**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**DIVISION BENCH, COURT – 1, AHMEDABAD**

**ITEM No.301**
**C.P.(IB)/50(AHM)2023**

**Under Section 9 of IB Code, 2016**

**IN THE MATTER OF:**

Suwarna Buildcon Pvt Ltd ........**Applicant**
V/s
Sadbhav Engineering Ltd ........**Respondent**

**Order delivered on: 11/05/2026**

**C O R A M:**

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

**O R D E R**
**(Hybrid Mode)**

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-

**SANJEEV SHARMA**
**MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN**
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY**
**NATIONAL COMPANY LAW TRIBUNAL,**
**DIVISION BENCH, COURT–I, AHMEDABAD**

**CP (IB) No. 50/9/AHM/2023**

*(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: **Sadbhav Engineering Limited**

**Suwarna Buildcon Private Limited**
CIN: U45200PN2011PTC139359
Having a registered office at:
3rd Floor, Office No. 309, Shoppers Orbit Building-A,
S. No. 44A/1, Plot No. 1, Alandi Road,
Vishrantwadi, Pune,
Maharashtra – 411015.

**...Applicant/Operational Creditor**

**VERSUS**

**Sadbhav Engineering Limited**
CIN: L45400GJ1988PLC011322
Having a registered office at:
Sadbhav House, Opp-Law Garden Police Chowki,
Ellisbridge, Ahmedabad, Gujarat – 380006.

**...Respondent/Corporate Debtor**

**Order Pronounced On: 11.05.2026**

**CORAM:**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**
**SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

| | |
|---|---|
| For the Applicant/OC | : Mr. Rashesh Sanjanwala, Sr. Adv. a.w. Mr. Ankit Pitti, Advocate. |
| For the Respondent/CD | : Mr. Navin Pahwa Sr. Adv. a.w. Mr. Ravi Pahwa, Advocate. |

## ORDER
## Per Bench

**1.** This Company Petition has been filed on 10.02.2023 vide Inward Diary No. E303 by the Applicant- Suwarna Buildcon Private Limited (hereinafter referred to as "Operational Creditor") against the Respondent -Sadbhav Engineering Limited (hereinafter referred to as 'Corporate Debtor') under Section 9 of the IBC, 2016 read with Rule 6 of the IB (AAA) Rules, 2016 for initiation of CIRP, appointment of IRP and declaration of moratorium for default in payment of operational debt of **Rs. 41,12,98,475/-** including interest 12% per annum as on 30.11.2022 till the date of realisation arising from supply of goods/services.

**2.** On perusal of Part-I of the Form-5 reveals that the Operational Creditor – Suwarna Buildcon Private Limited is a private limited company incorporated under the Companies Act, 1956 having CIN No. U45200PN2011PTC139359 and having its registered office at 3rd Floor, Office No. 309, Shoppers Orbit Building-A, S. No. 44A/1, Plot No. 1, Alandi Road, Vishrantwadi, Pune, Maharashtra – 411015. This Petition is filed through its authorised signatory Mr. Manojkumar Abrol, CEO, who has been authorised by Board Resolution annexed as Annexure-C.

**3.** On perusal of Part-II of the Form-5 reveals that the Corporate Debtor is Sadbhav Engineering Limited, a public limited company incorporated on 03.10.1988 under the Companies Act, 1956 having CIN No. L45400GJ1988PLC011322. The Corporate Debtor is having its registered office at Sadbhav House, Opp-Law Garden Police Chowki, Ellisbridge, Ahmedabad, Gujarat – 380006, with authorised share capital of Rs. 20,00,00,000/- and paid-up share capital of Rs. 17,15,70,800/- as per MCA records annexed as Annexure-B.

**4.** On Perusal of Part-III of Form-5, shows that the Operational Creditor has not proposed any name for the appointment of IRP and sought the appointment of IRP by this Tribunal as per the empanelment list of IBBI made available at the time of the admission of this Petition.

**5.** On perusal of Part-IV of the Form-5, it shows that total operational debt as claimed by the Operational Creditor arising from the supply of goods/services to Corporate Debtor is Rs. 41,12,98,475/- consisting of Rs. 30,47,83,059/- being principal and Rs. 10,65,15,416/- as interest @ 12.00% per annum up to 30.11.2022 till date of realization. The date of default is stated to be 02.01.2020 and thereafter 08.08.2020.

**6.** Upon perusal of Part-IV and Part-V of Form-5, it is observed that the Operational Creditor has set out the following facts in support of the present petition: -

6.1 It is stated that the Applicant M/s. Suwarna Buildcon Pvt. Ltd. is a body corporate duly incorporated under the relevant provisions of the Companies Act, 1956. The Applicant is engaged in the business of infrastructure development and construction. The present application is filed through one, Mr. Manojkumar Abrol, a Chief Executive Officer of the Applicant, who has been duly authorized by way of a Board Resolution dated 24.12.2022 to file the present Application.

6.2 That the Respondent Corporate Debtor M/s. Sadbhav Engineering Limited is a Company registered under the relevant provisions of the Companies Act, 1956, having its registered office at the address mentioned hereinabove. The Respondent Corporate Debtor is inter alia engaged in the business of infrastructure development and construction.

6.3 It is further submitted that the Maharashtra State Road Development Corporation Limited awarded work for Construction of Access Controlled Nagpur Mumbai Super Communication Expressway (Maharashtra Samruddhi Mahamarg) in the State of Maharashtra on EPC Mode for Package 05, From Km. 217.023 to Km. 259.900 (Section -Village Kinhiraja to Village Kenwad) in District Washim to the Corporate Debtor. Pursuant thereto, vide letter dated 25th January 2019, Respondent Corporate Debtor awarded the work of "Structure Works" from Km. 217.000 to Km. 224.000 as a Subcontract to the Applicant Operational Creditor. A copy of work order dated 25th January 2019 is annexed to the Application as Annexure – D.

6.4 It is submitted that pursuant thereto and considering the heavy scope of work, Applicant established two camps at Jaulaka (App Chainage 224.000) and Kenwad (App Chainage 250.000) by taking land on lease from the local farmers. The said camps were made fully equipped with civil work, electrical and drainage work along with the supply of water at the cost of Applicant. The Applicant was carrying on Sub-Contracted work to the full satisfaction of the Respondent Corporate Debtor. The Respondent

Corporate Debtor has never raised any dispute or demur with respect to contracted work.

6.5 The applicant has submitted that despite the same the Work Order along with the camps established and machinery deployed at the site was taken over by the Respondent Corporate Debtor abruptly on 12.11.2019. Under the said letter, Respondent Corporate Debtor has agreed to pay several amounts to the Applicant for the take-over of the site and contracted work. The Respondent Corporate Debtor had agreed to pay the admitted amount on or before 30.11.2019 considering the fact that entire site along with all the machineries were immediately used by Respondent - Corporate Debtor from the next day of the handing over date. A copy of letter dated 12.11.2019 is annexed as Annexure – E to the Application.

6.6 It is stated that despite such understanding, Respondent Corporate Debtor defaulted in releasing the payment. Under the circumstances, agreement dated 02.01.2020 was entered between the Applicant and Respondent Corporate Debtor. Under the said agreement, Respondent Corporate Debtor has once again acknowledged its liability towards the Applicant Operational Creditor and agreed to make payment of Rs. 30,47,83,059/- excluding GST on immediate basis. It was further agreed that the Corporate Debtor will pay interest at the rate of 24% per annum on the outstanding amount on and from 12.11.2019. Further it was specifically agreed between the parties that amount towards GST will be paid separately by the Respondent along with the payment for work done. (A copy of agreement dated 02.01.2020 is annexed to the Application as Annexure-F). The said agreement contemplated payment towards following components:

| **Particulars** | **Amount** |
|---|---|
| Machinery takeover payment | Rs. 15,84,00,000/- |
| Civil Work of Two Camps | Rs. 2,42,91,757/- |
| Inventory as per taking over sheet | Rs. 87,45,582/- |
| Shuttering material cost difference | Rs. 1,35,75,575/- |
| HR Staff Salary Mess and all | Rs. 1,25,01,031/- |
| Idle Charges of Machinery | Rs. 1,97,07,000/- |
| Interest till date | Rs. 1,75,62,114/- |
| Compensation for camp machinery takeover | Rs. 2,50,00,000/- |
| Compensation for work takeover | Rs. 2,50,00,000/- |
| **Total** | **Rs. 30,47,83,059/-** |

6.7 It is submitted that even after acknowledging its liability on two occasions, Respondent Corporate Debtor miserably failed to release the payment. Thereafter, vide agreement dated 08.07.2020, Respondent Corporate Debtor has once again acknowledged part of its liability towards the Machinery Take Over. Furthermore, in the said agreement, Applicant agreed to reduce the rate of interest from 24% to 12% on the outstanding amount. (A copy of agreement dated 08.07.2020 is annexed to the application as Annexure - G).

6.8 It is stated that under the circumstances, Applicant issued demand notice to Corporate Debtor vide e-mail dated 31.07.2021 demanding outstanding payment of Rs. 30,47,83,059/- which was acknowledged vide letter dated 12.11.2019 and agreement dated 02.01.2020. The said demand notice was duly served upon the Respondent. Thereafter, on 14.08.2021 Respondent Corporate Debtor has given vague and evasive reply to the demand notice and informed that they will give a detailed reply to the notice shortly. However, Applicant has not received any detailed reply till date, which fact indicates that the debt is admitted. (A copy of service of demand notice vide email dated 31.07.2021 and reply dated 14.08.2021 is annexed to the application as Annexure- H)

6.9 It is submitted that the Applicant was continuously following up thereafter with the Corporate Debtor for clearing payment of Rs. 15,84,00,000/- towards takeover of machinery since Applicant had obtained loan on the said machineries and was paying interest on the said amount. Therefore, it was urged that Rs.

15,84,00,000/- towards takeover of machinery be paid on priority basis and remaining amount agreed in 02.01.2020 agreement may be paid at a later date along with agreed interest.

6.10 It is stated that the Corporate Debtor indicated its willingness to pay the amount towards takeover of machinery on immediate basis along with interest. Accordingly, Applicant raised an invoice of Rs. 18,69,12,000/- (Rs. 15,84,00,000/- + 2,85,12,000/- GST) on 31.03.2022 towards the Machinery Take Over. The said invoice was duly acknowledged by Respondent - Corporate Debtor. Despite acknowledging its liability under the said invoice, Respondent Corporate Debtor failed to clear the invoice towards takeover of machinery.

6.11 It is stated that under these circumstances, Applicant addressed an e-mail dated 23.05.2022 for release of payment towards the takeover of machinery on immediate basis failing which they will be compelled to take legal action. In response thereto, email dated 25.05.2022, Respondent Corporate Debtor has acknowledged & admitted its liability towards the said invoice and requested Applicant to reduce rate of interest from 15% to 10%. (A copy of acknowledged invoice dated 31.03.2022 and email correspondence dated 23.05.2022 and 25.05.2022 are annexed to the application as Annexure-I)

6.12 It is stated that in addition to this, Applicant has also sent several reminders to the Corporate Debtor to clear outstanding dues of Rs. 30,47,83,059/- as per letter dated 12.11.2019, agreement dated 02.01.2020 and agreement dated 08.07.2020. Last such letter was addressed on 20.08.2022. However, Respondent Corporate Debtor has not responded to the same. (A copy of letter dated 20.08.2022 is annexed to the application as Annexure-J). Furthermore, as agreed between the parties, Applicant will be entitled to claim interest at the rate of 12% per annum on the outstanding amount of Rs. 30,47,83,059/- from 02.01.2020. Accordingly, Applicant is entitled to claim interest of Rs. 10,65,15,416/ till 30.11.2022. (A detailed computation of interest is enclosed as Annexure-K to the Application).

6.13 It is the case of the Application that accordingly, the Applicant is entitled to claim a total amount of Rs. 41,12,98,475/- (including principal and interest) along with further running interest at the rate of 12% per annum from 30.11.2022 till the date of realization. Under the circumstances, Applicant issued demand notice in accordance with Section 8 of the Code on 27.12.2022. The demand notice was served through RPAD on 29.12.2022 and through E-mail on 27.12.2022. (A copy of demand notice and proof of service is annexed to the application as Annexure-L)

6.14 It is stated that the Corporate Debtor has given very vague and evasive reply to the demand notice issued by the Applicant. (A copy of reply dated 06.01.2023 is annexed as Annexure-M to the application)

6.15 Therefore, the Applicant has filed the present application before this Adjudicating Authority for initiating CIRP the Respondent Corporate Debtor in accordance with the relevant provisions of the Code.

6.16 The Applicant has stated that to the knowledge of the Applicant, the Corporate Debtor owes huge amounts of monies not only to the Applicant but to various other financial and operational creditors also. There are several other Insolvency Petitions pending against the Corporate Debtor. The Applicant herein has stated that the Corporate Debtor has been making huge losses and is not in a stable position to clear its debts and liabilities. In such circumstances, where the Respondent Corporate Debtor has become insolvent and is unable to pay its outstanding debt to a large body of creditors it would be in the fitness of things to initiate the Insolvency Proceedings against the Respondent Corporate Debtor forthwith failing which all the creditors will be left entirely high and dry. Under the circumstances, it is utmost necessary to initiate corporate insolvency resolution process against the Respondent Corporate Debtor.

**7.** That on issuance of the notice in the Company Petition, the Corporate Debtor appeared through its Counsel and filed a reply on 21.07.2023 vide Inward Diary No. D-2721 wherein following contentions have been raised by the Respondent: -

7.1 It is submitted that the entire claim of the Operational Creditor arises out of Agreement dated 02.01.2020 (Annexure-F, Pg. 70), which is in the nature of a settlement agreement. It is contended that default of instalments under such settlement agreement does not fall within the definition of "operational debt" under Section 5(21) of the Code, as the same does not arise from provision of goods or services but from alleged breach of contractual terms. It is further submitted that the alleged dues are settlement amounts and therefore have lost the substratum of operational debt and at best fall within the definition of "debt" under Section 3(11) of the Code. In support of the said contention, reliance is placed on *Delhi Control Devices Pvt. Ltd. v. Fedders Electric and Engineering Ltd.*, Company Petition (IB) No. 343/ALD/2018; *Nitin Gupta v. International Land Developers Pvt. Ltd.*, IB No. 507/ND/2020; *Ahluwali Contracts (India) Pvt. Ltd. v. Logix Infratech Pvt. Ltd.*, 2022 SCC OnLine NCLT 169; *Trafigura India Private Limited v. TDT Copper Ltd.*, Company Appeal (AT) (Ins) No. 742 of 2020; and *Permali Wallace Pvt. Ltd. v. Narbada Forest Industries*

*Pvt. Ltd.*, order dated 03.11.2022, upheld by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 36 of 2023 dated 17.01.2023 (Annexure-R1).

7.2 It is further contended that mere obligation to pay under a settlement agreement cannot be treated as either operational debt or financial debt and breach thereof cannot trigger CIRP. In this regard, reliance is placed on Amrit Kumar Aggarwal v. Tembo Appliances Private Limited, Company Appeal (AT) (Insolvency) No. 1005 of 2020.

7.3 It is submitted that the provisions of the Code are not intended for recovery of money and cannot be invoked as a substitute for recovery proceedings. In this regard, reliance is placed on the judgments of the Hon'ble Supreme Court in Invent Assets Securitisation and Reconstruction Pvt. Ltd. v. Girnar Fibres Ltd., Civil Appeal No. 3033 of 2022 and Swiss Ribbons Pvt. Ltd. v. Union of India. It is further contended that even the claim towards interest arising out of settlement agreement is not maintainable under Section 9 of the Code, reliance being placed on Permali Wallace Pvt. Ltd. v. Narbada Forest Industries Pvt. Ltd., CP(IB) No. 668 of 2019 dated 03.11.2022, upheld in appeal vide Company Appeal (AT)(Insolvency) No. 36 of 2023 dated 17.01.2023.

7.4 It is further submitted that the present petition is barred under Section 10A of the Code. It is stated that as per the Demand Notice (Annexure-J, Pg. 130-139) and Form-5 (Pg. 7), the date of default is stated to be 08.08.2020, which falls within the period from 25.03.2020 to 24.03.2021 during which initiation of CIRP is suspended. It is contended that in view of the statutory bar, the present petition is not maintainable. In support of this contention, reliance is placed on Kinetic Engineering Solution Limited v. Walchandnagar Industries Limited, CP (IB) No. 903 of 2021 dated 12.04.2023; and Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd., Company Appeal (AT) (Ins) No. 701 of 2020 dated 19.10.2020, upheld by the Hon'ble Supreme Court in Civil Appeal No. 4050 of 2020 dated 09.02.2021 (Annexure-R2).

7.5 It is the case of the Respondent that there exist pre-existing disputes between the parties prior to issuance of demand notice dated 27.12.2022. It is submitted that pursuant to settlement agreement dated 08.07.2020, the Operational Creditor has filed Commercial Suit Nos. 52 of 2021, 53 of 2021 and 54 of 2021 before the Court of Ld. District Judge-2 and Additional Sessions Judge, Commercial Court, Pune. It is further stated that the Operational Creditor has also filed police complaints dated 07.12.2021, 07.02.2022 and 19.02.2022, to which replies were submitted by the Respondent on 21.02.2022, 23.02.2022 and 14.07.2022 respectively. It is further submitted that in

Commercial Suit No. 3 of 2023 before Commercial Court, Pune and Original Suit No. 226 of 2023 before the Court of Ld. Principal Civil Judge (Jr. Dn.) and JMFC at Malavalli, Mandya, the Operational Creditor has claimed an amount of Rs. 122,70,66,134/- and has stated that proceedings have been initiated before NCLT. It is contended that the aforesaid facts clearly demonstrate existence of disputes prior to issuance of demand notice. Copies of the said suits and complaints are annexed as Annexure-R3 (colly).

7.6 It is further submitted that in view of the existence of pre-existing disputes, the present petition is not maintainable. Reliance is placed on Landmark Realty v. Siroya Developers Pvt. Ltd., Company Appeal (AT)(Ins) No. 25 of 2020; Binani Industries Ltd. v. Bank of Baroda & Anr., Company Appeal (AT)(Insolvency) No. 82 of 2018; and Mr. Anil J. Nemaavarkar v. Kumar Builders Mumbai Realty Pvt. Ltd., Company Appeal (AT)(Ins) No. 330 of 2022 dated 05.04.2022. Further reliance is placed on Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2017) SCC OnLine SC 1154; Wind Water System v. Narendra Emporis Limited, (2020) 115 Taxmann.com 275 (NCLT Ahmedabad); and Trafigura Pte. Ltd. v. SLR Metaliks Ltd., (2020) 119 Taxmann.com 225 (NCLT New Delhi).

7.7 It is further contended that the Operational Creditor is pursuing multiple parallel proceedings against the

Respondent with a view to harass and pressurize it. It is stated that after filing of the present petition, the Operational Creditor has initiated Commercial Suit Nos. 1, 2 and 3 of 2023 before Commercial Court, Pune; Regular Civil Suit No. 76 of 2023 before the Court of Civil Judge (Jr. Division) and JMFC, Kagal; Original Suit No. 226 of 2023 before the Court of Principal Civil Judge (Jr. Dn.) and JMFC at Malavalli, Mandya; and arbitration proceedings bearing File Nos. A.P/001/28042023 and A.P/002/28042023 pursuant to notice dated 10.05.2023 fixing hearings on 10.06.2023 and 18.07.2023 (Annexure-R4).

**8.** The Operational Creditor filed a rejoinder on 17.10.2023 vide Inward Diary No. D-4053, denying most contentions raised by the Corporate Debtor in its reply. The contents of the Rejoinder are reproduced as follows: -

8.1 It is contended that the Respondent has wrongly asserted that the entire claim is based on agreement dated 02.01.2020. It is submitted that the claim in fact arises from letter dated 12.11.2019, whereby the Respondent had undertaken to pay Rs. 30,47,83,059/- (excluding GST) towards takeover of machinery, camps and work, payable on or before 30.11.2019, and default first occurred on 30.11.2019. It is further submitted that the agreement dated 02.01.2020 merely formalised and reconfirmed pre-existing obligations and cannot be termed as a "settlement agreement".

8.2 It is submitted that the Respondent has misconstrued the nature of the agreement dated 02.01.2020, which is not a settlement agreement but an agreement acknowledging liability arising out of provision of goods and services. It is contended that the petition is not based on default of instalments under any settlement agreement but on non-payment of operational dues arising from takeover of machinery and execution of work, which squarely falls within the definition of "operational debt" under Section 5(21) of the Code.

8.3 It is further submitted that the judgments relied upon by the Respondent are distinguishable as they pertain to cases where the petition was based solely on default under settlement agreements. The Petitioner has distinguished the said judgments including *Delhi Control Devices Pvt. Ltd. v. Fedders Electric and Engineering Ltd.*; *Nitin Gupta v. International Land Developers Pvt. Ltd.*; *Ahluwalia Contracts (India) Ltd. v. Logix Infratech Pvt. Ltd.*; *Trafigura India Pvt. Ltd. v. TDT Copper Ltd.*; and *Permali Wallace Pvt. Ltd. v. Narbada Forest Industries Pvt. Ltd.*, on facts. It is submitted that in the present case, the claim is not based on any settlement agreement but on original operational debt, and hence the said judgments are not applicable.

8.4 It is further contended that the reliance placed on *Amrit Kumar Aggarwal v. Tembo Appliances Pvt. Ltd.* is misplaced, as the said case pertained to financial debt under Section 7 based on a settlement agreement. It is submitted that in the present case, the claim arises from original operational debt, and reliance is placed on *Priyal Kantilal Patel v. IREP Credit Capital Pvt. Ltd.,* Company Appeal (AT) (Insolvency) No. 1423 of 2022, to contend that execution of settlement terms does not alter the nature of the original debt.

8.5 It is submitted that the Respondent has wrongly contended that the petition is a recovery proceeding. It is contended that the reliance placed on *Invent Asset Securitisation and Reconstruction Pvt. Ltd. v. Girnar Fibres Ltd.* and *Swiss Ribbons Pvt. Ltd. v. Union of India* is misplaced as those cases are factually distinguishable. It is submitted that the present claim is neither time barred nor stale and pertains to admitted dues. Reliance is placed on *S.S. Engineers v. Hindustan Petroleum Corporation Ltd.*, [2022] 234 Comp Cas 95 (SC), to contend that CIRP must be initiated where there is an undisputed operational debt and default.

8.6 It is further submitted that the claim towards interest is maintainable and forms part of "debt" under Sections 3(6) and 3(11) of the Code, as the agreements stipulate interest at the rate of 24% per annum.

8.7 Reliance is placed on *Prashant Agarwal v. Vikash Parasrampuria*, (2022) 145 taxmann.com 340 (NCLAT), and *Pawan Enterprises v. Gammon India*, Company Appeal No. 148 of 2018, to contend that interest forms part of operational debt. It is contended that the reliance placed on *Permali Wallace Pvt. Ltd.* is misconceived as that case pertained solely to interest under a settlement agreement.

8.8 The timeline relied upon by the Petitioner is reproduced hereinbelow as appearing in the rejoinder:

| **Date** | **Particulars** | **Page No.** |
|---|---|---|
| 2018-2019 | Maharashtra State Road Development Corporation Limited awarded work for Construction of Access Controlled Nagpur Mumbai Super Communication Expressway (Maharashtra Samruddhi Mahamarg) in the State of Maharashtra on EPC Mode for Package 05, From Km. 217.023 to Km. 259.900 (Section - Village Kinhiraja to Village Kenwad) in District Washim to Respondent | |
| 25.01.2019 | Respondent awarded the work of 'Structure Works' from Km. 217.000 to Km. 224.000 as a Subcontract to applicant | 40-48 |
| Feb 2019 - Nov 2019 | Applicant established two camps and carried out subcontracted work to satisfaction of Respondent | |
| 12.11.2019 | Work order, camps and machinery taken over; Respondent agreed to pay admitted amount | 49-69 |

| | | |
|---|---|---|
| 30.11.2019 | Default occurred due to non-payment | |
| 02.01.2020 | Agreement acknowledging liability of Rs. 30,47,83,059/- (excluding GST) | 70-79 |
| 08.07.2020 | Further agreement acknowledging liability; interest reduced | |
| 31.03.2022 | Invoice raised and acknowledged; default continued beyond Section 10A period | 109 |

8.9 It is further submitted that the Respondent has incorrectly stated the date of default as 08.08.2020, whereas the Petitioner has consistently stated the date of default as 12.11.2019 and thereafter 02.01.2020 and 08.08.2020. It is contended that the default commenced prior to the Section 10A period and continued thereafter, and hence the bar under Section 10A is not applicable. Reliance is placed on *Narayan Mangal v. Vatsalya Builders and Developers Pvt. Ltd.*, Company Appeal (AT) (Ins.) No. 294 of 2023.

8.10 It is further submitted that the judgments relied upon by the Respondent on Section 10A, including *Kinetic Engineering Solution Ltd. v. Walchandnagar Industries Ltd.* and *Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd.*, are distinguishable as in those cases default occurred during the Section 10A period.

8.11 It is contended that there are no pre-existing disputes between the parties. It is submitted that despite service of demand notices dated 31.07.2021 and 27.12.2022, the Respondent did not raise any dispute and the plea is an afterthought. It is further submitted that the claim is based on admitted liability acknowledged through letter dated 12.11.2019 and agreements dated 02.01.2020 and 08.07.2020.

8.12 It is further submitted that the civil suits referred to by the Respondent pertain to different projects and are not related to the present claim arising from the Samruddhi Project. The details as reproduced in the rejoinder are as under:

| **Civil Suit** | **Particulars** |
|---|---|
| Commercial Suit No. 52 of 2021 | Pertains to Border Check Post Project; consent decree dated 06.05.2022 for Rs. 53,54,00,000/- |
| Commercial Suit No. 53 of 2021 | Pertains to Mysore–Bellari Project |
| Commercial Suit No. 54 of 2021 | Pertains to Gadak–Honali Project |

8.13 It is submitted that reliance on such suits is misconceived as they pertain to different projects and cannot constitute pre-existing dispute for the present claim. It is further submitted that even police complaints relied upon by the Respondent pertain to different projects and have no bearing on the present dispute. It is therefore contended that the Respondent has raised false, baseless and afterthought defences to avoid payment of admitted dues, and the present petition is liable to be admitted.

**9.** Thereafter, the Operational Creditor filed written submissions on 19.11.2025 vide inward diary no. D-7518. The major contentions of the Operational Creditor are as follows: -

9.1 The Operational Creditor reiterated that the Corporate Debtor awarded subcontract work on 25.01.2019, pursuant to which the Operational Creditor established camps and deployed machinery. Subsequently, the Corporate Debtor took over the site along with assets and acknowledged liability of Rs. 30,47,83,059 vide letter dated 12.11.2019 with payment due by 30.11.2019.

9.2 The Corporate Debtor failed to make payment by 30.11.2019 and the said date constitutes the first default. The Operational Creditor had completed its obligations and there was no dispute at the time of takeover.

9.3 The Agreement dated 02.01.2020 reaffirmed the liability of Rs. 30,47,83,059 along with interest at 24% per annum and recorded that there were no deficiencies in the work and that the takeover was due to change in management.

9.4 The Agreement dated 08.07.2020 further acknowledged outstanding dues and provided a payment schedule including Rs. 15,84,00,000 towards machinery, confirming that the amount was for work already completed.

9.5 The Operational Creditor raised an invoice dated 31.03.2022 for Rs. 18,69,12,000 which was accepted by the Corporate Debtor without dispute. Email dated 25.05.2022 shows that only interest was discussed and principal liability was not denied.

9.6 The Operational Creditor submits that the claim arises from supply of goods and services and falls within the definition of operational debt under Section 5(21) of the Code as it relates to execution of work and takeover of machinery and camps.

9.7 The Operational Creditor submits that default occurred on 30.11.2019, prior to the period covered under Section 10A, and therefore the present Petition is not barred. Subsequent acknowledgments and invoice establish continuing default.

9.8 The Corporate Debtor's contention that the agreements are settlement agreements is denied. The agreements dated 02.01.2020 and 08.07.2020 are only acknowledgments and restructuring of payment terms and do not alter the nature of operational debt.

9.9 *In Ahluwalia Contracts (India) Ltd. v. Logix Infratech Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 696 of 2022*, it was held that a memorandum regarding payment terms does not change the nature of operational debt and Section 9 application is maintainable.

9.10 In *Ahluwalia Contracts (India) Ltd. v. Jasmine Buildmart Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 345 of 2023*, it was held that settlement relating to payment mode does not extinguish operational debt and non-payment gives rise to default under Section 9.

9.11 In *Narayan Mangal v. Vatsalya Builders, Company Appeal (AT) (Insolvency) No. 294 of 2023* and in *Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd., Civil Appeal No. 4050 of 2020*, it was held that Section 10A does not apply to defaults occurring prior to 25.03.2020 and continuing defaults remain actionable.

9.12 In view of the above facts, the Operational Creditor has sought admission of the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, initiation of CIRP against the Corporate Debtor, and grant of consequential reliefs as per law.

**10.** The Corporate Debtor filed Written Submissions on 16.05.2024 vide inward diary no. D-4115 and Written Submissions on 30.03.2026 vide inward diary no. D-2803, the submissions and judgment relied on by the Corporate Debtor are as follows: -

10.1 The Corporate Debtor states that work orders were issued on 25.01.2019 and 12.11.2019 for execution of work. The contract required completion within a fixed time. Disputes arose between the parties during execution of the work leading to settlement arrangements.

10.2 The Corporate Debtor states that a settlement agreement dated 02.01.2020 was executed for payment of Rs. 30,47,83,059 with agreed terms. A subsequent agreement dated 08.07.2020 revised the interest rate from 24% to 12% and provided that parties would withdraw all claims and proceedings.

10.3 The Corporate Debtor states that the Operational Creditor issued demand notice dated 31.07.2021 and a reply was given on 14.08.2021 disputing the claim. A fresh demand notice dated 27.12.2022 was issued and was replied on 06.01.2023. The present petition was thereafter filed on 27.01.2023.

10.4 The Corporate Debtor submits that the entire claim arises from settlement agreements dated 02.01.2020 and 08.07.2020 and not from supply of goods or services. Therefore, the claim does not fall within the definition of operational debt under Section 5(21) of the Code.

10.5 The Corporate Debtor relies on Trafigura India Pvt. Ltd. vs. TDT Copper Limited, 2022 SCC OnLine NCLAT 3885, wherein it is held that a claim arising from a settlement agreement is not an operational debt and cannot be enforced under Section 9. The Corporate Debtor also relies on Mr. Maulik Kirtibhai Shah vs. United Telecoms Ltd., Company Appeal (AT) (Ins) 268 of 2023, and Permali Wallace Pvt. Ltd. vs. Narbada Forest Industries Pvt. Ltd., Company Appeal (AT) (Ins) 36 of 2023, wherein similar view is taken.

10.6 The Corporate Debtor submits that the alleged default dated 08.07.2020 falls within the period covered under Section 10A of the Code, i.e., from 25.03.2020 to 24.03.2021, during which initiation of CIRP is barred. Hence, the present petition is not maintainable.

10.7 The Corporate Debtor further submits that the agreement dated 08.07.2020 supersedes the earlier agreement dated 02.01.2020. Therefore, the date of default cannot be taken as 02.01.2020. Consequently, the claim is entirely covered within the period barred under Section 10A.

10.8 The Corporate Debtor relies on HCC Infrastructure Company Limited vs. Sadbhav Infrastructure Project Limited, CP(IB) 131 of 2022, and Gautam Highway Solution vs. Sadbhav Infrastructure Project Limited, CP(IB) 342 of 2022, wherein it is held that no CIRP can be initiated for defaults falling within Section 10A period. The Corporate Debtor also relies on Zhejiang Industrial Group Co. Ltd. vs. Al Badr Seafoods Pvt. Ltd., Company Appeal (AT) (Ins) 272 of 2023, wherein it is held that the bar under Section 10A is absolute.

10.9 The Corporate Debtor submits that there are pre-existing disputes between the parties prior to issuance of demand notice dated 27.12.2022. The Operational Creditor has filed multiple commercial suits in the year 2021 and initiated police complaints and other proceedings which were pending prior to the demand notice.

10.10 The Corporate Debtor submits that as per Section 5(6) of the Code, dispute includes existence of debt, quality of services, or breach of contract. The existence of prior suits and proceedings clearly establishes dispute. Hence, the petition under Section 9 is not maintainable.

10.11 The Corporate Debtor relies on Mobilox Innovative Private Limited vs. Kirusa Software Private Limited, (2018) 1 SCC 353, wherein it is held that if a plausible dispute exists prior to demand notice, the petition must be rejected. The Corporate Debtor also relies on Sabarmati Gas Limited vs. Shah Alloys Ltd., (2023) 3 SCC 229, wherein it is held that issues such as reconciliation of accounts constitute dispute. Further reliance is placed on East India Udyog Ltd. vs. SPML Infra Limited, Company Appeal (AT) (Ins) 256 of 2023, wherein it is held that prior disputes and arbitration proceedings bar CIRP.

10.12 In view of the above facts, the Corporate Debtor has sought dismissal of the present petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 on the grounds that the claim is not an operational debt, the alleged default is barred under Section 10A, and there exist pre-existing disputes between the parties.

**11.** We have heard the arguments of Ld. Sr. Counsel for the Applicant/Operational Creditor as well as Ld. Sr. Counsel for the Respondent/Corporate Debtor, considered their oral submissions, written submissions; Judgments/Citations relied upon in their favour, and perused all the documents which were produced on record.

**12. <u>Observation and Findings of this Tribunal</u>:**

12.1 The present Company Petition has been filed under Section 9 of the Code by the Operational Creditor seeking initiation of CIRP against the Respondent Corporate Debtor. The claim arises out of alleged default in payment of an amount of Rs. 41,12,98,475/- including interest, stated to be due in respect of transactions relating to execution of works and takeover of machinery, camps and other assets in connection with the Samruddhi Project.

12.2 It is observed that the parties were engaged in a contractual relationship pursuant to subcontract awarded on 25.01.2019, under which the Operational Creditor carried out certain works and deployed machinery and infrastructure at the project site. Subsequently, the Corporate Debtor took over the site along with machinery and camps, and certain agreements dated 02.01.2020 and 08.07.2020 were executed between the parties, forming the basis of the present dispute.

12.3 It is the case of the Operational Creditor that the Corporate Debtor, vide letter dated 12.11.2019, expressly acknowledged its liability to pay a sum of Rs. 30,47,83,059/- (excluding GST) towards takeover of machinery, camps and work, and undertook to make payment on or before 30.11.2019. It is submitted that failure to make payment within the stipulated period constitutes the first date of default, which was subsequently acknowledged and reaffirmed under agreement dated 02.01.2020 and further under agreement dated 08.07.2020.

12.4 It is the case of the Operational Creditor that the liability acknowledged under the letter dated 12.11.2019 continued to subsist and was subsequently reaffirmed under agreement dated

02.01.2020 and further under agreement dated 08.07.2020. It is contended that the subsequent agreements merely regulated the mode and timeline of payment of an already existing operational debt and did not alter the nature of the underlying transaction. The Operational Creditor has further relied upon the invoice dated 31.03.2022 and email correspondence dated 23.05.2022 and 25.05.2022 to contend that the Corporate Debtor repeatedly acknowledged its liability and never disputed the principal amount.

12.5 Per contra, it is the case of the Corporate Debtor that the present claim is not an operational debt but arises out of settlement agreements dated 02.01.2020 and 08.07.2020, and therefore falls outside the scope of Section 5(21) of the Code. It is contended that the agreements constitute settlement of disputes and the present petition, being founded on alleged breach of such settlement terms, is not maintainable under Section 9 of the Code.

12.6 It is further contended by the Corporate Debtor that the petition is barred under Section 10A of the Code, as the date of default, according to the Operational Creditor itself, falls within the period from 25.03.2020 to 24.03.2021. It is also the case of the Corporate Debtor that there exist pre-existing disputes between the parties, as evidenced by multiple suits and proceedings initiated prior to issuance of demand notice, and therefore the present petition is liable to be dismissed.

12.7 It is further observed that the Operational Creditor has relied upon a series of documents commencing from letter dated 12.11.2019, agreement dated 02.01.2020 and subsequent agreement dated 08.07.2020, to contend that there exists a continuous and subsisting liability on the part of the Corporate Debtor. According to the Operational Creditor, the said documents merely record and reaffirm an existing liability arising out of execution of work and takeover of machinery and do not constitute novation or settlement of claims.

12.8 It is also observed that the Corporate Debtor has placed heavy reliance on the terms of the agreement dated 08.07.2020, particularly Clause 3 thereof, to contend that all prior claims stood settled and extinguished, and therefore the present proceedings, being based on alleged breach of such terms, are not maintainable under Section 9 of the Code. The Corporate Debtor has further sought to contend that the said agreement supersedes earlier arrangements and consequently alters the date of default for the purpose of Section 10A.

12.9 It is further observed that both parties have relied upon various proceedings initiated inter se, including civil suits, police complaints and arbitration proceedings, to either establish or negate the existence of pre-existing disputes. While the Corporate Debtor relies on the pendency of such proceedings to contend that disputes existed prior to issuance of demand notice, the Operational Creditor contends that such proceedings pertain to independent projects and have no nexus with the present claim.

12.10 In view of the rival submissions and material placed on record, the following issues arise for consideration: -

i. **Issue No. (i)** Whether the claim of the Operational Creditor constitutes an "operational debt" within the meaning of Section 5(21) of the Code or is merely a claim arising out of settlement agreements;

ii. **Issue No. (ii)** Whether the agreements dated 02.01.2020 and 08.07.2020 amount to novation/extinguishment of the original operational debt within the meaning of Section 62 of the Indian Contract Act, 1872?

iii. **Issue No. (iii)** Whether the present petition is barred under Section 10A of the Insolvency and Bankruptcy Code, 2016;

iv. **Issue No. (iv)** Whether there exists a pre-existing dispute between the parties prior to issuance of demand notice under Section 8 of the Code;

v. **Issue No. (v)** Whether the present Petition is in the nature of a recovery proceeding and thus not maintainable under Section 9 of the Code?

13. **Findings on Issue No.(i) & (ii):** Whether the claim of the Operational Creditor constitutes an "operational debt" within the meaning of Section 5(21) of the Code or is merely a claim arising out of settlement agreements? **and** Whether the agreements dated 02.01.2020 and 08.07.2020 amount to novation/extinguishment of the original operational debt within the meaning of Section 62 of the Indian Contract Act, 1872?

13.1. Before moving onto the adjudication of this issue, it is apposite to reproduce the statutory definition of "operational debt" as contained in Section 5(21) of the Code, which reads as under:

> "(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

A plain reading of the aforesaid provision makes it evident that for a claim to qualify as "operational debt", it must arise from the provision of goods or services, and there must exist a nexus between the debt claimed and the operational activities undertaken by the creditor.

13.2. In the present case, it is not in dispute that the initial relationship between the parties arose pursuant to the work order dated 25.01.2019 whereby the Corporate Debtor awarded subcontract work relating to the Samruddhi Project to the Operational Creditor. It is further not disputed that the Operational Creditor executed works, established camps, deployed machinery and infrastructure and undertook operational activities at the project site. The letter dated 12.11.2019 also records the takeover of the site and machinery by the Corporate Debtor along with the amounts payable under various heads.

13.3. Had the matter rested there, the claim may have retained the character of an operational debt arising from provision of goods and services. However, the subsequent conduct of the parties and the agreements executed thereafter materially alter the legal complexion of the transaction.

13.4. It is observed that after the initial arrangement, the parties entered into an agreement dated 02.01.2020 whereby the liabilities between the parties were quantified and payment obligations were structured. Thereafter, the parties entered into a further agreement dated 08.07.2020. A careful reading of the said agreement demonstrates that it is not merely an acknowledgment of earlier dues or a simple extension of time for payment. On the contrary, the agreement introduces fresh and independent terms governing the overall commercial relationship between the parties.

13.5. The agreement dated 08.07.2020 contains revised payment schedules, structured timelines and fresh reciprocal obligations between the parties. The payments were no longer tied to the original terms contained in the letter dated 12.11.2019 but were instead made subject to newly agreed schedules and conditions. The said agreement also contemplated resolution of disputes and claims between the parties arising not merely from the Samruddhi Project but from the overall business dealings and transactions inter se.

13.6. However, the controversy in the present case does not pertain merely to the origin of the transaction but rather to the effect of the subsequent agreements executed between the parties, particularly the agreement dated 08.07.2020. The Corporate Debtor has specifically contended that the said agreement constitutes a fresh arrangement governing the rights and obligations of the parties and extinguishes all prior operational claims. It therefore becomes necessary to determine whether the subsequent agreements merely acknowledged/restructured an existing operational liability or whether they extinguished and substituted the original cause of action by way of novation under Section 62 of the Indian Contract Act, 1872.

13.7. At this stage, it becomes necessary to examine Clause 3.1 of the agreement dated 08.07.2020, which reads as under:

> ***"3. SETTLEMENT OF DISPUTES***
>
> *3.1. Parties agree that on and from the date of this Agreement, neither of the Party would have any Claim of whatsoever nature, either past or in future against the other Party other than specifically agreed under this Agreement and each Party would withdraw all Claims/Litigations pending against the other Party, if any within thirty days from the date of execution of this Agreement."*

(Emphasis Supplied)

13.8. A careful reading of the aforesaid clause indicates that the parties consciously agreed that with effect from the execution of the agreement dated 08.07.2020, neither party would have any past or future claims against the other except to the extent specifically preserved under the said agreement. The clause further records the intention of the parties to withdraw all pending claims and litigations inter se within the stipulated period. The language employed in the clause prima facie indicates an intention of the parties to comprehensively regulate them inter se claims and liabilities prospectively, though such intention must still be tested in the context of the nature of the underlying operational transactions and the surrounding contractual framework.

13.9. The effect of such a clause cannot be lightly disregarded. Under **Section 62 of the Indian Contract Act, 1872**, where parties substitute a new contract in place of an existing contract, the original contract need not be performed. However, novation is not to be readily inferred and must be gathered from clear intention of parties demonstrating complete substitution of rights and obligations. The intention of the parties, as discernible from the terms of the subsequent agreement, assumes significance in determining whether the earlier obligations stood merely acknowledged or whether they stood substituted and novated.

13.10. It is further necessary to examine whether the subsequent agreement is so inconsistent with the earlier arrangement that both cannot stand together. In the present case, the obligations under the agreement dated 08.07.2020 are not merely in continuation but are structured independently with fresh timelines, conditions and reciprocal obligations, thereby rendering the earlier arrangement incapable of independent enforcement.

13.11. In this regard, Hon'ble Supreme Court in ***Lata Construction & Ors. v. Dr. Maheshchandra Ramniklal Shah & Anr.*, (2000) 1 SCC 586** has also held that novation under Section 62 takes place when parties substitute a new agreement in place of the earlier arrangement and the rights and liabilities thereafter stand governed by the substituted contract.

> *"9. We may, at this stage, refer to the provisions of Section 62 of the Indian Contract Act which provides as under:*
>
> > *"62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."*
>
> *This provision contains the principle of "novation" of contract.*
>
> *10. <u>One of the essential requirements of "novation", as contemplated by Section 62, is that there should be complete substitution of a new contract in place of the old. It is in that situation that the original contract need not be performed. Substitution of a new contract in place of the old contract which would have the effect of rescinding or completely altering the terms of the original contract, has to be by agreement between the parties. A substituted contract should rescind or alter or extinguish the previous contract. But if the terms of the two contracts are inconsistent and they cannot stand together, the subsequent contract cannot be said to be in substitution of the earlier contract.</u>"*
>
> (Emphasis Supplied)

13.12. The intention of the parties, as discernible from the terms of the subsequent agreement, assumes significance in determining whether the earlier obligations stood merely acknowledged or whether they stood substituted and novated.

13.13. This Adjudicating Authority is unable to accept the contention of the Operational Creditor that the agreement dated 08.07.2020 merely regulated the mode of payment of existing operational dues. The agreement, when read as a whole, goes far beyond a mere acknowledgment or restructuring arrangement. The introduction of fresh schedules, substituted payment timelines, reciprocal obligations and extinguishment of prior claims unmistakably indicates the intention of the parties to comprehensively govern and substitute their earlier arrangements under a fresh contractual framework.

13.14. For the purpose of determining novation under Section 62 of the Indian Contract Act, 1872, it is necessary to examine whether:

a. the earlier contract has been extinguished;

b. a new contract has been substituted in its place; and

c. the intention of the parties to substitute the original obligations is evident from the terms of the agreement."

13.15. Though the Operational Creditor has contended that the agreement dated 08.07.2020 merely regulated the mode and timeline of payment of existing dues, the language of **Clause 3.1** indicates that the parties intended to comprehensively govern their rights and liabilities under a fresh arrangement. The agreement appears to travel beyond mere acknowledgment of liability and contains clauses suggestive of comprehensive restructuring and settlement of claims, including withdrawal/extinguishment clauses governing prior disputes.

13.16. The Hon'ble NCLAT in ***Trafigura India Private Limited v. TDT Copper Ltd.*, (2022) ibclaw.in 714 NCLAT**, has observed that where parties enter into a settlement agreement comprehensively governing their liabilities and default occurs under such settlement arrangement, the original operational debt may lose its independent enforceability for purposes of Section 9 proceedings. The relevant portion of the judgement is reproduced hereinbelow: -

> *"**17**. After hearing the parties and having gone through the pleadings made on behalf of the parties, particularly the Settlement Agreement dated 20.11.2018 (Annexure A3 at page 99 to 108 of the Appeal) arrived between the parties in Clause 3 and 5 read as hereunder:*
>
> > *"3. As at August 2018, the Parties agree that the outstanding liabilities owed by TDT to Trafigura under the MSA is INR 63,81,63,368/- (the "Outstanding Principal"). The Outstanding Principal comprises of all sums owed and unpaid by TDT in respect of the Purchase Price only for purchases done under the MSA up to 28th February 2018 and does not include any contractual interest and/or MTM. In the event that it is confirmed that GST is to be levied on certain purchases of Material by TDT (as previously discussed between Parties), then the Outstanding Principal stands revised to INR 67,43,99,745/- as at 31 August 2018. It is further clarified that any purchases of material made by TDT after 28th February 2018 up until the date of this Settlement*

> *Agreement have been on a non-credit basis only.*
>
> *5. TDT shall make payment of the Outstanding Principal together with the interest (set out at Clause4 above) and/or MTM (together the "Outstanding Amount") to Trafigura into its designated bank account as follows:*
>
> *a. TDT shall make any and all payments to Trafigura as necessary in order to reduce the Outstanding Amount to INR 52,50,00,000/- by 30 November, 2018 (the "First Instalment"); and*
>
> *b. In the event that TDT fails to make the First Instalment within the timeframe set out above, the entire outstanding portion of the Outstanding Amount shall become immediately due ad owing, and Trafigura shall have the right to pursue TDT for that debt and Trafigura shall not be obliged to make any further supply of Material under the MSA; and*
>
> *c. In the event that the Parties fail to conclude a further contract for the supply of material for 2019 by 21 December 2018, TDT shall make any and all payments to Trafigura as necessary in order to reduce the Outstanding amount to zero balance by 30 April 2019."*

- *The Adjudicating Authority has considered the Settlement Agreement and rightly come to the conclusion that default of instalment of Settlement Agreement does not come within the definition of 'operational debt' as it does not fall within the definition of additional debt as per Section 5(21) of the IBC and further prayer made by the Corporate Debtor that the matter be referred to the Arbitration under Section 8 of the Arbitration and Conciliation Act, the Adjudicating Authority has also rightly held that the role of National Company Law Tribunal is very limited while exercising its power under Section 7, 9 and 10 of the IBC, 2016, it is beyond the scope of Section 9 of the IBC.*

- *The Adjudicating Authority has taken note of the submissions of Corporate Debtor that the Commercial Civil Suit No. 2/2020 is pending for consideration before the Court of competent jurisdiction and rightly rejected the claim of the Appellant.*
- *With these reasons assigned by the Adjudicating Authority, we do not find any merit in the instant Appeal. The impugned order dated 15.07.2020 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench Court-V) in Company Petition (IB) No. 2817/ND/2019 is hereby affirmed. The Appeal is hereby dismissed."*

13.17. Similar view has also been taken in ***Permali Wallace Pvt. Ltd. v. Narbada Forest Industries Pvt. Ltd.*, (2023) ibclaw.in 49 NCLAT**.

13.18. The reliance placed by the Operational Creditor on ***Ahluwalia Contracts (India) Ltd. v. Jasmine Buildmart (P) Ltd.*, 2023 SCC OnLine NCLAT 579**. The reliance placed by the Operational Creditor on Ahluwalia Contracts (India) Ltd. v. Jasmine Buildmart (P) Ltd., 2023 SCC OnLine NCLAT 579 and connected matters is distinguishable on facts inasmuch as in those cases the settlement arrangement was treated merely as a mode and manner of payment of admitted operational debt without any clause extinguishing prior claims as in **Clause 3.1** of the agreement dated 08.07.2020 herein. In the present case, however, Clause 3.1 expressly extinguishes all past and future claims outside the terms preserved under the agreement dated 08.07.2020, and the agreement itself introduces an entirely fresh mechanism governing payment schedules and obligations.

13.19. Thus, while the origin of the relationship between the parties may have arisen from operational transactions, the enforceable rights and liabilities subsequently came to be governed by the comprehensive settlement arrangement dated 08.07.2020. The present claim, therefore, cannot be treated as an operational debt simpliciter arising from provision of goods or services, but is a claim arising out of breach of a substituted contractual arrangement entered into between the parties.

13.20. Accordingly, this Adjudicating Authority holds that the agreement dated 08.07.2020 constitutes a substituted and governing arrangement between the parties within the meaning of Section 62 of the Indian Contract Act, 1872, and consequently the claim sought to be enforced in the present proceedings ceases to retain the character of 'operational debt' for the purpose of proceedings under Section 9 of the Code.

13.21. In the facts of the present case, this Adjudicating Authority is of the considered view that the agreements dated 02.01.2020 and 08.07.2020, particularly **Clause 3.1** of the latter, constitute a novation within the meaning of Section 62 of the Indian Contract Act, 1872, inasmuch as the earlier operational claims stood extinguished and substituted by a fresh contractual framework governing the rights and obligations of the parties. Consequently, the present claim arises from alleged breach of the said subsequent agreement and does not retain the character of 'operational debt' within the meaning of Section 5(21) of the Code. Accordingly, the original cause of action arising from operational transactions does not survive independently and cannot be enforced dehors the substituted agreement.

13.22. Accordingly, Issue No. (i) & (ii) are answered against the Operational Creditor and in favour of the Corporate Debtor.

14. **Findings on Issue No. (iii):** Whether the present petition is barred under Section 10A of the Insolvency and Bankruptcy Code, 2016?

14.1. The present issue arises from the objection raised by the Corporate Debtor that the petition is barred by virtue of Section 10A of the Code, inasmuch as the alleged default, according to the Corporate Debtor, arose during the period protected under the said provision. The determination of this issue is closely intertwined with the effect and legal consequence of the agreement dated 08.07.2020 executed between the parties.

14.2. Before adverting to the factual matrix, it would be appropriate to notice the statutory framework. **Section 10A** of the Code reads as under: -

> "Notwithstanding anything contained in Sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:
>
> Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.
>
> Explanation: For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

14.3. The legislative intent underlying Section 10A has been explained by the Hon'ble Supreme Court in ***Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd.*, (2021) 3 SCC 224**, wherein it has been held that the embargo created under Section 10A is absolute in nature and no application can ever be filed for defaults arising during the protected period. The relevant portion of the judgment has been reproduced hereinbelow: -

> *"16 Section 10A is prefaced with a non-obstante provision which has the effect of overriding Sections 7, 9 and 10. Section 10A provides that:*
> *(i) no application for the initiation of the CIRP by a corporate debtor shall be filed;*

*(ii) for any default arising on or after 25 March 2020; and*
*(iii) for a period of six months or such further period not exceeding one year from such date as may be notified in this behalf.*
*The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP of a corporate debtor "for the said default occurring during the said period". The explanation which has been inserted for the removal of doubts clarifies that Section 10A shall not apply to any default which has been committed under Sections 7, 9 and 10 before 25 March 2020.*

*17. Section 10A makes a reference to the initiation of the CIRP. Clauses (11) and (12) of Section 5 of the IBC define two distinct concepts, namely:*
*(i) the initiation date; and*
*(ii) the insolvency commencement date.*

*18. The "initiation date" is defined in Section 5(11) in the following terms:*
*"5(11) "initiation date" means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process;"*
*The expression "insolvency commencement date" is defined in Section 5(12) in the following terms:*
*"5(12) "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be:"*

*19. Section 5(11) stipulates that the date on which a financial creditor, corporate applicant or operational creditor makes an application to the adjudicating authority for initiating the CIRP is the "initiation date". Distinguished from this is the "insolvency commencement date", which is the date on which the application for initiating the CIRP under Sections 7, 9 or*

*10, as the case may be, is admitted by the Adjudicating Authority.*

*20. The substantive part of Section 10A adverts to an application for the initiation of the CIRP. It stipulates that for any default arising on or after 25 March 2020, no application for initiating the CIRP of a corporate debtor shall be filed for a period of six months or such further period not exceeding one year "from such date" as may be notified in this behalf. The expression "from such date" is evidently intended to refer to 25 March 2020 so that for a period of six months (extendable to one year by notification) no application for the initiation of the CIRP can be filed. The submission of the appellant is that the expression "shall be filed" is indicative of a legislative intent to make the provision prospective so as to apply only to those applications which were filed after 5 June 2020 when the provision was inserted. Such a construction cannot be accepted."*

14.4. The Operational Creditor has contended that the default in the present case first occurred on 12.11.2019 and, in any event, upon expiry of the agreed payment timeline on 30.11.2019 pursuant to the letter dated 12.11.2019. It has further been argued that the subsequent agreements merely acknowledged and restructured the existing liability and therefore the original pre-10A default continued to subsist.

14.5. This Adjudicating Authority has carefully examined the said contention. There can be no quarrel with the proposition that where a pre-existing operational debt merely continues and subsequent acknowledgements only reaffirm the liability; the original date of default may continue to govern the transaction. However, the facts of the present case stand materially altered by virtue of the agreement dated 08.07.2020.

14.6. This Adjudicating Authority has already held that the agreement dated 08.07.2020 was not a mere acknowledgment or extension of time for payment but constituted a comprehensive substituted arrangement governing the rights and obligations of the parties. The agreement introduced fresh payment schedules, fresh timelines, reciprocal obligations and extinguishment of prior claims and litigations between the parties. Most importantly, **Clause 3.1** expressly provided that neither party would have any past or future claims against the other except as specifically agreed under the said agreement.

14.7. Once the earlier operational claims stood extinguished and substituted under the agreement dated 08.07.2020, the enforceable rights of the parties thereafter flowed only from the said agreement. Consequently, the relevant default for the purpose of the present proceedings cannot be independently traced to the original operational transactions of 2019, but must necessarily be examined in the context of the obligations arising under the substituted agreement dated 08.07.2020. It is settled law that the embargo under Section 10A attaches to the 'default' and not merely to the underlying transaction. Thus, even if an earlier default is assumed to have occurred prior to

25.03.2020, the same stood subsumed in the subsequent agreement dated 08.07.2020 and cannot be relied upon independently to evade the bar under Section 10A

14.8. The he contention of the Operational Creditor regarding "continuing default" also cannot be accepted in the peculiar facts of the present case. The doctrine of continuing default cannot be invoked to revive an extinguished cause of action once the parties have consciously substituted their contractual framework under Clause 3.1 of the agreement dated 08.07.2020.

14.9. As already discussed, while adjudicating Issue No. (i) & (ii), **Clause 3.1** specifically provides that from the date of the agreement neither party would have any past or future claims against the other except as specifically agreed under the said agreement and that all pending claims and litigations would be withdrawn. The language employed in the said clause clearly indicates that the parties consciously intended to substitute and comprehensively govern their inter se obligations under a fresh arrangement. The earlier claims and liabilities were thus subsumed into the framework of the agreement dated 08.07.2020. The crucial question therefore is not merely whether a prior operational transaction existed before 25.03.2020, but whether the original default itself survived independently after execution of the agreement dated 08.07.2020 or stood subsumed within a fresh contractual framework.

14.10. Once the earlier operational claims stood extinguished and substituted under the agreement dated 08.07.2020, the enforceable rights of the parties thereafter flowed only from the said agreement. Consequently, the relevant default for the purpose of the present proceedings cannot be traced independently to the original operational transactions of 2019, but must necessarily be examined in the context of the obligations arising under the agreement dated 08.07.2020. Thus, even if an earlier default is assumed to have occurred prior to 25.03.2020, the same stood subsumed in the subsequent agreement dated 08.07.2020 and cannot be relied upon independently to evade the bar under Section 10A.

14.11. Even assuming arguendo that the earlier default is taken as subsisting, the enforceability of such default stands eclipsed in view of the subsequent substituted arrangement governing the parties, and therefore the Operational Creditor cannot selectively rely upon the earlier default while simultaneously enforcing rights under the subsequent agreement.

14.12. The Hon'ble NCLAT in ***Trafigura India*** (supra) and ***Permali Wallace*** (supra) has recognised that where parties consciously enter into a settlement arrangement governing their liabilities, the rights thereafter emanate from such arrangement and not independently from the original operational transaction.

14.13. In the present case, the agreement dated 08.07.2020 admittedly falls within the period contemplated under Section 10A of the Code. Therefore, any default arising from obligations governed by the said agreement necessarily falls within the statutory embargo created under Section 10A.

14.14. The contention of the Operational Creditor that this Adjudicating Authority should independently determine the earlier date of default notwithstanding the subsequent substituted arrangement also cannot be accepted. Once the parties consciously agreed that all past and future claims would stand governed exclusively by the agreement dated 08.07.2020, the earlier operational framework ceased to survive independently for the purposes of insolvency proceedings under the Code.

14.15. In view of the findings returned under Issue No. (i), this Adjudicating Authority is of the considered view that the operative and enforceable default in the present case arose only under the substituted arrangement dated 08.07.2020, which squarely falls within the period protected under Section 10A of the Code.

Consequently, the present petition is barred by Section 10A and is not maintainable particularly in view of the extinguishment/substitution clauses contained in Clause 3.1 of the agreement dated 08.07.2020.

14.16. Accordingly, Issue No. (iii) is answered in favour of the Corporate Debtor and against the Operational Creditor.

**15. Findings on Issue No.(iv):** Whether there exists a pre-existing dispute between the parties prior to issuance of demand notice under Section 8 of the Code?

15.1. The Corporate Debtor has further contended that the present petition is liable to be rejected on account of existence of disputes between the parties prior to issuance of the demand notice under Section 8 of the Code. In support of the said contention, reliance has been placed upon various civil suits, police complaints and arbitration proceedings initiated between the parties.

15.2. At this juncture, it would be appropriate to advert to the settled legal position governing "existence of dispute" under Sections 8 and 9 of the Code. The Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.,*** **(2018) 1 SCC 353**, has held that while examining a petition under Section 9, the Adjudicating Authority is required to ascertain whether there exists a real dispute which is not spurious, hypothetical or illusory, and such dispute must exist prior to issuance of the demand notice. The Hon'ble Supreme Court has further clarified that the Adjudicating Authority is not expected to enter into an adjudicatory exercise on merits but only to determine whether there exists a plausible contention requiring further investigation.

15.3. In the present case, it is observed from the material placed on record that the Corporate Debtor has relied upon Commercial Suit Nos. 23, 52, 53 and 54 of 2021 before the Commercial Court at Pune, police complaints dated 07.12.2021, 07.02.2022 and 19.02.2022, as well as certain arbitration proceedings, to contend that disputes existed between the parties prior to issuance of the demand notice dated 27.12.2022.

15.4. However, upon careful examination of the pleadings and documents, this Adjudicating Authority finds that the said proceedings largely pertain to independent projects and disputes inter se between the parties and do not directly relate to the operational transactions forming the subject matter of the present petition. Nevertheless, the matrix of multiple parallel civil suits, police complaints and arbitration proceedings initiated by the Operational Creditor itself demonstrates a broader disputed and contentious relationship between the parties, satisfying the threshold of a 'plausible dispute' requiring adjudication in appropriate fora as laid down in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353.***

15.5. It is further observed that insofar as the present transaction is concerned, the Corporate Debtor had, under the agreements dated 02.01.2020 and 08.07.2020, acknowledged and quantified the liabilities between the parties. The correspondence placed on record also reflects negotiations primarily with respect to interest and restructuring of payment obligations. No contemporaneous material has been placed on record to indicate that prior to execution of the agreement dated 08.07.2020, the Corporate Debtor had raised disputes regarding quality of work, measurement, execution of services or quantification of the operational components claimed by the Operational Creditor.

15.6. Even otherwise, the existence of multiple civil proceedings and arbitration invoked prior to issuance of demand notice indicates that disputes were not illusory or spurious but required adjudication in appropriate fora, thereby satisfying the test laid down in Mobilox.

15.7. Nevertheless, in view of the findings already returned under Issue Nos. (i), (ii) and (iii), particularly the finding that the rights and obligations of the parties stood governed by the agreement dated 08.07.2020 and that the present proceedings are barred under Section 10A of the Code, adjudication of the present issue loses substantial determinative significance for the outcome of the petition.

15.8. In view of the findings returned under Issues No.(i), (ii) and (iii), even otherwise, this Adjudicating Authority is of the view that the material placed on record indicates existence of disputes requiring adjudication by a competent forum, and the same cannot be adjudicated in proceedings under Section 9 of the Code.

15.9. Accordingly, Issue No. (iv) is answered in the aforesaid terms.

16. **Findings on Issue No. (v):** Whether the present Petition is in the nature of a recovery proceeding and thus not maintainable under Section 9 of the Code?

16.1. The Corporate Debtor has contended that the present petition has been filed with the sole intent of recovery of money and not for resolution of insolvency, and therefore the same is not maintainable under Section 9 of the Code.

16.2. At the outset, it is well settled that the Insolvency and Bankruptcy Code, 2016 is not a substitute for a recovery mechanism. The Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. v. Union of India*** has categorically held that the Code is a beneficial legislation intended for resolution of insolvency and not for recovery of dues. Similarly, in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.***, it has been held that Section 9 proceedings cannot be invoked in a manner so as to pressurize the Corporate Debtor for recovery of disputed claims.

16.3. In the present case, it is observed that the claim of the Operational Creditor arises from agreements dated 02.01.2020 and 08.07.2020, which this Adjudicating Authority has already held to constitute a substituted contractual framework governing the rights and obligations of the parties. The enforcement of such contractual payment obligations, particularly where disputes exist and civil proceedings have been initiated, falls within the domain of appropriate civil or arbitral remedies.

16.4. It is further observed that the Operational Creditor has simultaneously pursued multiple remedies including civil suits and arbitration proceedings against the Corporate Debtor. The initiation of the present proceedings under Section 9, in the backdrop of such parallel proceedings and in view of the nature of the claim arising out of a substituted agreement, indicates that the petition is primarily intended for recovery of alleged dues rather than for resolution of insolvency.

16.5. This Adjudicating Authority is therefore of the considered view that the present petition is in substance a recovery proceeding, which is impermissible under the scheme of the Code. The Operational Creditor cannot invoke the provisions of the Code as a coercive mechanism to enforce contractual claims arising out of settlement arrangements.

16.6. Accordingly, Issue No. (v) is answered in favour of the Corporate Debtor and against the Operational Creditor.

**17.** In view of the foregoing findings, this Adjudicating Authority holds that though the initial transactions arose from operational works, the comprehensive agreement dated 08.07.2020 (particularly Clause 3.1) effected a novation u/s 62 of the Indian Contract Act, 1872, substituting the original operational debt and bringing the enforceable default within the embargo of Section 10A of the Code. The petition is accordingly not maintainable as it seeks enforcement of a claim arising from a settlement arrangement and is in the nature of a recovery proceeding.

**18.** It is however clarified that dismissal of the present petition shall not preclude the parties from pursuing such other remedies as may be available in law.

**19.** Accordingly, CP (IB) No. 50/9/NCLT/AHM/2023 stand disposed of in the above terms as not maintainable. No order as to costs.

**20.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

—SD—

**SANJEEV SHARMA**
**MEMBER (TECHNICAL)**

—SD—

**SHAMMI KHAN**
**MEMBER (JUDICIAL)**

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