remain unpaid to date, which fall within the definition of "Debt" and "Default" under the IBC.

9.5 It is denied that the machinery, Tools & Tackles were withheld after the completion of the work. The Corporate Debtor has wrongfully withheld the legitimate payments due to the Operational Creditor and has neither informed the Operational Creditor about the engagement of another sub-contractor nor terminated the work order.

9.6 It is submitted that the Corporate Debtor has failed to produce any material evidence to establish that the Operational Creditor had violated any safety regulations. Further, the Corporate Debtor has not produced any document in support of its claim that a sum of Rs. 25,00,000/- was debited from its accounts. Hence, the Operational Creditor is not liable to pay any such penalty.

9.7 The demand notices dated 28.03.2024 & 03.05.2024 were issued for the recovery of the outstanding debt amount. In its reply dated 18.05.2024, the corporate debtor has not disputed the fact that outstanding payments were due and payable to the operational creditor. It is further submitted that, even during the meeting held on 27.05.2024, the corporate debtor focused only on the completion of the punch points and did not address the outstanding payments due and payable to the Operational Creditor.

9.8 It is submitted that the Operational Creditor has filed the bank statements, TDS deductions, payment advices issued by the corporate debtor, tax invoices and tax receipts in support of its claim.

10. <u>WRITTEN SUBMISSIONS OF THE OPERATIONAL CREDITOR:</u>

10.1 The Operational Creditor has reiterated the contentions made in the Application. It is reiterated that the Respondent placed the Work Order dated 12.10.2015 upon the Applicant for carrying out pre-assembly, erection, testing and commissioning of Main Boiler Structure (PG 35), galleries, platforms and structures (PG 36) and inter-connecting Platforms (PG 38) for Unit 1 of 2 * 500 MW Neyveli New Thermal Power Project at Neyveli, Tamil Nadu. The following clauses of the work order are reiterated by the Operational Creditor:

S.No.	Clause as per the Work Order dated	Particulars	Page No. referred in the

	12.10.2015		Application
1.	Clause I	The scope of work has been specified.	Pg No. 51
2.	Clause II	The likely contract value is a sum of Rs. 4,19,65,715/-	Pg No. 57
3.	Clause IX	It stipulates that the Applicant shall submit the progress invoice before 5th of every calendar month at the site for certification process and that the Respondent shall release the monthly progress payment within 5 days of receipt of the payment from the client.	Pg No. 57
4.	Clause VI (15)	In the event of any unsafe working procedure or violation of safety regulations, the Respondent shall not assume any responsibility. In the present case, no such unsafe working procedure or violation of safety regulations attributable to the Applicant has been pointed out by the Respondent at any point in time, nor has any document been produced in support thereof. Thus, the said defence is nothing but a moonshine defence.	Pg No. 57

10.2 It is stated that, pursuant to the work order, the Applicant carried out the works strictly in accordance with the terms and conditions thereof. The works carried out by the Applicant were accepted by the Respondent without any demur, and accordingly, the Respondent also issued the Sub-Contractor Payment Advices from time to time. The Respondent further made part-payments, which demonstrate that the Respondent has accepted the services rendered by the Applicant without any demur. The TDS statements, bank account statements, tax receipts, and tax invoices of the Applicant further substantiate the services rendered by the Applicant.

10.3 It is reiterated that the Applicant has carried out works to the extent of Rs. 5,84,37,930/-. However, the Respondent has made only part payments, and a sum of Rs. 1,28,04,903/- remains due and payable by the Respondent. It is further reiterated that the Respondent, even in its Counter-Affidavit, has not disputed the fact that a sum of Rs. 1,28,04,903/- is due and payable to the Applicant.

10.4 It is reiterated that the Notice under Section 21 of the Arbitration and Conciliation Act, 1996, was issued only on 07.06.2024. The Applicant had already issued notices dated 28.03.2024 and 03.05.2024 demanding payment of the outstanding amount of Rs. 1,28,04,903/-. Therefore, there was no pre-existing dispute between the parties, and the initiation of arbitration proceedings was merely an after-thought.

10.5 It is submitted that, even in the order dated 04.09.2024 passed by the Hon'ble High Court of Madras in Arb.O.P. (Com. Div) No. 301 of 2024, the

Operational Creditor had raised an objection to the effect that the petition under Section 9 of the IBC is pending before this Hon'ble Tribunal.

10.6 The allegations raised in the Counter-Affidavit relate to the non-return of Tools and Plants, a safety incident involving the accident of one Mr. Selvakumar, and non-completion of works relating to punch points. It is submitted that the tools and plants have been duly returned to the Respondent. This is evident from the acknowledgment of the Respondent affixed to the Tax Invoice dated 02.02.2023 raised by the Applicant. There is no provision for set-off under the Work Order. The Respondent has relied upon email communications issued in 2021, which are much prior to the Tax Invoice dated 02.02.2023.

10.7 It is reiterated that, with regard to the non-completion of works relating to the pending punch points, the Respondent had failed to make any payments to the Applicant since August 2021, thereby causing irreparable loss and hardship to the Applicant. Further, no specific time schedule has been prescribed under the Work Order for completion of the works.

10.8 The Applicant relied upon the following Judgements, ***Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd., 2025 SCC OnLine SC 806, Deepak Modi v. Shalfeyo Industries Pvt. Ltd., 2023 SCC OnLine NCLAT 169,*** and ***Sharad Chandra Goel v. Tarannom Shargh International Transportation Co., 2023 SCC OnLine NCLAT 232.***

11. <u>WRITTEN SUBMISSIONS OF THE CORPORATE DEBTOR:</u>

11.1 The Corporate Debtor has reiterated the contentions raised in the Counter-Affidavit. It is reiterated that the present application under Section 9 of the IBC has been filed by the Applicant by suppressing the materials facts relating to the existence of a dispute between the Corporate Debtor and the Operational Creditor.

11.2 It is reiterated that the Corporate Debtor had placed the work order dated 12.10.2015 with the Operational Creditor for carrying out works in connection with the Neyveli Thermal Power Project. The main contractor, BHEL / NLC (Owner), had awarded the Thermal Power Project contract to the Corporate Debtor and thereafter sub-contracted certain works to the Operational Creditor. The Present Application is not maintainable in view of the provisions of Section 8 of the IBC. The details of the disputes that existed even prior to the issuance of notice under Section 8 of the IBC are set out below:

S.No.	Clause as per the Work Order dated 12.10.2015	Issues	Page No. referred in the Counter Affidavit
A) Delayed and pending works			
1.	Clause 4,32,33 and 35	• As per these clauses, the petitioner was required to complete the scope of work within the time schedule stipulated by the Respondent (EDAC), BHEL/NLC (Owner).	Pg No. 14-21

		• In the event that the performance of the sub-contractor was not satisfactory, EDAC reserved the rights either to cancel or off load the work at the risk and cost of the sub-contractor. • In the event that the work was likely to be delayed, the Corporate Debtor had the right to engage other agencies without prior intimation. • The Corporate Debtor engaged another contractor to complete the pending works. • Thus, the petitioner committed a serious breach of conditions stipulated under the work order.	
B) Recovery towards non-return of machinery, tools & tackles			
2.	Clause 24 and25	The Corporate Debtor supplied the required machinery, tools & tackles to the Operational Creditor on a returnable basis on various dates for carrying out the works.	Pg No. 16
C) Compensation amount debited from the respondent's account by BHEL and Penalty			
3.	Clause 6.1, 6.5, and 6.14	The Petitioner's worker died in a fatal accident, which occurred allegedly due to the negligence of the Petitioner's Worker. The Respondent paid compensation to the victim's family and a penalty was also imposed by BHEL. As per the aforesaid clauses, the petitioner is liable to reimburse the said amount to the Respondent.	Pg No. 19,20

11.3 It is reiterated that the Respondent disputed the invoices raised by the petitioner as unacceptable vide email dated 17.04.2023. The details of the time schedule agreed upon by the petitioner are evidenced by the email dated 07.02.2020. Further, the respondent, vide email dated 28.10.2021 informed the petitioner to return the machinery, tools and plants supplied by the corporate debtor on a returnable basis. The respondent also issued a letter dated 28.03.2024 seeking reimbursement of the compensation and penalty amounts. On 27.05.2024 the petitioner attended a meeting to discuss the issues relating to the punch points and other pending matters. However, the Petitioner did not agree to resolve the said issues. The respondent, with the intention of amicably resolving the disputes and maintaining a cordial relationship, sought reconciliation of the accounts relating to the amounts claimed to be due. Such reconciliation, in law, would not amount to an admission of the debt as claimed by the petitioner.

11.4 The Respondent/Corporate Debtor has relied upon the following judgements in support of its contention that reconciliation of accounts constitutes a pre-existing dispute in the cases of ***Sabarmathi Gas Limited v. Shah Alloys Limited, (2023) 3 SCC 229,*** and ***East India udyog Ltd. V. SPML Infra Limited in Company Appeal (AT) (Ins) No. 256 of 2023.***

11.5 It is reiterated that the Respondent issued an invocation notice under the arbitration clause on 07.06.2024, in view of irreconcilable disputes between the petitioner and the respondent. Subsequently, the petitioner issued a demand notice dated 01.07.2024. In view of existence of disputes between the petitioner and the respondent, the Hon'ble Madras High Court vide its order dated 04.09.2024, appointed Mr. Justice V. Parthiban, as the Arbitrator to adjudicate the disputes between the parties. The respondent relied upon the judgments in ***Pramod Yadav and Another v. Divine Infracon Private Limited in Company Appeal (AT)(Ins) 251/2017, Adavya Projects Private Limited vs. M/s. Vishal Structurals Private Limited & Others*** and ***Regenta Hotels Private Limited v. M/s. Hotel Grand Centre Point & Others in SLP (Civil) No. 30212 of 2024.***

11.6 It is submitted that, insofar as the damages and compensation arising out of the allegedly breach of contract in the present case are concerned , the same have to be adjudicated by the Arbitral Tribunal, as serious disputes arise with regard to the pending obligations, uncrystallized claims, levy of liquidated damages, alleged breach of contract, non-completion of the works within the stipulated period and the risk and loss allegedly suffered by the Respondent on account of engaging another contractor. These issues have to be adjudicated in the context of contractual rights, obligations and liabilities of the parties.

11.7 It is submitted that the Hon'ble Supreme Court has repeatedly cautioned against using the IBC as a shortcut or an alternative mechanism for recovery of disputed contractual dues. Where complex disputes require the appreciation of evidence, the parties must seek appropriate remedies before the competent civil courts, tribunal or arbitral forum by leading the necessary evidences. The NCLT is neither a forum for resolving complex contractual disputes nor a substitute for a civil court to recording evidence and examining the merits of such disputes. From the facts and records set out above, it is emphatically clear that serious disputes existed between the parties prior to the issuance of the demand notice. Accordingly, there is a pre-existing dispute between the parties, which cannot be adjudicated in insolvency proceedings, as held by the Hon'ble Supreme Court in the matter of Mobilox Case.

FINDINGS OF THE TRIBUNAL

12. We have heard the learned Counsels for both the parties and perused the documents on record.

13. It is seen that there is a contractual agreement between the Operational Creditor and the Corporate Debtor. Though there is no formal agreement executed between the parties, the Corporate Debtor had placed the Work Order dated 12.10.2015 with the Operational Creditor for carrying out works in connection with the Neyveli Thermal Power Project. The main contractor, BHEL / NLC (Owner), had awarded the Thermal Power Project contract to the Corporate Debtor, which thereafter sub-contracted to the

Operational Creditor. Based on the said Work Order, invoices were raised by the Operational Creditor. The total likely Contract value was Rs.4,19,65,715/-. The invoices forming part of the alleged debt pertain to the period from 2016 to 2021. The outstanding amount claimed by the Operational Creditor is Rs. 1,28,04,903/- with the last invoice having been raised on 30.11.2021 and the last payment having been received in August 2021.

14. It is seen that the alleged debt arose on account of nonpayment of the aforesaid invoices, pursuant to which the Operational Creditor issued the 1st and 2nd demand notices dated 28.03.2024 and 03.05.2024, respectively. The Corporate Debtor responded to the demand notices vide its reply dated 18.05.2024, wherein it raised certain issues relating to the failure on the part of the Operational Creditor to fulfil its contractual obligations. The Corporate Debtor further stated in its reply dated 18.05.2024 that the Operational Creditor had not rectified all the defects and that the Corporate Debtor was required to rectify the same itself to the satisfaction of BHEL/NLC.

15. It is further seen that, in its detailed reply dated 10.07.2024 the Corporate Debtor brought to the notice of the Operational Creditor the issues relating to the non-completion of pending works and punch points. The Corporate Debtor had to engage another agency to complete the pending works including scrap cutting, removal of scaffolding, and cleaning of the floor. Therefore, the Corporate Debtor, in its reply, raised clear issues

relating to the existence of a pre-existing dispute and sought reconciliation of the outstanding amounts, taking into consideration the issues relating to the non-completion of the works. The corporate debtor also requested the Operational Creditor to reconcile the accounts and amicably resolve the disputes between the parties. The Corporate Debtor vide email dated 18.05.2024, called upon the petitioner to attend a meeting on 27.05.2024. However, no consensus could be reached between the parties. The corporate debtor also referred to resolution of disputes through arbitration in terms of Clauses XI and XIV of the Work Order. We find that the arbitration proceedings were invoked and that the Hon'ble Madras High Court, appointed Mr. Justice V. Parthiban, Retired Judge of the High Court, as the Arbitrator. Therefore, the essential ingredients for maintaining an application under Section 9, namely the existence of a debt and default, have to be established. In the present case, we find that the alleged debt has not crystalised in view of the pre-existing disputes referred to above. Accordingly, the claim of the Applicant based on various invoices has not attained finality on account of the non-completion of the works in accordance with the Work Order. The same is evident from the correspondence sent by the Corporate Debtor to the applicant, as well as from the continuing disputes between the Operation Creditor and the Corporate Debtor.

16. It is noted that the dates and events clearly establish the existence of disputes between the Petitioner and the Respondent. The Petitioner failed to comply with the terms and conditions of the work order and failed to complete the works within the stipulated time. The relevant dates and events are set out below:

S.No.	Date	Particulars
1.	12.10.2015	Work Order executed between the Corporate Debtor and the Operational Creditor.
2.	28.03.2024	The Applicant issued a notice demanding payment of the outstanding amount of Rs.1,28,04,903/-. (1st Demand Notice)
3.	03.05.2024	The Applicant issued a subsequent notice demanding payment of the outstanding amount. (2nd Demand Notice)
4.	18.05.2024	The Corporate Debtor issued a reply to the demand notices and called upon the petitioner to attend a meeting on 27.05.2024.
5.	07.06.2024	The Respondent invoked the arbitration proceedings.
6.	01.07.2024	The Applicant issued a Demand Notice under Section 8 of the IBC to the Corporate Debtor.
7.	10.07.2024	The Corporate Debtor issued a reply to the Demand Notice.
8.	12.08.2024	The Applicant/ Operational Creditor filed the

		Present under Section 9 of the IBC before this Tribunal.
9.	04.09.2024	The Hon'ble High Court of Madras appointed sole Arbitration vide its order dated 04.09.2024.

17. This Tribunal also relied on the judgment cited by the Respondent/Corporate Debtor in "***Pramod Yadav and Another v. Divine Infracon Private Limited in Company Appeal (AT)(Ins) 251/2017***", wherein the Hon'ble NCLAT held that, in view of the fact that the arbitral proceedings commenced upon a request being made under Section 21 of the Arbitration and Conciliation Act, 1996, the commencement of such proceedings established the existence of a dispute. Accordingly, Hon'ble NCLAT held that the petition under Section 9 of the IBC was not maintainable.

18. At this juncture, it is necessary to bear in mind the settled legal position governing applications under Section 9 of the Code. The object of the Code is resolution of insolvency and not recovery of disputed claims. The jurisdiction of the Adjudicating Authority under Section 9 is limited. The Authority is not required to adjudicate upon the merits of the dispute or determine the exact amount payable. It is only required to ascertain whether there exists a real dispute between the parties prior to the issuance of the demand notice. Once a pre-existing dispute is demonstrated, the Adjudicating Authority is obligated to

reject the application under Section 9, irrespective of the merits of the rival claims. The insolvency process cannot be invoked as a substitute for adjudication of contractual disputes or as a debt recovery mechanism.

19. Applying the aforesaid principles to the facts of the present case, this Adjudicating Authority finds that the disputes raised by the Corporate Debtor are neither vague nor unsupported by evidence. The email correspondences dated 14.10.2019, 25.11.2019, 23.12.2019, 24.12.2019, 06.01.2020, 07.02.2020, 19.09.2020, 05.10.2020, 18.11.2020, 28.10.2021, 26.11.2021 and 17.04.2023 clearly record the non-completion of the works, failure to return the machinery, tools and plants, failure on the part of the Operational Creditor to comply with the safety regulations. These disputes existed prior to the issuance of the demand notice. The subsequent correspondence exchanged between the parties' further evidences the continuing disagreements regarding the amounts claimed, and the liability of the Corporate Debtor. Furthermore, the Corporate Debtor, in its response to the demand notice dated 13.03.2024, specifically disputed the quantum of the alleged outstanding dues. The details of the aforesaid email correspondences are set out below:

DATE	DISPUTES
14.10.2019	The Respondent sent an email to the Petitioner directing it to complete pending works within one month. The Respondent further informed the petitioner that, in the event of failure to

Date	Disputes
	complete the works, it would engage manpower on a supply basis.
25.11.2019	The Respondent sent an email to the Petitioner informing it that Mr. Selvakumar, a worker of the petitioner, had died while working at the site.
23.12.2019	The Respondent sent an email to the Petitioner directing it to continue the work and complete the entire scope of work.
24.12.2019	The Respondent sent an email to the Petitioner informing it that one of its workers had met with a fatal accident at the site, which, according to the respondent, occurred due to the negligence of the petitioner's worker.
06.01.2020	The Respondent sent an email to the Petitioner directing it to engage additional manpower for completing the balance works.
07.02.2020	The Respondent sent an email to the Petitioner directing it to complete the balance works by the end of February 2020. As per the agreed schedule, the balance works were to be completed by the end of January 2020.
19.09.2020	The Respondent sent an email to the Petitioner directing it to complete scarp cutting works & stiffener plate welding works within one month.
05.10.2020	The Respondent sent an email to the Petitioner directing it to remove the scrap in accordance with the instructions of BHEL/NLC.

DATE	DISPUTES
18.11.2020	The Respondent sent an email to the Petitioner informing it about non-availability of manpower.
28.10.2021	The Respondent sent an email to the Applicant directing it to return the machinery, tools & tackles supplied by the Respondent.
26.11.2021	The Respondent sent a reminder email to the petitioner directing it to return the machinery, tools & tackles.
17.04.2023	The Respondent sent an email to the petitioner calling upon it to complete the pending work and punch points. The respondent also pointed out the non-completion of the pending works and punch points and stated that the invoices raised by the petitioner were not acceptable and were disputed.

20. The chronology of events clearly establishes that the disputes existed well before the issuance of the demand notice dated 28.03.2024. Therefore, the defence raised by the Corporate Debtor cannot be characterized as a mere attempt to avoid payment. Rather, the materials on record disclose a genuine and substantial disputes requiring adjudication before an appropriate forum.

21. In the case of ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, the Hon'ble Supreme Court held that while considering a Section 9 application, the Adjudicating Authority is only required to examine whether there exists a plausible contention requiring investigation and whether the dispute is not a patently feeble legal argument or an assertion unsupported

by evidence. If a genuine dispute exists prior to the issuance of the demand notice, the application must be rejected. The Court further held that the IBC cannot be used as a substitute for debt recovery proceedings.

> *"All that the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the application under Section 9 must be rejected."*

22. Applying the above test, the emails dated 14.10.2019, 25.11.2019, 23.12.2019, 24.12.2019, 06.01.2020, 07.02.2020, 19.09.2020, 05.10.2020, 18.11.2020, 28.10.2021, 26.11.2021 and 17.04.2023, clearly show the non-completion of works within stipulated time, failure to deploy the required manpower, the correspondence between the parties from 2019–2023 regarding deficiencies in the services, and the dispute concerning the non-return of machinery, tools and plants and the alleged violation of safety regulations under the Work Order, clearly establish the existence of a pre-existing dispute.

23. In the present case, the Corporate Debtor has placed on record contemporaneous correspondence evidencing disputes concerning non-completion of works, objections to the invoices and the quantum of liability. These disputes admittedly predate the demand notice dated 28.03.2024. The Operational Creditor has also admitted in Para 11 of the Rejoinder, that the

Corporate Debtor, instead of clearing the alleged debt, had engaged another sub-contractor to complete the pending works. The aforesaid statement clearly establishes that the works carried out by the Operational Creditor had not been completed to the satisfaction of the Corporate Debtor, necessitating the engagement of another sub-contractor to fulfil the requirements of the principal contractor of BHEL/NLC. Applying the principles laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, this Adjudicating Authority is satisfied that a genuine pre-existing dispute exists between the parties. Consequently, the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 is not maintainable and is liable to be dismissed.

24. In these circumstances, this Adjudicating Authority is of the considered view that the present dispute is not a simple case of admitted non-payment of operational debt. Rather, it involves substantial and bona fide disputes concerning the non-completion of the pending works and punch points, non-return of the machinery, tools and tackles, failure to comply with the prescribed safety regulations, failure to satisfy the requirements of the Owner BHEL/NLC as stipulated under the Work Order, the entitlement of the Operational Creditor to raise certain invoices, the correctness of the amounts claimed and the liability of the Corporate Debtor to make payment thereof.

25. Accordingly, this Adjudicating Authority is satisfied that a pre-existing dispute existed between the parties prior to the issuance of the demand notice under Section 8 of the Code.

26. In view of the foregoing facts, circumstances and findings, this Adjudicating Authority holds that the materials placed on record unequivocally demonstrate the existence of a genuine and bona fide pre-existing dispute between the parties regarding the operational debt claimed by the Operational Creditor.

27. Since the dispute existed prior to the issuance of the demand notice and the claim itself requires adjudication on disputed questions of fact and contractual obligations, the present proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 are not maintainable. Accordingly, the Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 stands dismissed.

28. Accordingly, Company Petition CP(IBC)/256(CHE)/2024 is **DISMISSED** and disposed of.

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