NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1145 of 2025 &
I.A. No. 5497 of 2025

(Arising out of Order dated 31.07.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Division Bench, Court-1 in C.P.(IB)/369(AHM)2024)

IN THE MATTER OF:

Bhuvan Kumar Gupta …Appellant

Versus

Maverick Developers and Colonisers Pvt. Ltd. & Anr. …Respondents

Present:

For Appellant	:	**Ms. Malvika Trivedi Sr. advocate with Mr. Sanyam Khetarpal, Mr. Sameer Abhyankar, Mr. Nitesh Goyal and Mr. Dhruv Suri, Advocates**
For Respondents	:	**Mr. Saumitra Chaturvedi, Advocate.** **Mr. Kamil Lokhandwala, Advocate for IRP.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Suspended Director of the Corporate Debtor ("**CD**") – M/s OFB Tech Private Limited has been filed challenging the order dated 31.07.2025 by which order Section 9 Application filed by Respondent No.1 (Operational Creditor) has been admitted.

2. Brief facts of the case giving rise to this Appeal are:

(i) The CD – OFB Tech Pvt. Ltd. is engaged in the business of trading and supply of raw materials to small and medium enterprises and other corporates. The Operational Creditor ("**OC**") has been executing the construction work.

(ii) The Operational Creditor approached the CD for purchase of round HDPE Pipes of different dimensions of make Giga. The CD had entered into Memorandum of Understanding ("**MoU**") dated 21.09.2020 with M/s Giga Pipe Systems India LLP ("**M/s Giga Pipe Systems**") by which it sanctioned purchase and finance facilities to the M/s Giga Pipe Systems.

(iii) In October 2020, the Operational Creditor issued purchase order on the CD for supply of pipes. The CD supplied the giga pipes to the OC sourced from M/s Giga Pipe Systems. The payments were made by the Operational Creditor to the CD towards the supply of the pipes. The last payment was made by the Operational Creditor to the CD on 24.08.2021.

(iv) The Operational Creditor sent an email dated 27.10.2023 seeking confirmation of Statement of Account for Income Tax purposes from the CD. In response to the above email, the CD replied on the same day and shared ledger of Statement of account. The Operational Creditor disputed the two ledger entries vide email dated 30.10.2023, i.e. dated 31.03.2021 and 31.08.2021 with respect to M/s. Giga Pipe Systems. No demand or refund of any payment was made by the Operational Creditor to the CD.

(v) The dispute between CD, M/s Giga Pipe and KK Spun, the sister concern of M/s Giga Pipe arose and notice of dispute dated 18.11.2023 was raised by M/s Giga Pipe Systems. The CD replied to the notice of dispute dated 20.11.2023.

(vi) The Operational Creditor issued a Demand Notice dated 11.07.2024 demanding an operational debt of Rs.3,05,95,276 alleging it to be excess payment made by the Operational Creditor to the CD. The Demand Notice was replied by the CD vide reply to Demand Notice dated 20.07.2024, denying the liability to pay any debt. The CD in reply to the said submitted that no debt is due and there is pre-existing dispute between the parties. The Operational Creditor issued a rejoinder to the reply of the CD dated 06.08.2024.

(vii) The Operational Creditor sent information of debt to the National E-Governance Services Ltd. ("**NeSL**") on 21.10.2024 as per IBBI (Information Utilities) Regulations, 2017. The NeSL forwarded the information to the CD for authentication. The CD disputed the debt. The NeSL in its record of default mentioned the status of authentication of default as disputed.

(viii) Section 9 application was filed by the Operational Creditor on 12.11.2024, claiming an amount of Rs.3,05,95,276/- as principal amount with interest of Rs.78,20,152/-, totaling to Rs.3,84,15,428/-. The Operational Creditor in its Section 9 application pleaded that it has issued purchase order dated 01.10.2020 for total value of Rs.27,62,12,000/- and another purchase order dated 28.08.2021 for Rs.6,57,40,000/-. The

Operational Creditor's case was that CD supplied the material totaling to Rs.32,38,77,724/- and Operational Creditor has made total payment of Rs.35,44,73,000/- and excess payment of Rs.3,05,95,276/- was made. The second purchase order was cancelled, hence, the CD is liable to pay the amount of Rs.3,05,95,276/- with interest.

(ix) A reply was filed by the CD to Section 9 application disputing the purchase order claimed by the Operational Creditor and relied on purchase order dated 05.10.2020. The CD denied the cancellation of purchase order as alleged by the Operational Creditor. It is pleaded that after the last payment, for more than two years, there was no communication by the Operational Creditor and further for the first time by email dated 27.10.2023, confirmation of Statement of Account was sought for the Financial Year 2020-21, which ledger was shared by the CD. Vide email dated 30.10.2023, the Operational Creditor disputed two entries in the ledger. The Demand Notice issued by the Operational Creditor was replied and claim was disputed by the CD. In the record of information utilities, the status of debt is shown as 'disputed'.

(x) The Adjudicating Authority by the impugned order admitted Section 9 application. The Adjudicating Authority came to the conclusion that there was no pre-existing dispute between the parties within the meaning of Section 9(5)(ii)(d), as the CD's set-off is unsupported by evidence linking the Operational Creditor to Giga Pipe Systems. The debt and default are established. In paragraphs 23 and 24, the Adjudicating Authority observed following:

> "23. The Tribunal finds no pre-existing dispute under Section 9(5)(ii)(d) as the Corporate Debtor's set-off is unsupported by evidence linking the Operational Creditor to Giga Pipe Systems. The debt and default are established, meeting the requirements of Section 9.
>
> 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 of 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 said default is not covered under the period exempted under Section l0A 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."

3. This Appeal was filed challenging the order dated 31.07.2025 and on the very next day on 01.08.2025 an interim order was passed by this Tribunal, staying the further steps in the CIRP, which interim order has continued.

4. We have heard Ms. Malvika Trivedi, learned Senior Counsel appearing for the Appellant; Shri Saumitra Chaturvedi, learned Counsel

appearing for Respondent; and Shri Kamil Lokhandwala, learned Counsel appearing for Interim Resolution Professional ("**IRP**").

5. Learned Senior Counsel appearing for the Appellant in support of the Appeal submits that there was pre-existing dispute between the parties. There was no debt due to the CD. The first and second purchase orders as claimed by the Operational Creditor are fabricated purchase orders. The invoices, which have been relied by Operational Creditor, do not refer to purchase order as claimed by the Appellant. The last payment was received by the CD on 24.08.2021 and for more than two years, no correspondence was made by the Operational Creditor asking for any refund or any amount due on the Appellant and for the first time by email dated 27.10.2023, the Operational Creditor sought for confirmation of Statement of account, which was immediately replied by the CD and on 30.10.2023, the Operational Creditor has disputed two entries in the ledger dated 31.03.2021 and 31.08.2021. The Demand Notice dated 11.07.2024 was replied by notice of dispute by the CD on 20.07.2024 raising dispute within the meaning of Section 9 of the IBC and there being pre-existing dispute, the Adjudicating Authority ought to have rejected Section 9 application. It is further submitted that in the record of information utilities, the dispute was entered by NeSL, which was sufficient to rejection Section 9 application, as per Section 9, sub-section (5)(ii)(d). The Adjudicating Authority committed error in ignoring the notice of dispute and record of information utility. The Adjudicating Authority was required to reject the application by virtue of Section

9(5)(ii)(d) and the order of Adjudicating Authority is unsustainable. The CD is a profit earning company, who has turnover of more than Rs.25,000 crores and it employes more than 25,000 employees across India. The Operational Creditor has approached the NCLT with unclean hands. The Operational Creditor is hand in glove with other two companies, i.e. M/s Giga Pipe Systems and KK Spun India Ltd. with whom the CD has dispute. The guarantees given by Giga Pipe Systems and KK Spun were invoked and notice of dispute was issued on 20.11.2023 by the CD to Giga Pipe and KK Spun as well as the Operational Creditor. The Operational Creditor did not reply to the notice of dispute and as a counterblast issued Demand Notice.

6. Learned Counsel appearing for the Operational Creditor refuting the submissions of learned Counsel for the Appellant submits that the ledger, which was shared by the CD vide email dated 27.10.2023 clearly admits the payment received from Operational Creditor and in the Ledger, the CD has shown debit entry of Rs.50 lakhs and Rs.2,55,95,276/- to Giga Pipe System. There was no contractual relation between Operational Creditor and Giga Pipe System and the CD had no authority to set-off any amount with dues payable by Giga Pipe System and the set-off was wholly unauthorized. The set-off being wholly unauthorized, the excess payment of Rs.3.05,95,276/- is fully substantiated from the ledger of the CD itself. The CD is wrongly denying the purchase order dated 01.10.2020 and 21.08.2021. No purchase order was issued on 05.10.2020 and the same is a fabricated document. Total payment received from the Operational

Creditor to the CD was Rs.35,44,73,000/- and the ledger clearly proves the excess payment, which the CD is liable to refund. The MoUs entered between CD and Giga Pipe System dated 21.09.2020 and 21.05.2021 have no concern with the Operational Creditor. The Operational Creditor was not party to the said MoU and the CD could not have set-off any amount, which was payable by Giga Pipe Systems to the CD. The notice of dispute dated 30.11.2023 as claimed by the CD was never served on the Operational Creditor. In replying to the Demand Notice the CD sought to raise a pre-existing dispute, but did not produce a single document proving that there was pre-existing dispute between the parties. The documents relied by the CD, do not show any existence of dispute. Record of Information Utility does not debar an Operational Creditor to rely on other sources and evidence to prove the existence of operational debt. The defense raised by the CD is a defense, unsupported by any material or evidence and is moonshine defense. Against the CD, the CIRP had already commenced on an application filed by another entity against the CD vide order dated 10.11.2023, which was not disclosed by the CD in the reply.

7. We have considered the submissions of learned Counsel for the parties and have perused the record.

8. The challenge to the impugned order admitting Section 9 application by the Appellant is on the ground of there being a pre-existing dispute between the parties, Section 9 application ought not to have been admitted. The Appellant has placed reliance on Section 9, sub-section

(5)(ii) (d) and submits that Adjudicating Authority was obliged to reject the application under Section 9. Section 9, sub-section (5) (ii) is as follows:

> "9(5) (ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if –
>
> (a) the application made under sub-section (2) is incomplete;
>
> (b) there has been 1 [payment] of the unpaid operational debt;
>
> (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;
>
> (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
>
> (e) any disciplinary proceeding is pending against any proposed resolution professional:
>
> Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority."

9. In the present case, the reliance is placed on Section 9(5)(ii)(d), which refers to two grounds for rejection of Section 9 application, they are – (i) notice of dispute has been received by the Operational Creditor; or (ii) there is a record of dispute in the information utility. We need to first examine the second ground, i.e. record of dispute in the information utility. In Section 9 application, the Operational Creditor has brought on record, the record of default with the information utility. In paragraph 5 of the application in Column-4, following has been pleaded by the Operational Creditor:

"4.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)	i.	Record of Financial Information in Form-C as filed by Operational Creditor with National E-Governance Services Limited. A copy of the same is annexed

		herewith as Annexure A-15. ii. Record of Default (RoD) issued by the Information Utility in Form-D under sub-regulation (4) of regulation 21 Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017. A copy of the same is annexed herewith as Annexure A-16.”

10. The record of default was also filed as Annexure A-16 to Section 9 application, which record of default is on the record of the Appeal at page 1170. Form-D indicates that default information was submitted by the Operational Creditor on 21.10.2024 and authentication was applied on 22.10.2024, where the CD disputed the claim. Form-D is as follows:

“**NeSL** NATIONAL E-GOVERNANCE SERVICES LIMITED

FORM D
RECORD OF DEFAULT {RoD)

(Issued By information utility under sub- regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (information Utilities) Regulations, 2017)

This Record of Default is issued to the Operational Creditor M/s MAVERICK DEVELOPERS AND COLONISERS PRIVATE LIMITED in respect of the default of debt as per details given below-

(a)	Name of the Submitter:	M/s MAVERICK DEVELOPERS AND COLONISERS PRIVATE LIMITED
(b)	Schedule-2 Ban (Y/N):	N
(c)	Name of Corporate Debtor:	M/s OFB TECH PRIVATE LIMITED
(d)	Unique Debt Identified Number:	AABCM25B0M REF NOMDC202122AUG43
(e)	Registered Address:	B-4, Vaishali Nagar, Jaipur

(f)	Total Outstanding Amount	38415428.00
(g)	Default amount	38415428.00
(h)	Date of Default:	27-10-2023
(i)	Status of Authentication of Default	DISPUTED
(j)	Date of Last Acknowledgement of Debt (AoD):	Not available

Filing of Default (submission ID No.)	Submitted on	Status of Authentication (Authenticated/ Disputed/ Deemed to be authenticated)	Authentication completed on
(1)	21-10-2024 19:04:01	[redacted] Colour Code: Red	22-10-2024 12:51:53

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

For MAVERIC DEV & COL. Pvt. Ltd.

Sd/-

Authorised Signatory"

11. Part A, of the NeSL record contains following reasons for dispute:

"**NeSL** NATIONAL E-GOVERNANCE SERVICES LIMITED

PART A

*(Information of default filed with IU, covering information of debt, submitter and other parties connected with the debt, security interest and default details
*Status of authentication by the party on whom the report is generated by the submitter
*Communication made by IU to intimate the party on the default filing)

Record of Default for Party M/s OFB TECH PRIVATE LIMITED (Debtor)

Unique Debt Identifier: AABCM2580M_REF NOMDC202122AUG43

Information as of 21-10-2024

Received by NeSL on 21-10-2024 19:04:01

Status of Authentication (DEBTOR): DISPUTED (as on :22-10-2024 12:51:53)

Reason For Dispute: No such debt existed, Pre-existing Dispute, Remarks - There is a pre existing dispute with Maverick as OFB has filed Pre Institution Mediation before the High Court of Delhi today. Also A demand notice had been sent by OFB in Nov 2023. Maverick is a sub contractor of Giga and has been doing business with them. They are in collusion with KK Spun and Giga and are arm twisting OFB into paying an amount where no debt exists. Maverick has also fabricated Purchase Orders to show a purported debt where none exists.

Registered in IU: YES
Registration Date: 01-06-2019 17:21:24
Last Login: 29-10-2024 12:41:08"

12. Part B of the NeSL records as follows:

"**NeSL** NATIONAL E-GOVERNANCE SERVICES LIMITED

PART B

(History of all filing of information received by IU for the same UDI, whether regular debt or default, and the status of authentication by the party)

History of submission and Authentication in respect of M/s OFB TECH PRIVATE LIMITED (Debtor)

Unique Debt Identifier: AABCM2580M_REF NOMDC202122AUG43

Date of submission	21-10-2024 19:04:01
Type of submission	Default Submission
Submission ID	1
Submitted by (CREDITOR)	Mis MAVERICK DEVELOPERS AND COLONISERS PRIVATE LIMITED
Debtor	Mis OFB TECH PRIVATE LIMITED

Default Amount	38415428.00
Status of Authentication by Debtor	[redacted]
Reason for Dispute	No such debt existed , Pre-existing Dispute , Remarks - There is a pre existing dispute with Maverick as OFB has filed Pre Institution Mediation before the High Court of Delhi today. Also A demand notice had been sent by OFB in Nov 2023.Maverick is a sub contractor of Giga and has been doing business with them. They are in collusion with KK Spun and Giga and are arm twisting OFB into paying an amount where no debt exists. Maverick has also fabricated Purchase Orders to show a I ouroorted debt where none exists.
Authentication Completed on	22-10-2024 12:51:53”

13. The Operational Creditor itself brought on the record, the Record of Information Utility. Section 9 proceedings are summary proceedings, which an Operational Creditor can initiate on there being existence of debt and default having been committed by the CD. Section 9, sub-section (5)(ii) requires the Adjudicating Authority to reject the application, if any of the circumstances from (a) to (e) are found. When there is record of dispute in the Information Utility, the Adjudicating Authority is obliged to reject the application. The legislative scheme of Section 9 is not for resolving any dispute between the Operational Creditor and the CD and when the record of Information Utility contains mention of dispute, the Adjudicating Authority is obliged to reject the application. The learned Counsel for the Appellant has rightly relied on the judgment of this

Tribunal in ***Bhawani Prasad Mishra vs. Armaco Infralinks Pvt. Ltd. & Anr. – Company Appeal (AT) (Insolvency) No.557 of 2025***. This Tribunal in the above case had occasion to consider Section 9(5)(ii)(d). In the above case also, Section 9 application was admitted and there was record of default in the Information Utility. The status of debt was disputed by the CD, which was noticed in paragraph 20 of the judgment, which is as follows:

> 20. The Corporate Debtor on the same day i.e. 04.09.2024 disputed the information and raised a dispute which is captured by the NeSL record itself. NeSL record is filed as Annexure A8 by the Appellant which record contains following:-
>
> ***"NATIONAL E-GOVERNANCE SERVICES LIMITED***
>
> ***<u>Record of Financial Information - Form C</u>***

Submission Details			
Unique Debt Identifier	AAUCA0687N_AA CCB266 SH	Submission ID	1
Submitted by	Armaco lnfrafinks Private Umlted	Submitted Date & Time	04/09/2024 13:13:45
Submission Type	Default	Information as on	04/09/2024

Authentication Status				
Party Name	Relationship	UserId	Status	Date and Time of Authentication
B.S.ISPAT LTD.	Debtor	2701316	Disputed	04/09/2024 17:04:59
Reason for Dispute: Pre-existing Dispute. Remarks- No default has been committed by B S Ispat Limited. Pre-existing dispute exist prior to the issuance of Demand Notice dated 04.09.2024.				

Submitter Information			
Name	Armaco Infralinks Private Limited	UIN (PAN)	AAUCA0687N
Relationship	Creditor	Comm. Address PIN	442401
DOI / DOB	18/09/2020	Mobile No.	9xxxxxxxx1
Telephone No.	9xxxxxxxx1	Billing/ Comm. Address	OPP AKASHWANI RAGHATATE LAYOUT A164, Chandrapur. CHANDRAPUR, Maharashtra India 442401
Email ID	*************@ gmail.com	Email ID- Dispute AXlert	**@gmail.com

Other Part Details Debtor			
Name	BS ISPAT LTD.	Relationship	debtor
Regd./ Permanent Address	Khasara No. 97, 101, 190, Village Salon Yesna Post Chinora. Tah. Warora Chandra-our Maharashtra	Regd. Address PlN	442914
Billing I Comm. Address	Khasara No. 97, 101, 190, Village Salon Yesna Post Chinora. Tah. Warora Chandra-our Maharashtra	Comm. Address PlN	442914
Legal	PUBL	CIN/LLPIN	U271 OOMH1999PLC

Constitution			122856
PAN	AACCB2665H	MSME Flag	N
Email ID	bsispatlimited @gmail.com		

Debt Information			
Type of Debt	operational	Debt Reference No.	AACCB2665H
Debt Start Date	03/04/2021	Debt Currency	INR
Sanction Currency	INR	Funded Type	Funded
Security flag	unsecured	Sanctioned Amount	714467365.00
Facility Name	Purchase of Goods Coal	Total Outstanding Amount	355816538.06
Amount Overdue	355816538.06	Principal Outstanding	355816538.06
Account Closed Flag	no		

Default Details			
Date of Default	15/08/2024	Default Amount	355816538.06
Total Outstanding Amount	355816538		

14. This Tribunal relying on the disputed status of the debt and Section 9(5)(ii)(d) has held that Adjudicating Authority could not have proceeded to ignore the same. In paragraphs 28 and 29 of the judgment following have been held by this Tribunal:

"28. When we look into Section 9(5)(ii)(d) there are two circumstances under which Section 9 application deserves to be rejected i.e. (i) notice of dispute has been received by operational creditor or (ii) there is record of dispute in the Information Utility. In the present case, both the above clauses are fully met since notice of dispute has been received by operational creditor and there is record of dispute in the Information Utility. The record of dispute in the Information Utility as extracted above was information which was submitted by 'Armaco Infralinks Pvt. Ltd.' for authentication and authentication made on the same day by the corporate debtor disputing the information which is captured in the Information Utility information. The statutory condition as contained in Section 9(5)(ii)(d) was fully in existence, hence, Adjudicating Authority had to reject the application. Adjudicating Authority although in paragraph 31 has noticed the record of default in the Information Utility which paragraph 31 is as follows:-

> *"31. Further, upon perusal of record of default in the information utility namely National E-Governance Services Ltd. ('NeSL') produced by the Respondent vide its reply dated 18.01.2025, we notice the existence of prior dispute between the parties. The relevant screenshot is reproduced hereunder:*

Authentication Status				
Party Name	*Relationship*	*User Id*	*Status*	*Date and Time of Authentication*
B.S.ISPAT LTD.	*Debtor*	*2701316*	*Disputed*	*04/09/2024 17:04:59*
Reason for Dispute: Pre-existing Dispute. Remarks- No default has been committed by B S Ispat Limited. Pre-existing dispute exist prior to the issuance of Demand Notice dated 04.09.2024.				

29. However, even after noticing the said disputed status in the NeSL record, Adjudicating Authority has not adverted to Section 9(5)(ii)(d) and has proceeded to observe that defence of pre-existing dispute raised by the Corporate Debtor is merely a moonshine defence to cover up its failure to supply the goods against the

advance which observation has been made in paragraph 37 of the order. Paragraph 37 of the impugned order is as follows:-

> *"37. It is pertinent to note here that this Tribunal, in a company petition no. 872 of 2023 filed by Vinayak Trading Company against the same Corporate Debtor on the ground of failure on metric tons of coal from its mines within a period of 2 years, has recorded in its Order dated 16.2.2024 passed therein that "The Applicant claims to have not received the remaining supply of 1,42,000 metric tonne of coal. It is the case of the applicant that the coal was to be supplied from Marki Mangli III, Majra and Chinora coal mines, however, the nominated authority for ministry of coal terminated the agreement for Majra and Chinora coal mines and only Marki Mangli III mine is in operation, the production capacity of which makes it impossible for the Corporate Debtor to supply it by 14.09.2024". In that case, the Petition was dismissed as the obligation of the Corporate Debtor to supply the goods was expiring on 14.9.2024, hence the petition was dismissed on the ground of it being pre-mature i.e. having been filed prior to last date for supply of Coal in that case. However, the fact remains that the Corporate Debtor has taken advances from more than one buyers against its commitment to supply Coal to then, however, its capacity to fulfil these obligations was undoubtedly in question. This leads to a conclusion that the defence of pre-existing disputed raised by the Corporate Debtor is merely a moonshine defence to cover up its failure to supply the goods against the advance, and the Operational Creditor is entitled to seek refund of such amount.""*

15. It is also relevant to notice that Records of the Information Utility was produced and annexed by the Operational Creditor itself in its Section 9 application and in the reply to Section 9 application, the CD referring to the Record of Dispute in Information Utility has clearly pleaded that Section 9 application deserves rejection on this ground

alone. In paragraph 8 of the reply of Section 9 application, the CD has pleaded following:

> "8. It is submitted that the present Petition is required to be rejected on the ground that there exists a notice of dispute in terms of Section 9(5)(ii)(d) The Record of Default (RoD) issued by the Information Utility in Form D under Sub-regulation (4) of regulation 21 of Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, as annexed by the Operational Creditor (Annexure A-16) clearly mentions the status of debt as disputed along with the reasons for the same and that there is no acknowledgement of debt by the Corporate Debtor. Furthermore, the Operational Creditor sent a demand notice dated 11.07.2024 to the Corporate Debtor which was duly replied to vide letter dated 20.07.2024 by the Corporate Debtor. In this reply, the Corporate Debtor had disputed the very existence of the debt. Further, vide the said reply, the Corporate Debtor had demonstrated the existence of dispute while placing reliance on the exchange of emails between the Corporate Debtor and the Operational Creditor as far back as October 2023. This reply to the demand notice is in itself a notice of dispute and therefore ought to entail rejection of the Petition."

16. The Adjudicating Authority in the impugned order has noticed in paragraph 7 (x) record of financial information and Form-D. However, in its consideration has not adverted to Record of Dispute as captured in the Certificate of Information Utility.

17. In view of the above, we are of the view that there being Record of Dispute in the Information Utility, the Adjudicating Authority was obliged to reject Section 9 application as required by Section 9, sub-section (5)(ii)(d) and the order of admission of Section 9 application, cannot be sustained on this ground alone.

18. We also need to examine the submission of the parties with regard to pre-existing dispute between the parties as pleaded by the CD and denied by the Operational Creditor. As noted above, the CD has supplied the giga pipes to Operational Creditor sourced from Giga Pipe Systems.

Payments were made by the Operational Creditor to the CD and last payment was received by the CD on 24.08.2021. There was complete silence from Operational Creditor regarding excess payment made to the CD and it was for the first time in October 2023, when Statement of Account of Financial Year 2020-21 was sent by Operational Creditor to the CD, requiring confirmation. The email dated 27.10.2023 sent by Operational Creditor to the CD is as follows:

> "Fw: CONFIRMATIONS
> From: Maverick Dev (maverick_dev2002@yahoo.com)
> To: finance@ofbusiness.in
>
> Cc: ankush.jain@ofbusiness.in
> Date: Friday, October 27, 2023 at 10:44 AM GMT+5:30
>
> Subject: CONFIRMATIONS
>
> Dear sir
>
> PFA the statement of account for fy 2020-21, you are requested to confirm the same by making seal and sign. This is reuired for IT Assessment purpose.
>
> Thanks & Regards
>
> vivek goyal
> for Maverick Developers & Colonisers Pvt ltd
> PH: 9261080048"

19. Along with email dated 27.10.2023, the Statement of Account for 01.04.2020 to 31.03.2021 was forwarded. The said email was replied by the CD, which according to the CD was as per the ledger maintained by it. The email dated 27.10.2023 sent by the CD to Operational Creditor is as follows:

> From: Yadvender Singh Yadav *hadvender.yadav@ofbusiness.in)

To. Maverick_dev2002@yahoo.com

Cc: finance@ofbusiness.in; ankush.jain@ofbusiness.in

Cc: ankush.jain@ofbusiness.in

Date: Friday, October 27, 2023 at 03:41 PM GMT+5:30

Dear Sir/Mam,

As per ledger reco gap of below Entries are there:-

Not recorded in Maverick							
Date		Particulars	Vch Type	Vch No.	Debit	Credit	
31-Mar-21	To	Giga Pipe Systems India LLP_B_AAOFG9685K	RECEIPT OSASYS	35588	5000000.00		
19-Apr-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	30622		10000000.00	
24-May-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	32334		5000000.00	
25-May-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	32391		4900000.00	
25-May-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	32392		12500000.00	
25-May-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	32393		5000000.00	
29-May-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	32583		12600000.00	
30-May-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	32615		4780000.00	
07-Jun-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	33152		4593000.00	
14-Jun-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	33551		5000000.00	
21-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39369		13500000.00	
21-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39370		13500000.00	
21-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39371		3000000,00	

23-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39438		12500000.00	
23-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39439		12600000.00	
23-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39458		4900000.00	
23-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39491		17500000.00	
23-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39492		17600000.00	
24-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39565		5000000.00	
24-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39580		14000000.00	
24-Aug-21	By	Kotak Mahindra Bank (India)	RECEIPT OSASYS	39581		13500000.00	
31-Aug-21	To	GIGA PIPE SYSTEMS INDIA PRIVATE LIMITED_SAAICG4822F	JVCOASYS	57080	25595276.00		
				Total	30595276.00	201973000.00	•171377724.00

Not recorded in OFB							
Date		Particulars	Vch Type	Vch No.	Debit	Credit	
31-Mar-21		Ires On Purchases			125309.31		
				Total	125309.31		125309,31

Thanks & Regards,
Yadvender Singh Yadav
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Gurugram, Haryana-122002"

20. On 30.10.2023, the Operational Creditor wrote to the CD that entry pertains to Giga Pipe System of 31st March 21 and 31st August 21 in your ledger is not acceptable. The email dated 30.10.2023 sent by Operational Creditor to the CD is as follows:

> "Re: Fw: CONFIRMATIONS
> From: Maverick Dev (maverick_dev2002@yahoo.com)
> To:
> yadvender.yadav@ofbusiness.in
> Cc: finance@ofbusiness.in; ankush.jain@ofbusiness.in
> Date: Monday, October 30, 2023 at 05:30 PM GMT+5:30
>
> Dear sir
>
> The entry pertains to Giga Pipe system of 31st March 21 and 31 August 21 in your ledger is not acceptable to us as we didn't have any transactions with Giga Pipe. Therefore you are requested to rectify entries of Giga Pipe in your ledger and send the confirmation on ledger sent by us or if you have any proof regarding this, please inform us.
>
> Thanks & Regards
>
> Vivek goyal
> For maverick developers and colonizers pvt ltd
> Sent from Yahoo Mail on Android"

21. It was thereafter on 11.07.2024 that a Demand Notice was issued by the Operational Creditor, demanding a payment of Rs.3,05,95,276/-. The above notice was immediately replied by the CD vide its reply dated 20.07.2024, refuting the claim. In paragraphs 1 and 2 of the reply to Demand Notice, following have been pleaded:

> "1. At the outset, the contents of the Demand Notice are denied in entirety. It is clear from the several anomalies in the Demand Notice (enumerated hereinafter) that the said Notice is solely intended to, in collusion with Giga Pipes Systems India LLP/ Giga

Pipes Systems India Pvt. Ltd. (collectively referred to for convenience as "Giga") and its sister concern KK Spun India Ltd. ("KKSpun") as a counter blast to the disputes between Our Client and the said entities. The Demand Notice is further intended by Your Client to resile from the understanding among Your Client, Our Client and Giga as to adjustment of the amounts recoverable from Giga (which, admittedly, is the manufacturer of the goods sourced by Your Client from Our Client). While the Demand Notice mentions that there is no relationship between Giga and Your Client, it cleverly conceals the fact of past mutual dealings between Giga and Your Client which formed the basis of the understanding between Your Client and Our Client for adjustment of the dues of Giga from receivables from Your Client. That the Demand Notice is part of a stratagem devised by Your Client in collusion with Giga, is also clear from the issuance of a Demand Notice by Giga on 18.11.2023 (i.e. shortly after Your Client's email dated 30.10.2023, Annexure 5 to the Demand Notice). Moreover, and most crucially, the Demand Notice conceals the notice dated 20.11.2023 issued by Our Client to Your Client with regard to the very amounts which are now falsely claimed as 'operational debt' in the Demand Notice. As may well be within Your Client's knowledge, Our Client has already taken steps for initiation of appropriate criminal proceedings in respect of these actions on the part of Your Client in collusion with Giga and KK Spun.

2. Without prejudice to the rest of the contents of this response, you will note that Your Client would be well advised to forthwith withdraw the Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("IBC") for the reason that the existence of a dispute since October 2023 (if not before) is self evident from the contents of the said Notice itself. Annexures 3, 4 and 5 of your Demand Notice, cumulatively seen, establish without a doubt the existence of a dispute between Your Client and Our Client as to the purpose of payment of the amount of Rs. 3,05,95,276/- by Your Client to Our Client. In fact, Your Client's email dated 30.10.2023 (relied upon as Annexure 5) by itself is demonstrative of the

existence of the dispute between Your Client and Our Client. Your Client having disputed the Ledger shared by Our Client subsequent to its request, there does not exist any admitted operational debt due from Our Client to Your Client, so as to attract the provisions of the IBC. The Demand Notice in paragraphs 11 and 12 by itself indicates and reiterates the existence of a dispute between Your Client and Our Client as to the reconciliation of accounts between them."

22. The above reply given by the CD was clearly a notice of dispute within the meaning of Section 8, sub-section (2)(a) and Section 9(5)(ii)(d). In Section 9 application the Operational Creditor itself has pleaded about the emails dated 27.10.2023 sent by it to the CD and the reply of CD of the same date and the email dated 30.10.2023 objecting to the two entries in the ledger of the CD. In Part-IV of Section 9 application at Column 10, 11, 12 and 13, following have been stated:

		"10. On 27.10.2023, the Operational Creditor sent an email to the Corporate Debtor containing a statement of accounts between the parties for FY 2020-21 for confirmation for the purposes of Income Tax assessment. 11. On the same day i.e. 27.10.2023, the Corporate Debtor sent a response to the Operational Creditor containing a ledger reconciliation statement wherein the Operational Creditor was shocked to learn that the Corporate Debtor was wrongly and illegally attempting to set-off the above mentioned excess payment of Rs.

		3,05,95,276/- against one company namely M / s Giga Pipe Systems India LLP,. vide two entries dated 31.03.2021 for an amount of Rs. 50,00,000/- and 31.08.2021 for an amount of Rs. 2,55,95,276/-. 12. This set-off was completely wrong and untenable in as much as the Operational Creditor has no connection with M/s Giga Pipe Systems India LLP. There is neither any common shareholder nor director between the Operational Creditor and M/s Giga Pipe Systems India LLP, nor did the Operational Creditor have any transactions with M / s Giga Pipe Systems India LLP. As such, there arises no question of any set-off of any payment due to the Operational Creditor as against M/s Giga Pipe Systems India LLP. 13. Accordingly, on 30.10.2023, the Operational Creditor wrote an email to the Corporate Debtor i:ntimating the Corporate Debtor that there exist no transactions between the Operational Creditor and M/s Giga Pipe Systems India LLP, and therefore, the two entries relating to M/s Giga Pipe Systems India LLP shown in the ledger reconciliation statement of the Operational Creditor are -wrong and baseless and ought to be rectified. However, neither any response was

		received from the Corporate Debtor nor did the Corporate Debtor rectify the accounts or repay the excess payment of Rs. 3,05,95,276/-."

23. The above pleadings of the Operational Creditor itself notice the email sent by the CD dated 27.10.2023 and dispute raised by the Operational Creditor with regard to two entries in the ledger, clearly proves that there was pre-existing dispute between the parties, which is reflected from pleading of the Operational Creditor itself in Section 9 application. Learned Counsel for the Respondent has contended that there was no contractual relation between the Operational Creditor and Giga Pipe Systems and the MoU dated 21.09.2020 and 21.05.2021 were between the CD and Giga Pipe Systems and there was no entitlement of any set-off by the CD in respect of payments towards Giga Pipe Systems. Hence, the ledger statement as communicated by the CD on 27.10.2023 was disputed by email dated 30.10.2023. The relevant materials we have already extracted above. The email by Operational Creditor dated 30.10.2023 clearly indicates that a dispute was raised by the Operational Creditor, objecting to the two entries in the ledger of the CD as maintained by the Operational Creditor. The dispute between the parties with regard to set-off in the leger entry as communicated by the CD to the Operational Creditor is not a dispute, which can be examined and determined in Section 9 proceedings. The fact that after making last payment on 21.08.2021 for more than two years, there was no communication or any demand from Operational Creditor, itself speaks

about acceptance of the account and it was on 27.10.2023 for the first time ledger confirmation was called for by the Operational Creditor stating to be for Income Tax purposes. Even the reconciliation of the ledger dispute between the parties is a dispute, which cannot be gone into and examined in Section 9 proceedings.

24. Learned Counsel for the Appellant has rightly placed reliance on judgment of the Hon'ble Supreme Court in ***Sabarmati Gas Ltd. vs. Shah Alloys Ltd. – (2023) 3 SSC 229*** wherein in paragraphs 49, 55, and 56 after more than two years, a dispute regarding entries in the ledger was raised. In the present case also after more than two years of close of the Financial Year 2020-21 a dispute regarding two entries was raised, where the CD's case is that it has rightly set-off the amount as was agreed between the parties, is an issue, which requires determination in competent Court after considering all relevant evidence and could not have been brushed aside in proceeding under Section 9. It is although true that the Operational Creditor was not party to MoU entered between the CD and Giga Pipe Systems, but the fact remains that the CD has advanced purchase finance facility amount to Giga Pipe Systems.

25. Learned Counsel for the Appellant has referred to an email dated 03.03.2021 sent by Giga Pipe Systems to the CD, where Giga Pipe Systems has issued guarantee with respect to outstanding from M/s Giga Pipe Systems India LLP; M/s E.K. Khan Contractor and M/s Maverick Developers & Colonisers Pvt. Ltd. (Operational Creditor herein). At page

805 and 806 of the Appeal guarantees were given by Giga Pipe Systems is noted and at page 806 following statement has been noticed:

> "Obligation under this Guarantee include the outstanding from the following parties (Unconditionally)
>
> 1. M/s GIGA PIPE SYSTEMS INDIA PRIVATE LIMITED (23AAOFG9685K1ZM)
> 2. M/s E.K. KHAN CONTRACTOR (09ABRPI2880G1ZA)
> 3. M/s MAVERICK DEVELOPERS & COLONISERS PRIVATE LTD (08AABCM2580M127)
>
> The Transaction for above parties shall from time to time be defined as per the purchase order and the Coverall MOU signed with GIGA PIPE SYSTEMS INDIA PRIVATE LIMITED.
>
> SIGNED AND DELIVERED by
>
> Sd/-
>
> M/S OFB TECH PRIVATE LIMITED.
> (Through its Authorised Signatory)
> For : M/s Giga Pipe Systems India Private Limited
>
> For Giga Pipe Systems Inida Pvt. Ltd.
> (Authorised Signatory Stamp)
>
> Sd/-
>
> Director"

26. Learned Counsel for the Respondent has placed reliance on the judgment of this Tribunal in ***Rahee Jhajharia E to E JV vs. MB Power (Madhya Pradesh Ltd.) – Company Appeal (AT) (Ins.) No.2279 of 2024*** and reliance has been placed in paragraphs 33 to 38. In paragraphs 33 to 38, which have been relied by the Respondent, following was observed:

> "34. Separately, around the same time on 04.12.2018 the Appellant issued a fresh Demand Notice to the Respondent-MB Power for the same 92 invoices, which was refuted by the Respondent on

20.12.2018. The relevant paras of the Reply dated 20.12.2018 are extracted below:

> "... 2. It is most respectfully submitted that from the perusal of the documents submitted by you, it is amply clear that a Purchase Order bearing Reference No. MBCPL/MP/LoA/RS/12-13/10006 (hereinafter referred to as the "Purchase Order") was issued to you by a Company by the name of Moser Baer Construction Private Limited (name changed to Hindustan Thermal- EPC Company. Private Limited (hereinafter referred to as the "HT EPCCPL")) for supply for equipment/material/accessories for complete Composite Railway Siding from Jaithari Railway Station of Bilaspur Division to Anuppur Project Site including Road Bed, Major and Minor Bridges, Buildings works, Tracks/Rails Supply, Signaling, & Telecom and Overhead Electrification and associated equipment for the safe completion of the Project for 2 x 600 MW Anuppur Thermal Power Plant at Anuppur District, Madhya Pradesh.
>
> 3. It is further relevant to mention herein that all the alleged invoices which are claimed to be due and payable in the notice under reply were also raised by you to HT EPCCPL. It is most respectfully submitted that our Client and HT EPCCPL are two separate legal entities. The alleged liabilities, if any, of HT EPCCPL can't be saddled on Our Client in absence of any specific undertaking by Our Client. It is stated that in the instant case neither any goods nor services being supplied to Our Client nor any invoices raised to our Client. Further even the ledger as appended with the Notice under reply also reflects payment by HT EPCCPL. Thus no case can be made out against Our Client in absence of any debtor-creditor relationship between the parties herein.
>
> 4. It is most respectfully submitted that there is no privity of contract between our Client and your Client. It is submitted

that our Client has neither issued any purchase order to your Client nor has your Client ever raised any invoice upon our Client for the alleged payment of its outstanding dues. Therefore, issuance of the Demand Notice under reply to our Client is nothing but a sham exercise of your Client to illegally enrich itself at the hands of our Client. It is submitted that not just your Client is trying to abuse the process of law but has also not informed you the above facts and has got the instant Notice under reply issued by you by distorting the original facts which is in grave violation of law."

......

7. It is also submitted without prejudice that to the limited knowledge of our client there is in fact "existence of dispute" between your Client and/HTEPCCPL and it is only because there is an existence of dispute between your Client and HT EPCCPL that you have manifestly issued the captioned notice to our Client just to illegally enrich itself by distorting true facts. Hence, issuance of the present notice is nothing but an afterthought with a view to illegally enrich your Client at the cost of our Client."

(emphasis supplied)

35. Initially a Section 8 Notice was issued to the Hindustan Thermal - EPC, which was later on withdrawn and fresh Section 8 and 9 Notices were issued against the Respondent. We fail to understand that, on one hand the Appellant had raised invoices against Hindustan Thermal - EPC and then later on for unknown reasons it started proceedings under Section 8 against Respondent-MB Power for the same set of invoices. We are inclined to agree with Respondent that it is an afterthought. It is also seen that Hindustan Thermal - EPC vide their letter dated 09.10.2018 and 23.10.2018 had denied the allegations levelled against Hindustan Thermal - EPC and on the contrary claimed that the Appellant is liable to pay an amount of Rs. 20.10 crores (approx.) to

Hindustan Thermal - EPC towards compensation in terms of purchase and work orders executed between them.

36. From the materials on record, we note that there is no privity of contract or any sort of Debtor-Creditor relationship between the Applicant and CD and also the quality issues and delay in completion of work as regards works executed by the Applicant was duly notified by Hindustan T-EPC to the Applicant in their letter dated 09.10.2018 and 23.10.2018, some of which are noted as below:

- Counter claim of Rs.1,44,78,749/- was made by Hindustan TEPC on account of price variation.
- Debit note of Rs.5.95 Crores vide letter dated 03.07.2015.
- Demand of Rs.20,10,66,736/- was made by Hindustan T-EPC from the Applicant on 09.10.2018 itself.
- Letter dated 12.02.2014 issued by Hindustan T-EPC whereby the Applicant was notified that it had failed to its commitments in relation to the project.
- Letter dated 04.02.2016 issued by Hindustan T-EPC notifying the Applicant of delay in the project despite repeated assurances from the Applicant.

37. Thus, we find that there was a pre-existing dispute between the Appellant and Hindustan Thermal. Even though there is an issue of preexisting dispute also, but the AA dismissed the Petition basis mainly on the maintainability of the petition. It will be worthwhile to note the relevant paras 13 to 15 which are as below:

> "…..
>
> 13. Considering the above, the issue here is whether the application filed under section 9 of the Code against the respondent is maintainable or not. We find that the invoices were raised by the applicant in the name of group concern of the respondent i.e. Hindustan Thermal for an amount of Rs. 105,62,05,167/ out of which Hindustan Thermal made the

majority payment leaving the outstanding amount to Rs. 16,08,00,632/-. Here, since the invoices were raised by the applicant against Hindustan Thermal, the payment (major) were received by the applicant from Hindustan Thermal and even the Work Order was received by the applicant from Hindustan Thermal, then we fail to understand as to for what reason the applicant has filed the present application against the respondent instead of filing the same against Hindustan Thermal even after sending the demand notice under section 8 of the Code. Merely because the respondent tried to reconcile or settle between the applicant & Hindustan Thermal or merely because the work completion was signed by the respondent being the owner of the project does not entitle the respondent to be liable for the outstanding amount. There is no privity of contract between the applicant and the respondent.

14. Be that as it may, without going into any other details as to whether there is pre-existing dispute between the applicant and Hindustan Thermal; or, whether or not there was any delay in completion of the work by the applicant, we are of the considered view that the present application against the respondent is not maintainable and is liable to be rejected.

15. In view of the above, we pass the following order:

ORDER

The application TP 47 of 2019 [CP(IB) 187 of 2019] filed under Section 9 of the Code stand rejected and disposed of."

(emphasis supplied)

38. We find that the Adjudicating has rightly concluded that since the invoices were raised by the Appellant against Hindustan Thermal - EPC, the majority payment was received by the Appellant from Hindustan Thermal - EPC and even the work order was received by the Appellant from Hindustan Thermal - EPC and the reasons for Appellant to file the Application against the Respondent

> were not understood. AA has also noted that merely because the Respondent tried to reconcile or settle between the Hindustan Thermal - EPC or merely because the work completion was signed by the Respondent, being the owner of the project does not entitle the respondent to be liable for the outstanding amount. Therefore, it did not find any privity of contract between the Appellant and the Respondent. We do not find any infirmity in the findings and the conclusions of the Adjudicating Authority."

27. The above was a case where Section 9 application was dismissed by the Adjudicating Authority. This Tribunal upheld the rejection of Section 9 application holding that there was no Debtor-Creditor relationship between the Appellant and the CD. Following was concluded by this Tribunal in paragraph 40:

> "40. In the facts and circumstances of the case, we find that the Application filed under Section 9 of the Code is not maintainable for there being no Debtor-Creditor relationship between the Appellant and the CD, the facts and circumstances of the present case clearly establish that no invoices were raised by the Applicant to the CD, also no payments have been made by the CD to Applicant and as such there exists no privity of contract between the parties."

28. The judgement of this Tribunal in the above case has no application in the facts of the present case. The issues raised in this Appeal were neither gone into, nor were subject matter of consideration in the above judgment of this Tribunal. The said judgment does not come to any help to the Respondent in the present case. The submission of the Respondent that the documents, which were brought by the CD on the record did not

prove any pre-existing dispute, cannot be accepted, in view of what we have noted and observed as above.

29. We, thus, are of the view that Section 9 application also deserved rejection under Section 9(5)(ii)(d) on the first ground that is notice of dispute having received by the Operational Creditor. The reply to Demand Notice on 20.07.2024 was clearly notice of dispute received from the CD. In view of above discussions and our conclusion, we are of the view that order of the Adjudicating Authority admitting Section 9 application is unsustainable and deserves to be set aside.

30. In result, the Appeal is allowed. The impugned order dated 31.07.2025 is set aside. Section 9 application being C.P.(IB)/369(AHM)2024 is rejected. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

11th December, 2025

Ashwani