NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1636 of 2025

[Arising out of the Impugned Order dated 17.10.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Cuttack Bench in C.P. (IB)/2/CB/2025]

IN THE MATTER OF:

Rahul Bhakat
(Ex-director of M/s. Geosphere Industries Private Limited) Having its Registered office at: HDD 1/225, Phase-3, Kabir Nagar, Raipur, Chhattisgarh, India-492099 **...Appellant(s)**

Versus

1 M/s. Sree UGCL Projects Limited
Registered Office at: E-07, 7th Floor, Solus Jain Heights No. 2, 1st Cross JC Road, Opp. Jain University, Bangalore, Karnataka- 560027

2. Mr. Ashutosh Khemani
Office at Office No. 1-C, 3rd Floor, Shyam Plaza, Pandri, Opp New Bus Stand, Raipur, Chhattisgarh ,492001
E-mail Id: ashutosh.khemani@gmail.com **...Respondent(s)**

Present:

For Appellant	:	Mr. Abhijeet Sinha, Sr. Advocate with Mr. Shivam Shukla, Mr. Rahul Pandey, Mr. Akshat and Ms. Heena Kochhar, Advocates
For Respondents	:	Mr. Anand Varma, Mr. Shreshth Arya, Mr. Shreyuss Shankar Joshi and Mr. Aditya Garg, Advocates for R-1. Mr. Chitranshul A. Sinha, Advocate for R-2 with Mr. Ashutosh Khamani, IRP.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 17.10.2025 (hereinafter referred to as the **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Cuttack Bench) in C.P.(IB)/2/CB/2025. By the said impugned order, the Adjudicating Authority has allowed the application filed under Section 9 of the IBC by the Operational Creditor-Respondent No. 1- M/s Sree UGCL Projects Limited seeking initiation of Corporate Insolvency Resolution Process ("**CIRP**" in short) against the Corporate Debtor- M/s Geosphere Industries Pvt Ltd. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-Corporate Debtor.

2. Coming to the factual matrix of the present case, the salient facts, events and developments relevant to be noticed are that the Corporate Debtor- M/s Geosphere Industries Pvt Ltd which was earlier known as Godawari Natural Resources Limited was engaged in mining and mineral processing activities and had been awarded certain mining and crushing-related works by Jayaswal Neco Industries Limited. In turn, the Corporate Debtor had engaged the Operational Creditor vide letter of engagement dated 14.03.2019 and issued them a Work Order on 23.03.2019 which was subsequently amended on 14.11.2019 and 26.12.2019. In terms of Clause 11 of the General Terms and Conditions of the Work Order, invoices were to be raised by the Operational Creditor upon completion of work which were to be paid by the Corporate Debtor within 30 days of submission while Clauses 19 and 20 of the General Terms and Conditions specifically provided that in case of deficient performance or failure to meet work specifications, the Corporate Debtor had the right to impose penalties on the Operational Creditor. The Operational Creditor had raised 7 invoices on 17.12.2019, 20.01.2020, 01.02.2020 and two invoices each on 01.03.2020 and 31.03.2020 amounting to a total of Rs. 15.87 Cr. It is also an admitted fact that the Corporate Debtor had sent several communications dated 19.08.2019, 25.11.2019, 26.12.2019, 11.01.2020, 29.01.2020, 18.02.2020 and 13.03.2020 to the Operational Creditor raising concerns regarding the quality and quantity of the output of work generated by them coupled with warning that penalties would be imposed on account of losses caused to the Corporate Debtor.

3. Despite repeated communications, since the Operational Creditor had failed to rectify the deficiencies and had eventually abandoned the work, causing losses to the Corporate Debtor, the latter issued a communication dated 24.07.2020 by which penalty aggregating Rs 11.38 Cr. on account of excess generation of fines, short production, and rejected stock due to mishandling was imposed on the Operational Creditor and their consent sought. Subsequent to the issue of the letter dated 24.07.2020, settlement discussions were undertaken between the two parties and a Memorandum of Understanding ("**MOU**" in short) was executed on 20.12.2021 which MOU, however, according to the Operational Creditor, was never finally executed by both the parties and had been allegedly negotiated on a "without-prejudice basis". Subsequent to the signing of the MOU, it is claimed by the Corporate Debtor that the Operational Creditor had purportedly issued a credit note dated 30.01.2023 to them for Rs. 10.60 Cr, which the Operational Creditor has denied claiming that the purported credit note was never issued by them and that no such credit note existed. Further, while the Corporate Debtor claimed that corresponding write-off entries in respect of the credit note was reflected in the ledger account of 21.02.2023 of the Corporate Debtor, the Operational Creditor has contended that this ledger was never agreed to between the parties and the entry of 21.02.2023 in the said ledger being unilateral was not acceptable. It was also added that the ledger dated 03.03.2021 was the only agreed ledger between the two parties wherein the Corporate Debtor had acknowledged their liability towards the Operational Creditor arising out of the seven invoices raised by them and that this ledger records the TDS deposited by the Corporate Debtor on these invoices. Another relevant fact to be noticed is that on 15.06.2023, on the request of the Operational Creditor, the Corporate Debtor had purportedly issued a Work Completion Certificate, which certificate was purportedly required for the purposes of income tax compliance by the Operational Creditor.

4. The Operational Creditor issued a Demand Notice dated 19.09.2024 under Section 8 of the IBC upon the Corporate Debtor claiming an amount of Rs. 18,56,78,817/- including interest. The demand notice was duly replied to by the Corporate Debtor on 11.10.2024 in which not only was the liability disputed but the issue of pre-existing disputes raised. However, the Adjudicating Authority after due consideration admitted the Section 9 application on 17.10.2025.

5. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-Corporate Debtor.

6. Making submissions on behalf of the Appellant, Sri Abhijeet Sinha, Ld Sr. Counsel submitted that the business transaction between the two parties was embroiled in pre-existing disputes on account of deficiencies in the performance of the Operational Creditor having failed to meet the work specifications. It was submitted that contemporaneous letters had been issued to the Operational Creditor regarding the work-related disputes, which was followed up by settlement discussions leading to a MOU and subsequent issue of a credit note and when these strands of development are seen together, it clearly establishes the existence of disputes. It was also added that all these disputes clearly existed much prior to the issue of the Section 8 Demand Notice as the letters of pre-existing dispute were from the period 19.08.2019 to 13.03.2020, while the Section 8 Demand Notice was issued on 19.09.2024 Contending that Section 9 petition was not maintainable, in support of their contention, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353.***

7. It was further added that when the Operational Creditor had failed to improve their performance, the Corporate Debtor had imposed a penalty which eventually led to the execution of an MOU and this MOU admitted to the existence of pre-existing disputes in Clause 1. When the MOU provided for proposed settlement of claims in pursuance of which the Operational Creditor had themselves issued a credit note on 30.01.2023 for Rs. 10.60 Cr to the Corporate Debtor, the Adjudicating Authority could not have returned the finding that the disputes were manufactured by the Corporate Debtor or enter into adjudication on the merits of the underlying contractual dispute.

8. It was also added that the Adjudicating Authority had committed an error in agreeing to the contention of the Operational Creditor that the credit note dated 30.01.2023 was forged and fabricated. The validity and authenticity of the credit note and its effect are matters of factual adjudication which require evidence and cannot be determined in summary proceedings. The proceedings under Section 9 being summary in nature, allegations concerning forgery or authenticity of documents cannot be adjudicated by the Adjudicating Authority. It was vehemently contended that the Adjudicating Authority failed to appreciate that the existence of the credit note in itself establishes a plausible contention that a dispute under Section 8 of IBC exists which was sufficient to defeat the maintainability of a Section 9 petition. It was also grossly wrong on the part of the Adjudicating Authority in treating the absence of arbitral or civil proceedings as conclusive proof of absence of dispute, despite the statutory scheme not requiring pre-existing proceedings to establish a pre-existing dispute. When the default was disputed and the operational debt was not admitted by the Appellant, the Section 9 petition ought to have been rejected. The Adjudicating Authority had clearly failed to notice that the conditions precedent for admission under Section 9 were not satisfied in the present case. It was also added that it was misconceived on the part of the Adjudicating Authority to treat the Work Completion Certificate as an unconditional acknowledgement of liability by them in disregard of the fact that the same was issued on the specific request of the Operational Creditor exclusively for income tax purposes and not for an acknowledgement of satisfactory completion of work or acknowledgement of dues. It was argued that issuance of completion certificates in any case does not ipso facto extinguish disputes relating to contractual performance. Contending that IBC cannot be invoked as a substitute for debt recovery proceedings where disputes exist between the parties, it was contended that the impugned order passed by the Adjudicating Authority is unsustainable in law and deserves to be set aside.

9. Rebutting the arguments canvassed by the Appellant, Shri Sunil Fernandes, Ld Sr. Counsel and Shri Anand Varma, Ld Counsel for the Respondent No. 1-Operational Creditor submitted that the Appellant had falsely raised the bogey of pre-existing disputes to escape admission of operational debt liability. When neither penalty was quantified nor penalty was imposed for the work-related performance disputes, there was no amount recoverable from the Operational Creditor. It was added that premising of pre-existing disputes basis self-serving letters and a non-concluded and unexecuted 'without-prejudice' MOU by the Appellant was nothing but an attempt to create a spurious defence to disclaim liability and cannot be looked upon as a pre-existing dispute. Hence the Adjudicating Authority had not committed any error in holding that the Corporate Debtor not having drawn the Operational Creditor into a suit/arbitration prior to the demand notice, the MOU and the self-serving letters could not be a ground of establishing pre-existing disputes.

10. It was emphatically asserted that the Corporate Debtor had already acknowledged their debt to the Operational Creditor in the ledger dated 03.03.2021 after taking cognisance of the seven invoices raised by the Operational Creditor. This ledger did not reflect inclusion of any amount towards proposed penalty by the Corporate Debtor nor does it show any debit note ever raised by the Corporate Debtor. Furthermore, when the Corporate Debtor had made a subsequent payment of Rs. 20 lakhs to the Operational Creditor on 03.11.2020, it clearly negates any genuine pre-existing dispute between the two parties with regard to the work performed by the Operational

Creditor. However, the Corporate Debtor has cleverly and deliberately not placed the ledger of 03.03.2021 and instead put on record another ledger dated 21.02.2023 with entries post 03.03.2021 which were unilateral entries made by the Corporate Debtor but not ever shared or reconciled with the Operational Creditor prior to the issue of Section 8 demand notice or the filing of Section 9 petition. In fact, these unilateral entries were placed for the first time before the Adjudicating Authority.

11. Moreover, there was a clear inconsistency between the draft MOU which had proposed the issue of a credit note for Rs. 9.49 Cr. and the credit note which was reflected in the ledger subsequently which was for a higher amount of Rs. 10.60 Cr. This discrepancy in amounts exposes that the credit note was only an afterthought and a fabrication. It was contended that the credit note was fabricated and was never issued by the Operational Creditor as it had originated from an email id which was not used by the Operational Creditor When the credit note had been issued from an unknown email id which was not the e-mail address from which communications were exchanged by the Operational Creditor, it casts doubt on the validity of the credit note and hence was rightly ignored by the Adjudicating Authority. Submission was further pressed that CA certificate itself was an unequivocal admission and acknowledgement of the debt that the Corporate Debtor had not paid Rs 10.60 crore as it clearly records that the Corporate Debtor had undertaken ITC reversal under proviso (2) to Section 16(2) of the CGST Act read with Rule 37 of the CGST Rules on account of failure to pay the supplier of services. The credit note was also absent from the mandatory GST filings under Section 34 of the CGST Act read with Rule 59 of the CGST rules which require that all credit notes are required to be statutorily reflected. Since no such statutory disclosures exist, it goes to show that the credit note was fabricated. It was also pointed out that the Corporate Debtor subsequently filed a self-serving CA certificate issued on 28.10.2025 to alter their own books, since they were not in a position to provide the GST filing as per Section 34. This unequivocally establishes that the purported credit note is bogus and an afterthought.

12. Attention was also drawn to the Work Completion Certificate which was issued from the official email of the Corporate Debtor to the official email of the Operational Creditor. The genuineness of the Work Completion Certificate has also not been denied by the Appellant. This shows that the work had been satisfactorily completed and any such unqualified Work Completion Certificate issued by the Corporate Debtor estops them from subsequently raising any dispute as regards the quality, quantity, or execution of work performed by the Operational Creditor.

13. We have heard Ld. Counsel for both the parties and perused the records carefully.

14. In returning our findings, we would like to be guided by the test which has been laid down by the Hon'ble Supreme Court in seminal judgment of ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited (2018) 1 SCC 353*** which are as follows:-

> *"25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

> *(i) Whether there is an "operational debt" as defined exceeding Rs. 1 lakh? (See Section 4 of the Act)*
>
> *(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*
>
> *(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?"*

From a plain reading of the above judgment, it is clear that if any of the aforesaid conditions of debt above the threshold limit being due and payable remains unpaid but is found to be disputed, the Section 9 application would have to be rejected.

15. We would like to further draw upon the other legal precepts laid down in this judgement that as long as a dispute is raised which is not a patently feeble argument or unsupported by evidence, the Adjudicating Authority has to reject the Section 9 application. If we apply the above tests laid down in ***Mobilox judgement*** then what has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court or if there is an undisputed debt for which insolvency can be initiated against the Corporate Debtor. The relevant extracts of the judgment is as reproduced as below:

> "*51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(i)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is*

pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

"56. Going by the aforesaid test of "existence of a dispute", it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability."

At the cost of repetition, we would like to reiterate that in a Section 9 proceeding, there is no need for the Adjudicating Authority to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt but sufficient to reject a Section 9 application if from the facts of the case, it becomes clear that the nature of dispute raised is such that it requires adjudication by a competent court.

16. Apart from the above tests laid down in the ***Mobilox judgement*** which needs to be scrupulously followed, it also goes without saying that the Adjudicating Authority is required to follow the mandate prescribed in Section 9(5) of the IBC to admit or reject the Section 9 application, as the case may be. Now it may be relevant to undertake a quick glance at the statutory provisions of IBC. Section 8 of the IBC envisages that the Operational

Creditor, on occurrence of a default by the Corporate Debtor, is required to deliver a Demand Notice in respect of the outstanding Operational Debt. Section 8(2) lays down that the Corporate Debtor within a period of 10 days of the receipt of the Demand Notice would have to bring to the notice of the Operational Creditor, the existence of dispute, if any. Post issue of demand notice by the Operational Creditor, in terms of Section 9(1), if the Operational Creditor does not receive payment from the Corporate Debtor or does not receive notice of dispute under Section 8(2), he may file an application under Section 9(1) while Section 9(5)(ii) of the IBC contemplates rejection of Section 9 application in certain circumstances while Section 9(5)(ii)(d) contemplates rejection when notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility.

17. Having noted the propositions of law laid down in the ***Mobilox judgement*** with regard to test that has to be applied in a Section 9 matter and also noted the statutory contours of Sections 8 and 9 of IBC, we now propose to answer whether in the present factual matrix there is pre-existing dispute surrounding the operational debt and seen from this perspective whether the impugned order passed by the Adjudicating Authority admitting the Section 9 application is sustainable in the eyes of law.

18. To find out how the Adjudicating Authority has considered the spectrum of facts to arrive at the conclusion that the Section 9 application deserved to be admitted as there were no pre-existing disputes, the relevant portions of the impugned order are as extracted hereunder:

"9.3. The defence of the Corporate Debtor is: (i) that disputes existed regarding performance, as evidenced by letters exchanged between August 2019 and March 2020; and (ii) that the debt stood settled through a Credit Note allegedly issued on 30.01.2023.

9.4. This Tribunal finds that while certain letters were exchanged alleging performance deficiencies, they were not followed by any contemporaneous debit notes, arbitral proceedings, or civil suits. On the contrary, the Corporate Debtor issued Work Completion Certificates in 2020 certifying satisfactory execution of the work and, in 2021, signed a ledger reflecting outstanding dues. The alleged Credit Note relied upon by the Corporate Debtor is categorically denied by the Operational Creditor. It is found irregular in format, inconsistent with the Operational Creditor's standard template, bearing disputed signatures, using an incorrect company name, and emanating from an unauthorised e-mail address. In absence contemporaneous authorization, statutory filings, or board of resolution, the Credit Note submitted by the Corporate Debtor cannot be relied upon.

9.5. In Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353, the Hon'ble Supreme Court held that only genuine, real, and bona fide disputes evidenced by contemporaneous records can defeat a Section 9 petition. Mere assertions or self-serving letters do not constitute such disputes. Applying this test, the disputes raised by the Corporate Debtor are found to have germinated from Clause 20 of the Work Order dated 23.03.2019 entered between the Corporate Debtor and the Operational Creditor, which are not supported evidenced by any contemporaneous material against the supply of materials that were admittedly consumed by the Corporate Debtor.

9.6. ……. In the present matter, while the Corporate Debtor raised letters of protest, it simultaneously continued to avail services, issued completion certificates, and acknowledged liability in its ledger. The cited judgments are therefore distinguishable and do not aid the Corporate Debtor."

19. To begin our analysis of the facts at hand, we first come to the performance related disputes which were brought to the notice of the Operational Creditor by the Appellant. It is the case of the Appellant that seven contemporaneous performance-related letters had been exchanged by them with the Operational Creditor between August 2019 and March 2020 regarding excess generation of fines; failure to maintain prescribed size specifications; ineffective pre-screening systems; reduced output and substantial losses suffered by the Corporate Debtor. These communications besides highlighting performance deficiencies had also concurrently carried a warning that penalties would be imposed on account of losses caused to the Corporate Debtor. All the disputes raised therein clearly preceded the issue of the Section 8 Demand Notice and undoubtedly fell in the category of pre-existing disputes and could not have been ignored by the Adjudicating Authority as not being genuine merely because they were purportedly never followed up with a penalty.

20. Per contra, it is the case of the Respondent that though the Corporate Debtor had admittedly raised concerns regarding execution of the work by them, the Corporate Debtor had never imposed any penalty. Nor was consent ever granted by the Operational Creditor in this regard to the Corporate Debtor to enforce the penal provisions. When neither penalty was imposed nor penalty was quantified by the Corporate Debtor, the Adjudicating Authority had rightly held these communications to be mere self-serving letters which not having been followed up by any contemporaneous debit notes, arbitral proceedings, or civil suits show that these were not bonafide genuine disputes capable of defeating a Section 9 petition.

21. We would like to sample a few of these letters to see whether the body of these letters raised disputes or not. Three such letters are as reproduced hereunder:

"Date 19.08.2019
To,
The Director
M/s United Global Corporation Ltd
This has reference to the above cited work order for screening, crushing & breaking of ROM Please note that the crushing activities are not going as per the work order terms. As per the work order. Under the heading "Scope of Work clause no 7 undersized material should not exceed 5% in the crushed lump ore but fines are coming to the tune of 15 to 20% which is not at all acceptable.
Secondly the analysis of pre-screen fines and crushed fines are coming same, it means that the pre-screen is not effectively functioning. The Entire crushed fines is mixed with low grade fines, spoiling the quality of crushed fines.
You are requested to kindly look into the issues seriously.

Date 25.11.2019
To,
M/s United Global Corporation Ltd
...... As per the work order, you are supposed to give undersized material of maximum 5% only in the crushed lump ore but fines generation is still to the tune of 15 to 20% which is our direct loss and is not at all acceptable.

It was also intimated to you that pre-screen is not functioning effectively since pre-screen fines and crushed fines analysis are still coming same, for, for which crushed fines grade is low for use in plant.

Kindly note that because of quality and quantity issues, our client M/s Jayaswal Neco Industries Ltd, are unable to use the material and has strictly warned us that if the quality is not improved immediately, penalty will be imposed on us on account of production loss at their plant due to quality issue said above.

Again, you are requested to look into the matter seriously and improve the working immediately.

Date: 24.07.2020
To
M/s. United Global Corporation Ltd
Ref: Work Order no GNRL/Mines/2019/002, dated 23.03.19 and our Letters dated 19.08.2019, 25.11.2019, 26.12.2019, 11.01.2020, 29.01.2020, 18.02.2020 & 13.03.2020
Sub: Levy of Penalty/Claim
This has reference to above subjected work order and various letters issued to you raising therein our serious concern regarding non fulfilment of work

obligation as per the scope and terms and conditions of the said work order by you.

In spite of our rigorous follow ups for improvement in working neither quality improved with respect to undersizing/fines generation nor pre-screening effectiveness increased.

Rather one more phenomena witnessed for the period Dec 19-Mar 20 that you also reduced the production drastically.

Further as a last nail in the coffin, you abandoned the site without any intimation causing huge loss to us on various fronts

In view of all the above facts, our client Jayaswal Neco Industries Ltd has imposed penalty on us and we have to suffer huge losses/extra costs and we are forced to impose penalty on you as per details below resulting on account of non-fulfilment of contractual obligations by you

1) Penalty on account of Excess generation of Fines

a. 25363.46 MT Rs 525/- PMT amounting to Rs. 1,33,15,816.50

2) Penalty for Low/short quantity Production of Breaking & Crushing of Boulders

a 115981.18 Mt @Rs.537.42 amounting to Rs. 6,23,30,605.76

3) Penalty Rejected stock at Mines due to mishandling.

a. 61062.34 MT Rs. 625.72 amounting to Rs. 3,82,07,927-38

Our total Penalty/Claim as above is amounting to Rs.11,38,54,349.64

We request you to kindly agree to the abovementioned penalty/claims and expeditiously settle the same at the earliest.

We also place on record that the abovementioned penalty/claims are without prejudice to our right and is based on the available facts, information and data.

We reserve the right to add, alter or modify the penalty/claims based on the facts that may emerge in due course.

We wish to further clarify that in case you do not agree/settle the above Penalty/Claim, we shall be left with no other option but to proceed legally.

For Godawari Natural Resources Ltd"

(Emphasis supplied)

22. When we look at the above communications relating to performance deficiencies, we find that not only had these letters been received by the Operational Creditor but there is no contemporaneous denial of the receipt of these letters by them. The entire set of these 7 letters have been placed at pages 114-123 of the Appeal Paper Book ("**APB**" in short). From the date of these letters, it pertained to the period 19.08.2019 to 13.03.2020 while the Section 8 Demand Notice was issued on 19.09.2024. Hence it is indisputable that all these letters preceded the issue of the Section 8 Demand Notice. Further when we see the Clauses 19 and 20 of the General Terms and Conditions of the Work Order which has been placed at pages 102-113 of the APB, the same had specifically provided that in case of deficient performance or failure to meet work specifications, the Corporate Debtor would have the right to impose penalties on the Operational Creditor which factum has not been denied by the Operational Creditor either. The Respondent while admitting that the Corporate Debtor had the right to levy the penalty but claimed that since the Corporate Debtor had never imposed any penalty, these performance deficiency letters cannot be looked upon as characterising pre-existing dispute. We are not persuaded to accept this contention of the Operational Creditor since when we look at the communications it is amply clear that work-related disputes and business loss suffered by the Corporate Debtor has been raised in all of them and in the letter dated 24.07.2020 the Corporate Debtor had proposed imposition of a penalty of Rs. 11.38 Cr on 24.07.2020. Notwithstanding the fact that the Corporate Debtor had sought the consent of the Operational Creditor which had allegedly never been given, it does not detract from the fact that these letters clearly signified that contemporaneous disputes had been raised which were clearly prior to the Section 8 Demand Notice and hence qualified to be pre-existing disputes.

23. The Adjudicating Authority also had clearly erred in concluding that since these communications were not followed up with contemporaneous debit notes, arbitral proceedings or civil suits, these disputes lacked bonafide. It was grossly erroneous on the part of the Adjudicating Authority to hold that the absence of arbitral or civil proceedings even after the issue of these communications by the Corporate Debtor conclusively demonstrate absence of dispute. In terms of the ***Mobilox judgement supra***, the Adjudicating Authority as such has no jurisdiction to enter upon the merits of the dispute or decide whether the disputes would succeed or not and when seen from the statutory prism of IBC, it does not either envisage institution of any such proceedings as a condition precedent for establishing a pre-existing dispute.

24. This now brings us to the other ground relied upon by the Appellant to substantiate their claim of pre-existing dispute by adverting to the fact that subsequent to their issue of the letter imposing penalty dated 24.07.2020, settlement discussions were initiated which led to a MOU between the parties. This MOU was executed on 20.12.2021 to purportedly resolve the business disputes and to bring about a compromise between the two parties of their disputed claims. It was contended by the Appellant that in terms of the judgement of this Tribunal in ***Narayani Resources Pvt. Ltd. vs. Essar Power Gujarat Ltd. in CA(AT)(Ins) No. 158 of 2026*** when contemporaneous communications on reconciliation disputes/settlement are on record, the defence of pre-existing disputes cannot be treated as a feeble legal argument unsupported by evidence.

25. Per contra, it is the claim of the Respondent that when the MOU was never finally executed by both the parties and had been negotiated on a "without prejudice basis", the terms of such a non-concluded MOU cannot buttress the existence of pre-existing dispute.

26. When we look at the MOU which has been placed on record at page 124 of the APB, we find that the MOU was originated by the Operational Creditor and carries the signature and stamp of the Operational Creditor. Even if the contention of the Operational Creditor is taken at face value that the MOU was only a draft document and was never finalised by both parties, we are of the considered view that after having been the progenitor of the MOU it does not lie in the mouth of the Operational Creditor to resile from the contents of the MOU. Further when we see the draft MOU as placed on record, we do not find any mention captioned therein that the MOU had been shared with the Corporate Debtor on 'without-prejudice' basis.

27. At this stage, we would like to reproduce some of the relevant extracts of the terms of the said MOU which was to the effect:

> *"1. Both the parties <u>agree to resolve the ongoing business dispute</u> relating to quality of material which has been raised and pointed out on timely basis by the Second Party to First Party.*
>
> *2. The parties expressly acknowledge that <u>this agreement is being made as a compromise and settlement of disputed issues</u>, that the execution and compliance with this agreement is not be constructed to be an admission by any party, of any liability or obligation, to any other party or any liability or other obligation by any party to any third party.*

…

4. The parties agree that they are entering into this agreement as a compromise of disputed claims, to avoid the cost and expense of further litigation.

….

6. The Final Settlement amount is agreed upon Rs. 1,11,00,000.00 in 3 instalments against existing due. There will be no claim from either party beyond the settled amount. First party will issue credit note amounting to Rs. 9,49,59,019.00 to the second party. Second Party will make the balance payment in instalment as per below points…..”

(Emphasis supplied)

28. It is clear from the above stipulations that the MOU was formulated to resolve the ongoing business dispute between the two parties and that they had entered into this agreement for compromise of disputed claims. The ongoing dispute between the parties is quite clearly depicted in Clause 1 of the MOU. Thus, when the draft MOU prepared by the Operational Creditor themselves in no unclear terms had acknowledged that there was an ongoing business dispute, they cannot shy away from the same by taking shield under the fact that the MOU was never signed by both parties. When the Operational Creditor had admitted to the existence of pre-existing disputes in Clause 1 of the MOU, which MOU had also adverted to the proposed settlement of disputed claims, the Adjudicating Authority could not have returned the finding that the disputes were manufactured by the Corporate Debtor. Moreover, as the above dispute pointed out in the MOU clearly existed much before issuance of demand notice, the defence of MOU taken by the Corporate Debtor to substantiate pre-existing disputes to our minds is not a feeble contention unsupported by evidence.

29. This brings us next to the findings returned by the Adjudicating Authority in the impugned order that the defence relied upon by the Appellant of a Credit Note having been issued by the Operational Creditor on 30.01.2023 to settle their outstanding liability qua the Corporate Debtor cannot be relied upon as the Credit Note has been categorically denied by the Operational Creditor. The Adjudicating Authority further held that the Credit Note submitted by the Corporate Debtor cannot be relied upon as it was irregular in format being inconsistent with the Operational Creditor's standard template; that the credit note used an incorrect company name and bears disputed signatures; that it emanated from an unauthorised e-mail address and was not backed up by statutory filings or board resolution or any contemporaneous authorization.

30. It is the contention of the Corporate Debtor that pursuant to the execution of an MOU between the two parties on 20.12.2020, the Operational Creditor had issued a credit note on 30.01.2023 for Rs. 10.60 Cr to the Corporate Debtor. It was further asserted that with the issue of credit notes, corresponding write-off entries were also reflected by the Corporate Debtor in the ledger account on 21.02.2023. Submission has been pressed that the Adjudicating Authority had on the one hand acknowledged that there is a credit note dated 31.01.2023 but *inter alia* questioned its veracity and authenticity on the ground that the credit note was irregular in format and inconsistent with the standard template of the Operational Creditor. Further, the Adjudicating Authority has gone alongwith the misleading plea of the Operational Creditor that the credit note had originated from an email id which was not that of the Operational Creditor but failed to take cognisance of the fact that the same email conveying the credit note had been endorsed to one Mr. Vamsi, who was the Managing Director of Operational Creditor who at no point of time prior to initiation of Section 9 proceedings raised any contemporaneous objection regarding alleged forgery of the said credit note. Submission was pressed that the Adjudicating Authority had thus failed to appreciate that the existence of the credit note, in itself, established a plausible contention that a dispute existed which was sufficient to defeat the maintainability of a Section 9 petition.

31. Rebutting the arguments of the Appellant, it was contended by the Operational Creditor that the Adjudicating Authority had rightly held the credit note cannot be relied upon since there were inconsistencies and discrepancies in respect of the nomenclature, format and structure of the credit note. The existence of credit note was denied and contended that it was never issued by them and hence rightly ignored by the Adjudicating Authority. While all correspondence from the Operational Creditor was from the email id of accounts@lpgroup.co.in, this credit note had originated from an email id which was not used by the Operational Creditor which shows that the credit note was forged and fabricated. It was also added that there was a clear inconsistency between the draft MOU which proposed the issue of a credit note for Rs. 9.49 Cr. while the credit note reflected in the ledger subsequently was for an amount of Rs. 10.60 Cr. which discrepancy in amounts exposes that the credit note was an afterthought and a fabrication.

32. When we look at the material available on record, we find that a credit note was purportedly issued by the Operational Creditor as placed at page 129 of the APB as reproduced below:

Credit Note

United Global Corporation Ltd
House No 64/04, Room No 3
Ground Floor, Nehru Nagar West
Bhilai, Dist Durg
GST NO : 22AABCU5251F1ZQ
State Name : , Code :

Party :
Godawari Natural Resources Pvt Ltd
(Formerly Godawari Natural Resources Ltd)
HDD-1-225, Kabirnagar, Raipur
Chhattisgarh
GST : 22AADCG3079K2ZK
State Name : : Chhattisgarh, Code : 22

Credit Note No. 1	Dated 30-Jan-2023
	Mode/Terms of Payment
Buyer's Ref.	Other Reference(s)
Buyer's Order No. GNRL/MINES/2019/002	Dated 23-03-2019
Despatch Document No.	
Despatched through	Destination
Terms of Delivery	

Sl No.	Description of Services	HSN/SAC	Quantity	Rate	per	Amount
1	*SALES @ 18%* (Being Credit Note is passed related to Various Issues of Quality Disputes settled during the year)					10,60,39,018.00
	Total					₹ 10,60,39,018.00

Amount Chargeable (in words)
INR Ten Crore Sixty Lakh Thirty Nine Thousand Eighteen Only

E. & O.E

For United Global Corporation Ltd

Authorised Signatory

This is a Computer Generated Document

TRUE COPY

When we look at the above credit note, it is clearly found to be stamped and signed by the Operational Creditor. However, we do not wish to go into the issue of veracity, validity, authenticity and effect of the credit note as any such investigation would warrant leading of evidence which does not lie within the remit of the Adjudicating Authority or this Tribunal. As allegations containing forgery, fabrication, or authenticity of documents require detailed adjudication and cannot be conclusively determined in summary proceedings under Sections 8 and 9 of the IBC, the Adjudicating Authority with its summary jurisdiction could not have entered into adjudication and render its findings on the authenticity/genuineness or otherwise of the credit note.

33. This brings us to the contention of the Respondent that the Adjudicating Authority had returned the correct finding that the Appellant-Corporate Debtor having issued Work Completion Certificates in 2020 coupled with the fact that the Corporate Debtor had also signed a ledger in 2021 reflecting outstanding dues payable to the Operational Creditor, this was a case of established debt and default where the debt was not a disputed one and hence a fit case for admission of Section 9 petition. Further, the Corporate Debtor had made a subsequent payment of Rs. 20 lakhs to the Operational Creditor on 03.11.2020. Further when payments were made by the Corporate Debtor to the tune of Rs 20 lakhs to the Operational Creditor even after raising the alleged dispute, this clearly negates the continued presence of the alleged pre-existing disputes. It was also pointed out that the Corporate Debtor has put on record another ledger with entries post 03.03.2021 which were unilateral entries made by them. As these unilateral entries had never been shared or reconciled by the Corporate Debtor with the Operational Creditor prior to the issue of Section 8 demand notice or the filing of Section 9 petition but was placed by them in their reply to the Section 9 petition before the Adjudicating Authority, this cannot be relied upon by them to substantiate pre-existing disputes.

34. The Appellant has repelled the contentions of the Respondent by submitting that it was incorrect on the part of the Adjudicating Authority to treat the Work Completion Certificate as an unconditional acknowledgement of liability as the Work Completion Certificate was sought by the Operational Creditor solely for income tax purposes. The WhatsApp communications exchanged between the Operational Creditor and the Corporate Debtor as placed at pages 139-140 of the APB clearly demonstrate that the Work Completion Certificate was issued on the specific request of the Operational Creditor exclusively for income tax purposes and not as an acknowledgement of satisfactory completion of work or acknowledgement of dues. It was also contended that the Work Completion Certificate was given only in 2023 for works executed in 2020 and this time-lapse was on account of the fact that credit note was eventually provided by the Operational Creditor in 2023. This makes it clear that only after the Operational Creditor had given the credit of Rs.10.60 crore to the corporate debtor on 30.01.2023 that they were provided with the Work Completion Certificate in the same format as had been forwarded by the Operational Creditor.

35. From material available on record, it is clear that Work Completion Certificate was issued but there is clear dispute between the two parties as to whether it was issued for purposes for income tax or any other purpose. Further while the Operational Creditor has contended that the Work Completion Certificate substantiates that there was no work-related dispute, the Appellant has contended that the certificate was issued in 2023 for 2020 works because there were work-related disputes for which disputed claims a credit note had been raised which was eventually paid by the Operational Creditor in 2023. It is therefore clear that the Work Completion Certificate constituted a plausible dispute between the two parties and there was no need for the Adjudicating Authority to go further into the format, signature and other aspects etc of the said certificate. Further when we look at the reply of the Corporate Debtor to the Section 8 Demand Notice as place at page 153 of APB, we find that after denying any liability owed to the Operational Creditor, the Corporate Debtor had inter-alia adequately highlighted the events leading to the Work Completion Certificate which are as reproduced below:

> *"1. At the outset, all the contentions and allegations in relation to <u>your alleged total amount of debt of Rs. 18,56,78,817/-</u> (Rupees Eighteen-crore Fifty-six lakh Seventy-eight thousand Eight-hundred Seventeen Only) including the aforesaid alleged debt itself as made out in your Legal Notice under reply <u>are disputed, challenged and denied in totality, being erroneous, baseless and devoid of any merit.</u> Further, the monetary demand for the purported unpaid outstanding dues to the tune of Rs. 18,56,78,817/- (Rupees Eighteen-crore Fifty-six lakh Seventy-eight thousand Eight-hundred Seventeen Only) comprising of the Principal Amount of Rs. 10,60,39,021/-(Rupees Ten-crore Sixty-lakh Thirty-nine Thousand Twenty-one Only), along with interest to the tune of Rs. 7,96,39,796/- (Rupees Seven-crore Ninety-six lakh Thirty-nine thousand Seven-hundred Ninety-six Only) allegedly due as on 20.05.2024, are specifically disputed, challenged and denied being baseless and devoid of any merit and contrary to documents executed and exchanged between you and my Client on various occasion. My Client does not owe a single farthing/paise to you under the contractual obligation under the WO, 1st Amend WO and 2nd Amend WO as alleged in the Demand Notice under reply as accounts between you and my Client stands mutually settled after the disputes relating to the works executed by you was raised by my Client starting August 2019 to July 2020…..*

7. Finally, by a letter dated at 24th July 2020, in spite of rigorous follow ups for improvements in your working and performances but all in vain. <u>my Client imposed total penalty on you of Rs. 11,38,54,349/- in terms of the WO, 1st Amend WO and 2nd Amend WO and General Terms & Conditions therein and requested you to pay the same at the earliest</u>.

8. Against the total penalty imposed on you by my Client aforesaid my Client and <u>you mutually agreed to settle the pending dispute after protracted negotiations amicably under which you issued to my client a Credit Note dated 30th January 2023 of Rs. 10,60,39,018/-</u> (see Annexure-2 Colly to this reply) and thereby all the disputes were put to rest by my Client in the long-term business relation. On 17.02.2023, you had also shared the said Credit Note vide email communication to my Client (see Annexure-2(Colly.) to this reply). The Completion Certificate relating to WO, 1st Amend WO and 2nd Amend WO was issued to you on 2nd September 2023 over email on your request (see Annexure -3 to this reply."

(Emphasis supplied)

36. When we look at the above reply to the demand notice, it becomes clear that the dispute between the two parties regarding reconciliation and settlement is clearly manifest and notwithstanding the dates on which the credit note and Work Completion Certificates were issued, the dispute clearly had its roots much before issuance of demand notice. This defence taken by the Corporate Debtor in its reply to demand notice was a plausible dispute and cannot be said to be spurious dispute or a feeble contention unsupported by evidence.

37. It is settled law that what the Adjudicating Authority is required to see is whether there is a plausible contention which requires further investigation or it is a dispute unsupported by evidence. The Adjudicating Authority is not supposed to conclusively decide at this stage as to whether the defence taken shall ultimately succeed or not. However, in the present factual matrix we find that the Adjudicating Authority has wrongly ventured to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt which cannot be sustained. Looking to the materials on record including the notice of dispute, we are of the view that the disputes raised by the Respondent were a plausible contention and cannot be said to be spurious dispute. Section 9 proceedings are not there to resolve such contractual disputes and such disputes are required to be determined in appropriate civil proceedings.

38. With the aforesaid discussion, we are of the considered view that the Adjudicating Authority has erroneously admitted the application under Section 9 of the IBC. We therefore set aside the impugned order. The orders passed by the Adjudicating Authority initiating CIRP against the Corporate Debtor and all other orders pursuant to impugned order are set aside. The Corporate Debtor company is released from the rigours of CIRP and is allowed to function independently through its board of directors with immediate effect. The Appeal is allowed with the aforesaid observations. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Place: New Delhi
Date : 30.06.2026
Farhan