



NATIONAL COMPANY LAW TRIBUNAL
INDORE SPECIAL BENCH
COURT NO. 1

ITEM No.301
CP(IB)/68(MP)2022

Order under Section 9 IBC

IN THE MATTER OF:

M/s BPC Technologies India Pvt Ltd
V/s
M/s Om Shri Shubh Labh Agritech Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 05/05/2025

Coram:

Shammi Khan, Hon'ble Member(J)
Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order.

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

Sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

Tomar

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
SPECIAL INDORE BENCH AT INDORE**

CP (IB) No.68/9/MP/2022

(Petition 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 **Om Shri Shubh Labh Agritech Pvt. Ltd.**

BPC Technologies India Private Limited

Registered office at
7th Floor, Building No. 4, C Wing,
Nesco IT Park, Western Express Highway,
Goregaon East, Mumbai – 400063.

...Applicant/Operational Creditor

VERSUS

Om Shri Shubh Labh Agritech Private Limited

Registered office at
In front of Atal Bihari Bajpayee IITM College,
Near Malgada Thana, Kalyanpur, Ladheri,
Gwalior, M.P. - 474003

...Respondent/Corporate Debtor

Order pronounced on 05.05.2025

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV KUMAR SHARMA, HON'BLE MEMBER (TECHNICAL)



A P P E A R A N C E:

For the Applicant : Mr. Palak Rohmetra, Advocate
For the Respondent : Mr. Sanjeev Chaudhary, Advocate
a.w. Mr. Shubham Budhiraja, Adv.

O R D E R

(Per: BENCH)

1. This is an application filed on 11.10.2022 by **BPC Technologies India Private Limited** (hereinafter referred to as “the Applicant/ Operational Creditor”) against **Om Shri Shubh Labh Agritech Private Limited** (hereinafter referred to as “the Respondent/Corporate Debtor”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of its outstanding dues **Rs.148,98,00,081/-** including interest.



2. Perusal of Part-I of Form-5 indicates that the Applicant/Operational Creditor is a Private Limited Company (CIN: U72900MH2016FTC287647) having its registered office at 7th Floor, Building No. 4, C Wing, NESCO IT Park, Western Express Highway, Goregaon East, Mumbai – 400063.
3. The application is affirmed by Mr. Naren Nautiyal, Director and Authorized Signatory of the Operational Creditor, who is authorized under Board Resolution dated 05.07.2022, placed at page 205 of the application.
4. Perusal of Part-II of the Form-5 reveals that the Respondent/Corporate Debtor is Om Shri Shubh Labh Agritech Private Limited (CIN: U74999MP2017PTC043587). The date of incorporation is 23.06.2017. The registered office of the Respondent/Corporate Debtor is situated in front of IIITM College, Near Hazira Police Station, Morena Link Road, Gwalior – 474015.



5. Perusal of Part-III of the Form-5 reveals that the Applicant/Operational Creditor has not nominated any IP in this matter under section 13(1)(c) of the code to act as Interim Resolution Professional (“**IRP**”).
6. Perusal of Part-IV of the Form-5 reveals that the Applicant/Operational Creditor was approached by Corporate Debtor for purchasing and procuring agricultural commodities and Commodity Procurement Contract dated 05.08.2020 was executed between the parties, and the total amount in default is claimed to be Rs.148,98,00,081/-, including interest. The date of default is mentioned as July 2021 in the petition, and the debt fell due subsequently when the Corporate Debtor failed to honour the Payment Reconstruction Agreement.
7. The Operational Creditor has placed the facts through this Petition in the following manner: -
 - (i) The Corporate Debtor approached the Operational Creditor for purchasing and procuring agricultural commodities, and pursuant to negotiations, a



Commodity Procurement Contract (hereinafter referred to as "Agreement") dated 05.08.2020 was executed between the Operational Creditor and Corporate Debtor. As per the Agreement, the Operational Creditor was obligated to supply the commodities as referred in Schedule-A of the Agreement or described in Purchase Order in accordance with the quantity and quality mentioned therein.

- (ii) The Operational Creditor delivered all commodities as sought vide numerous Purchase Orders ("PO") by Corporate Debtor and raised timely invoices for supplying the same. The Corporate Debtor failed to make timely payment of the invoices which was a material breach of the Agreement.
- (iii) That as per the clause 4.1 of the Agreement, it was agreed that on Operational Creditor providing a detailed invoice to the Corporate Debtor, the Corporate Debtor shall pay to the Operational Creditor, the price for the commodities supplied by the Operational Creditor to the Corporate Debtor as described in



purchase order. It was further agreed that the Corporate Debtor shall additionally pay to Operational Creditor, a facilitation fees on a percentage mutually agreed between the Parties. That as per clause 4.3, it was agreed that the said payment shall be made by the Corporate Debtor subject to 18 days payment cycle. It was also agreed that the price of each commodity, its quantity and delivery date shall be agreed by the parties in Purchase Order.

- (iv) That pursuant to the execution of the Agreement, the Corporate Debtor raised various Purchase Orders from time to time for procuring commodities viz. Mustard, Blackgram etc. which were duly honoured by the Operational Creditor and as such commodities were supplied to the Corporate Debtor in accordance with the description and terms of purchase order which fact is undisputed and undenied till date.
- (v) That subsequent to the commodities so supplied, the Operational Creditor raised timely invoices upon the Corporate Debtor, however, the Corporate Debtor



grossly failed to discharge their liability and most of the invoices remain outstanding and unpaid till date. Copies of the Purchase Orders are collectively annexed as Annexure A-3. Copies of the Acceptance Letters issued by the Corporate Debtor are collectively annexed as Annexure A-4. Copies of the outstanding invoices are collectively annexed herewith as Annexure A-5.

- (vi) That in addition to the above Agreement, another Commodity Procurement Contract was executed between the parties. A tripartite agreement was executed between Operational Creditor, Corporate Debtor and Pragati Sales, a proprietorship firm for procurement of commodities as detailed in the Annexure A-6 of the Tripartite Agreement 1 dated 07 June 2021.
- (vii) Similarly, another tripartite agreement was executed between Operational Creditor, Corporate Debtor and one Ramraj Enterprises, a proprietorship firm wherein similar arrangement referred above was agreed by the



Parties. True copy of the Tripartite Agreement 2 dated 07 June 2021 is annexed as Annexure A-7.

- (viii) That both Pragati Sales and Ramraj Enterprises defaulted in making timely payments as per the Purchase Orders making Corporate Debtor liable to make the payments of the outstanding dues to the Operational Creditor as per clause 2.12 of the Tripartite Agreement 1 and Tripartite Agreement 2.
- (ix) That keeping in mind long business association, and on the request of the Corporate Debtor, the Operational Creditor agreed to accommodate the Corporate Debtor with more time to make the outstanding payments and accordingly a Payment Restructuration Agreement ("PRA") was executed in January, 2022 whereby the Corporate Debtor assured to make payments in timely instalments, however, the Corporate Debtor failed to make payment of a single instalment. The execution of PRA is admitted by Corporate Debtor in its letter dated 13.06.2022.



- (x) That the Corporate Debtor, contrary to what was agreed, paid an inappreciable sum of Rs. 5,00,000/- to the Operational Creditor till 28.02.2022, instead of Rs. 75,28,800/-, which amount was due on the said date and accordingly the Corporate Debtor grossly failed to honour the terms of the PRA and committed breach of PRA. That the Operational Creditor vide email dated 28.02.2022 requested the Corporate Debtor to share the amount of money they intended to transfer against the Black Gram payment, however, the Corporate Debtor refused to respond to the said email. True copy of the email dated 28.02.2022 is annexed as Annexure A-10.
- (xi) That in view of the breach of the PRA and omission to respond to the emails and phone calls, the Operational Creditor issued legal notice dated 25.04.2022 and 28.04.2022 calling upon the Corporate Debtor to clear entire outstanding dues pointing out that since the corporate Debtor persons had failed to honour the Agreement and PRA, the same stood repudiated and



asked the Corporate Debtor persons to make payment of Rs. 176,44,54,095/- which includes a principal sum of Rs. 149,53,00,081/- and interest @ 18% per annum which is 126,91,54,014/-.

- (xii) The Operational Creditor issued, through their counsel, a statutory demand notice dated 14.05.2022 under section 8 of the Code which was not replied to by the Corporate Debtor.
- (xiii) That the Corporate Debtor vide numerous email correspondence has admitted its liability. The Corporate Debtor vide numerous correspondences has admitted the execution and contents of Payment Restructuration Agreement. The Corporate Debtor through their representative vide email dated 10.05.2022 wrote to the representatives of the Operational Creditor Company requesting for extension of time and proposing a fresh payment plan. Copy of the email dated 10.05.2022 is annexed as Annexure A-19. The Corporate Debtor through their representative vide email dated 27.05.2022 informed Operational Creditor that they



had transferred Rs. 10,00,000/- (Rupees Ten Lakhs Only) on 26.05.2022 for Black gram purchase and more amount was expected to follow in next week. Copy of the email dated 27.05.2022 is annexed as Annexure A-20.

(xiv) That on 01.06.2022, the Corporate Debtor paid another Rs. 15,00,000/- which was confirmed by Corporate Debtor's representatives vide email dated 02.06.2022. The Corporate Debtor was informed that payment of paltry sums is not acceptable to the Operational Creditor when the Corporate Debtor sought a personal hearing with the representatives of the Operational Creditor. Subsequently, the Corporate Debtor admitting his liability paid another sum of Rs. 30 lacs on 3rd, 4th and 6th June, 2022.

8. The Corporate Debtor has made the submissions through its reply in the following manner: -

(i) The Corporate Debtor had been diligent and regular in paying off the undisputed dues of the Operational Creditor since the inception of the business



arrangements between the parties and barring few unreconciled and disputed transactions, dues of the Operational Creditor were being promptly paid by the Corporate Debtor. In fact, the Corporate Debtor had paid a sum of Rs.19,69,54,456/- during the transaction period i.e. from 29th June 2021 to 8th October 2021 directly to the Operational Creditor as per the record produced by the Operational Creditor.

- (ii) There was dispute in the various supplies made by the Operational Creditor, specially the invoices raised with Invoice No.702, 467, 176 and 540. The Corporate Debtor had made payments to these invoices as per the actual deliveries and deductions made due to quality/quantity issues. The Operational Creditor never issued credit notes nor given the credit into account against these invoices and payments as made by the Corporate Debtor. Due to this and as per the terms of the Agreement - since all payments to be made within 18 days, the Corporate Debtor has stopped the payments and advised the Operational Creditor to clear disputes



first. The Corporate Debtor raised its objection and shortcoming - pending for compliance by the Operational Creditor vide letter dated 13.06.2022.

- (iii) When the Operational Creditor sent the Demand Notice to the Corporate Debtor, outlining the particulars of the alleged operational debt. The Corporate Debtor immediately sent a reply denying all the claims in the said Demand Notice.
- (iv) The Hon'ble Supreme Court in M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd. [Civil Appeal No. 4583/2022] held that if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an Operational Creditor.
- (v) As the application filed by the Operational Creditor under section 9 of the Code is not legally correct due to entering into Payment Restructuring Agreement. Once the Payment Restructuring Agreement has been



entered, the nature of operational debts changes to non-operational debt.

9. The Operational Creditor has made the submissions through its Rejoinder in the following manner: -

- (i) The Corporate Debtor in its reply mentions that there was a pre-existing dispute but fails to elaborate as to how there was a dispute with respect to the dues payable, when did the dispute arose, when was that dispute conveyed to the Operational Creditor, what was the total amount in dispute, etc. In the absence of such material averments and documents to support those averments, the reply affidavit is liable to be rejected.
- (ii) The Corporate Debtor has not filed a single document wherein the sum sought by the Operational Creditor has been disputed or denied by the Corporate Debtor prior to issuance of statutory demand notice.
- (iii) The Corporate Debtor has admitted the execution of PRA in January, 2022, the contents of the same are deemed to be admitted. The Payment Restructuration Agreement in paragraph 1(a) provides that Corporate



Debtor expressly acknowledges and agrees that in due course of the business, Corporate Debtor is liable to pay an amount of Rs. 128,28,52,745/-. The Payment Restructuration Agreement in paragraph 2(a) provides that Corporate Debtor expressly acknowledges and agrees that in due course of the business, Corporate Debtor is liable to pay an amount of Rs. 21,29,47,336/-.

- (iv) Once the execution of PRA is admitted, the question of non-payment over quality / quantity issues becomes irrelevant. As a matter of fact, not even a single document has been placed on record in support of the averment that the payments were not made due to quality/ quantity issues. On the contrary, the Operational Creditor has placed on record the acceptance letters which is a proof of delivery of goods to the satisfaction of the Corporate Debtor. The Acceptance letters have not been disputed by the Corporate Debtor.



(v) It is a settled law that to determine whether the dispute is bona fide and substantial or not, one of the tests to find out is, whether the dispute was raised contemporaneously or not; or the dispute came to be raised only when the demand for payment came to be made or the statutory notice came to be served. Reliance is placed on the judgment passed by the Hon'ble Calcutta High Court in *Mehra's Books Private Limited v Random House Publishers India Private Limited* (MANU/WB/0784/2015) and the Hon'ble Gujarat High Court in *Oswal Machinery Ltd vs Pipavav Shipyard Ltd* (2012) 173 CC 211 (Guj).

10. Both parties have submitted detailed pleadings, supported by voluminous documents, and filed comprehensive written submissions on 14.04.2025 (Applicant) and 15.04.2025 (Respondent), pursuant to the Tribunal's direction on 08.04.2025. They have relied on various judicial precedents to support their respective positions.

11. We have heard the arguments of Ld. Counsel for the Applicant/Operational Creditor and Ld. Counsel for the



Respondent/Corporate Debtor and perused the material available on record. We have considered the submissions, pleadings, documents, and precedents cited by both parties to arrive at a reasoned decision.

12. Based on the pleadings and submissions, the following issues arise for determination: -

- (A).** Whether the debt claimed by the Applicant qualifies as an operational debt under Section 5(21) of the IBC?
- (B).** Whether there exists a pre-existing dispute that precludes the admission of the application under Section 9 of the IBC?
- (C).** Whether the Payment Restructuration Agreement (PRA) alters the nature of the debt or subsumes prior obligations?
- (D).** Whether the PRA's unstamped status renders it inadmissible, and if so, whether the application can still be maintained?
- (E).** Whether the petition is premature due to the PRA's payment schedule?
- (F).** Whether the Applicant has established the existence of a debt and default exceeding the threshold limit under Section 4 of the IBC?
- (G).** Whether inconsistencies in invoices, POs, or vendor dues affect the admissibility of the application?
- (H).** Whether the petition complies with procedural requirements, including Section 10A of the IBC

13. Issue No.(A): Whether the claimed debt qualifies as an operational debt?



(i) The Operational Creditor submits that the debt arises from the supply of agricultural commodities under the Commodity Procurement Contract dated 05.08.2020 and Tripartite Agreements dated 07.06.2021, constituting an operational debt under Section 5(21) of the IBC. The PRA only restructured the payment terms without altering the debt's operational nature. The Operational Creditor relies on:-

- a. *Ahluwalia Contracts (India) Ltd. v. Logix Infratech (P) Ltd.* (2022 SCC OnLine NCLAT 3797).
- b. *Ahluwalia Contracts (India) Ltd. v. Jasmine Buildmart Pvt. Ltd.* (2023 SCC OnLine NCLAT 579).
- c. *M/s Inevitable Infotech Pvt. Ltd. v. M/s Engineer.Ai India Pvt. Ltd.* ((IB) 686 (ND)/2024).

(ii) The Corporate Debtor argues that the PRA's breach does not constitute operational debt, as it is a settlement agreement. Operational debt pertains only to goods/services, not restructured obligations. The PRA represents a new contractual obligation, distinct from the original supply-based debt.

(iii) **Section 5(21) of the IBC** defines operational debt as “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.”

- (iv) The debt in question originates from the supply of agricultural commodities (mustard, black gram) under the Commodity Procurement Contract and Tripartite Agreements. The Operational Creditor has provided: -
- i. **Purchase Orders** (Annexure A-3).
 - ii. **Acceptance Letters** (Annexure A-4), confirming delivery and satisfaction.
 - iii. **Unpaid Invoices** (Annexure A-5), totaling **Rs. 128,23,52,745/-**.
- (v) The Tripartite Agreements impose liability on the Corporate Debtor as a guarantor for vendor dues (Rs.21,29,47,336/-), which also arise from the supply of goods.
- (vi) The PRA, executed in January 2022, acknowledges the Corporate Debtor’s liability for Rs.128,28,52,745/- (invoices) and Rs.21,29,47,336/- (vendor dues) and outlines a payment schedule. It does not create a new debt but restructures the existing operational debt.



- (vii) The NCLAT in ***Ahluwalia Contracts (India) Ltd. v. Logix Infratech*** held that a settlement agreement concerning payment terms does not negate the operational nature of the debt.
- (viii) The Corporate Debtor's argument that the PRA transforms the debt into a non-operational obligation ignores the debt's origin. However, in ***Priyal Kantilal Patel v. IREP Credit Capital Pvt. Ltd. (CA (AT) (Ins.) No. 1423 of 2022)***, the NCLAT clarified that a breached settlement agreement does not extinguish the original debt. Therefore, PRA's breach, as held in *Priyal Kantilal Patel*, revives the original debt's enforceability.
- (ix) The Corporate Debtor's reliance on the PRA's financial nature is misplaced, as the underlying debt remains tied to commodity supplies
- (x) Hence, the debt remains an operational debt under Section 5(21), and the PRA's existence does not alter its character.

14. Issue No.(B): Whether there exists a pre-existing dispute?



- (i) The Corporate Debtor alleges disputes concerning invoices numbered 702, 467, 176, and 540, claiming deductions were made for quality and quantity issues. The Corporate Debtor asserts a pre-existing dispute, evidenced by Emails dated 28.02.2022, 01.03.2022, 09.03.2022, 16.03.2022, 28.03.2022, 01.04.2022, and 10.05.2022, A meeting on 07.03.2022, A letter dated 13.06.2022, raising objections to invoices due to quality/quantity issues. The Corporate Debtor relies on ***M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd. (Civil Appeal No. 4583/2022)***, where the Supreme Court held that disputed debts preclude CIRP initiation.
- (ii) The Operational Creditor submitted that no bona fide dispute existed prior to the Section 8 demand notice dated 14.05.2022. The Corporate Debtor admitted liability via the PRA (January 2022), emails dated 10.05.2022, 27.05.2022, and 02.06.2022, and the letter dated 13.06.2022. Quality/quantity disputes are afterthoughts, unsupported by evidence.



- (iii) The Operational Creditor submitted that the Corporate Debtor's claims of quality/quantity disputes (invoices 702, 467, 176, 540) are afterthoughts, unsupported by contemporaneous documents. Reliance is placed on ***Mehra's Books Private Limited v. Random House Publishers India Private Limited (MANU/WB/0784/2015)*** and ***Oswal Machinery Ltd. v. Pipavav Shipyard Ltd. (2012) 173 CC 211 (Guj.)***.
- (iv) The Operational Creditor has placed on record acceptance letters (Annexure A-4), which confirm the Corporate Debtor's satisfaction with the quality and quantity of the supplied commodities. These letters, issued at the time of delivery, are undisputed by the Corporate Debtor. Furthermore, the Corporate Debtor has not produced any contemporaneous correspondence, such as emails, letters, or complaints, to substantiate the alleged quality or quantity issues at the time of supply.



- (v) The Corporate Debtor's email correspondences dated 10.05.2022, 27.05.2022, and 02.06.2022 are significant. In these emails, the Corporate Debtor: -
- a.** Requested extensions for payment (10.05.2022).
 - b.** Confirmed partial payments of Rs. 10,00,000/- and Rs. 15,00,000/- (27.05.2022 and 02.06.2022).
 - c.** Promised further payments without raising any disputes.
- (vi) These communications constitute clear admissions of liability and negate the Corporate Debtor's claim of a bona fide dispute. The partial payments made post-notice further weaken the Corporate Debtor's defence, as they indicate an intent to settle the debt rather than contest it.
- (vii) However, the only evidence provided is a letter dated 13.06.2022, issued after the demand notice of 14.05.2022. This letter does not qualify as evidence of a pre-existing dispute, as it was not raised contemporaneously with the deliveries or invoicing



- (viii) Section 8(2)(a) of the IBC allows a corporate debtor to dispute a debt within 10 days of receiving a demand notice. Section 9(5)(ii)(d) mandates dismissal of an application if a dispute is raised before the notice.
- (ix) The Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited [(2018) 1 SCC 353]*** clarified that a dispute must be “pre-existing” and not a “patently feeble legal argument” or “assertion of facts unsupported by evidence.” The dispute must be substantial and raised contemporaneously.
- (x) The Corporate Debtor’s letter dated 13.06.2022 (post-demand notice) and emails cited do not specifically dispute the quality or quantity of supplies before the demand notice. The emails primarily discuss payment plans and reconciliation, not disputes over deliveries. The Corporate Debtor’s evidence includes: -
- i. Emails: The cited emails (28.02.2022 to 10.05.2022) discuss payment plans, reconciliation, or extensions, not specific disputes over quality/quantity.



- ii. The email dated **28.02.2022** (Annexure A-10) is from the Applicant, requesting payment details, with no response from the Corporate Debtor raising a dispute.
 - iii. The email dated **10.05.2022** (Annexure A-19) requests an extension of time and proposes a payment plan, admitting liability.
 - iv. Meeting (07.03.2022): No minutes or documents confirm a dispute.
 - v. Letter (13.06.2022): Post-dates the demand notice and vaguely references invoice disputes without details or supporting evidence (e.g., rejection notes).
- (xi) The Operational Creditor's Acceptance Letters (Annexure A-4) confirm delivery satisfaction, and no contemporaneous objections are on record. The PRA's acknowledgment of Rs. 149,58,00,081/- in dues contradicts dispute claims.
- (xii) Partial payments (Rs. 55,00,000/-) and emails (27.05.2022, 17.06.2022) further affirm liability, undermining dispute assertions.
- (xiii) The Corporate Debtor's claim of disputes regarding invoices 702, 467, 176, and 540 lacks supporting



documents (e.g., rejection notes, quality test reports).

The Acceptance Letters (Annexure A-4) confirm delivery satisfaction, and no contemporaneous objection is on record.

- (xiv) The PRA (January 2022) explicitly acknowledges the debt of Rs. 149,58,00,081/-, undermining claims of a dispute.
- (xv) The Corporate Debtor's partial payments (Rs. 15,00,000/- and Rs. 30,00,000/-) and email dated 27.05.2022 further affirm liability.
- (xvi) The Operational Creditor rightly relied on ***Mehra's Books Private Limited v. Random House Publishers India Private Limited (MANU/WB/0784/2015)*** and ***Oswal Machinery Ltd. v. Pipavav Shipyard Ltd. (2012) 173 CC 211 (Guj)***, which hold that a dispute must be raised contemporaneously to be considered valid. The Corporate Debtor's failure to provide evidence of disputes raised at the time of delivery or invoicing, coupled with its admissions in the PRA and



correspondences, leads this Bench to conclude that no pre-existing dispute exists.

(xvii) The Corporate Debtor's reliance on ***M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd. [Civil Appeal No. 4583/2022]*** is misplaced. In that case, the Supreme Court dismissed a Section 9 application due to a substantiated pre-existing dispute supported by contemporaneous evidence. In the present case, the Corporate Debtor's allegations are unsubstantiated and post facto, failing to meet the threshold of a bona fide dispute

(xviii) Therefore, no pre-existing dispute exists within the meaning of Section 8(2)(a) of the IBC, 2016 as the Corporate Debtor's objections are not bona fide or contemporaneous.

15. Issue No.(C):. Whether the PRA alters the debt's nature or subsumes prior obligations?

(i) The Operational Creditor submits that the PRA only restructured payment terms and was repudiated due to the Corporate Debtor's breach. The original operational



debt remains enforceable, as per ***Priyal Kantilal Patel V. IREP Credit Capital Pvt. Ltd. (CA (AT) (Ins.) No. 1423 of 2022)***.

- (ii) The Corporate Debtor submitted that the PRA transformed the operational debt into a non-operational debt, rendering the application under Section 9 invalid. The Corporate Debtor argued that the PRA is a novation, subsuming all prior obligations. Claims based on earlier invoices or POs are extinguished. This argument requires a careful examination of the nature of the debt and the effect of the PRA.
- (iii) The PRA, executed in **January 2022**, was a restructuring mechanism to facilitate the repayment of the existing debt. It did not alter the underlying transaction, which remained the supply of commodities. The PRA's terms, particularly paragraphs 1(a) and 2(a), reaffirm the Corporate Debtor's liability for the operational debt, with no indication of a new



financial arrangement distinct from the original transaction.

- (iv) **Section 5(21)** of the IBC, 2016 defines an operational debt as a claim arising from the provision of goods or services, including dues arising under any law. The debt in question originates from the Operational Creditor's supply of agricultural commodities under the Agreement and tripartite agreements, clearly qualifying as an operational debt.
- (v) **Section 62** of the Indian Contract Act, 1872, provides that a novation replaces the original contract with a new one, extinguishing prior obligations. However, the PRA does not indicate an intent to extinguish the original debt.
- (vi) The PRA acknowledges the Corporate Debtor's liability for Rs.128,28,52,745/- (invoices) and Rs.21,29,47,336/- (vendor dues) and sets a payment schedule indicating continuity not replacement. It is a restructuring agreement, not a new contract.



- (vii) The Operational Creditor repudiated the PRA due to the Corporate Debtor's breach (payment of only Rs. 5,00,000/- against Rs. 75,28,800/- by 28.02.2022). The NCLAT in ***Priyal Kantilal Patel*** held that a breached settlement agreement restores the creditor's right to claim the original debt.
- (viii) The Corporate Debtor's partial payments and admissions (e.g., email dated 17.06.2022) reinforce that the original debt persists.
- (ix) The National Company Law Appellate Tribunal (NCLAT) in ***Promila Taneja v. Surendri Design Pvt. Ltd. [2020 SCC OnLine NCLAT 735]*** held that a restructuring agreement does not change the character of an operational debt unless it fundamentally alters the nature of the transaction. Similarly, in ***Swiss Ribbons Pvt. Ltd. v. Union of India [(2019) 4 SCC 17]***, the Supreme Court clarified that the IBC distinguishes operational debts based on their origin, not subsequent arrangements for repayment.



- (x) In the present case, the PRA merely provided a schedule for repaying the debt arising from the supply of commodities. The Corporate Debtor's partial payments under the PRA and subsequent admissions of liability reinforce the operational nature of the debt. The Corporate Debtor's argument that the PRA created a non-operational debt is unsupported by legal precedent or factual evidence.
- (xi) Furthermore, the Corporate Debtor's reliance on the PRA to dispute the debt's nature is inconsistent with its acknowledgment of liability in the same document. The PRA's purpose was to address the Corporate Debtor's default, not to create a new category of debt. Thus, this Bench holds that the debt remains operational, and the application under Section 9 is maintainable.
- (xii) Hence, the PRA does not alter the debt's operational nature or subsume prior obligations. The original debt remains enforceable.

16. Issue No.(D):. Whether the PRA's unstamped status render it inadmissible?



- (i) The Corporate Debtor submitted that the unstamped PRA is inadmissible under the Indian Stamp Act, 1899, invalidating the claim and cannot form the basis of the claim.
- (ii) The Operational Creditor argues that stamping issues do not bar the admissibility of the PRA for IBC purposes as the debt is proven by invoices, POs, and admissions, citing precedents include: -
- a. *In Re: Interplay between Arbitration Agreements* (Curative Petition (C) No. 44 of 2023).
 - b. *Odyssey Corporation Ltd. v. Diaonics Automation (India) Pvt. Ltd.* (2023 SCC OnLine NCLT 1272).
 - c. *Mr. Praful Nanji Satra v. Vistra ITCL Ltd.* (CA (AT) (Ins.) No. 713 of 2020).
- (iii) The Operational Creditor also submits that the debt is independently proven by invoices, POs, and acceptance letters.
- (iv) The Supreme Court in *In Re: Interplay between Arbitration Agreements* held that stamping deficiencies are curable and should not stall proceedings at the threshold. The NCLT in *Odyssey Corporation* extended this principle to IBC



applications, noting that stamping issues do not preclude debt and default determination.

(v) The Operational Creditor's claim is primarily based on the Commodity Procurement Contract and Tripartite Agreements, supported by:

- i. POs and invoices.
- ii. Acceptance Letters, confirming delivery.
- iii. Emails and the letter dated 13.06.2022, admitting liability.

(vi) These documents independently establish the debt, reducing reliance on the PRA. Therefore, the PRA's unstamped status does not bar the application, as the debt is substantiated by other evidence.

17. Issue No.(E):. Whether the petition is premature?

(i) The Operational Creditor submitted that the petition is based on the original default (July 2021) and the PRA's breach (February 2022). The repudiation of the PRA restored the Operational Creditor's right to claim the full debt.



- (ii) The Corporate Debtor submitted that the petition is premature, as only Rs.75,28,800/- was due by 28.02.2022, and the remaining Rs. 121,323,945/- was not due until 30.12.2022, per the PRA's review clause.
- (iii) The PRA stipulated payment of Rs.75,28,800/- by 28.02.2022 and the balance in tranches by May 2022. The Corporate Debtor paid only Rs. 5,00,000/-, breaching the PRA led to repudiation.
- (iv) The Operational Creditor repudiated the PRA via legal notices dated 25.04.2022 and 28.04.2022, restoring its right to claim the original debt. The petition, filed on 11.10.2022, is based on the original default (July 2021) and the PRA's breach.
- (v) The Corporate Debtor's argument that the debt was not due until 30.12.2022 ignores the PRA's breach and repudiation as well as the default's timing. The debt was due and unpaid well before filing. The NCLAT in Priyal Kantilal **Patel** supports the Operational Creditor's right to revert to the original debt upon a settlement's breach.



(vi) Thus, the petition is not premature, as the default occurred well before filing.

18. Issue No.(F):. Whether the Applicant established debt and default?

(i) The Operational Creditor submits that the debt exceeds the threshold of Rs. 1.00 Crore (Section 4, IBC), supported by:

- a. Unpaid invoices (Rs. 128,23,52,745/-).
- b. Vendor dues (Rs. 21,29,47,336/-).
- c. Admissions in the PRA, emails, and the letter dated 13.06.2022.
- d. The default began in July 2021 and continued with the PRA's breach.

(ii) The Corporate Debtor disputes the debt's finality, citing pending reconciliation, lack of a default clause in the PRA, and no agreement on interest.

(iii) The Operational Creditor has provided:

- i. POs and invoices, detailing quantities and amounts.
- ii. Acceptance Letters, confirming delivery.
- iii. The PRA, acknowledging Rs. 149,58,00,081/- in dues.
- iv. Emails (10.05.2022, 27.05.2022, 17.06.2022) and the letter dated 13.06.2022, admitting liability.



- (iv) The Corporate Debtor's partial payments (Rs. 50,00,000/-) further confirm the debt.
- (v) The claimed debt (Rs. 148,98,00,081/-, excluding interest) exceeds the IBC threshold. The interest claim (Rs. 26,91,54,014/-) is disputed, but the principal debt exceeds the threshold.
- (vi) The default is established from July 2021 (invoice defaults) and February 2022 (PRA breach). The Corporate Debtor's claim of "pending reconciliation" is vague and unsupported by evidence.
- (vii) The PRA's lack of a default clause does not negate the original contract's terms or the debt's enforceability.
- (viii) Thus, the Operational Creditor has proven debt and default exceeding the IBC threshold.

19. Issue No.(G):. Whether inconsistencies in invoices, POs, or vendor dues affect admissibility?

- (i) The Operational Creditor submits that the debt is substantiated by POs, invoices, and acceptance letters. Minor inconsistencies do not negate the debt's existence.



- (ii) However, the Corporate Debtor submitted that Invoices lack POs, have quantity mismatches, or are unrelated to vendors. Vendor dues lack evidence of Clause 2.12's triggering. The Corporate Debtor highlights as under: -
- Invoice dated 08.10.2020 lacks a PO.
 - Invoice dated 24.03.2021 has a quantity mismatch with the PO.
 - 10 invoices (05.10.2021–08.10.2021) lack corresponding POs.
 - Vendor dues lack documentation and evidence of Clause 2.12's triggering.
- (iii) The Operational Creditor has provided 24 invoices and 8 POs, supported by acceptance letters. While some invoices (e.g., 08.10.2020) lack corresponding Pos. but the acceptance letters confirm delivery and satisfaction.
- (iv) The quantity mismatch in the invoice dated 24.03.2021 (8,99,890 vs. 11,000 mustard seeds) is not substantiated by rejection notices or quality complaints.
- (v) The 10 invoices for black gram (05.10.2021–08.10.2021) No POs for these black Grams. But are supported by the PRA's acknowledgment of black gram dues (Rs. 75,28,800/-).



- (vi) For vendor dues, Clause 2.12 of the Tripartite Agreements makes the Corporate Debtor liable upon vendor default. The Operational Creditor's demand notice references vendor invoices, and the PRA acknowledges Rs. 21,29,47,336/- in vendor dues. The Corporate Debtor's claim of "counter-dues" is unsupported and lacks evidence.
- (vii) It is a settled position that minor documentary deficiencies do not invalidate a petition if debt and default are proven. Here, the PRA, admissions, and partial payments outweigh inconsistencies.
- (viii) Thus, inconsistencies do not preclude admission, as the debt is substantiated.

20. Issue No.(H):. Whether the petition comply with procedural requirements?

- (i) The Operational Creditor submitted that the petition complies with Sections 8 and 9 of the IBC, with the demand notice duly served and no reply received. The default (July 2021) falls outside Section 10A.



- (ii) The Corporate Debtor alleges non-compliance with Section 10A (COVID-19 moratorium) and failure to specify a clear default date.
- (iii) **Section 10A** prohibits CIRP initiation for defaults between 25.03.2020 and 25.03.2021. However, the default is from July 2021, which is outside this period.
- (iv) The Demand Notice (14.05.2022) was served at the Corporate Debtor's registered address and via email, with no denial of receipt. The Corporate Debtor's failure to reply within 10 days satisfies Section 8 of the IBC, 2016.
- (v) The petition specifies the default from July 2021 and February 2022 (PRA breach), sufficient for Section 9 of the IBC, 2016.
- (vi) The Corporate Debtor's reply was accepted on 20.01.2023, resolving procedural objections.
- (vii) Thus, the petition complies with all procedural requirements.

21. The Petition is complete, as evidenced by the Operational Creditor's compliance with Form-5 and the submission of



supporting documents. The Corporate Debtor has not cleared the outstanding debt, and no valid notice of dispute was received in response to the demand notice. The Operational Creditor has not nominated an IRP, leaving the appointment to the discretion of this Bench. No disciplinary proceedings are relevant in this context.

- 22.** The Corporate Debtor's defences, namely the alleged dispute and the nature of the debt, have been found wanting. The Operational Creditor has established the existence of an operational debt exceeding Rs. 1.00 crore and a default, satisfying the conditions for admission under Section 9 of the IBC, 2016.
- 23.** After a thorough examination of the facts, submissions, and legal principles, this Bench concludes that the Operational Creditor has made out a compelling case for the initiation of CIRP against the Corporate Debtor. The Corporate Debtor's defences lack merit, as they are unsupported by contemporaneous evidence and contradicted by its own admissions. The debt remains operational, and the default is undisputed, warranting the admission of the application.



24. Hence, in our view, the present Petition is complete in terms of Section 9 of the Code. The Operational Creditor is entitled to claim its dues, establishing the operational debt and default in payment of the Operational Debt beyond doubt. The outstanding Operational Debt is more than Rupees One Crore, which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present Petition. Moreover, **the aforesaid default is not covered under the period exempted under Section 10A of IBC, 2016.** Accordingly, the Petition filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

25. Accordingly, in light of the above facts and circumstances, it is **hereby ordered** as under: -

- (i) The Respondent/Corporate Debtor **Om Shri Shubh Labh Agritech Private Limited** is **admitted** in the Corporate Insolvency Resolution Process under section 9(5) of the Code.



- (ii) As a consequence thereof, an Interim Resolution Professional (**IRP**) is appointed, a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
- a. *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
 - c. *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
 - d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation*



with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.

- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the Corporate Debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional **(IRP)**. Therefore, from the Panel list of **IBBI** dated 01.01.2025, we hereby appoint **Mr. Rahul Anand**, having Registration No. IBBI/IPA-003/IP-N000166/2018-2019/11955, having **(e-mail: rahulpnb@hotmail.com)** Mobile No.9893025630 under section 13 (1)(c) of the Code to act as Interim Resolution Professional **(IRP)**. He shall conduct the Corporate Insolvency Process as per the Insolvency



and Bankruptcy Code, 2016, r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all its functions as contemplated, *inter-alia*, by sections 17, 18, 20, and 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its promoters, or any other person associated with the management of the Corporate Debtor are under legal obligation, as per section 19 of the Code, to extend every assistance and cooperation to the IRP. Where any personnel of the Corporate Debtor, its promoters, or any other person required to assist or co-operate with the IRP do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (viii) The IRP is expected to take full charge of the Corporate Debtor's assets and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby



directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor company' and manage the operations of the Corporate Debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.5,00,000/- (Rupees Five Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, Corporate Debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the



Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Petition and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

26. Accordingly, this Petition being **CP(IB)/68/9/MP/2022** is **admitted**. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)