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(IBC)/78/CHE/2022**
NAME OF THE PETITIONER	**: Aegis Power Solutions Pvt Ltd**
NAME OF THE RESPONDENT(S)	**: Refex Energy Ltd (Svaryu Energy Ltd)**
UNDER SECTION	**: Sec 9 Rule 6 of IBC, 2016**

ORDER

Present : Ld. Counsel Mr. Kumarpal Chopra for the Respondent.

Vide separate order pronounced in open court, **CP/(IBC)/78/CHE/2022** is dismissed.

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

kg

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

CP(IB)/78(CHE)/2022

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

In the matter of ***Refex Energy Limited***

M/s AEGIS POWER SOLUTIONS PVT. LTD.
CIN –U31900GJ2010PTC061566
Imperial Height Nr. Sun Pharma Road,
Atladara Vadodara, Vadodara GJ 390012

… Operational Creditor

-Vs-

M/s. REFEX ENERGY LIMITED
Svaryu Energy Ltd
CIN –U40100TN2008PLC067360
11th Floor, Bascon Futura IT Park, 10/2,
Venkat Narayana Road, T Nagar,
Chennai TN 600017

…Corporate Debtor

Order Pronounced on ***7th August 2026***

CORAM

Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Operational Creditor : Iswar Mohapatra
For Corporate Debtor : Chiron Singhi

ORDER

Under Adjudication is **CP(IB)/78(CHE)/2022** filed by M/s. AEGIS POWER SOLUTIONS PVT. LTD (hereinafter referred to as**'Operational Creditor'**) under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. REFEX ENERGY LIMITED **Svaryu Energy Ltd** (Hereinafter referred to as **'Corporate Debtor'**). It has been prayed to admit the Application and initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Applicant, the Operational Creditor AEGIS POWER SOLUTIONS PVT. LTD, In Part II of the application, the details of the Corporate Debtor is mentioned as M/s REFEX ENERGY LIMITED **Svaryu Energy Ltd** As per Part III of the application, the Operational Creditor has proposed the name of the Interim Resolution Professional (IRP) as Mr Ashok Kriplani.

3. Part IV of the application signifies the amount of debt to the tune of Rs.1,73,54,459/-(Rupees One Crore Seventy Three Lacs Fifty Four Thousand Four Hundred Fifty Nine only) which consists of principal outstanding amount of Rs.1,56,73,209/- and interest amounting to Rs.16,81,250/- calculated up to Oct. 2019 as the outstanding dues that is payable by the Corporate Debtor.

4. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default as follows:

1. Copy of PO
2. Copy of Invoices issued by operational creditor to corporate debtor for supply of Services
3. Calculation Sheet
4. Ledger Account of Operational Creditor
5. Copy of Demand Notice

SUBMISSIONS OF THE PETITIONER

5. It is stated that the corporate Debtor has failed to pay operational creditor Rs.1,73,54,459/-(Rupees one crore Seventy Three Lacs Fifty Four Thousand Four Hundred Fifty Nine only) which consists of principal outstanding amount of Rs. 1,56,73,209/- and interest amounting to Rs.16,81,250/- as on Oct, 2019.

6. It is stated that the corporate Debtor had issued work orders/purchase orders (hereinafter called, contracts,) to the Applicant/ operational creditor It is stated that as per terms of the contracts, the operational creditor, started executing the work and kept raising running account bills to the corporate Debtor from time to time for the pieces of work completed by them. The Corporate Debtor made payments for the bills from time to time to the Operational creditor.

7 It is stated that corporate Debtor failed to release payment with respect to invoices raised by the operational creditor despite the operational Creditor discharging their contractual obligations as per the contracts.

The details of the work order given by the corporate debtor is as follows,

Date of Work Order	No	Nature of Services	Value(Rs)
07.03.2018	REL/NLC-50MW-161710 & PO-56/2017-2018-Amendment-3	MMS piling, MMS Erection & Module installation work for solar power project of the corporate debtor situated at Kamuthi Taluk & Kadaladi Taluk, District Ramanathapuram, Tamil Nadu.	1,64,37,872/-
15.10.2018	REL/NLC-50MW-161710 & WO-29/2017-2018-Amendment-1	Supply of boundary wall material for solar power project of the corporate debtor situated at Kamuthi Taluk & Kadaladi Taluk, District Ramanathapuram, Tamil Nadu.	61,71,000/-
27.12.2018	REL/NLC-109MW-1819101A & B/WO-11/2018-2019	MMS piling work for solar power project of the corporate debtor situated at Avathandai Village, Kadaladi Taluk, District Ramanathapuram, Tamil Nadu.	3,33,94,000/-

8. It is stated that the details of the work order for which payment is not received is in between 28.01.2019 to 31.03.2019 and the details of the amount due is extracted below,

Purchase Order No	Invoice No	Date of Invoice	Invoice Amount (₹)	Amount of Debt (₹)	Interest @18% (₹)	Total Amount with Interest (₹)	Details of Transaction on account of which debt fell due	Date from which such debt fell due
REL/NLC-50MW-161710/PO-56/17-18 AMM- 3	41/TN/18-19	28-01-19	3,971,880	1,661,859	204,067	1,865,926	Sale of Services	29-01-19
REL/NLC-50MW-161710/ WO-29/17-18 -Amt-1	44/TN/18-19	21-02-19	2,496,910	2,496,910	284,443	2,781,353	Sale of Services	22-02-19
REL/NLC-109 MW -1819101 A &B /WO 11/18-19	49/TN/18-19	15-03-19	2,006,000	2,006,000	212,196	2,218,196	Sale of Services	16-03-19
REL/NLC-109 MW -1819101 A &B /WO 11/18-19	50/TN/18-19	15-03-19	2,242,000	2,242,000	237,161	2,479,161	Sale of Services	16-03-19
REL/NLC-109 MW -1819101 A &B /WO 11/18-19	52/TN/18-19	16-03-19	3,196,620	3,196,620	336,959	3,533,579	Sale of Services	17-03-19
REL/NLC-109 MW -1819101 A &B /WO 11/18-19	54/TN/19-20	31-03-19	41,300	41,300	4,124	45,424	Sale of Services	01-04-19
REL/NLC-109 MW -1819101 A &B /WO 11/18-19	55/TN/19-20	31-03-19	2,584,200	2,584,200	258,066	2,842,266	Sale of Services	01-04-19
REL/NLC-109 MW -1819101 A &B /WO 11/18-19	56/TN/19-20	31-03-19	1,444,320	1,444,320	144,234	1,588,554	Sale of Services	01-04-19
Total (₹)			17,983,230	15,673,209	1,681,250	17,354,459		

9. It is stated that the demand notice is issued on 27.12.2019 and the corporate debtor has replied to the demand notice on 09.01.2020. It is stated that the Corporate Debtor has raised debit note on account of machinery and equipment amounting to Rs.6,01,0641 as stated in the mail dated 02.06.2020 which is signed by the operational creditor.

10. That the operational creditor has completed the work allocated as per terms and conditions of the contract and the issue relating to quality of the work has never arisen during the execution of the work. The operational creditor has successfully completed the work awarded under the contract and the allegation to the effect that the operational Creditor has not completed the work as per terms of contract is false,

baseless it is stated that after completion of the project, Corporate Debtor has issued completion certificate to the Operational Creditor.

REJOINDER FILED BY THE APPLICANT

10. It is submitted that respondent never make the payment as per terms and condition of the contract and also failed to supply material at site which is required to execute the project and petitioner has expressed its inability to execute the work under this situation. It is submitted that short closure is not attributable to fault on the part of the petitioner but for default on the part of respondent to honour the payment.

11. It is stated that the corporate debtor has engaged Enfros India Solutions Pvt. Ltd to execute leftover work of the petitioner is totally false and baseless. It is submitted that respondent issued parallel work order to Enfros India Solutions Pvt. Ltd. for same work for 15 MW on 15.02.2018.

12. It is submitted that CD has issued completion certificate with respect to completion of 109 MW Solar Plant CD has mentioned all invoices which are claimed by the petitioner.

13. The details of Invoices claimed by petitioner for which completion certificate is issued by CD are as under:

Invoice No	Invoice Value(Rs)
49/TN/18-19	20,06,000/-
50/TN/18-19	22,42,000/-
52/TN/18-19	31,96,620/-
54/TN/18-19	41,300/-
55/TN/18-19	25,84,200/-
56/TN/18-19	14,44,320/-

14. It is submitted that the debit note are issued by the CD after the receipt of the demand notice (Demand notice dated 31.03.2020 for Rs.12,16,835/- bearing No. REL/TN/95/19-20 It is submitted that respondent admitted the total invoice raised amounting to Rs.3,94,85,898/- and also admitted that total payment made to petitioner is Rs.2,31,32,940/- and the admitted debt in the present case is more than the threshold amount of Rs.1 crore and the Corporate Debtor has issued unilateral debit note after receipt of demand notice to reduce the debt figure below threshold amount.

SUBMISSIONS OF THE RESPONDENT

15. It is stated by the respondent that The Respondent had received a contract for some works issued by NLC India Limited for which the Respondent, entered into a transaction with the Applicant as sub-contractor for completion of some civil works like MMS piling, MMS erection and module installation work for a solar power project, amongst a few others for 2 projects one being the 50 MW Solar Power Project and another being the 109 MW Solar Power Project. For this, a few work orders as described by the Applicant in their application was issued with certain terms and conditions

16. It is stated that after issuing work orders for the said projects, the same were amended multiple times as the Applicant was unable and incapacitated in completing the original work as per work order issued even after amendments and the Applicant failed to complete the works as directed by the Respondents.

17. The respondent has stated that the payments for the above completed works have been made in full it is stated that many payments were made in the year 2019, and all the payments made (only for completed works) are towards invoices raised by the Applicant in 2019 some of the payments include INR 15,00,000/-, INR

20,00,000/-, and INR 25,00,000/- were made to the Applicant for the invoices issued by the Applicant in 2019, for the completed works.

18. It is stated that work order for the 109MW project dated 27.12.2018 which the Applicant has provided as part of their typeset itself reflects clause 12 stating the terms of payment, where the breakup of payment to be made depends upon the work completion stage, clearance of punch points and payment of Performance guarantee as per the terms. Moreover clauses 13 and 14 of the work order show termination for default and non-performance which is what is the present case. The Applicant simply did not complete the works as given by the Respondent even after the work order was amended many times to suit their capacities. Therefore they have committed non-performance which led to short closure of the work order clause 16 of the said work order also states that the Applicant shall indemnify the Respondent in case of any losses/expenses etc incurred or suffered by the Respondent due to performance of the Applicant. The Applicant has breached all the above terms of the work order originally issued, and now is trying to turn the tables on the Respondent.

19. It is submitted that the work done by the Applicant was not as per the work orders issued it was incomplete in nature the Respondent had communicated many times over call, stating the inconsistencies in the work done by them, but to no avail. Finally, the Respondent had no option but to engage other third party contractors to finish the pending work, as the Respondent had to fulfil its obligations to NLC India ltd, from whom the actual work order was issued to the Respondent.

20. It is stated that the Respondent had issued reply to rejoinder dated 07.03.2020, wherein it was clearly stated that there has been a deficiency in service, and it was pointed out that there was an inconsistency in the amounts claimed by the Applicant itself. In a letter dated 14.11.2019, the Applicant had demanded an outstanding due of INR 3,05,95,392/-, and then immediately in the demand notice dated 27.12.2019 the amount outstanding is stated as INR 1,73,54,459/.

21. It is stated that As per the records of the Respondent, the total value of invoices raised by the Applicant is INR 3,94,85,898/-, out of which the split up of all amounts paid to the Applicant, Debit notes raised and amounts adjusted against payments made on behalf of the Applicant After adjustment of all the above amounts, the only surviving outstanding payable by the Respondent now comes up to

INR 76,80,484/- which is much lesser than the threshold of 1 crore needed to file this application.

22. It is submitted that completion certificate issued by the Respondent and despite this the Respondent is falsely claiming incomplete work is denied in Toto as false and baseless. It is pertinent to note that the said completion certificate was issued only for the piling work in the 109MW SPV project as per work order dated 27.12.2018. The invoices produced by the Applicant which are allegedly not paid consist of different descriptions like Supply of boundary wall material, installation, erection and commission in different blocks, and MMS erection etc of both the projects. The invoices claimed to be outstanding pertain to both the projects whereas the completion certificate issued is pertaining to one project and that to only one scope of work i.e., piling work. There are discrepancies in the pleadings of the Applicant itself, they claim that some invoices are pending and for the same completion certificate has been issued. There is no relation to the invoices alleged as pending and the completion certificate which was issued.

23. They have not attached all the work orders actually issued to them, they have not stated the true amount of total invoices actually

issued, and with regard to the email dated 02.06.2020 and letter dated 01.04.2020 wherein it is alleged that the Respondent has admitted its debt, this statement is denied. The Respondent never admitted any debt as due as per shown by the Applicant in its demand notice, the Respondent only stated that the outstanding was to INR 76,80,484/-.

FINDINGS OF THIS TRIBUNAL

24. We have heard the rival arguments of both parties and perused the records.

25. This application has been filed under Section 9, Rule 6 of IBC, 2016 by the Applicant alleging to be Operational Creditor seeking relief to initiate CIRP against the Respondent/CD.

26. Before devolving into the merits of the case, we have to look into the matter, of whether debt is within the limitation. In other words, we have to look into whether the Application under Section 9(6) of IBC has been filed against the Respondent/CD within the limitation period which has been provided in the IBC Code, The date of default mentioned in the application is in 2019 as 29.01.2019 22.02.2019 16.03.2019 17.03.2019 01.04.2019 and the application is filed in 2022 which is well within the limitation period.

27. At this Juncture the short point for our consideration is whether any operational debt qua the Corporate Debtor has been proven to have become due and payable which the corporate debtor has default in the payment further whether there is any pre-existing dispute between the parties. This examination would be in line with the test which has been laid down by the Hon'ble Supreme Court ***in Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353 ('Mobilox' in short)*** which is as reproduced below

> *"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:(i) Whether there is an "operational debt" as defined exceeding Rs. 1 lakh? (See Section 4 of the Act) (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute? If any of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."*

28. For ready reference relevant provisions are extracted.

> ***Section 3(11****) of IBC "****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*
>
> ***Section 5 (21) operational debt****" means a claim in respect of the provision of goods or services including employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority*
>
> ***section 3(12) Default****" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [1][paid]by the debtor or the corporate debtor, as the case may be;*

29. To decide on the question of whether the applicant has proved that there is a debt that is due and payable which is defaulted by the Corporate debtor we would refer to the judgements of Hon'ble Supreme Court in ***Macquarie Bank Limited v. Shilpi Cable Technologies Limited 2018*** held as follows the relevant paragraph are extracted

> *Section 9(1) contains the conditions precedent for triggering the Code insofar as an operational creditor is concerned. The requisite elements necessary to trigger the Code are: (i) occurrence of a default; (ii) delivery of a demand notice of an unpaid operational debt or invoice demanding payment of the amount involved; and (iii) the fact that the operational creditor has not received payment from the corporate debtor within a period of 10 days of receipt of the demand notice or copy of invoice demanding payment, or received a reply from the corporate debtor which does not indicate the existence of a pre-existing dispute or repayment of the unpaid operational debt. It is only when these conditions are met that an application may then be filed under Section 9(2) of the Code in the prescribed manner, accompanied with such fee as has been prescribed ..."*

30. The applicant in its application submits that the corporate Debtor had issued work orders/Purchase orders to the Applicant/ operational creditor. As per terms of the contracts, the operational creditor, in good faith, started executing the work and The Corporate Debtor made payments for the bills from time to time to the Operational creditor.

31. It is stated that the Corporate Debtor has not released the payment with respect to invoices raised by the operational creditor between 28.01.2019 to 31.03 .2019, It is stated That the Corporate Debtor has released payments to operational creditor from time to time but has not released balance outstanding payment of Rs. 1,56,73,209/-(Rupees One Crore Fifty Six Lacs Seventy Three Thousand Two Hundred Nine only).

32. The respondent states that The Applicant is falsely alleging that there are outstanding payments totalling to INR 1,56,73,209/- Whereas in fact all payments for the works done and completed by the Applicant has been paid by the Respondent

33. It is stated that the terms of the work orders issued itself indicate that breakup of payment to be made depends upon the work completion stage, clearance of punch points and payment of Performance guarantee. Moreover the terms of the work orders also show termination for default and non-performance which is what is the present case.

34. It is stated that since the Applicant failed to complete the works in time, the Respondent was forced to short close all work orders issued

to the Applicant and hire another third party contractor 'Enfros India Solutions Pvt Limited' to complete the works of the Applicant.

35. It is further stated that the only surviving outstanding payable totals to INR 76,80,484/-, which is less than the limit of One Crore and this Tribunal had further directed to file details of the pending works and details of how those pending works were later handed over to another third-party contractor by the name 'Enfros India Pvt ltd' which led to extra expenditure shelled out by the Respondent.

36. It is clarified that With regard to the 50 MW project, the pending works are showcased in the below table

50Mw Work Details (WORK ORDER NO 56, AMENDMENT 1,2,3)

SN No	Work Decreption	AS Per PO Qty	Inv No	Qty	*Pending Qty*
1	Supply of Boundary Wall	6600	01/TN/18-19	2325	0
2	Supply of Boundary Wall		13/TN/18-19	675	
3	Supply of Boundary Wall		41/TN/18-19	3600	
4	Pole Casting	6600	03/TN/18-19	2100	0
5	Pole Casting		14/TN/18-19	900	
6	Pole Casting		26/TN/18-19	1611	
7	Pole Casting		31/TN/18-19	1989	
8	Installation of Pole Casting	6600	29/TN/18-19	3000	3600
9	MMS Piling	9240	02/TN/18-19	2538	-1176
10	MMS Piling		04/TN/18-19	2181	
11	MMS Piling		05/TN/18-19	1739	
12	MMS Piling		06/TN/18-19	2259	
13	MMS Piling		12/TN/18-19	1277	
14	MMS Piling		27/TN/18-19	422	
15	MMS Erection	510400	44/TN/18-19	287086.32	223313.68
16	Module Installation	61600	44/TN/18-19	34560	27040

Enfros India Pvt Ltd

Wo No	Work Decreption	AS Per PO Qty Addi - Amnd	Rate	*Amount*
WO No 17/Amd7	MMS Erection	333052.36	4	1,332,209.44
	Module Installation	58760	28	1,645,280.00

37. It is stated that the pending works of MMS Erection and MMS Installation are the ones which were later on given to 'Enfros India Pvt Ltd' via Work order no. 17 dated 17.08.2021, The Corresponding work

order 1 no.29 dated 07.03.2018 issued to the Applicant for which works were pending is attached

Work Order No: REL/NLC-50MW-161710/WO-29/2017-2018 – Amendment - I
Work Order Date: 07.03.2018

To,
Aegis Power Solutions (P) Ltd.
103 Imperiel Height, Old Padra Road, Nr.Akshar Chowk
Vadodara-390020, Gujarat.
Mobile No. : +91-9898038107
Email ID: sunil@aegispowersolutions.com
Kind Attn. Mr. Sunil Singh.

Subject: Amendment in Work Order for MMS Piling, MMS Erection & Module installation work for our Solar PV Power Plant of 50 MW AC at Kamuthi Taluk & Kadaladi Taluk , Ramanathapuram district, Tamil Nadu, India

Ref: REL/NLC-50MW-161710/WO-29/2017-2018 dated 02/03/2018

Dear Sir,
With reference to the above subject, we hereby amend the above referred Work order and the details are as follows:

Revised Scope of Work

Sr. No.	Item Description	Qty.	Unit	Rate (Rs.)	Amount
1	MMS Piling (462 Per MW x 20MW) (As per our approved drawings)	9240	Nos	1,100.00	1,01,64,000.00
2	MMS Erection (25520KG Per MW x 20MW) (As per our approved drawings)	510400	KG	4.00	20,41,600.00
3	Module Installation (3080 Per MW x 20MW) (As per our approved drawings)	61600	Nos	28.00	17,24,800.00
Sub Total :					**1,39,30,400.00**
GST @ 18% (HSN Code – 7216)					25,07,472.00
Grand Total :					**1,64,37,872.00**

All the other terms and conditions will remain the same as per the original Work Order.

38. With regard to the 109 MW Project, the pending works relating to supply of boundary wall material, pole casting and installation of pole casting are all the works which are completely not done by the Applicant and since these works were not done by the Applicant it was given to 3rd party to complete the work.

39. Upon a careful perusal of the document placed on record the primary issue is to determination are whether the operational debt claimed by the Applicant has been crystallized above the statutory threshold limit of Rs. 1 Crore, and whether there exists a bona fide pre-

existing dispute between the parties prior to the issuance of the Demand Notice under Section 8 of the Code

40. On the first issue of crystallization and quantum of debt, it is a well-settled proposition of law that an operational debt must be an undisputed clear to maintain an application under Section 9 of the IBC. In the present case, the Applicant claims an outstanding principal amount of Rs. 1,56,73,209/- along with interest, totalling Rs. 1,73,54,459/-. However, there are difference in the claims raised by the Applicant, from Rs. 3,05,95,392/- in its letter dated 14.11.2019 and Rs. 1,73,54,459/- in the Demand Notice dated 27.12.2019.

41. Per contra the Corporate Debtor has set out that out of total invoices raised amounting to Rs. 3,94,85,898/-, payments are made to the tune of Rs. 2,31,32,940/-, with adjustments toward debit notes for equipment and third-party completion expenses and it is stated that the balance stands at Rs. 76,80,484/-, which falls below the threshold limit of Rs. 1,00,00,000/- (Rupees One Crore) prescribed under Section 4 of the Code.

42. This tribunal has sought for clarification, with regard to details of default to place on record the amount paid and amount deducted

based on default and the calculation of the same and details of delegated work based on default if any.

43. In compliance with the order of this tribunal the respondent has memo and brought on record the following details,

WORK DONE ITEM WISE SUMMARY FOR 50 MW.

Bill Details " NLC 50 MW"

Date	Description of Goods	Bill No.	Quantity	Rate	Basic Amount	Tax	INVOICE Amount	Tds	Debit Note	Retention PBG 5%	Payable	INVOICE NO.	SUBMIT IN COUNTER PITTITION PAGE NO.
02.04.2018	Supply of Boundary Wall	01/TN/18-19	2325	835.00	19,41,375.00	3,49,448.00	22,90,823.00			97,068.75	**21,93,754.25**	01/TN/18-19	
02.04.2018	MMS Piling	02/TN/18-19	2538	1,100.00	27,91,800.00	5,02,524.00	32,94,324.00	55,836.00		1,39,590.00	**30,98,898.00**	02/TN/18-19	
02.04.2018	Pole Casting	03/TN/18-19	2100	500.00	10,50,000.00	1,89,000.00	12,39,000.00	21,000.00		52,500.00	**11,65,500.00**	03/TN/18-19	
10.04.2018	MMS Piling	04/TN/18-19	2181	1,100.00	23,99,100.00	4,31,838.00	28,30,938.00	47,982.00	5,65,789.00	1,19,955.00	**20,97,212.00**	04/TN/18-19	
19.04.2018	MMS Piling	05/TN/18-19	1739	1,100.00	19,12,900.00	3,44,322.00	22,57,222.00	38,258.00		95,645.00	**21,23,319.00**	05/TN/18-19	
27.04.2018	MMS Piling	06/TN/18-19	2259	1,100.00	24,84,900.00	4,47,282.00	29,32,182.00	49,698.00		1,24,245.00	**27,58,239.00**	06/TN/18-19	
30.05.2018	MMS Piling	12/TN/18-19	1277	1,100.00	14,04,700.00	2,52,846.00	16,57,546.00	28,094.00		70,235.00	**15,59,217.00**	12/TN/18-19	
30.05.2018	Supply of Boundary Wall	13/TN/18-19	675	835.00	5,63,625.00	1,01,453.00	6,65,078.00			28,181.25	**6,36,896.75**	13/TN/18-19	
30.05.2018	Pole Casting	14/TN/18-19	900	500.00	4,50,000.00	81,000.00	5,31,000.00	9,000.00		22,500.00	**4,99,500.00**	14/TN/18-19	
28.08.2018	Pole Casting	26/TN/18-19	1611	600.00	9,66,600.00	1,73,988.00	11,40,588.00	19,332.00		48,330.00	**10,72,926.00**	26/TN/18-19	
28.08.2018	MMS Piling	27/TN/18-19	422	1,100.00	4,64,200.00	83,556.00	5,47,756.00	9,284.00		23,210.00	**5,15,262.00**	27/TN/18-19	
17.09.2018	Installation of Pole Casting	29/TN/18-19	3000	200.00	6,00,000.00	1,08,000.00	7,08,000.00	12,000.00		30,000.00	**6,66,000.00**	29/TN/18-19	
08.10.2018	Pole Casting	31/TN/18-19	1989	600.00	11,93,400.00	2,14,812.00	14,08,212.00	23,868.00		59,670.00	**13,24,674.00**	31/TN/18-19	
28.01.2019	Supply of Boundary Wall	41/TN/18-19	3600	935.00	33,66,000.00	6,05,880.00	39,71,880.00			1,68,300.00	**38,03,580.00**	41/TN/18-19	U/S -9, PAGE NO. 79, COPY ATTACHED
21.02.2019	Module Installation	44/TN/18-19	34560	28.00	9,67,680.00	1,74,182.40	11,41,862.40	42,320.51		1,05,801.26	**23,48,788.06**	44/TN/18-19	U/S -9, PAGE NO. 80, COPY ATTACHED
	MMS Erection		287086.32	4.00	11,48,345.28	2,06,702.15	13,55,047.43						
	Total Amount		**348262.32**		2,37,04,625.28	42,66,833.55	2,79,71,458.83	3,56,672.51	5,65,789.00	11,85,231.26	2,58,63,766.06		

WORK DONE ITEM WISE SUMMARY FOR 109 MW. (Z)

Description of Goods	Quantity	Rate	Date	Bill No.	Basic Amount	Tax	INVOICE Amount	Tds	Debit Note	Retention PBG 5%	10% Hold against Punchpoints	Hold 25% for Site Issues	Payable	INVOICE NO.	SUBMIT IN COUNTER PITTITION PAGE NO.
MMS Piling	1700	1,000.00	15.03.2019	49/TN/18-19	17,00,000.00	3,06,000.00	20,06,000.00	34,000.00	**NA**	85,000.00	1,70,000.00	4,25,000.00	**12,92,000.00**	49/TN/18-19	U/S -9, PAGE NO. 81, COPY ATTACHED
MMS Piling	1900	1,000.00	15.03.2019	50/TN/18-19	19,00,000.00	3,42,000.00	22,42,000.00	38,000.00	**NA**	95,000.00	1,90,000.00	4,75,000.00	**14,44,000.00**	50/TN/18-19	U/S -9, PAGE NO. 82, COPY ATTACHED
MMS Piling	2709	1,000.00	16.03.2019	52/TN/18-19	27,09,000.00	4,87,620.00	31,96,620.00	54,180.00	**NA**	1,35,450.00	2,70,900.00	6,77,250.00	**20,58,840.00**	52/TN/18-19	U/S -9, PAGE NO. 83, COPY ATTACHED
MMS Piling	35	1,000.00	31.03.2019	54/TN/18-19	35,000.00	6,300.00	41,300.00	700.00	**NA**	1,750.00	3,500.00	8,750.00	**26,600.00**	54/TN/18-19	U/S -9, PAGE NO. 84, COPY ATTACHED
MMS Piling	2190	1,000.00	31.03.2019	55/TN/18-19	21,90,000.00	3,94,200.00	25,84,200.00	43,800.00	**NA**	1,09,500.00	2,19,000.00	5,47,500.00	**16,64,400.00**	55/TN/18-19	U/S -9, PAGE NO. 85, COPY ATTACHED
MMS Piling	1224	1,000.00	31.03.2019	56/TN/18-19	12,24,000.00	2,20,320.00	14,44,320.00	24,480.00	**NA**	61,200.00	1,22,400.00	3,06,000.00	**9,30,240.00**	56/TN/18-19	U/S -9, PAGE NO. 86, COPY ATTACHED
Total Amount	**9758**				97,58,000.00	17,56,440.00	1,15,14,440.00	1,95,160.00	-	4,87,900.00	9,75,800.00	24,39,500.00	74,16,080.00		

44. It is stated TDS amount is Rs 5,51,833.00 and Advance paid against work through bank: Rs 6,90,750.00 Amount payable against work done invoice paid through bank (matching AEGIS power) Rs 2,31,21,940.00 Further amounts which are not considered by AEGIS include Debit Notes is extracted below,

		LIST OF DEBIT NOTE		
SL	DATE	DESCRIPTION	AMOUNT	DEBIT NOTE NO.
1	31.03.2020	INCOMPLETION OF WORK & PUNCH POINT	12,16,835	REL/TN/95/19-20
2	31.03.2019	CIVL WORK (EXCAVATION)	35,275	REL/TN/56/18-19
3	31.12.2018	MACHINERY HIRING CHARGES HYDRA	1,63,995	REL/TN/62/18-19
4	15.12.2028	MACHINERY HIRING CHARGES HYDRA	1,02,926	REL/TN/58/18-19
6	12.10.2018	CIVIL WORK	4,263	REL/TN/41/18-19
5	12.10.2018	CIVIL WORK	1,003	REL/TN/48/18-19
7	11.03.2028	MACHINERY HIRING CHARGES HYDRA, FENCING DAMAGE WORK , SAFETY HELMET	1,20,449	REL/TN/64/18-19
8	15.06.2018	CIVIL WORK, LOADING, LABOUR CHARGES, MLT RENT, MMS MATERIAL CHARGES	1,73,153	REL/TN/13/18-19
			-	
		TOTAL AMOUNT	18,17,899.00	

45 The corporate debtor states that on verification of invoices, statutory tax implications, debit notes, and contractual deductions, the reconciled final payable amount is Rs 76,80,484/- (Rupees Seventy-Six Lakhs Eighty Thousand Four Hundred Eighty-Four Only), In view of the above we are of the view that clear crystallization of the specific amount in due is not substantiated in this case.

46. Regarding pre-existing disputes is concerned, this Adjudicating Authority, while dealing with an application under Section 9 of the Insolvency and Bankruptcy Code, 2016, is strictly required to examine whether a real dispute existed prior to the issuance of the Demand Notice. It is a settled principle that the primary objective of initiating the Corporate Insolvency Resolution Process (CIRP) against a Corporate Debtor is to address the company's inability to pay its operational debts, and not to convert this Tribunal into a forum for debt recovery or the resolution of underlying commercial squabbles.

47. Where an operational relationship exists between the parties, any dispute raised prior to Demand Notice specifically concerning the quality of services rendered, deficiency in performance, or breach of agreed terms of service constitutes a valid pre-existing dispute under the Code.

48. Applying these principles to the facts of the present case, this Tribunal must evaluate whether the contentions raised by the Corporate Debtor regarding the nature and quality of the services provided by the Operational Creditor falls under the ambit of pre-existence of dispute it is seen that the Corporate Debtor had execute the work through a third party, M/s Enfros India Solutions Pvt Ltd and under Clauses 12, 13, and 14 of the Work Orders, payments were strictly linked to completion stages, clearance of punch points, and performance benchmarks, further the corporate debtor has also terminated the purchase order and also the work order with the applicant quoting the reasons of non-fulfilment of delivery and other commitments.

49. Further it is stated that it is the case of the respondent that due to delays and incomplete execution by the Applicant, the Corporate Debtor was constrained to short-close the work orders and engage a

third-party contractor, M/s Enfros India Solutions Pvt. Ltd., to execute the pending works under both the 50 MW and 109 MW projects and also stated that the cancellation of the word order is also issued to the applicant due to non-fulfilment of the delivery.

50. Upon perusal of the record and relevant statutory provisions under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"), this tribunal observes that the existence of a "dispute" holds equal significance as the occurrence of a "default" for triggering the Corporate Insolvency Resolution Process (CIRP) under Section 9. The mere presence of an unpaid operational debt or a default by the Corporate Debtor does not automatically entitle an Operational Creditor to invoke the provisions of the Code, unless it is established that no pre-existing dispute exists between the parties.

51. It is a settled position of law that the Code is a beneficial legislation intended to reorganize and rehabilitate the Corporate Debtor to put it back on its feet, and it cannot be utilized as a mere tool or substitute for money recovery proceedings

52. Under Section 8(2)(a) of the Code, the Corporate Debtor is provided a statutory opportunity to safeguard itself against malicious or improper insolvency applications. Furthermore, as laid down by the

Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, the dispute raised by the Corporate Debtor must be a bona fide and genuine dispute. It must truly exist in fact and the grounds alleging such a dispute must be real, and not illusory, hypothetical, misconceived, or spurious. Consequently, where a genuine, pre-existing dispute is demonstrated by the Corporate Debtor prior to the issuance of the demand notice, the petition under Section 9 fails to satisfy the essential statutory criteria and is liable to be rejected.

53. This Tribunal is of the considered view that the scope of a "dispute" concerning the quality of goods or services under Section 5(6)(b) of the Code cannot be read restrictively so as to confine it only to disputes raised at, or after, the stage of delivery or completion of the contracted work. A dispute as to quality or performance may equally, and indeed more naturally, manifest itself during the course of execution where delay, incapacity, or inconsistency in the discharge of contractual obligations compels the employer to seek alternate means of completing the work, therefore we are of the considered view that a dispute raised during the execution of work constitute a valid dispute raised by the corporate debtor.

54. Further were terms of the work orders issued itself indicate that breakup of payment to be made depends upon the work completion stage, clearance of punch points and payment of Performance guarantee and a operational creditor entrusted with a scope of work is unable to execute it to the satisfaction of the corporate debtor, and the corporate debtor is consequently constrained to delegate the balance or entire work to a third party, such delegation is not a mere administrative or commercial rearrangement. Such delegation of work to a third party inherently substantiates that the goods and services rendered by the Operational Creditor did not conform to the terms agreed between the parties, and is sufficient, to establish that the dispute is real and not spurious, hypothetical, or illusory. Accordingly, this Tribunal holds that wherever a corporate debtor is shown to have relied upon a third party to complete or remedy work originally assigned to the operational creditor, by raising the dispute on the quality of work, such delegation shall in the absence of evidence to the contrary may be treated indicator of a pre-existing dispute as to

quality of performance within the meaning of Section 5(6)(b) of the Code.

55. In light of the pre-existing dispute between the parties and non-crystallization of the debt The Applicant has failed to established that there is debt and also the default from the end of corporate debtor, for us to initiate CIRP against the corporate debtor, thus we can safely conclude that there are no good reasons for us to initiate the CIRP against the corporate debtor.

56. In view of the dispositive reasoning stated above, the present Application filed by the Operational Creditor under Section 9 of IBC, 2016 seeking initiation of CIRP as against the Corporate Debtor is dismissed and accordingly CP/IB/78(CHE)2022 stands Dismissed. No order as to costs.

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

Rannika/LRA