IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **01.09.2026** THROUGH VIDEO CONFERENCING

PRESENT: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER	**:**
PETITION NUMBER	**:** CP(IB)/267(CHE)/2025
NAME OF THE PETITIONER(S)	**:** Rajendra Mittal
NAME OF THE RESPONDENTS	**:** Semac Consultants Ltd
UNDER SECTION	**:** Sec 9 Rule 6 of IBC, 2016

ORDER

Present: Ld. Counsel Ms. Aakansha Nehra for the Petitioner.

Ld. Counsel Ms. Reshmi Nair for the Respondent / Corporate Debtor.

Vide separate order pronounced in Open Court, petition is dismissed. File be consigned to records.

Sd/-	**Sd/-**
(VENKATARAMAN SUBRAMANIAM)	**(SANJIV JAIN)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

MG

Date: 01.09.2026

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

CP(IB)/267(CHE)/2025

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***SEMAC Consultants Limited***

Rajendra Mittal,
Plot No. A-168, Bhagat Singh Colony,
Bhiwadi, District Alwar,
Rajasthan-301 019

… Petitioner / Operational Creditor

Vs

SEMAC Consultants Limited,
Pollachi Road, Malumichampatti,
Coimbatore, Tamil Nadu-641 021

… Respondent / Corporate Debtor

Present:

For Petitioner : Ms. Aakanksha Nehra, Advocate

For Respondent : Shri. T.K. Bhaskar, Advocate
Shri. Niranjan S Rao, Advocate
Shri. Mayan H Jain, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 1st September, 2026

O R D E R

(Heard Through Hybrid Mode)

1. This petition CP(IB)/267(CHE)/2025 under Section 9 of the Insolvency and Bankruptcy Code, 2016 {"**IBC**") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Rajendra Mittal, proprietor of Mittal Construction Company (**hereinafter referred to as **"Petitioner/Operational Creditor"**) against **Semac Consultants Limited** (hereinafter referred to as ("**Respondent/Corporate Debtor"**) for initiating Corporate Insolvency Resolution Process ("**CIRP"**).

2. **Part-I** of the petition sets out the particulars of the Petitioner/Operational Creditor, Rajendra Mittal, Being the Proprietor of Mittal Construction Company. He is having office at Plot No. A-168, Bhagat Singh Colony, Bhiwadi, District Alwar, Rajasthan-301 019. **Part-II** of the petition sets out the details of the Corporate Debtor, SEMAC Consultants Limited. It was incorporated on 30.05.1977 with Nominal Share Capital (Company Limited by shares) and Paid-up Share Capital of **Rs.1,82,08,920/-** Its Registered Office is situated at Pollachi Road, Malumichampatti, Coimbatore-641 021 within the

jurisdiction of this Tribunal. In **Part-III** of the petition, the Petitioner has not proposed the name of any Interim Resolution Professional. **Part-IV** of the petition contains the particulars of operational debt i.e., **Rs.2,79,85,341.44.** This petition has been filed on 08.09.2025. In **Part-V** of the petition, the Petitioner has enclosed the documents, records and evidence of default.

3. The case of the Petitioner is that it is a sole proprietary concern and engaged in the business of building construction and related civil engineering works. It is registered under MSMED Act, 2006. The Respondent / Corporate Debtor is a Company engaged in the business of Engineering / Procurement and Construction activities offering various services etc., under single umbrella in the construction of projects / buildings. The Petitioner was awarded a contract of construction of a main building and boundary work for V-Mart site at Palwal, Haryana vide letter of intent dated 15.06.2022 for Rs. 46,00,00,000/-. The work could not commence owing to defaults at the end of the Corporate Debtor. Despite impediments and hindrances, he made every endeavor to complete the work at the earliest. He completed the work in all respects on 30.09.2023. It is stated that the

Petitioner after satisfactorily completing the work in all aspects submitted the final bill on 02.11.2023 vide mail dated 02.11.2023. The bill was approved by the office of the Corporate Debtor on 01.02.2024 and shared vide mail dated 01.02.2024. As per Clause 30 of letter of intent, the payment against the said bill was required to be made by the Corporate Debtor not later than 30.12.2023 but the Corporate Debtor failed to adhere to the contractual terms.

4. It is stated that after the completion of work, the Petitioner demobilized all his resources but the Corporate Debtor placed another request to undertake certain additional works. On completing the additional works, he raised a bill on 29.07.2024 which was approved by the Corporate Debtor on 04.11.2024.

5. It is stated that against the original work of Rs. 46,00,00,000/-, and additional civil work of Rs. 2,55,00,000/-, the Petitioner did the work for a gross value of Rs. 57,37,35,964/- but he only received Rs. 49,58,97,492 only despite satisfactorily completing the work. He also continued the service during the defect liability period and remedied the defects which were indicated but despite the above, he was not paid his contractual dues as per details as under:

a. Dues owed to Petitioner under the final bills submitted in November, 2023 (pertaining to Main Building, Boundary Wall and Extra/ NonScheduled Items) as per Clause 30 were due and payable on 30.12.2023: INR 6,21,80,954/- (Rupees Six Crores Twenty One Lakhs Eighty Thousand Nine Hundred and Fifty Four Only);

b. Dues owed to Petitioner under the bill submitted on 29.07.2024 (approved by your office on 04.11.2024) pertaining to Miscellaneous Work (which were additional items beyond the scope of work awarded to Petitioner, for which a special request was placed on Petitioner and which was undertaken due to the long term relationship between Your office and Petitioner) as per Clause 30 were due and payable on 29.08.2024: INR 24,89,868/- (Rupees Twenty Four Lakhs Eighty Nine Thousand Eighty Hundred and Sixty Eight Only); and in respect of which only part payment has been received, and a sum of INR 2,79,85,341.44/- (Rupees Two Crores Seventy Nine Lakhs Eighty Five Thousand Three Hundred and Forty One and Paise Forty Four Only and Paise Forty Four Only) (excluding GST) is outstanding and defaulted.

6. It is stated that against the above, only part payment of Rs. 2,79,85,341.44 was made. A joint meeting was held on 15.04.2024 where Project Manager of the Corporate Debtor confirmed that only the rates in respect of Non-Scheduled items are to be decided. In respect of the same, the Petitioner submitted the documents on 17.04.2024 against which he received the response on 19.04.2024 where all the dues were admitted. Again a joint meeting was held in May 2024 where the Corporate Debtor told him that it would clear the dues in monthly installments of Rs. 2,50,00,000/- in May 2024 and June 2024

and Rs. 1,50,00,000/- in July 2024 and August 2024. It is stated that despite the above, he received Rs. 1,00,00,000/- on 07.06.2024, Rs. 99,00,000/- on 04.07.2024 and Rs. 1,48,50,000/- on 12.08.2024 as adhoc payments. It is stated that the mobilization advance paid by the Corporate Debtor already stood repaid by adjustment against the running account bills.

7. It is stated that the Petitioner issued a demand notice dated 06.02.2025 under Section 8 of IBC which was responded by the Corporate Debtor on 11.02.2025 wherein Respondent / Corporate Debtor raised the issue of pre-existing dispute. It is stated that no case of pre-existing dispute is made out and the disputes raised by the Corporate Debtor are the moon shine defenses having no basis. It is stated that the Petitioner also invoked the arbitration vide notice dated 20.11.2024 and the provisions of MSMED Act, 2006 vide notice dated 14.01.2025 and filed claims before Micro and Small Enterprises Facilitation Council, Jaipur. The parties also engaged in talks in June 2025 and July 2025 but could not reach to any conclusive settlement, however, during settlement discussions, he received part payments but related to other projects.

8. <u>On getting notice of the petition, Respondent filed the reply</u> stating that name of the Corporate Debtor is changed w.e.f. 19.05.2025 and its name is "SEMAC Constructions Limited". It denied the averments made in the petition and stated that both petition and demand notice issued by the Petitioner are incomplete as no copies of the invoices have been enclosed. The debt claimed to be in default is disputed by the Respondent which fact has been concealed by the Petitioner. The Petitioner was a sub-contractor under the work order. The entire construction of items of work was to be carried out in conformity with the drawings and specifications. The contractor was also liable to rectify the defects and submit a guarantee for the performance of works during the defect liability period for a period of 24 months / 12 months after the commissioning of site. He was required to rectify the defects within the stipulated time. In case, the Contractor fails to complete the work within the time frame work, it is liable to pay liquidated damages @ 0.5% of the contract value for each week's delay subject to maximum of 5% of the contract value as per Clause 28. No final bill shall be entertained without the full completion of the items of work and it shall not be processed in the event of non-rectification of

defects as per Clause 30. After completion of work and before issuance of taking over certificate, he was required to furnish a complete set of as-built drawings reflecting the complete works actually designed and constructed.

9. It is alleged that the Respondents noticed delays and defects in the work carried out by the Petitioner. Numerous emails and correspondences (between 11.08.2022 to 14.05.2025) were exchanged in relation to the same but the Petitioner did not take any meaningful steps to rectify the defects. The details are stated in para 10 of the reply. It is stated that the emails clearly establish the existence of pre-existing disputes between the parties. The Petitioner abandoned the work site on 08.10.2024 and till date has not handed over the project to the Respondent. No taking over certificate under Clause 38 had been issued to the Petitioner. Numerous defects in the works had been pointed out to the Petitioner even as recently as in 2025 which have been left unrectified. There was a delay in handing over the project and the quality of work was sub-standard. The existence of dispute is also established from the fact that Petitioner had issued a notice of arbitration on 20.11.2024 and referred the matter to MSEF Council,

Jaipur. The demand notice had been issued on 06.02.2025 claiming a sum of Rs. 2,79,85,341.44 to be in default. The Respondent immediately responded to the notice on 19.02.2025 highlighting the contractual breach, non-completion of works, sub-standard quality of work and delay in completion including the retention of money for 12 months after completion of works.

10. It is stated that the Respondent in its reply has stated that the Petitioner was paid in excess of Rs. 1,91,47,236/- which is liable to be refunded. Further, Respondent is entitled to liquidated damages to the extent of 5% of the contract value. It is stated that though the Respondent tried to resolve the issues amicably and an understanding was reached and a payment of Rs. 3.05 Crore was made to the Petitioner but that money was appropriated by the Petitioner towards other projects.

11. We have heard Ld. Counsels for the parties and perused the record.

12. Ld. Counsel for the Petitioner reiterated what has been stated in the petition. Ld. Counsel submitted that Respondent vide mail dated 01.02.2024 had shared the copy of the bill after its consultant had made the changes containing the quantity and rates as approved by the

Respondent which contained the running account bill No. 15 for scheduled and non-scheduled items for Rs. 4,74,65,292/- and Rs. 1,18,73,064/- respectively. Subsequently, another email dated 17.04.2024 was sent approving the boundary wall bill. Ld. Counsel stated that the Corporate Debtor initially owed Rs. 6,46,70,882/-. Against the said amount, it made part payment of Rs. 3,47,50,000/-. Ld. Counsel submits that had the Petitioner abandoned the work site or there were multiple issues concerning the quality as alleged, there was no reason for the Corporate Debtor issuing the above mails without any conditions and making the part payments. Therefore it is estopped from disputing their contents. Settlement discussions were held in May / June 2025 where the Corporate Debtor asked the Petitioner to obtain 'no due certificate' from the sub-contractors which the Petitioner objected being not a precondition for making payments but for the reasons best known, the admitted amount has not been released. The mails referred in the reply were prior to the mails dated 01.02.2024 and 17.04.2024 and the defense raised by the Respondent in its reply is a moonshine defense. The Petitioner claim relates solely to the admitted amounts. No correspondence has been placed to show that the Petitioner abandoned the work in 2023-2024. The alleged work orders issued to Rihan Construction is a self-serving document and deserves to be rejected. The proceedings before the Council at Jaipur were merely the recovery proceedings which do not constitute a pre-existing dispute. There was no prior dispute regarding the acknowledged amount. Reference is made of the case *iValue Advisors Pvt. Ltd. Vs. Srinagar Banihal Expressway Ltd., 2020 SCC Online NCLAT 522.*

13. Ld. Counsel for the Respondent argued on the lines of the reply and stated that the Respondent is one of the India's leading EPC Companies dedicated to providing innovative construction solutions. There was a bonafide commercial dispute arising out of a construction sub contract which was existing long prior to issuance of demand notice under Section 8 of IBC which continues to be pending in an arbitration before the Council at Jaipur. The demand notice was issued on 06.02.2025. The Respondent in reply has alleged that there was an excess payment of Rs. 1,91,47,236/- and consequential loss suffered by the Respondent. The Respondent had not issued any completion certificate / taking over certificate as required under Clause 27 of the

work order. The quality audit had confirmed the deficiencies in the quality of work which was communicated vide mails from 11.08.2022 to 14.05.2025. There was delayed completion of work and abandonment of site as evident from the documents for the period from 31.10.2022 to 15.09.2023. The entire case of the Petitioner is based on the mails dated 01.02.2024 and 17.04.2024 which were controverted by the Respondent as evident from the mails dated 09.04.2024, 11.04.2024, 17.04.2024 and 24.05.2024 where the Respondent had raised objection to the inclusion of non-scheduled items unsupported by documents and without prior rate approval. The Petitioner has misrepresented the running account bill No. 15 as the final bill. The Respondent got the balance work done from the other agencies which included the defective works. The Petitioner had issued the notice of arbitration on 20.11.2024 even prior to issuance of the demand notice and in the proceedings pending before the Council, Jaipur. Respondent has filed the counter claims which have not been adjudicated yet. Ld. Counsel submits that the Respondent has already made excess payment which the Petitioner is liable to refund. Ld. Counsel submits that IBC is not a recovery forum. He placed reliance on the cases *(i)GLS Films Industries Private Limited Vs. Chemical Suppliers India 2026, SCC Online SC 551; (ii) Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, 2018 SCC 353; (iii) Raj Krishna Construction Company Private Limited Vs. Newera Solutions Private Liimited, Company Appeal (AT)(Ins) No. 83 of 2024; (iv) Mantra Corporation Vs. Sadbhav Infrastructure Project Limited, C.P(IB)/79(AHM)/2022,* to submit that the dispute raised by the Respondent is not patently feeble. The dispute existed prior to invocation of arbitration and as such petition under Section 9 is not maintainable.

14. We have given our thoughtful consideration to the rival contentions and perused the record.

15. Section 9 of IBC provides that on the expiry of period of 10 days from the date of receipt of the invoice or demand notice under Section 8, if the Operational Creditor does not receive either the payment of debt or a notice of existence of dispute in relation to the debt claimed from the Corporate Debtor, he can file an application with the Tribunal for initiating CIRP against the Debtor.

16. Hon'ble Supreme Court in the case of *GLS Film Industries Pvt. Ltd. Vs. Chemical Suppliers India Pvt. Ltd., 2026 SCC Online SC 551*, referred the case of *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, 2018 1 SCC 353* wherein Hon'ble Supreme Court observed as under: -

> *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.' Thereafter, in S.S. Engineers vs. Hindustan Petroleum Corporation Limited* and others3, *this Court noted that when examining an application under Section 9 of the Code, the adjudicating authority has to examine (i) whether there was an operational debt exceeding ₹1 lakh (after 24th March, 2020, ₹1 crore); (ii) whether the evidence furnished with 2 (2018) 1 SCC 353 3 (2022) 234 COMP CAS 95, the application showed that the debt was due and payable and had not till then been paid; and (iii) whether there was in existence any dispute between the parties or the record of pendency of a suit or arbitration proceedings filed before the receipt of demand notice in relation to such dispute and in the event, any of the*

aforestated conditions was not fulfilled, the application of the operational creditor would have to be rejected.

17. The case of *Sabarmati Gas Limited vs. Shah Alloys Limited, (2023) 3 SCC 229*, was referred where Hon'ble Supreme Court considered the scope of the word 'reconciliation' and applying the definition in Black's Law Dictionary, 10th edition, the Court opined that the apt meaning suitable to the situation in relation to accounting would mean an adjustment of amounts so that they agree, especially by allowing for outstanding items. The Court referred to the observations in *Mobilox (supra)* that it is not necessary that the Court should be satisfied that the defence of a pre-existing dispute is likely to succeed and it is enough if such a dispute exists between the parties. What is to be seen is whether there is a plausible contention requiring investigation for the purpose of adjudication for it to satisfy the requirement of a pre-existing dispute.

18. It was held that given the facts and the aforestated settled legal position, it was not for the NCLAT to delve into the appellant's dispute to decide whether it had actual merit. All that is required is for the adjudicating authority to satisfy itself as to the existence of a plausible

pre-existing dispute, which was not spurious, hypothetical or illusory. Whether the party raising that dispute would succeed on the strength thereof is not within the realm of such inquiry. That being so, we are of the opinion that the NCLT was correct in concluding that the application filed by the respondent under Section 9 of the Code did not merit consideration, owing to pre-existing disputes. The NCLAT was not justified in reversing the said decision. There was clearly no consensus between the parties as to who was liable to pay to the other and the amount that was payable.

19. A perusal of the record reveals that the Petitioner was issued a letter of intent on 15.06.2022 for construction of a building and boundary work for V-Mart site at Palwal for Rs. 46.0 Crore. In addition, it was given civil works of Rs. 2,55,00,000/-. According to the Petitioner, it did the work for a gross value of Rs. 57,37,35,964/- but only received Rs. 49,58,97,492/- despite satisfactorily completing the work. He provided the service during the defect liability period and remitted the defects. Later, after receipt of notice and pursuant to joint meeting, he received part payments and still a sum of Rs. 2,79,85,341.44 is due and payable by the Respondent. The case of the Respondent is that the Petitioner

abandoned the site, did not rectify the defects, there were quality issues in the work and was not issued the completion certificate and as per the clauses of the contract, he was liable to pay 5% as liquidated damages of the contract value. The work was got completed from the other agencies and the Petitioner was paid in excess of Rs. 1,91,47,236/-.

20. The Petitioner reliance is solely based on two mails dated 01.02.2024 and 17.04.2024 wherein the Respondent had approved the bills submitted by the Petitioner for final payments against which full payments were not released. It was submitted that had he abandoned the site and there were multiple issues concerning the quality, there would have been no reason for the Corporate Debtor issue the above mails without any conditions. Further, during settlement discussions held in May – June, 2025, the Corporate Debtor had asked the Petitioner to obtain no-due certificate from the sub-contractors which the Petitioner was not obligated to being not a pre-condition as per the contract.

21. The Respondent reliance is on the mails which it exchanged from 11.08.2022 to 14.05.2025, on delay and quality issues including abandonment of site. The Petitioner has not disputed the receipt of the

above mails. Further, the Respondent had replied to the mails on 09.04.2024, 11.04.2024, 17.04.2024 and 24.05.2024 objecting to the inclusion of non-scheduled items unsupported by documents. These mails show that the Respondent had not approved the bills as claimed in the mails dated 01.02.2024 and 17.04.2024 by the Petitioner. The Petitioner before issuance of the demand notice dated 06.02.2025 under Section 8 of IBC had sent a notice on 20.11.2024 invoking the arbitration and also filed the claims before the MSED Council at Jaipur. The Respondent also filed the counter claims and the proceedings have not yet concluded. The invocation of arbitration is prior to the issuance of the demand notice under Section 8 of IBC. The Corporate Debtor immediately responded to the demand notice raising disputes within 10 days of the issuance of notice. The disputes correspond to the mails exchanged by the parties. The parties had a meeting to resolve. Admittedly, Respondent made part payment but from this it cannot be said that Respondent had acknowledged the liability and has not disputed the debt. As per the clauses of the contract / letter of intent, Petitioner was not issued the completion certificate as alleged. Further, the contract provides for rectification of defects within the defect liability period. The Respondent has placed a document issued by the quality audit confirming the deficiencies in the quality of work. The mail dated 21.11.2023 shows that the Engineer of the Corporate Debtor had checked the running account bill No. 15. There is no document to show that the Engineer or the Project Manager of the Corporate Debtor had certified that the work has been completed in all aspect.

22. The documents and the mails do not negate the existence of dispute between the parties. The reply was filed by the Corporate Debtor raising disputes and refuting the claim of the Petitioner. The disputes had been raised by the Corporate Debtor prior to issuance of demand notice. The dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence nor is spurious or frivolous or vexatious. The dispute requires adjudication on merits. Arbitral proceedings are going on before the MSED Council, Jaipur.

23. From the forgoing discussions and in view of the settled proposition of law, the petition filed under Section 9 is not maintainable because the dispute existed prior to issuance of demand notice. We therefore **dismiss** the petition with no orders as to cost.

24. File be consigned to records.

Sd/- **Sd/-**

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (JUDICIAL)