

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1102 of 2025

**[Arising out of the Impugned Order dated 09.06.2025 passed by the
Adjudicating Authority, National Company Law Tribunal, New Delhi
Bench, Court-IV in C.P. (IB) No. 870/ND/2022]**

In the matter of:

Ruchira Green Earth Private Limited

Through its Authorised Representative

Mr. Paras

Having Address at:

542-R Model Town, Yamuna Nagar,
Haryana – 135001

...Appellant

Versus

KLB Komaki Private Limited

Having Address at:

10, First Floor, Rani Jhansi Road,
Jhandewalan, New Delhi
Central Delhi 110055
Email ID: KLBKOMAKI@GMAIL.COM

.... Respondent

Present:

For Appellant : Mr. Anand Chhibbar, Sr. Advocate with Mr. Abhishek
Anand, Mr. Karan Kohli, Mr. Vaibhav Sahni, Mr. Arjun
Cbhibbar, Advocates.

For Respondent : Dr. Swaroop George, Mr. Abhinandan Jain, Mr. Sunil
Roy, Mr. Shivam Prajapati, Mr. Kartikey, Advocates.

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

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 09.06.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-IV) in C.P. (IB) No. 870/ND/2022. By the impugned order, the Adjudicating

Authority has dismissed the Section 9 petition filed by the Appellant-Operational Creditor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-Ruchira Green Earth Private Limited.

2. The brief factual matrix of the present case is that the Appellant-Operational Creditor, namely, Ruchira Green Earth Pvt. Ltd. is an MSME which was having business transactions with the Corporate Debtor-Respondent, namely KLB Komaki Pvt. Ltd. for supply of batteries. The Appellant had supplied batteries to the Respondent under purchase orders raised from time to time and issued invoices for payments. In spite of alleged regular follow up by the Appellant, the Corporate Debtor started defaulting in making payments from August 2022. In view of unpaid invoices, the Appellant issued a Section 8 Demand Notice on 21.10.2022 on the Corporate Debtor. Since the Corporate Debtor did not reply to the Section 8 Demand Notice nor made the outstanding payments, the Appellant filed a Section 9 petition before the Adjudicating Authority on 30.11.2022 seeking initiation of CIRP of the Corporate Debtor. The Section 9 application was dismissed on 09.06.2025 by the Adjudicating Authority. Assailing the impugned order, the present appeal has been preferred by the Appellant.

3. Making his submissions, Shri Anand Chhibbar, Ld. Sr. Counsel for the Appellant submitted that the Adjudicating Authority has erroneously dismissed the Section 9 application by holding that there was a pre-existing dispute between the Appellant and the Respondent. It was also submitted that the outstanding amount was a legally enforceable operational debt as it was supported by invoices, delivery confirmations and ledger entries. Reliance has been placed on the judgment of this Tribunal in ***Naresh Choudhary Vs***

Sterling Enamelled Wires Pvt. Ltd. in ***CA(AT)(Ins.) No. 39 of 2023*** to contend that the Section 9 petition deserves to be admitted as the Corporate Debtor had acknowledged that an outstanding amount was due and payable to the Operational Creditor and given an assurance to clear the said amount. The invoices which formed the basis of the Section 9 application was unrelated to the alleged pre-existing disputes and pertained to an entirely separate set of invoices and transactions relating to supplies made between April to August 2022 which had never been disputed. By conflating unrelated transactions, the Corporate Debtor had fabricated a defence of pre-existing dispute while in reality there was no dispute. It was contended that the alleged dispute raised by the Corporate Debtor regarding the quality of battery supplied was not a genuine dispute but a moonshine dispute which is established by the fact that the Corporate Debtor even after raising complaints had placed a high value purchase order of Rs 6.32 Cr. on 09.08.2022. Further, the Adjudicating Authority wrongly relied on certain routine WhatsApp communications exchanged between two employees of both parties to hold them to be evidence of pre-existing disputes without properly examining their relevance. The Adjudicating Authority also failed to appreciate that the dispute raised by the Corporate Debtor that they had indemnified themselves vide an indemnity bond was without basis since the bond had been executed after the goods had already been supplied. The warranty document was also not applicable since it was not formally executed and hence could not have been treated as a ground of dispute. It was contended that the Corporate Debtor has raised these frivolous disputes as an afterthought to avoid discharging of their liabilities. The Ld. Sr. Counsel

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also asserted that the finding of the Adjudicating Authority overlooks the settled law laid down by the Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*** which held that a pre-existing dispute must be genuine and one which is supported by evidence.

4. Refuting the contentions made by the Appellant, the Ld. Counsel for the Respondent, Dr. Swaroop George submitted that the Operational Creditor had been supplying faulty batteries which caused huge loss to the Corporate Debtor due to resultant loss of consumer confidence in the Corporate Debtor. Asserting that it is an irrefutable fact that regular conversation was held on the WhatsApp Group between both parties regarding the defects in the batteries supplied, it was added that the Operational Creditor in their WhatsApp messages had admitted to the faults in the battery and assured to take corrective measures. The faulty goods were however either not replaced or even if replaced continued to remain faulty. Though the Operational Creditor had assured to supply batteries free from any manufacturing defects and had even given a warranty proposal of three years against all defects in material and workmanship, the Operational Creditor did not honour the warranty commitments. The failure on the part of the Operational Creditor to provide after-sales service within the warranty period was yet another cause of dispute between the parties. Further adverting attention to the indemnity bond, it was contended that there is no crystallization of the claim and no admission on the part of the Corporate Debtor qua the operational debt claimed by the Appellant. Since there was no debt due or owed, the question of default did not arise. Hence, it was contended that the Adjudicating Authority has therefore rightly held basis the WhatsApp communications,

photographs, warranty terms and indemnity bond that there was evidence of pre-existing dispute and therefore proceeded to dismiss the Section 9 application.

5. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

6. The short point for our consideration is whether an operational debt is due and payable in the instant case and whether there is any pre-existing dispute between the parties in the context of the debt in terms of the test laid down by the Hon'ble Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353.***

7. It is the case of the Appellant that the Adjudicating Authority has ignored material evidence on record that the Corporate Debtor had acknowledged the outstanding operational debt and sent a communication dated 16.08.2022 requesting the Appellant to send current invoices which is a clear admission/acknowledgement of liability on their part towards the Operational Creditor. The Adjudicating Authority had also committed an error in ignoring the commercial conduct of both the parties which conduct does not reveal any trace of dispute. The conduct of the Corporate Debtor by way of placing of fresh purchase orders including a high-value purchase order of Rs. 6.32 cr on 09.08.2022 shows that in reality there was no dispute. Submission was also pressed that WhatsApp messages relied upon by the Adjudicating Authority only reflected routine after-sales correspondences and such informal grievances do not merit treatment as a genuine pre-existing dispute envisaged under the IBC. Sans any independent test report, the allegations of quality defects in respect of the batteries supplied by the

Appellant lacked conclusive proof. The Adjudicating Authority also failed to appreciate that the issue of indemnity bond raised by the Respondent as a ground of dispute was misplaced as this bond was executed after the goods had already been supplied and therefore inapplicable in respect of the outstanding operational debt which had already crystallised. The disputes raised by the Respondent was therefore dubbed as moonshine dispute by the Appellant.

8. Per contra, it is the case of the Respondent that in their reply filed to the Section 9 application before the Adjudicating Authority they had categorically denied and disputed the outstanding debt claimed by the Operational Creditor. At no stage had they ever admitted the debt or assured that necessary payments will be made to the Operational Creditor. It was asserted that the Appellant had misconstrued the communication dated 16.08.2022 to send current invoices to be an admission/acknowledgement of any liability on their part towards the Operational Creditor. The Learned Counsel for the Respondent further pointed out that the Corporate Debtor had raised issues with respect to deficient quality of battery and poor after-sales services to the Operational Creditor from May 2022 onwards as communicated through several WhatsApp messages from time to time. The Operational Creditor had also admitted defects in the battery supplied by them in their email dated 10.09.2022 and inspite of their assurances to replace the battery did not take appropriate remedial measures in that direction. From the contents of the above multifarious communications available on record, it is clear that they had clearly articulated an array of disputes arising from the warranty document, indemnity bond, defective and

faulty battery supply, denial of debt etc. It was vehemently contended that the Adjudicating Authority not finding these disputes to be spurious, frivolous or vexatious correctly applied the ratio of the ***Mobilox judgment supra*** in dismissing the Section 9 application.

9. Before we deliberate on the issue at hand and weigh the rival contentions made by both parties, it may be useful to notice the findings recorded by the Adjudicating Authority. The relevant portions of the impugned order are as extracted below:-

“6. ANALYSIS AND FINDINGS:

.....

iv. From the documents and submissions placed on record, it is evident that there were substantial quality issues in the batteries supplied by the Applicant, which were communicated to the Applicant at various stages starting from May 2022 as evident from the chat. The record reveals contemporaneous and repeated communications acknowledging and discussing the defects, including the Applicant’s own assurances for rectification and replacement. It is also noted that the Applicant had signed an indemnity bond accepting responsibility for any fire hazards or defects, which were allegedly not honoured. The disputes cannot be termed as mere bald assertions or moonshine defences raised for the first time in response to the demand notice; rather, they appear to be genuine and pre-existing in nature.

v. The contention of the Operational Creditor that there was no such dispute is belied by the documents and communications filed by the Corporate Debtor. The Applicant’s assertion in its affidavit under Section 9(3)(b) that no disputes were ever raised by the Corporate Debtor is, therefore, incorrect and appears to be a deliberate suppression of material facts. Such suppression further casts doubt on the bona fides of the Application and undermines its maintainability. Further, the cases relied upon by the Applicant are distinguishable on facts and not applicable to the present case.

*(vi) These disputes in the present case are genuine and substantial, rather than being spurious, hypothetical, or illusory. It is well-settled by the Hon’ble Supreme Court **in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Put. Ltd., (2018) 1 SCC 353**, that if there exists*

a genuine dispute prior to the issuance of demand notice, the Application under Section 9 is liable to be rejected.

(vii) In view of the above, this Adjudicating Authority finds that the existence of a pre-existing dispute between the parties serves as a valid ground for rejecting the present Application.

(Emphasis supplied)

From the above findings, we note that the Adjudicating Authority has applied the test laid down in the **Mobilox judgment supra** in rejecting the Section 9 application by holding that the disputes raised by the Corporate Debtor was both genuine and pre-existing and not spurious, hypothetical or illusory.

10. It is a well settled legal proposition that for a pre-existing dispute to be a ground to nullify an application under Section 9, the dispute raised must be truly existing at the time of filing a reply to notice of demand as contemplated by Section 8(2) of IBC or even at the time of filing the Section 9 application.

11. We now proceed to examine whether in the instant factual matrix the disputes raised by the Corporate Debtor can qualify to be treated as pre-existing dispute which can constitute the basis for rejection of Section 9 application.

12. At the very outset we take notice that in the reply to the Section 9 application as placed at page 657 of APB, it has been clearly stated by the Corporate Debtor that *“there is no crystallisation of the claim, there is no debt due or owed or default on the part of the Respondent and since that is sine qua non for admission of an application under Section 9 of the Insolvency and Bankruptcy Code 2016, the present petition deserves to be dismissed.”* We also notice that the Corporate Debtor has further stated in the said reply that large sums of money as well as replacement products are due from the Operational

Creditor and that for such reasons the Section 9 petition deserves to be dismissed. Further the Appellant vide their WhatsApp message of 10.09.2022 had not only assured to resolve the complaints raised by the Respondent regarding the batteries supplied by them on account of FRC (Fire Related cases) but also admitted that more than Rs. 3 crores worth of batteries were defective. Further, a few days before the Appellant sent the demand notice, the Respondent had communicated to the Appellant that the replacement batteries supplied were also defective. This by itself shows that the debt amount was yet to crystallise and this coupled with the fact that the Appellant had failed to replace the batteries by the time the demand notice was sent clearly shows that there were pre-existing dispute between the two parties.

13. Having noticed that the Corporate Debtor has denied the existence of debt qua the Appellant, we now proceed to examine the tenability of the argument canvassed by the Corporate Debtor that the claim of Operational Creditor had not crystallized since the transactions with the Operational Creditor was embroiled in dispute. It is an indisputable fact that the Corporate Debtor had placed purchase order of batteries on them between October 2021 to December 2021. The Corporate Debtor had purportedly received complaints of manufacturing defects and quality issues from their consumers/dealers of the batteries being sub-standard. This supply of defective batteries was communicated on 29.12.2021 to the Operational Creditor, a fact which has not been denied by the Appellant as noticed at page 727 of Appeal Paper Book (**APB**). Following the complaint, as per the Corporate Debtor, an Engineer of the Operational Creditor carried out an inspection and assured to replace the defective batteries but backtracked

thereafter and replaced only limited number of batteries which also turned out to be defective. To the contrary, the Appellant in their Rejoinder Reply to the Section 9 application admitted that while they had received this message of defective batteries from the Corporate Debtor, they had replaced all defective batteries prior to sending of Demand Notice and that the complaints stood closed.

14. Quite clearly, there is clear difference of standpoint between the Corporate Debtor and the Operational Creditor as to whether the complaint with respect to defective batteries was a continuing dispute as claimed by the Corporate Debtor or the same stood resolved with replacement of defective battery as claimed by the Appellant.

15. When we further examine the exchange of correspondence between the two parties, we find that the Respondent had informed the Appellant on 16.05.2022 that batteries 72*39 had got burnt due to the excessive increase in temperature of battery on account of manufacturing defects. This was reiterated through WhatsApp messages on 05.06.2022, 06.06.2022 and 07.06.2022 as placed at page 686-688 of APB. On 07.06.2022 we also find that the Appellant apologized for the defects and admitted to the deficiency besides agreeing to replace them as a corrective measure. Similar chats continued to be exchanged in the subsequent months including short-circuiting of batteries and fire related cases allegedly posing as hazard to life and property as placed at pages 693, 698-699 of APB. The dispute between them seemed to have reached a head in September-October 2022 as is evident from the tone and tenor of messages exchanged as extracted below:

(On 10.09.2022)

Corporate Debtor: Replace all 600 batteries of December month with new batteries. Reason for ask - Multiple FRC cases for the same lot of December.

Operational Creditor: First of all, we want to say we stand by with every request Komaki makes and are ready to replace each and every battery to gain your trust and customer satisfaction. We have already given 135 new batteries till date for that lot. And are prepared to give the remaining amount as well. We have a couple of requests from our side.

1. Based on our learnings, we want to give new batteries only with Software BMS to ensure extra safety and better performance. We request Komaki to help us out with the additional cost.

2. Given the replacement will directly impact us with over 3 Cr hit, we request to increase our business with Komaki to the maximum possible so that we can cover for these losses in coming months.

(On 21.09.2022)

Corporate Debtor: What about 250 pcs replacement batteries you committed in our office las Week.

Operational Creditor: We have started production last week. Batteries are getting ready.

Operational Creditor: 250 pcs replacement had to reach us by last week end but nothing sent till today.

(On 17.10.2022)

Corporate Debtor: These batteries provided by you are garbage replacement.

(Emphasis supplied)

16. It is also clear from the above messages that the Respondent was consistently badgering the Appellant about defective batteries supplied by them and insisted on their replacement. Even before the demand notice was issued on 21.10.2022, the Corporate Debtor had sent a terse message to the Appellant that even the replaced batteries were faulty and were like “garbage”. The Appellant never denied the exchange of these chats. We also notice that the Appellant had recognised the need to replace the batteries though they

also tried to slip in issues relating to additional costs etc. Further when we see the Rejoinder Reply of the Appellant to the Section 9 application, we find that the Operational Creditor took a contrary stand and stated that they had never apologized for supply of faulty battery but that they had only expressed their concern as a gesture to retain the Corporate Debtor as their customer. It was also their contention that necessary remedial measures had been taken by them and that the complaint stood closed. We also find that the Appellant had thus tried to impart a new dimension and perspective to their email and WhatsApp messages which was different from how the messages were contemporaneously understood by the Corporate Debtor at the time when these messages were exchanged. All this when seen cumulatively together display a clear sign of pre-existing dispute between the two parties. Given this scenario, the reliance placed on ***Naresh Choudhary judgement supra*** by the Appellant is misplaced since in the present case, the facts are distinguishable in that the Corporate Debtor had not acknowledged any outstanding debt while sending the WhatsApp messages articulating disputes.

17. Thus, to return our findings, we are of the view that by no stretch of imagination can the regular exchange of these WhatsApp chats on the quality of battery supplied and the replacement modalities of defective batteries can be treated as mere routine business communications lacking the flavour of pre-existing dispute.

18. We find that the Corporate Debtor has also raked up the issue that the Appellant had given a warranty policy of 3 years vide email dated 22.04.2021 which had been breached by the Appellant. We find the email conveying the

“Warranty of 3* years 750-800 lifecycles” at page 680 of APB. When we look at this Warranty document, we notice that Clause 2 provided warranty against all manufacturing defects in material and workmanship of the batteries. The warranty was to start from the date of the billing and it is the contention of the Corporate Debtor that only on the basis of the said warranty that they began to place orders for batteries. It is pertinent to notice that the warranty document also pre-dates the issue of Demand Notice. At page 808 of APB, we also notice that the Respondent had messaged the Appellant to follow the warranty terms which had been “*mutually decided*” to which the Appellant had given an affirmation to surely follow the terms of the warranty proposal. It is equally pertinent to note that that the Appellant has not controverted the email or the WhatsApp chats on the warranty document. However, it has been subsequently contended by the Appellant that this warranty document was only a draft proposal which was yet to be formally signed and accepted by both the sides and hence placing any reliance on the same is misplaced. Without getting into finding out as to whether the warranty was actually executed or not, we nevertheless would like to observe that the applicability of the warranty had become a bone of contention between the two parties and this by itself goes into the root of the matter as a pre-existing dispute.

19. It is also contended by the Corporate Debtor that the Appellant also undertook by way of a duly signed and stamped Indemnity Bond dated 27.08.2022 that the Appellant would be liable for all repairs/replacement of the defective batteries already supplied, under supply and to be supplied in the future as well and that the Appellant shall compensate the Respondent for any losses caused due to the faulty batteries supplied by the Appellant.

The relevant clauses of the Indemnity Bond as placed at page 70 of APB are as extracted below:

WHEREAS, Indemnifier has assured Indemnified that the batteries (for electric vehicle) so already supplied and still being supplied and to be supplied in the future by Indemnifier were/are/ will be of good quality and there are no issues in the said batteries. That, believing the above representations and assurances of the Indemnifier, the Indemnified has purchased and continues to purchase the batteries so supplied by the Indemnifier and has further sold and continues to sell the said batteries along with its E-Vehicles(battery-operated).

2. That, the Indemnifier agrees and undertakes that, in case the end customer/dealer/distributor of the Indemnified approach the Indemnified in regard to any repair of faults/defects, fire issues, exchange, replacement etc, of the said batteries within the warranty period of 39 months from the date of sale of batteries by the Indemnified to its end-customers/dealers/distributors etc, then, in that case, the Indemnifier shall be solely responsible for the repair of faults/defects, fire issues, exchange, replacement etc of the said batteries and the Indemnifier shall keep the Indemnified absolutely indemnified in the events above and the Indemnified shall have absolutely no liability towards any person. KLB/Indemnified shall return the said faulty batteries to the Indemnifier by raising an Invoice on the Indemnifier and the Indemnifier shall be bound to honour the said Invoice/s and shall buy back the said faulty batteries from KLB/Indemnified within 24 hours of receipt of such Invoice from the Indemnified. The Indemnifier agrees and undertakes to repair the said returned batteries or in case of irreparable faults, the Indemnifier undertakes to replace the said batteries with new batteries, in either case keeping KLB indemnified, against any claims in regard to the said batteries. The Indemnifier shall and undertakes to bear the losses/damages etc in case of any fire issues in the batteries and to provide necessary requisite servicing/service in regards to the said batteries.

(Emphasis supplied)

20. From a plain reading of the above clauses of the Indemnity Bond, it is clear that that the Appellant would be liable for all repairs/replacement of the batteries for a warranty period of 39 months from the date of invoice including

the batteries already sold. Nothing has been placed on record by the Appellant to establish that the indemnity bond was not signed by them. Nothing on record shows that any steps were taken by the Appellant to contemporaneously seek cancellation of the indemnity bond. However, in their Rejoinder Reply to the Section 9 application it has been belatedly contended that indemnity bond was signed under coercion and duress that further payments would not be released until the Appellant had signed the bond. When the signing of the indemnity bond by the Appellant as such is not disputed, for the Appellant to subsequently contend that this was signed under intimidation and not out of free-will is a matter that would clearly require deeper investigation and trial which is clearly beyond the scope of summary proceedings under IBC. Hence the Adjudicating Authority did not commit any error in holding the indemnity bond to be another ground of pre-existing dispute and factoring the same in rejecting the Section 9 application.

21. At this stage, we may refer to paragraph 51 of the judgment of the Hon'ble Supreme Court in ***Mobilox judgment supra*** wherein it has been held that Adjudicating Authority while rejecting a Section 9 application has to only notice whether there is a dispute pending between the parties which dispute warrants further investigation. In paragraph 51, the following was laid down:

“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)(2)(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.”

22. It is well settled that in Section 9 proceedings, the Adjudicating Authority is not supposed to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt. What has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court. Disputes pertaining to contractual issues are not to be resolved in Section 9 proceedings. On hearing both the parties and perusing the documents/materials placed on record, we are satisfied that the Adjudicating Authority did not commit any error in finding the defence raised by the Corporate Debtor not to be one in the nature of being a patently feeble legal argument or being a hypothetical assertion unsupported by evidence.

23. The Adjudicating Authority therefore did not commit any error rejecting the Section 9 application after noticing the voluminous exchange of chat and email communications between the Corporate Debtor and Operational Creditor spread over a long period of time on the supply of defective goods, which clearly establishes that there were serious differences between them in the nature of real pre-existing disputes. If we apply the test laid down in ***Mobilox judgement supra*** to the facts of the present case it is clear that the defence raised by the Corporate Debtor in their reply filed in Section 9

application is not illusory or moonshine. For such disputed operational debt, Section 9 proceeding under IBC cannot be initiated at the instance of the Operational Creditor.

24. For the foregoing reasons, we are of the considered view that the Adjudicating Authority has rightly dismissed the application of the Appellant filed under Section 9 of IBC. We are satisfied that the impugned order does not warrant any interference. We however make it clear that in the event the Appellant seeks remedy before any other appropriate forum, it shall be open for the Appellant to do so in accordance with law. There is no merit in the Appeal. The Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**Place: New Delhi
Date: 07.08.2025**

Abdul/Harleen