IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT - IV

CP No.: IB 533(ND)/2024

(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 DTH INFRA ENGINEERS PVT. LTD.
...Operational Creditor / Applicant

VERSUS

M/s HINDUSTAN URVARAK & RASAYAN LTD.
...Corporate Debtor / Respondent

Pronounced on: 05.08.2025

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

Present:

For Applicant	:	Adv. Bhuvan Arora.
For Respondent	:	Adv. Aditya Shandilya.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present Company Petition has been instituted by DTH Infra Engineers Pvt. Ltd. ("**Applicant / Operational Creditor**") under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), seeking initiation of the Corporate Insolvency Resolution Process

("**CIRP**") against Hindustan Urvarak & Rasayan Ltd. ("HURL" or "Respondent /Corporate Debtor") in relation to alleged unpaid dues arising from works purportedly executed in connection with the Ammonia-Urea Fertilizer Project at Barauni, Bihar.

2. The Corporate Debtor having CIN: U24100DL2016PLC358399 was incorporated on 15.06.2016 under the provisions of the Companies Act, 2013 having its registered office situated at Core-4, 9th Floor Scope Minar, Laxmi Nagar, District Centre, New Delhi- 110092. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Adjudicating Authority having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor.

3. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a total sum of Rs. 1,81,43,587 (Rupees One Crore Eighty One Lakh Forty Three Thousand Five Hundred Eighty Seven Only) including interest up to 31.01.2024. The Demand Notice sent by the Operational Creditor to the Corporate Debtor is annexed to the Application as Annexure – A8 Colly.

4. Ld. Counsel for the Applicant has raised the following contentions:

   a. The Ld. Counsel for the Applicant submitted that the Corporate Debtor had signed the Minutes of Meeting (MOM) dated 10.02.2020 and had also made payments to the Applicant in pursuance of the said MOM. Therefore, having acknowledged its obligation and acted in accordance with the MOM, the Corporate

Debtor cannot now take a contradictory stand denying its role as a Corporate Guarantor. It was stated that the MOM was convened due to non-payment of dues by the Principal Contractor, M/s. BGR Energy Systems Limited ("BGR"), and the said meeting was attended by the Applicant, BGR, the Corporate Debtor, and PDIL. In this meeting, the Corporate Debtor agreed to make payments in case of default by BGR and in fact paid Rs. 4.23 Crores to the Applicant pursuant to this understanding. The payment made pursuant to the MOM stands admitted by the Corporate Debtor in para C at page 9 of its reply. This conduct, according to the Applicant, clearly establishes that the Corporate Debtor had assumed the liability of a guarantor and cannot now resile from the same.

b. It was further contended that both the debt and default exceed the statutory threshold of Rs. 1 crore and have been admitted by the Corporate Debtor. The Ld. Counsel pointed out that upon default by BGR, a reconciliation statement dated 14.09.2021 was sent by BGR to the Applicant acknowledging its dues. Further, BGR, through its emails dated 19.11.2021, 22.11.2021, and 23.11.2021, provided revised rates based on the work performed by the Applicant, which were accepted by the Applicant through return correspondence. In these communications, BGR also acknowledged its dues towards Provident Fund and labour charges. These communications are annexed with the petition. The Counsel relied upon Section 128 of the Indian Contract Act, 1872, which provides that the liability of the surety is coextensive with that of the principal debtor, unless otherwise agreed. It was further submitted that in the matter of *State Bank of India vs. Gourishankar Poddar & Others* [Company Appeal (AT)(Insolvency) No. 689/2024], the Hon'ble NCLAT, Delhi, in its judgment dated 06.01.2025, has held that an acknowledgment of debt by the principal borrower is equally binding on the guarantor for the purpose of limitation. This view has been affirmed by the Hon'ble Supreme Court in Civil Appeal No. 3563/2025 decided on 24.03.2025. The judgments are annexed to the application. Accordingly, the Applicant submitted that the Corporate Debtor, having paid Rs. 4.23 Crores in its capacity as guarantor, and having defaulted on the remaining dues, cannot now dispute the claim.

c. The Ld. Counsel further submitted that at no point has the Corporate Debtor raised any dispute regarding the quantum of work performed by the Applicant, the quality of services rendered, or the amount claimed. Therefore, in the absence of any pre-existing dispute, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted.

d. The Applicant also refuted the stand taken by the Corporate Debtor in its reply that payment was made only towards invoices related to RMC supply. It was submitted that the Applicant had raised invoices not only for RMC supply but also for services such as Roller hiring, Main-plant works, Finishing works, Hiring of boom placer pump, Sand supply, and Manpower supply. The Corporate Debtor has falsely stated that the payments were made exclusively towards RMC supply invoices as per the MOM dated

10.02.2020. However, records show that the Corporate Debtor has made payments covering invoices related to various heads of work beyond RMC supply. A chart illustrating such payments is annexed to the petition. Therefore, the Corporate Debtor cannot now take a contrary stand to defeat the Applicant's claim.

e. It was further contended that the Corporate Debtor's claim that payments were made only against "certified invoices" under the Indemnity Bond executed with BGR is also misleading. The Corporate Debtor has admitted that it paid Rs. 4.23 Crores to the Applicant. However, the total amount of certified invoices under the Indemnity Bond comes only to Rs. 3.23 Crores. Thus, there is a gap of Rs. 99,72,241/- for which the Corporate Debtor has failed to provide any explanation. A tabulated chart of the invoices forming part of the Indemnity Bond has been provided to demonstrate this discrepancy. Since the excess payment of nearly Rs. 1 crore is not backed by any certified invoice under the Indemnity Bond, it is evident that the Corporate Debtor made payments for other invoices as well. This undermines the Corporate Debtor's contention and indicates a false plea intended to evade liability under the Insolvency and Bankruptcy Code.

f. Lastly, the Ld. Counsel for the Applicant submitted that the Corporate Debtor has misrepresented the total value of invoices raised. It was argued that the Corporate Debtor has wrongly stated that the total invoices amount to Rs. 6.68 Crores, of which Rs. 6.02 Crores has been paid, and therefore, the application does not meet the threshold limit. In reality, the total invoices raised by the Applicant amount to Rs. 7,91,21,066/-, out of which Rs.

6,02,47,937/- has been paid, leaving a balance/default amount of Rs. 1,88,73,129/-, which clearly exceeds the minimum threshold of Rs. 1 crore as prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016. A chart showing the total invoices is annexed with the petition. Thus, the Corporate Debtor's contention regarding the threshold limit is false and unsupported by any credible evidence. The Counsel concluded that the Corporate Debtor has not established any pre-existing dispute and has, in fact, acknowledged its liability in terms of the MOM dated 10.02.2020 and made payments across various heads of invoices. In view of the judicial precedents, documents, and acknowledgments on record, the application under Section 9 merits admission.

5. In reply to the contentions raised by the Applicant, Ld. Counsel for the Respondent has stated the following:

   a. The foundation of the claim rests on commercial arrangements entered into not with the Respondent/Corporate Debtor, but with BGR Energy Systems Limited ("BGRESL"), the EPC contractor appointed by the Respondent/Corporate Debtor for execution of the said project. The Operational Creditor, having been engaged directly by BGRESL, now seeks to fasten liability upon the Respondent/Corporate Debtor by placing reliance on internal administrative communications and interim arrangements, which do not constitute any enforceable contractual obligation on the part of the Respondent/Corporate Debtor. It is submitted that the present application is based on a fundamental misapprehension of the Respondent/Corporate Debtor's legal status in the transaction. The Operational Creditor attempts to invoke the summary insolvency jurisdiction of this Tribunal, bypassing established principles of contractual liability, statutory thresholds, and the existence of pre-existing disputes. Therefore, the Respondent/Corporate Debtor submits that the petition is not maintainable in law or on facts and deserves dismissal at the threshold.

b. **Non-joinder of Necessary Party and Want of Privity of Contract** The Respondent contends that the present application under Section 9 of the IBC is not maintainable and is liable to be rejected in limine, as the entire claim pertains to transactions arising from Purchase Orders issued solely by BGRESL, a party not impleaded in these proceedings. The non-joinder of BGRESL, a necessary and indispensable party, renders the proceedings fundamentally defective.

c. It is a settled legal principle that a party is deemed "necessary" when there exists a right to relief against such party in respect of matters involved in the proceedings, and no effective adjudication can be made in its absence. In the present case, the Operational Creditor was never engaged by the Respondent/Corporate Debtor, but by BGRESL. All contractual documents—Purchase Orders, Work Orders, and invoices—were issued exclusively by BGRESL. There is no privity of contract between the Operational Creditor and the Respondent/Corporate Debtor.

d. To further demonstrate the contractual structure, the Respondent has placed reliance on clauses of the General Conditions of Contract forming part of the Agreement dated 14.11.2018 between Respondent and BGRESL. These provisions clarify that: (i) BGRESL assumed liability and indemnified the Respondent for all third-party claims arising from subcontractors or vendors; (ii) BGRESL was solely responsible for payments to its subcontractors and vendors; and (iii) the Respondent bore no contractual obligations towards such subcontractors.

e. The Respondent also relied on the judgment of the Hon'ble Supreme Court in *Moreshwar Yadaorao Mahajan v. Vyankatesh Sitaram Bhedi*, 2022 SCC OnLine SC 1307, which affirmed the dual test for a necessary party. Applying this test, it is evident that the claim arises solely from BGRESL's contractual arrangements, and no effective adjudication is possible without BGRESL.

f. **Lack of Pecuniary Jurisdiction under Section 4 of IBC**

The Respondent has further submitted that the application is barred by the pecuniary threshold under Section 4 of the IBC. As per Notification No. S.O. 1205(E) dated 24.03.2020 issued by the Ministry of Corporate Affairs, the minimum default amount for initiating CIRP under Section 9 is Rs. 1 crore.

g. In the present case, the Operational Creditor has admitted that out of total invoices of Rs. 6,68,33,638/-, a sum of Rs. 6,02,47,937/- has already been received. The outstanding amount, therefore, falls below the statutory threshold. To artificially meet the threshold, the Operational Creditor has included components such as labour cess, EPF liabilities, retention amounts, and interest at 19.5% per annum—none of which are contractually agreed upon or legally enforceable.

h. The Respondent relied on the judgment of the Hon'ble NCLT, New Delhi, in *CBRE South Asia Pvt. Ltd. v. United Concepts and Solutions Pvt. Ltd.* [CP(IB)-797/ND/2021], where it was held that if the principal operational debt falls below Rs. 1 crore, the petition is not maintainable. The Respondent also cited *Viston Steel Corp (P) Ltd v. Capacit'e Infraprojects Ltd.* [CP(IB) No.1579/MB/C-IV/2019], wherein it was held that interest claims based solely on "industry practice" or under the MSME Act, without being reflected in the contract or invoices, are not sustainable to meet the jurisdictional threshold.

i. Accordingly, the Respondent contends that in the absence of a principal operational debt exceeding Rs. 1 crore, the petition does not meet the jurisdictional threshold under Section 4 and is liable to be dismissed.

j. **Reliance on Minutes of Meeting dated 10.02.2020 is Misplaced**
The Respondent further submits that the Operational Creditor's reliance on the Minutes of Meeting (MoM) dated 10.02.2020 is wholly misplaced and untenable. The said MoM does not constitute a corporate guarantee nor records any binding undertaking by the Respondent to discharge the liabilities of BGRESL.

k. The relevant portions of the MoM clearly show that any payment by the Respondent to subcontractors, including the Operational Creditor, was contingent upon non-payment by BGRESL and subject to prior certification by BGRESL. Thus, it only outlined a conditional administrative arrangement to ensure continuity of work at the site and did not create an absolute or unconditional liability on the Respondent.

l. The Operational Creditor has already received payments under this arrangement, but only against certification by BGRESL and on submission of indemnity bonds executed by BGRESL in favour of the Respondent. These bonds indemnify the Respondent from any statutory or financial liability related to the claims of subcontractors.

m. There is no clause in the MoM that confers enforceable rights upon the Operational Creditor to claim payment from the Respondent. Therefore, the MoM cannot be construed as a corporate guarantee or an enforceable contractual promise.

n. It is submitted that the Respondent/Corporate Debtor has not, at any point of time, assumed direct or unqualified liability for the payment of any dues claimed by the Operational Creditor. Any payments made by the Respondent/Corporate Debtor to the Operational Creditor were conditional, limited, and subject to strict compliance with certain prerequisites, namely the certification by BGRESL—the principal contractor—and the prior furnishing of duly executed indemnity bonds by BGRESL in favour of the Respondent.

o. The Respondent/Corporate Debtor places reliance upon its Reply, particularly Annexures R-4 (pages 107–144), to contend that the indemnity bonds executed by BGRESL constituted an integral element of the contractual matrix. These bonds governed limited and specific circumstances under which the Respondent agreed to make direct disbursements to subcontractors, including the Operational Creditor.

p. The terms of the said indemnity bonds specifically recorded the following: (i) any direct disbursement by the Respondent was to be made only against BGRESL's express certification of the work done and the amount payable; (ii) BGRESL undertook to indemnify and hold harmless the Respondent from any and all liabilities, disputes, statutory dues, interest, or future demands raised by the subcontractor; and (iii) such direct payments by the Respondent would not constitute any recognition of contractual liability or obligation beyond the certified amount.

q. The Respondent further relies upon the correspondence dated 07.06.2022 (Annexure-6 of the Reply at pages 157–158), wherein the Applicant itself acknowledges that the holding and retention amount was with BGRESL. This admission, it is submitted, reaffirms that the Respondent's role was merely administrative or facilitative in nature and did not emanate from any contractual or primary liability towards the Operational Creditor.

r. In view of the foregoing, it is submitted: (i) that the payments made by the Respondent were discretionary and based solely on BGRESL's certification; (ii) the indemnity bonds served as a legal shield insulating the Respondent from any subsequent or residual claims; and (iii) there has been no novation of liability or substitution of debtor as recognised under law.

s. It is therefore the case of the Respondent that any liability, if at all, stood discharged upon making the payments as contemplated under the indemnity mechanism. Any claim by the Operational Creditor for amounts not certified by BGRESL or in excess thereof is not maintainable against the Respondent and stands expressly barred by the terms of the indemnity arrangement. Accordingly, it is submitted that the present petition, to the extent that it seeks recovery of amounts that are uncertified and not covered by the indemnity mechanism, is not maintainable in law and is liable to be dismissed.

t. Without prejudice to the above, it is submitted that the present Application under Section 9 of the IBC is vitiated by the existence of a pre-existing dispute, which renders it non-maintainable. The filing of the present proceedings after unsuccessful invocation of civil remedies is an instance of classic forum shopping, which is impermissible under the scheme of the IBC.

u. As per the records, the Operational Creditor had earlier initiated pre-institution mediation proceedings under Section 12-A of the Commercial Courts Act, 2015, prior to the filing of the instant Application (Annexure-5 at page 145 of the Reply). The object behind such mediation was clearly civil recovery, which demonstrates that the Applicant had always regarded the dispute as a civil/commercial contractual issue and not one that would fall within the scope of insolvency proceedings.

v. The said pre-institution mediation proceedings were based on the same invoices and cause of action as the present Application. This clearly establishes the existence of a substantial and genuine dispute between the parties as to (i) the entitlement of the Operational Creditor to the amounts claimed; (ii) the liability of the Respondent/Corporate Debtor as a non-contracting entity; and (iii) the computation and heads of claim, including EPF, retention, labour cess, and interest.

w. The Respondent/Corporate Debtor has, through Annexures R-1 to R-6 of the Reply, demonstrated that: (i) there exists no contractual relationship between the Respondent and the Operational Creditor; (ii) the payments already made were conditional and based on certifications issued by BGRESL along with the execution of indemnity bonds; (iii) there has never been any unqualified admission of liability; and (iv) the Minutes of Meeting dated 10.02.2020 (Annexure-3) do not impose any binding legal obligation on the Respondent.

x. It is submitted that the abrupt shift from mediation under the Commercial Courts Act to an Application under the IBC, without any material change in the factual matrix or underlying claim, amounts to an impermissible abuse of the legal process. This conduct reveals an attempt to misuse the coercive mechanism of insolvency proceedings to pressurise the Respondent into making payments in respect of a disputed claim.

y. The present Application, therefore, is not only based on a disputed claim but has also been filed as an afterthought following unsuccessful pre-litigation efforts. The same is liable to be dismissed with costs for constituting a textbook case of forum shopping and suppression of material facts.

6. We have heard the Learned Counsels for the Operational Creditor as well as the Corporate Debtor and have examined the documents submitted by the parties. Upon due consideration of the arguments advanced and the evidence placed on record, the primary question that arises before us is whether the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter "the Code") is maintainable in the facts and circumstances of the case.

7. At the very outset, it is to be noted that the Operational Creditor is not in a direct contractual relationship with the Respondent/Corporate Debtor. The principal contract in question was awarded to BGR Energy Systems Limited (hereinafter "BGRESL") by the Corporate Debtor. It is BGRESL which, in turn, had sub-contracted certain works to the present Applicant. The record clearly reveals that the payments claimed by the Applicant arise out of this subcontracting arrangement between the Applicant and BGRESL and not from any direct engagement with the Corporate Debtor. There is neither a purchase order nor any contractual document evidencing any privity of contract between the Operational Creditor and the Respondent/Corporate Debtor.

8. The next question that arises before us is whether any liability can be fastened upon the Corporate Debtor merely on the ground that it made certain direct payments to the Operational Creditor in the past. In this regard, we find that such payments were made strictly upon certification by BGRESL and only after the Operational Creditor executed indemnity bonds in favour of the Corporate Debtor. These bonds categorically declared that the payments were being made without admission of any liability and that the Corporate Debtor would stand indemnified against any present or future claims arising from the same.

9. These indemnity bonds are not mere formalities but contractual instruments that must be interpreted in accordance with the intention of the parties. The language employed therein leaves no room for ambiguity—it expressly negates any obligation on part of the Corporate Debtor towards the Operational Creditor and reinforces that the Corporate Debtor was merely facilitating payments in an administrative capacity. It cannot, therefore, be inferred that any operational debt is due and payable by the Corporate Debtor to the Applicant in the absence of a direct contractual nexus.

10. The next aspect that merits consideration is whether the correspondence exchanged between the parties, including internal minutes of meeting dated 10.02.2020, can be construed as an acknowledgment of debt. In this regard, we must reiterate that for any such acknowledgment to acquire legal sanctity, it must be unequivocal and made in the course of a subsisting legal obligation. In the present case, the purported minutes of meeting do not contain any unequivocal admission of liability by the Corporate Debtor. On

the contrary, the record shows that the Corporate Debtor has consistently maintained that the retention amounts and other dues were held and managed by BGRESL. This is also evidenced in the Applicant's own letter dated 07.06.2022, wherein it acknowledges that BGRESL had withheld the retention money, thereby further diluting any claim of direct liability against the Corporate Debtor.

11. The next question that arises before us is whether the present Application is barred by the existence of a prior dispute. The law in this regard is well settled. The Hon'ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, (2018) 1 SCC 353, has held that where there exists a genuine and pre-existing dispute prior to the issuance of a demand notice, the Adjudicating Authority must reject the application filed under Section 9 of the Code. In the case before us, the material on record clearly establishes the existence of substantial disputes—not only regarding the quantum of alleged dues but also with respect to the very maintainability of the claim against the Corporate Debtor. The nature of these disputes is neither illusory nor contrived. They go to the root of the claim and cast serious doubt upon the entitlement of the Applicant to invoke the provisions of the Code.

12. The Applicant has further admitted that it had earlier invoked pre-institution mediation proceedings under Section 12A of the Commercial Courts Act, 2015, before the Delhi High Court for recovery of the same amount. That action was initiated purely as a contractual/commercial dispute. It is only after failing to secure relief in that process that the present application under the Code has been filed. This conduct amounts to forum shopping and is an abuse of the

insolvency process, which cannot be permitted. It must be borne in mind that the object of the Code is not to serve as a mere debt recovery tool but to facilitate resolution of insolvency of a corporate person who has committed a default in repayment of an undisputed and legally enforceable debt.

13. We are also constrained to observe that the essential ingredients of "operational debt" as defined under Section 5(21) of the Code are not satisfied in the present case. A claim for payment made against a party that never contracted with the claimant, and which expressly denied liability both contractually and through its conduct, cannot be elevated to the status of an operational debt. Furthermore, there is no credible evidence to show that the default, if any, was committed by the Corporate Debtor within the meaning of Section 3(12) of the Code.

14. We, therefore, find that the Applicant has not discharged the burden of proving that the debt claimed is due and payable by the Respondent, that the same is free from any dispute, or that the Respondent has committed a default in relation to such debt. The invocation of the Code in these circumstances is entirely unwarranted.

15. In view of the foregoing analysis, and having considered the material on record as well as the judicial pronouncements relevant to the issue, we are of the considered view that the present Application is not maintainable under Section 9 of the Code. The Corporate Debtor cannot be subjected to the rigours of the Corporate Insolvency Resolution Process when the foundational requirement of a clear, undisputed operational debt is not met.

16. Accordingly, the Application bearing **CP (IB) 533 of 2024** stands **dismissed**. However, this order shall not preclude the Applicant from seeking remedies, if so advised, under other laws that may be applicable in the facts of the case. There shall be no order as to costs.

Sd/-	**Sd/-**
(ATUL CHATURVEDI)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)