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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 11/09/JPR/2026

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:
M/S SRIRAM CABLES PVT. LTD.

... Operational Creditor/Petitioner

VERSUS

M/S BANSWARA SYNTEX LIMITED

...Corporate Debtor/ Respondent

MEMO OF PARTIES

M/S Sriram Cables Pvt. Ltd,
A-524, RIICO Industrial Area,
Chopanki, Bhiwadi, District Alwar,
Rajasthan- 301019
Through Director: Mr. Ashutosh Garg
Email id: - ashutosh@sriramcab1es.in

...Operational Creditor / Petitioner

Versus

M/S Banswara Syntex Limited
Village Industrial Area, Dahod Road,
Banswara-327001, Rajasthan
Corporate Office: 5th Floor, Gopal Bhawan,
199 Princess Street, Shamaldas Gandhi Marg,
Mumbai-400002
Email Id: -rakeshmehra@banswarasyntex.com

...Corporate Debtor/ Respondent

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For the Petitioner	:	Sonal Anand, Adv. Surbhi Singh, Adv. Kamlesh Ojha, Adv.
For the Respondent	:	Prakul Khurana, Adv. Akshita Koolwal, Adv. Samay Maheshwari, Adv.

Order Pronounced On: 16.10.2026

ORDER

Per: Ms. Kavita Bhatnagar, Technical Member

1. The present Petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by *Sriram Cables Pvt. Ltd.* ('Petitioner'/ 'Operational Creditor') through its Director, namely *Mr. Ashutosh Garg*, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') in respect of *Banswara Syntex Limited* ('Respondent'/ 'Corporate Debtor'), on account of default in payment of Rs. 1,28,29,195/- (Rupees One Crore Twenty-Eight Lakh Twenty-Nine Thousand One Hundred Ninety-Five Only).

2. The Operational Debt produced in Part IV of the Petition, is reproduced here as following:

PARTICULARS OF OPERATIONAL DEBT		
	Total amount of debt, details of transaction on account of which debt fell due, and	*Rs. 1,28,29,195/- (In Word One Crore Twenty-Eight Lac Twenty-Nine Thousand One Hundred, and Ninety-Five Only)*

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<table>
<tr><td></td><td>the date from which such debt fell due.</td><td></td></tr>
<tr><td></td><td>Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and dates of default in tabular form).</td><td>Rs. 1,28,29,195/- (In Word One Crore Twenty-Eight Lac Twenty-Nine Thousand One Hundred, and Ninety-Five Only)

Date from which such debt fell due:
<table>
<tr><td>Year</td><td>Date Of Debt</td><td colspan="2">Amount</td></tr>
<tr><td></td><td></td><td>Percentage</td><td>Rupees</td></tr>
<tr><td>2023</td><td>31.01.2023</td><td>83.44%</td><td>1,07,05,195</td></tr>
<tr><td>2025</td><td>01.03.2025</td><td>16.56%</td><td>21,24,000</td></tr>
<tr><td colspan="3">Total</td><td>1,28,29,195/-</td></tr>
<tr><td colspan="4">Default due date from last date of transaction i.e. 01.03.2025</td></tr>
</table></td></tr>
</table>

3. The Petitioner is a company incorporated under the Companies Act, 1956 and registered with the Registrar of Companies, Jaipur, Rajasthan, having its registered office at *A-524, RIICO Industrial Area, Chopanki, Bhiwadi, District Alwar, Rajasthan – 301019*. The present Petition is filed through its director, namely Mr. Ashutosh Garg, who is stated to be authorised by the Petitioner.

4. The Corporate Debtor is a company incorporated under the Companies Act, 1956 and registered with the Registrar of Companies, Jaipur, having its registered office at *Village Industrial Area, Dahod Road, Banswara –*

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327001, Rajasthan and its corporate office at *5th Floor, Gopal Bhawan, 199 Princess Street, Shamaldas Gandhi Marg, Mumbai – 400002.*

5. The Petition has been filed on the basis of the following set of facts:

5.1 The Petitioner states that in October 2021, it entered into a supply and services contract with the Corporate Debtor for solar power plant installation and maintenance, baring Contract No. *BSL/COMM/2020-21/6456* dated 19.10.2021 for the supply and installation of a 4590 KWp rooftop Solar Power Plant. As stated by the Petitioner, the total value of the contract is Rs. 16,29,45,000/- (Rupees Sixteen Crore Twenty-Nine Lakh Forty-Five Thousand Only).

5.2 As stated by the Petitioner, the contract was divided into two parts, namely, Part-A, being the procurement of solar modules, i.e., Trina 545 WP Module for 4590 KWp quantity, and Part-B, being the supply of Inverter and BOS with installation and commissioning part. The Petitioner states that Part-A comprises 65% of the total contract value.

5.3 The Petitioner states that the contract prescribed the following payment terms:

(a) Part-A – Module payment for 4590 KWp (Trina Solar 545 Wp Vertex Model): 100% before 27.10.2021, as per Clause 4(a);

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(b) Part-B, as per Clause 4(b) – Inverter and BOS supply and installation and commissioning: 20% of Part-B as advance along with the Purchase Order;

(c) 20% of Part-B against delivery of MMS (Structure);

(d) 30% of Part-B against delivery of Inverter and balance material;

(e) 10% of Part-B against Modules and Inverter installation; and

(f) 20% of Part-B against successful switch on/installation of the Plant, as per Clause 4(b)(5).

5.4 The Petitioner states that it was agreed that the supply and services contract would be completed once the rooftop solar plant is successfully switched on, and that all remaining payments relating to supply and installation under Clause 4(b), including 20% of Part-B under Clause 4(b)(5) against successful switch on/installation of the plant, would be released. The Petitioner further states that an agreement for maintenance of the solar plant for a tenure of one year was to be made as per the Main Contract dated 19.10.2021, and the same was to be executed after issue of the O&M contract.

5.5 The Petitioner states that, on the basis of the agreed and signed contract, it asked the Corporate Debtor for 100% payment against Clause 4(a), i.e., solar module payment before 27.10.2021, but the Corporate Debtor failed to make the same. As stated by the Petitioner, the Corporate

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Debtor thereafter verbally informed the Petitioner to procure the solar modules mentioned in Part-A from the manufacturer itself and not from the Petitioner. The Petitioner states that, therefore, as per Annexure-1 of the Main Contract, the generation guarantee for the Part-A goods lies with the Corporate Debtor and is not within the scope of the Petitioner for the goods procured by the Corporate Debtor.

5.6 The Petitioner states that during the import of the solar modules, the Corporate Debtor sent various mails directly to the manufacturer and informed the Petitioner of the status of procurement of the Part-A goods, so that the Petitioner could prepare for further actions for installation and switch on the solar plant under Part-B. The Petitioner submits that it has no control over generation output or equipment defects, and that no performance liability can legally arise against it in respect of equipment supplied by the client.

5.7 As stated by the Petitioner, after procurement of the goods under Part-A by the Corporate Debtor, the office of the Corporate Debtor informed the Petitioner to start work under Part-B, which was only for supply of Inverter and BOS with installation and commissioning services. The Petitioner states that it arranged the technical team and installation team and, after supply of all goods required under Part-B, installed the Trina 545 WP Modules for 4590 KWp quantity procured by the Corporate

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Debtor along with the goods within the Petitioner's scope under Part-B.

5.8 The Petitioner states that it informed the Corporate Debtor, by email dated 31.01.2023, that the plant was successfully switched on 31.01.2023 and that the contract awarded to the Petitioner stood completed. As stated by the Petitioner, the same was accepted and confirmed by the Corporate Debtor through an AMC contract dated 23.02.2023, issued as per the terms and conditions of the Main Contract dated 19.10.2021.

5.9 The Petitioner states that the Corporate Debtor released the Performance Security in May 2024, thereby acknowledging completion, which is contractually tied to successful completion of installation. As stated by the Petitioner, the Performance Security was to be released after successful completion of the 1st year O&M and agreed generation.

5.10 The Petitioner states that after successfully switching on the solar plant as per the Main Contract dated 19.10.2021, it raised the final invoice for the balance payment and asked the Corporate Debtor to release the final payment, i.e., 20% of the contract value of Part-B, being Rs. 1,07,05,195/- (Rupees One Crore Seven Lakh Five Thousand One Hundred Ninety-Five Only), as per Clause 4(b)(5) 'Against Successful

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switch on/Installation of Plants' of the Main Contract. The Petitioner states that, despite admitting completion, the Corporate Debtor has wrongfully withheld this amount.

5.11 The Petitioner further states that it raised *Invoice No. 2024-25/108/* Solar dated 01.03.2025 for Rs. 21,24,000/- (Rupees Twenty-One Lakh Twenty-Four Thousand Only) against the Corporate Debtor under the O&M contract dated 10.04.2024, and that the payment of this invoice has also not been released by the Corporate Debtor till date.

5.12 As stated by the Petitioner, the Corporate Debtor renewed the AMC contract *vide* No. *BSL/STR/2024-25* dated 10.04.2024. Furthermore, the Corporate Debtor again issued a one-year AMC contract, bearing Contract No. *BSL/STR/2025-26/3478* dated 05.03.2025.

5.13 The Petitioner states that the Corporate Debtor has thus renewed the AMC contracts on 23.02.2023, 10.04.2024 and 05.03.2025, and submits that this consistent renewal shows the continuous satisfaction of the Corporate Debtor with the Petitioner's work over the past years.

5.14 The Petitioner states that, from the date of completion, i.e., 31.01.2023, till date, it has not received the outstanding amount of Rs. 1,28,29,195/- (Rupees One Crore Twenty-Eight Lakh Twenty-Nine Thousand One Hundred Ninety-Five Only) from the Corporate Debtor, comprising Rs. 1,07,05,195/- (83.44%) and Rs. 21,24,000/- (16.56%), along with

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statutory interest under the MSME Act. The Petitioner has stated the date of default as 01.03.2025, being the last date of transaction.

5.15 As stated by the Petitioner, since the Corporate Debtor failed to pay after constant requests, the Petitioner issued and sent a legal notice dated 21.04.2025 to the Corporate Debtor. The Petitioner states that the Corporate Debtor replied to the said notice on 07.05.2025 (Annexure A-16) and that the Petitioner sent a replication on 22.05.2025.

5.16 The Petitioner states that thereafter two meetings were held via video conference on 22.07.2025 and 02.09.2025. As stated by the Petitioner, in these meetings the Corporate Debtor withdrew its alleged counter-claim of Rs. 3 crore and offered only Rs. 25 lakh as full and final settlement, which the Petitioner categorically rejected, insisting on Rs. 1.25 crore as principal with possible waiver of interest.

5.17 The Petitioner states that on 15.11.2025, it issued a demand notice under Section 8 of the Code, demanding payment of the unpaid operational debt due from the Corporate Debtor within ten days from the date of receipt of the notice. As stated by the Petitioner, the said notice was sent through speed post and email and was duly delivered to the Corporate Debtor at its registered email address. The Petitioner states that the Corporate Debtor failed to make the payment of the

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default amount or even reply to the said demand notice within ten days from the date of delivery. Hence, the present Petition.

6. The Respondent in its reply has stated that:

6.1 The Respondent states that it is a company listed on BSE and NSE, in operation since 1976, engaged in the manufacture of synthetic blended yarn, worsted yarn, synthetic cotton, worsted and blended fabrics at its facility at Banswara, Rajasthan. The Respondent states that it has a net worth of Rs. 585 Crores as per its audited financial statements for FY 2024-25, carries on business as a going concern, and that the non-payment is not due to any inability to pay but because the amount claimed is disputed.

6.2 The Respondent states that it issued a Purchase Order dated 19.10.2021 to the Petitioner for material supply, installation, testing, commissioning, operation and maintenance of a 4590 KWP Solar Power Generation System at its premises for a period of 25 years, for a total value of Rs. 16,29,45,000/-. As stated by the Respondent, Clause 2 of the Purchase Order divides the work into Part-A (Trina 545 Wp Solar Modules, valued at Rs. 10,01,99,700/-) and Part-B (inverters and BOS with installation, commissioning and allied services, valued at Rs. 6,27,45,300/-), and Annexure-I thereto stipulates the year-wise

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guaranteed generation, on the assurance of which the Respondent entered into the arrangement.

6.3 The Respondent states that the parties also executed an Operation & Maintenance Agreement dated 27.10.2021 under which the Petitioner agreed to operate and maintain the project in compliance with SOPs and applicable laws, as per the scope in Annexure-II, and took complete responsibility for the quality and sufficiency of resources for the O&M services and for achieving the assured generation levels.

6.4 As stated by the Respondent, the Petitioner later informed it, through calls and meetings, that it was unable to arrange a letter of credit and bank guarantee and asked the Respondent to either make full payment at one go or procure the modules directly from the vendor Trina at China. The Respondent states that it was mutually agreed that it would procure the modules directly from Trina, as recorded in emails dated 27.10.2021 and 15.11.2021. According to the Respondent, its email dated 15.11.2021 confirmed that the Purchase Order dated 19.10.2021 would prevail and that the maximum payable would not exceed Rs. 16,29,45,000/-. The Respondent states that the modules so procured conformed to the Purchase Order specifications, that the direct procurement did not alter the contractual scope, technical parameters

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or performance obligations, and that the entire responsibility for the project remained with the Petitioner.

6.5 The Respondent states that the plant was installed and commissioned by the Petitioner in 2022 and that, within a few months, it observed that the plant was consistently underperforming against the guaranteed generation in Annexure-I. As stated by the Respondent, it repeatedly raised the issue through letters and emails seeking identification of the cause and corrective measures, but the Petitioner gave no satisfactory explanation or resolution and instead sought to shift responsibility to the Respondent.

6.6 The Respondent states that Clause 7(m) of the Purchase Order provides that any shortfall during the 25-year term is to be compensated by the supplier at the prevailing grid tariff multiplied by the number of units short, plus 18% interest, calculated on 365 days' availability of load/grid supply, with degradation of 2.5% in the first year and 0.55% per year thereafter. According to the Respondent, the Petitioner has neither compensated the shortfall nor rectified the deficiencies, and has instead kept demanding the balance payment.

6.7 The Respondent states that the dispute was raised in the following emails sent by it to the Petitioner, all well before the demand notice:

Date	Annexure	Contents as stated by the Respondent

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04.05.2024	R/6	Cumulative shortfall of 9,36,783 units (guaranteed 65,70,000; actual 56,33,217); credit note demanded under the compensation clause.
04.11.2024	R/7	Loss of 2,281 units/day in October 2024 as compared to October 2023; loss of Rs. 5.16 lakh; action plan sought.
05.11.2024	R/8	Generation about 2,000 units/day lower; 2,375 units/day purchased from AVVNL at Rs. 7.45/unit; loss of Rs. 5.2 lakh; senior person requested.
08.11.2024	R/9	Projected 16,117 units/day against about 13,211 units/day actual; estimated loss Rs. 6.1 lakh; investigation requested.
13.11.2024	R/10	Table of shortfall for Apr 2022 to Sep 2024 at Rs. 7.75/unit, aggregating Rs. 2,24,93,225/-; payment could not be released without verification and negotiation.
15.11.2024	R/11	Average daily loss of 3,762 units over 14 days (about Rs. 4 lakh); doubts on the Petitioner's generation predictions.
19.11.2024	R/12	Site survey and dust conditions not properly considered while committing to generation estimate.
20.11.2024	R/13	Inaccuracies in design calculations; Petitioner urged to identify causes and give plan of action.
26.11.2024 and 04.12.2024	R/14 (colly.), R/15	A 100 KW plant of another supplier at the same premises achieves about 90% efficiency whereas the Petitioner's plant does not, with higher degradation; technical justification sought.
23.01.2025	R/16	Petitioner's plants performing significantly below the 100 KW plant; 100 KW VFD non-functional for over a month without response.
06.03.2025	R/17	DC switches on all inverters found turned off after the Petitioner's O&M team left the site (evening of 01.03.2025); 100 kW inverter out of operation for over two months.

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14.03.2025	R/18	DC connectors found left open on inspection; no maintenance except module cleaning in three years; alleged deliberate reduction of generation.

6.8 The Respondent states that it sent a detailed notice dated 19.03.2025 calling upon the Petitioner to compensate for the shortfall and rectify the deficiencies. As stated by the Respondent, the Petitioner replied on 02.04.2025, attributing the shortfall to carbon particles and direct module procurement and relying on the release of Performance Security. The Respondent states that it released the Performance Security only on the Petitioner's repeated request and assurance that funds were needed for further O&M and that guaranteed generation would be reached, which was not achieved.

6.9 The Respondent further states that: (a) 100 KW solar plant installed by another supplier at the same premises, under identical conditions, has performed efficiently; (b) about 100 KWP of the Petitioner's plant has been non-operational since December 2024 despite repeated requests; (c) the Petitioner discontinued the online monitoring system without notice; (d) the Petitioner unilaterally withdrew its technical and maintenance personnel and did not avail the opportunity to continue the AMC and rectify the deficiencies; (e) the Petitioner withheld original warranty documents, guarantee certificates and invoices of components, preventing the Respondent from enforcing manufacturer

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warranties; and (f) the Petitioner's team left certain modules disconnected from the grid.

6.10 As stated by the Respondent, of the total Purchase Order value of Rs. 16,29,45,000/-, a sum of Rs. 15,22,39,805/- has been paid to the Petitioner or the vendor and is not disputed. The Respondent states that only Rs. 1,07,05,195/- has not been paid, because it is not payable on account of the Petitioner's failure to generate the guaranteed units. According to the Respondent, its substantial payments show its bona fides and that the dispute arises from deficient performance and not from any unwillingness or inability to pay.

6.11 The Respondent states that meetings were held between the parties from 22.07.2025 to 02.09.2025 to resolve the disputes amicably, as reflected in the Minutes annexed by the Petitioner as Annexure A-22, but no mutually acceptable settlement was arrived at, and that it addressed a letter dated 04.09.2025 to the Petitioner thereafter. The Respondent states that it was thereby constrained to initiate legal proceedings.

6.12 The Respondent further contends that the Demand notice dated 15.11.2025 was sent to the Respondent *vide* email dated 27.11.2025 which was replied *vide* email dated 05.12.2025.

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6.13 As stated by the Respondent, on 20.11.2025 it filed an application for Pre-Institution Mediation under Section 12A of the Commercial Courts Act, 2015 before the Mediation Centre, Udaipur, claiming Rs. 2,57,82,200/- from the Petitioner, a Non-Starter Report was generated on 27.01.2026, and it thereafter instituted Commercial Suit No. 136/2026 before the Commercial Court at Udaipur, Rajasthan, for recovery of damages. The Respondent states that this is its counter-claim under Clause 7(m), exceeding the amount claimed in the Petition. It is further stated that the Mediation was not the genesis of the dispute as the documentary correspondence concerning alleged underperformance goes back to May 2024.

6.14 The Respondent states that the demand notice, though dated 15.11.2025, was admittedly sent to it by email only on 27.11.2025, after it had filed the mediation application on 20.11.2025, and that it was therefore antedated and issued as an afterthought and a retaliatory measure. As stated by the Respondent, it replied to the demand notice on 05.12.2025, categorically disputing the amount claimed. The Respondent states that the Petitioner has suppressed the correspondence, notices, mediation proceedings, counter-claim and the Respondent's reply to the demand notice, and has not approached this Tribunal with clean hands.

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6.15 The Respondent states that, in law, where a genuine dispute pre-exists the demand notice, an application under Section 9 of the Code is not maintainable, and relies upon ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited and S.S. Engineers v. Hindustan Petroleum Corporation Ltd. (Civil Appeal No. 4583 of 2022***). It further states that the Code is not a recovery mechanism and that the Petition is an abuse of the insolvency process against a solvent company.

7. The Petitioner has filed its written submissions in which it is stated that:

7.1 The petitioner has reiterated the aforementioned facts and further stated that the debt stands admitted in writing by the Corporate Debtor itself, in the following documents:

(a) In reference to paragraph 13 of its Section 12A mediation application, the Corporate Debtor states that Rs. 1,26,55,196/- was payable by it to the Petitioner i.e. Shri Ram Cables for installation and O&M of the solar power system, has been adjusted towards compensation of its alleged losses;

(b) In reference paragraph 26 of its plaint in *Commercial Suit No. 136/2026* the Corporate Debtor claims a total loss of Rs. 3,54,56,653/- for April 2022 to October 2025, states that it adjusted the same Rs. 1,26,55,196/- payable to the Petitioner for

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installation and O&M against it, and claims a balance of Rs. 2,28,01,457/-; the Petitioner states that this is the last documentation between the parties and unequivocally admits the operational debt;

(c) In reference to email dated 13.11.2024, replying to the Petitioner's email dated 07.11.2024 titled 'Request for Release of Balance Payment', the Corporate Debtor tabulated an alleged generation shortfall and stated that it could not release the payment without mutual negotiation, asking the Petitioner to depute an officer to verify the plant, after which it could negotiate settlement of the payments; and

(d) In reference to its Reply to the demand notice, the Corporate Debtor states that the Petitioner insisted on demanding the entire claimed amount of Rs. 1,28,29,195/- while ignoring its counter-claim of Rs. 2,89,74,315/-, which, according to the Petitioner, admits the entire debt.

7.2 The petitioner further states that the alleged shortfall of the generation of units is an unadjudicated claim for damages whereas its own claim relates to the installation and AMC services therefore the Respondent cannot unilaterally extinguish an admitted operational debt by setting off uncrystallised damages

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8. The Respondent has filed its written submissions in which it has reiterated the aforementioned facts stated by him and the Respondent / Corporate Debtor has also placed its reliance on following judgments: -

8.1. Quess Corp Ltd v. Wardwiz (India) Solutions Pvt Ltd *NCLT Mumbai, CP (IB) No. 523/MB/2022*

8.2. Mobilox Innovations Pvt Ltd v. Kirusa Software Pvt Ltd Supreme Court, Civil Appeal No. 9405 of 2017, decided 21.09.2017, (2018) 1 SCC 353.

8.3. Surya Dev Pvt Ltd v. Sunrun Solar Ventures (UP) Pvt Ltd CP (IB) No. 91/ALD/2019

8.4. Sunila Chhabra v. Leighton India Contractors Pvt Ltd NCLAT, Mumbai, CP (IB) No. 232/MB/2022

8.5. S.S. Engineers v. Hindustan Petroleum Corporation Ltd & Ors Supreme Court, Civil Appeal No. 4583 of 2022

8.6. Greymatter Entertainment Pvt Ltd v. Pro Sportify Pvt Ltd NCLAT, Company Appeal (AT) (INS) No. 1043 of 2021

8.7. Om Prakash v. Wipro Enterprises Pvt Ltd NCLAT, Company Appeal (AT) (INS) No. 31 of 2023

8.8. Sterling and Wilson Pvt Ltd v. Embassy Energy Pvt Ltd NCLAT Chennai, Comp. App. (AT) (CH) (Ins.) No. 161 of 2022,

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8.9. GLS Films Industries Pvt Ltd v. Chemical Suppliers India Pvt *Supreme Court, MANU/SC/0331/2026.*

9. ***Analysis and Findings***

9.1 We have heard the learned counsel appearing for the parties and have carefully perused the pleadings, documents placed on record and the written submissions filed by both sides. The principal question which arises for determination is whether the amount claimed by the Operational Creditor constitutes an operational debt in default in respect of which the present Petition under Section 9 of the Code is maintainable, or whether there existed, prior to receipt of the demand notice under Section 8, a genuine dispute between the parties concerning the liability sought to be enforced.

9.2 The Operational Creditor claims an aggregate amount of Rs.1,28,29,195/-, comprising Rs.1,07,05,195/- towards the balance amount allegedly payable under Part-B of the Purchase Order dated 19.10.2021 and Rs.21,24,000/- towards AMC/O&M services under invoice dated 01.03.2025. The Operational Creditor's case is that the plant was successfully switched on 31.01.2023 and that the balance consideration under Part-B became payable upon such successful switch-on/installation.

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9.3 The contention of the Operational Creditor that the Corporate Debtor has acknowledged an amount payable to it cannot be brushed aside. In its own application for pre-institution mediation, the Corporate Debtor stated that an amount of Rs.1,26,55,196/-, payable to the Operational Creditor for installation and O&M of the solar power system, had been adjusted towards compensation for the losses claimed by the Corporate Debtor. A substantially similar statement appears in the plaint subsequently instituted before the Commercial Court. The Operational Creditor therefore contends that the underlying debt stands admitted and that an unadjudicated counterclaim for damages cannot extinguish an otherwise admitted operational debt.

9.4 The aforesaid circumstance is undoubtedly relevant. It cannot, however, be considered in isolation. In proceedings under Section 9, the enquiry of the Adjudicating Authority is not confined merely to whether at some stage an amount was shown or acknowledged as payable. Where the material demonstrates that, prior to receipt of the demand notice, the Corporate Debtor had raised a genuine dispute concerning the contractual performance underlying the liability and had asserted a corresponding right to withhold or adjust the amount, the Tribunal is required to examine the existence of such dispute within the limited parameters prescribed under Sections 8 and 9 of the Code.

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9.5 The governing principle was authoritatively stated by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353***. At the stage of Section 9, the Adjudicating Authority is not required to adjudicate the merits of the underlying contractual dispute. What has to be seen is whether there is a plausible contention requiring further investigation and whether the defence is not a patently feeble legal argument or an assertion unsupported by evidence. A dispute which is not spurious, hypothetical or illusory is sufficient to attract the statutory bar.

9.6 On examining the record in the light of the aforesaid test, we find that the dispute asserted by the Corporate Debtor cannot be characterised as one manufactured after receipt of the demand notice. The documentary trail substantially precedes the Section 8 proceedings. The Corporate Debtor relies upon communications commencing from 04.05.2024 and continuing through November 2024 and March 2025, repeatedly raising the issue of shortfall in generation and alleged deficiencies in the performance of the solar plant. These communications contain not merely general allegations but figures of guaranteed generation, actual generation, alleged shortfall and consequent monetary loss. In the communication dated 13.11.2024, the Corporate Debtor quantified the alleged shortfall and expressly stated that it could not release the

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payment without verification and mutual negotiation and called upon the Operational Creditor to depute an officer for inspection.

9.7 The dispute thereafter continued. The Corporate Debtor issued a detailed notice dated 19.03.2025 calling upon the Operational Creditor to compensate it for the alleged generation shortfall and rectify the deficiencies. The Operational Creditor responded on 02.04.2025, disputing responsibility and attributing the shortfall, inter alia, to other factors. Thus, considerably before the Section 8 notice, the parties had already joined issue on the very question whether the Operational Creditor had fulfilled its contractual performance obligations and whether the Corporate Debtor was entitled to compensation on account of the alleged shortfall.

9.8 We have also considered the submission of the Operational Creditor that the generation guarantee under Clause 7(m) represents a distinct obligation extending over 25 years, whereas the amount claimed in the present Petition represents the consideration for completed installation and AMC services. The Operational Creditor further contends that the Purchase Order does not authorise unilateral adjustment of uncrystallised damages against the Part-B balance or AMC invoices. This submission raises an arguable question concerning the construction of the contractual arrangement and the permissibility of

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the adjustment asserted by the Corporate Debtor. However, determination of that question would itself require adjudication of the competing contractual rights of the parties. Section 9 proceedings are not intended for finally deciding whether the Corporate Debtor's interpretation of Clause 7(m), its computation of generation shortfall, or its claimed right of adjustment would ultimately succeed.

9.9 The recent judgment of the Hon'ble Supreme Court in ***GLS Films Industries Private Limited vs. Chemical Suppliers India Private Limited, Civil Appeal No. 4019 of 2025, 2026 INSC 344***, decided on 09.04.2026, reinforces this distinction. The Supreme Court restored the dismissal of a Section 9 application where contemporaneous material disclosed a plausible dispute regarding defective performance/supplies. The Court reiterated that the Adjudicating Authority is required to satisfy itself as to the existence of a plausible pre-existing dispute which is not spurious, hypothetical or illusory; whether the party raising the dispute would ultimately succeed on its merits is outside the scope of the Section 9 enquiry.

9.10 The facts before us satisfy that threshold. The dispute is supported by contemporaneous correspondence extending over a substantial period prior to the demand notice. It concerns the performance of the same solar project and the contractual obligations from which the amounts

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claimed by the Operational Creditor arise. The fact that the Corporate Debtor quantified its own alleged losses and sought to adjust the amount otherwise payable to the Operational Creditor does not require this Tribunal, in exercise of its summary jurisdiction under Section 9, to determine whether such adjustment is legally sustainable. That issue is capable of adjudication in the appropriate civil proceedings.

9.11 There is an additional contemporaneous circumstance. The Corporate Debtor instituted pre-institution mediation proceedings under Section 12A of the Commercial Courts Act on 20.11.2025, claiming Rs.2,57,82,200/-. According to the material placed on record, although the demand notice bears the date 15.11.2025, the Corporate Debtor asserts that it was transmitted by email on 27.11.2025. More importantly, even independently of this chronology, the communications evidencing the dispute extend back to 2024. Therefore, the conclusion regarding pre-existence of the dispute does not rest merely upon the mediation proceedings or upon the subsequent Commercial Suit. The earlier correspondence independently establishes that the dispute existed before the statutory demand was received.

9.12 We are consequently unable to accept the contention that the Corporate Debtor's defence is merely an afterthought devised to avoid payment.

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Equally, we express no opinion upon whether the generation shortfall alleged by the Corporate Debtor actually occurred to the extent claimed, whether the Operational Creditor was responsible therefor, whether Clause 7(m) permits the adjustment asserted, or whether the Corporate Debtor would ultimately succeed in its claim for damages. Those questions fall outside the limited jurisdiction being exercised in the present proceedings.

9.13 The Hon'ble Supreme Court in ***M/s S.S. Engineers vs. Hindustan Petroleum Corporation Ltd. & Ors., Civil Appeal No. 4583 of 2022***, decided on 15.07.2022, reiterated that an Operational Creditor can trigger the CIRP process where there is an undisputed operational debt and a default in payment thereof; however, where the debt is disputed, the application under Section 9 must be dismissed. The Hon'ble Supreme Court further observed that the NCLT, while exercising jurisdiction under Sections 7 or 9 of the Code, is not a debt-collection forum and that initiation of CIRP is not intended to penalise solvent companies for non-payment of disputed dues claimed by an Operational Creditor. In that case, finding a pre-existing dispute in relation to the claim, the Hon'ble Supreme Court upheld the order of the NCLAT setting aside the admission of the Section 9 application.

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The Corporate Debtor has specifically relied upon the said judgements in its pleadings.

9.14 The Corporate Debtor has additionally relied upon its net worth and its status as a solvent and going concern. In our considered view, the financial solvency of the Corporate Debtor is not by itself determinative of an application under Section 9. The Petition fails not because the Corporate Debtor has demonstrated that it is financially sound, but because the material placed before us establishes the existence of a genuine dispute predating receipt of the demand notice.

9.15 In view of the foregoing, we are satisfied that the dispute raised by the Corporate Debtor is neither spurious nor hypothetical nor illusory and satisfies the test laid down in ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited***. The Adjudicating Authority cannot undertake a trial of the rival contractual claims in order to determine which party would ultimately succeed. The subsequent civil proceedings may determine those rights in accordance with law, uninfluenced by any observation made herein.

9.16 Accordingly, the existence of a genuine pre-existing dispute being established, the present Petition under Section 9 of the Insolvency and

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Bankruptcy Code, 2016 is liable to be rejected under Section 9(5)(ii)(d) of the Code.

9.17 **CP (IB) No.11/9/JPR/2026 is accordingly dismissed**. It is clarified that the observations contained in this order are confined to determination of the present Petition under Section 9 of the Code and shall not be construed as an adjudication upon the merits of the claims or counterclaims of either party in any other proceedings. No order as to costs.

REETA KOHLI
JUDICIAL MEMBER

KAVITA BHATNAGAR
TECHNICAL MEMBER

AW/LRA